



SURFACE USE AGREEMENT

This Surface Use Agreement (“**Agreement**”) is dated and made effective this 20th day of May, 2009, and is between Kerr-McGee Oil & Gas Onshore LP (“**KMG**”) with an address of 1099 18th Street, Denver, CO 80202, and Varra Companies, Inc. (collectively hereinafter referred to as “**Surface Owner**”) with an address of 8120 Gage Street, Frederick, CO 80516.

A. Surface Owner owns the surface estate of that certain tract of land more particularly described on Exhibit “A” attached hereto, located in Township 2 North, Range 68 West, Section 2, of Weld County, Colorado (hereinafter referred to as the “**Property**”);

B. Surface ownership of the Property is subject to the rights of the oil and gas mineral leasehold estate, a portion of which is now owned by KMG;

C. Surface Owner represents that it plans to develop the surface of the Property for residential and commercial purposes;

D. KMG currently operates 1 well on the Property, known as the CARL ADLER GAS UNIT B #1 (the “**Existing Well**”) generally located in the center of the SW/4 of Section 2, described above, and has the right to develop its oil and gas leasehold estate by drilling additional wells (the “**Future Well(s)**”) on the Property; and

E. In August 2007, Surface Owner filed claims against KMG alleging that, with respect to prospective future oil and gas operations, KMG has violated C.R.S. § 34-60-127. KMG has denied all such claims. The lawsuit filed by Surface Owner is *Varra Companies, Inc. v. Kerr-McGee Oil & Gas Onshore LP*, Weld County (Colo.) District Court Case No. 07CV675 (the “**Litigation**”). After meeting in August 2008, KMG and Surface Owner agreed to suspend non-essential work on the Litigation and instead negotiate this Agreement and do more testing on the Property for possible pollution.

F. This Agreement sets forth the parties’ rights and obligations regarding the relationship between the development of the Property by Surface Owner and KMG’s operation and development of its oil and gas leasehold estate underlying the Property, such rights and obligations to be binding upon the parties’ successors and assigns.

G. As a part of this Agreement, KMG and Surface Owner are agreeing to dismiss with prejudice all claims for relief in the Litigation, except for claims related to pollution damage alleged in the First Claim for Relief (paragraphs 23 to 25) and the Second Claim for Relief (paragraphs 26 to 29) of the First Amended Complaint attached as Exhibit “B” and filed by Surface Owner in the Litigation (the “**Pollution Claims**”).

In consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

RECORDER'S MEMORANDUM
THIS DOCUMENT WAS FOUND
TO BE INADEQUATE FOR
SCANNING PURPOSES.



AFTER RECORDING RETURN
TO: MELISSA HENCMANN
KERR-MCGEE OIL & GAS ONSHORE LP
1099 18TH STREET, SUITE 1800
DENVER, CO 80202

1. AREAS RESERVED FOR THE EXISTING WELL AND FUTURE WELLS.

Surface Owner shall set aside and provide to KMG that portion of the Property hereinafter referred to as the “**Oil and Gas Operations Areas**” such area(s) being depicted on Exhibit “C” attached hereto. The Oil and Gas Operations Areas are to be made available to KMG in their present condition for any operations conducted by KMG in connection with the Existing Well or any Future Wells including, but not limited to, drilling and production activities, surface production equipment, workovers, well deepenings, recompletions, fracturing, refracturing and replacement wells. Except for the Oil and Gas Operations Areas and the access roads and easements associated with flowlines, gathering lines and pipelines as provided in this Agreement, KMG shall not occupy the surface of the Property except in the event of an emergency or for reasonable incidental, temporary and non-damaging activities, for which KMG shall be strictly and solely responsible for any damages that it caused.

2. WELL LOCATIONS.

KMG, at its sole discretion, shall have the right to drill Future Wells within the Oil and Gas Operations Areas in the locations and configuration shown on Exhibit C, including horizontal and directional wells that produce from and drain lands other than the Property provided such lands are validly pooled with all or any portion of the lands included in KMG’s oil and gas lease covering the Property, and so long as such locations are permitted locations under the then applicable well spacing regulations of the Colorado Oil and Gas Conservation Commission (“**COGCC**”) or exceptions granted thereto by the Director of the COGCC; provided, however, KMG shall drill no more than seven (7) Future Wells on the Property. As part of the consideration for this Agreement, Surface Owner waives its rights and covenants not to, protest or object to any such exception location or any other application by KMG filed with any government entity for permission to undertake any oil and gas operations consistent with this Agreement. Notwithstanding the foregoing, the wellhead location of any Future Wells drilled from any Oil and Gas Operations Area shall not be closer than 200’ from the perimeter of the Oil and Gas Operations Area. Surface Owner shall not plat, develop or sell any residential lot which encroaches on the Oil and Gas Operations Area.

3. SETBACK REQUIREMENTS.

Surface Owner will not locate any lot line, building, or structure within any Oil and Gas Operations Area. Surface Owner understands and acknowledges that the COGCC has rules and regulations that apply to the distance between a wellhead and public roads, production facilities, building units and surface property lines, among other things. In order to give full effect to the purposes of this Agreement, Surface Owner hereby waives its right to object to the location of any of KMG’s facilities on the basis of setback requirements in the rules and regulations of the COGCC, as they may be amended from time to time. Surface Owner further and similarly waives its right to object to any other state or local setback requirements or other requirements or regulations that are or become inconsistent with this Agreement or that would prohibit or interfere with the rights of KMG, its successors and assigns, to explore for and produce the oil and gas in accordance with this Agreement. KMG or its successors and assigns may cite the waiver in this paragraph in order to obtain a location exception or variance under COGCC rules or from any other state or local governmental body having jurisdiction. Surface Owner agrees not to object to the use of the surface in the Oil and Gas Operations Areas so long as such use is



consistent with this Agreement and Surface Owner will provide KMG or its successors and assigns with whatever written support they may reasonably require to obtain permits from the COGCC or any local jurisdiction.

4. GATHERING LINES AND FLOWLINES.

Subject to the limitations hereinafter described, KMG has a continuing right and entitlement to own, operate, maintain, repair and replace all flowlines, gathering lines and other pipelines that may be necessary or convenient to its operations on the Property. All flowlines shall be located in the designated easement corridor shown on Exhibit "D" (the "**Petroleum Pipeline Easement**"). The current development plans for the property anticipate the relocation of certain existing gathering lines or flowlines ("**Existing Pipelines**") to the Petroleum Pipeline Easement. Specifically, KMG agrees at Surface Owner's sole cost and expense to relocate the Existing Pipeline located in the E/2SW/4 of Section 2 ("**Relocated Pipeline**") to the Petroleum Pipeline Easement, remove the abandoned pipeline that results from this relocation and reclaim the affected area. It is further anticipated that any additional pipelines, flowlines and gathering lines that may be required in the future ("**Future Pipelines**") will also need to be placed within, or relocated to the Petroleum Pipeline Easement. Additionally, Surface Owner may request that KMG relocate any Existing or Future Pipeline to a new Petroleum Pipeline Easement to be granted by Surface Owner and KMG shall not refuse such reasonable request provided that any such relocation is feasible and reasonable from a technical and engineering standpoint and complies with all applicable federal, state and local laws rules and regulations. Any and all costs associated with such relocations shall be at Surface Owner's sole cost and expense.

Except for the Relocated Pipeline referenced in the previous paragraph, at such time as Surface Owner desires to have any Existing Pipelines or Future Pipelines relocated to the Petroleum Pipeline Easement shown on Exhibit "D" or to a new Petroleum Pipeline Easement, it shall give written notice to KMG. Following receipt of written notice, KMG shall promptly prepare, or commission the preparation of, a cost estimate to accomplish the relocation. As soon as available, KMG will then provide the cost estimate to Surface Owner who shall then have the opportunity to review same and make a final determination about whether it wishes to proceed with the relocation. If Surface Owner elects to have KMG effectuate the pipeline relocation, it shall tender the estimated costs of such to KMG together with its written request to commence the project as soon as reasonably practicable, or as otherwise requested by Surface Owner. If it has not already done so, Surface Owner shall also deliver to KMG an executed and acknowledged Pipeline Right of Way Grant on the form that is attached hereto as Exhibit "E" in order to convey the Petroleum Pipeline Easement lands as shown on Exhibit "D". The Petroleum Pipeline Easement shall be fifty feet (50') in width during construction, installation or relocation operations and otherwise reduced to thirty feet (30') in width for post-construction usage. Furthermore, at Surface Owner's sole cost and expense, KMG shall abandon all pipeline locations that will no longer be used due to any relocations but only after the completion of such relocations and at such time as Surface Owner has provided KMG with a Pipeline Right of Way Grant in the form of Exhibit "E", if such relocation requires a new Petroleum Pipeline Easement.

All relocated Existing and Future Pipelines shall be located within the Petroleum Pipeline Easement unless otherwise agreed upon between Surface Owner and KMG. KMG acknowledges that the Petroleum Pipeline Easement will be non-exclusive and agrees that it will



not object to concurrent and compatible use by other oil and gas operators or utilities, as Surface Owner may grant from time to time, so long as such other parties comply with KMG's pipeline guidelines, attached hereto as Exhibit "F". Notwithstanding the foregoing, Surface Owner shall not permit, nor shall it place, any other utility or structure within ten feet horizontally or two feet vertically of any KMG pipeline. The Petroleum Pipeline Easement and Oil and Gas Operations Areas shall be depicted and labeled on all subdivision plats submitted to Weld County or the Town of Firestone.

If Surface Owner's development plans anticipate that roadways will or may in the future cross over Existing Pipelines. Surface Owner agrees to pay for the cost to have KMG sleeve any Existing Pipeline that is to be crossed by such roadways, such payment to be made in advance of the work and Surface Owner shall not permit any roadway crossing of any Existing Pipeline until the sleeving of the affected line has been completed.

KMG shall not, without the prior written consent of Surface Owner, have the right to lay additional flowlines or pipelines on the Property, outside the Petroleum Pipeline Easement. All flowlines and pipelines shall be buried to a depth of approximately 48 inches from the surface. Absent separate agreement between Surface Owner and KMG, which agreement shall not be unreasonably withheld. Surface Owner shall maintain a minimum of 48 inches and not more than 72 inches of cover over all pipelines and flowlines during any of Surface Owner's operations on the Property. The construction and burying of additional flowlines, gathering lines and pipelines shall be at the sole cost and expense of KMG or its gas purchaser.

5. ACCESS.

Surface Owner shall provide KMG with continuous access to all of the Oil and Gas Operations Areas and the Petroleum Pipeline Easement. The access roads to be used by KMG will be those roads that currently are in place. Surface Owner shall have the right to relocate or substitute such existing access roads with different roads at its sole cost and expense. Access routes constructed by Surface Owner as part of Surface Owner's development of the Property shall be of sufficient scope to allow KMG to conduct its oil and gas operations and shall be at least 30 feet in width and built to withstand a minimum of 104,000 pounds and 26,000 pounds per axle. KMG shall gravel all roads located within the Oil and Gas Operations Areas. At Surface Owner's sole cost and expense, roads no longer used by KMG pursuant to such relocations or substitutions shall be abandoned.

6. BATTERIES AND EQUIPMENT.

KMG shall have the right to locate, build, repair and maintain tanks, separators, dehydrators, and other equipment for the operation and production of the Existing Well or any Future Wells only within the Oil and Gas Operations Areas and only in the locations, number and configuration shown on Exhibit C. No compressors, other than wellhead compressors shall be located on the Property. All future tanks shall be low-profile tanks.



With respect to KMG’s equipment and facilities other than flowlines or pipelines:

a. KMG shall install and maintain, at its sole cost and expense, all fences around the Existing Well and any Future Wells in compliance with the Rules and Regulations of the COGCC. The fence material may be upgraded at Surface Owner’s option and sole cost and expense, so long as the upgrade complies with COGCC rules and regulations;

b. KMG shall install and maintain, at its sole cost and expense, all gates and locks reasonably necessary for the security of any wells or facilities in the Oil and Gas Operations Areas. Such gates and locks shall be the standard gates and locks used by KMG;

c. KMG shall paint any production facilities for any wells, including wellhead guards, with paint that is approved by the COGCC. The color may be selected by the Surface Owner, provided that any additional cost of using the color is paid by Surface Owner and that it is in compliance with COGCC rules and regulations; and

d. Surface Owner shall not inhibit KMG’s access to the Oil and Gas Operations Areas or inhibit KMG’s operations within the Oil and Gas Operations Areas by landscaping or other improvements, unless otherwise agreed upon between Surface Owner and KMG, which agreement shall not be unreasonably withheld. Surface Owner at its own expense shall have the right to install and maintain fencing, earth berms and trees around Oil and Gas Operations Areas and grass, shallow root shrubs and other non-obstructive landscaping features within the Oil and Gas Operations Areas and on the Petroleum Pipeline Easement. KMG shall not be liable for damage to landscaping or landscaping improvements which result from its reasonable exercise of its right hereunder.

e. KMG shall maintain production facilities in a good state of repair.

7. NOTICE OF FUTURE OPERATIONS.

KMG shall provide at least seven (7) days prior written notice to Surface Owner of any operations in connection with the reworking, fracturing, deepening or recompletion operation on the Existing Well or any Future Wells; provided, however, that KMG shall provide at least thirty (30) days prior written notice to Surface Owner and/or any homeowner’s association formed by Surface Owner that is associated with the Property upon the drilling of any Future Wells. Regardless of the foregoing notice requirements, KMG shall have immediate access to any of its facilities in the event of an emergency.

After receipt of the above notice, but not less than five (5) working days prior to KMG’s mobilization on the applicable Oil and Gas Operations Areas, either KMG or Surface Owner may request an on-site meeting. The purpose of the meeting shall be to inform Surface Owner of the expected activity and to coordinate site access, hazards, barricades, restoration or any other issues that affect the use and safety of Surface Owner’s development.

8. NOTICES TO HOMEOWNERS AND BUILDERS.

Surface Owner shall furnish all buyers of the Property from Surface Owner with a plat or map showing the Oil and Gas Operations Areas and the Petroleum Pipeline Easement. In



addition, Surface Owner shall provide notice to all builders, homeowners, homeowner associations and other buyers of the Property from Surface Owner that:

- a. There may be ongoing oil and gas operations and production in the Oil and Gas Operations Areas on the surface of the Property;
- b. There are likely to be additional Future Wells drilled and oil and gas operations and production from the Oil and Gas Operations Areas that affect the surface of the Property;
- c. Heavy equipment may be used by KMG from time to time for oil and gas production operations and that such operations may be conducted on a 24 hour basis;
- d. Future purchasers of all or a portion of the Property, as successors in interest to Surface Owner, will be acquiring a proportionate interest in Surface Owner's rights under this Agreement and assuming those obligations undertaken by Surface Owner pursuant to this Agreement; and
- e. Homeowner associations and buyers of individual lots or homes, as successors in interest to Surface Owner, will be acquiring a proportionate interest in Surface Owner's rights under this Agreement, and will be subject to the waivers contained in Sections 3, 11, and the covenants contained in Section 3 prohibiting the location of any building or structure within the Oil and Gas Operations Areas and waiving objection to any setback rules of the COGCC or any local jurisdiction.
- f. Surface Owner may fulfill the notice requirement outlined in this paragraph by recording such notice in the records of the Clerk and Recorder for Weld County, Colorado.

9. AGREEMENT TO SEPARATELY DISMISS WITH PREJUDICE CERTAIN CLAIMS IN THE FIRST AMENDED COMPLAINT IN THE LITIGATION

The Parties agreed in August 2008 to suspend non-essential work on the Litigation and instead negotiate this Agreement and further test the Property for possible pollution.

Surface Owner agrees to execute documents dismissing with prejudice claims in its First Amended Complaint in the Litigation, and to also release KMG from all potential liability for these claims pursuant to C.R.S. § 34-60-127 or other law. However, this paragraph shall not apply to the Pollution Claims. The Pollution Claims shall be resolved and addressed in a separate agreement.

Except for claims under this Agreement, Surface Owner and KMG and their successors and assigns mutually covenant not to sue each other or their officers, directors or shareholders based upon any facts, transactions, acts or omissions with respect to the released claims or the Property as of the date hereof. Surface Owner and KMG agree to execute a separate settlement agreement and release confirming these releases of claims and to cooperate with each other to prepare, execute and file all documents necessary to obtain prompt dismissal with prejudice of certain claims in the Litigation.



10. DRILLING AND COMPLETION OPERATIONS.

KMG shall endeavor to reasonably minimize the total drilling time and to avoid rig relocations or startup during the course of drilling. Surface Owner waives any objections to continuous (i.e., 24-hour) drilling operations.

11. GOVERNMENTAL PROCEEDINGS.

Surface Owner shall not oppose KMG in any agency or governmental proceedings, including but not limited to the COGCC, the Town of Firestone, or other governing body proceedings, related to KMG's operations on the Property, including but not limited to drilling, workovers, well deepenings and recompletions, provided that KMG's position in such proceedings is consistent with this Agreement.

Unless necessary to protect public health or safety, KMG shall not oppose Surface Owner in an any agency or governmental proceedings, including but not limited to the Town of Firestone, County of Weld or other governing body proceedings, related to the development of the Property by Surface Owner provided its position in such proceedings is consistent with this Agreement.

12. LIMITATION OF LIABILITY, RELEASE AND INDEMNITY.

a. No party shall be liable for, or be required to pay for, special, punitive, exemplary, incidental, consequential or indirect damages to any other party for activities undertaken within the scope of this Agreement. This provision shall not apply to the Pollution Claims;

b. Except as to claims arising out of pollution or environmental damage (which claims are governed by Section 13 below) or out of other provisions of this Agreement (which claims shall be governed by the terms of this Agreement), each party shall be and remain responsible for its own liability for all losses, claims, damages, demands, suits, causes of action, fines, penalties, expenses and liabilities, including without limitation attorneys' fees and other costs associated therewith (all of the aforesaid herein referred to collectively as "Claims"), arising out of or connected with each such party's ownership or operations on the Property, no matter when asserted, subject to applicable statutes of limitations. Each such party shall release, defend, indemnify and hold the other parties, their officers, directors, employees, successors and assigns, harmless against all such Claims. This provision does not, and shall not be construed to, create any rights in persons or entities not a party to this Agreement, nor does it create any separate rights in parties to this Agreement other than the right to be indemnified for Claims as provided herein;

c. Upon the assignment or conveyance of a party's entire interest in the Property, that party shall be released from its indemnification in Section 12b. above, for all actions or occurrences happening after such assignment or conveyance.



13. ENVIRONMENTAL INDEMNITY.

The provisions of Section 12 above, except for Section 12.a., shall not apply to any environmental matters, which shall be governed exclusively by the following, subject to the limitations of Section 12.a. above:

a. “Environmental Claims” shall mean all Claims asserted by governmental bodies or other third parties for pollution or environmental damage of any kind, arising from operations on or ownership of the Property or ownership of the oil and gas leasehold interest, whichever is applicable, and all cleanup and remediation costs, fines and penalties associated therewith, including but not limited to any Claims arising from Environmental Laws or relating to asbestos or to naturally occurring radioactive material. Environmental Claims shall not include the costs of any remediation undertaken voluntarily by any party, unless such remediation is performed under the imminent threat of a Claim by a governmental body or other third party;

b. “Environmental Laws” shall mean any laws, regulations, rules, ordinances, or order of any governmental authority(ies), which relate to or otherwise impose liability, obligation, or standards with respect to pollution or the protection of the environment, including but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§ 6901 et seq.), the Clean Water Act (33 U.S.C. §§ 466 et seq.), the Safe Drinking Water Act (14 U.S.C. §§ 1401-1450), the Hazardous Material Transportation Act (49 U.S.C. §§ 1801 et seq.), the Clean Air Act, and the Toxic Substances Control Act (15 U.S.C. §§ 2601-2629); and

c. Environmental Indemnification. KMG shall protect, indemnify, and hold harmless Surface Owner, homeowners association and any lot owner who purchases a lot from Surface Owner from any Environmental Claims relating to the Property or oil and gas leasehold thereunder that arise out of KMG’s ownership or operation of the Oil and Gas Operations Areas and its ownership and operation of its pipeline easement or rights-of-way on the Property. Surface Owner shall fully protect, defend, indemnify and hold harmless KMG from any and all Environmental Claims relating to the Property that arise out of Surface Owner’s development of the Property.

14. EXCLUSION FROM INDEMNITIES.

The indemnities of the parties herein shall not cover or include any amounts which the indemnified party is actually reimbursed by any third party. The indemnities in this Agreement shall not relieve any party from any obligations to third parties.

15. NOTICE OF CLAIM FOR INDEMNIFICATION.

If a Claim is asserted against a party for which the other party would be liable under the provisions of Section 12 or 13 above, it is a condition precedent to the indemnifying party’s obligations hereunder that the indemnified party give the indemnifying party written notice of such Claim setting forth all particulars of the Claim, as known by the indemnified party, including a copy of the Claim (if it is a written Claim). The indemnified party shall make a good faith effort to notify the indemnifying party within five days of receipt of a Claim and shall affect



such notice in all events within such time as will allow the indemnifying party to defend against such Claim.

16. REPRESENTATIONS.

Each party represents that it has the full right and authority to enter into this Agreement. KMG does not represent that it has rights to settle matters for all of the mineral owners or any other lessees in the Property and this Agreement shall only apply to and bind the KMG leasehold interest in the property.

17. SUCCESSORS.

The terms, covenants, and conditions hereof shall be binding upon and shall inure to the benefit of the parties and their respective heirs, devisees, executors, administrators, successors and assigns; provided, as to KMG, successors and assigns shall be deemed to be limited to lessees or successor operators under the oil and gas leases which KMG owns.

18. TERM.

This Agreement shall become effective when it is fully executed and shall remain in full force and effect until KMG's leasehold or mineral estate expires or is terminated, and KMG has plugged and abandoned all wells owned all or in part by KMG and complied with the requirements of all applicable oil and gas leases pertaining to removal of equipment, reclamation, cleanup and all other applicable provisions of the leases and existing laws and regulations.

19. NOTICES.

Any notice or other communication required or permitted under this Agreement shall be sufficient if deposited in U.S. Mail, postage prepaid, addressed to each of the following:

If to KMG:

Kerr-McGee Oil & Gas Onshore LP
Granite Tower
1099 18th Street – #1800
Denver, CO 80202
Attn: David Bell and Director of Land, Denver Basin

If to Surface Owner:

Garrett C. Varra
Varra Companies, Inc.
8120 Gage Street
Frederick, Colorado 80516

Any party may, by written notice so delivered to the other parties, change the address or individual to which delivery shall thereafter be made.



20. RECORDING.

This Agreement, and any amendment hereto shall be recorded by KMG, which shall provide the other parties with a copy showing the recording information as soon as practicable thereafter.

21. SURFACE DAMAGES.

Surface Owner hereby waives all surface damage payments pursuant to any COGCC or local regulation, state statute, common law or prior agreement, for each and every well that is drilled, tank battery and emissions control device located on the Property within the Oil and Gas Operations Areas and also including but not limited to any access road, flowline, or pipeline constructed within the Easement. KMG may provide a copy of this Agreement to the COGCC as evidence of this waiver.

22. ARBITRATION.

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be resolved by arbitration conducted in Denver, Colorado and shall be administered by the American Arbitration Association under its commercial rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

23. COGCC RULES.

Unless waived or otherwise stated herein, KMG shall conduct its operations on the Property in accordance with all of the rules and regulations promulgated by the COGCC.

24. APPLICABLE LAW.

This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, without reference to its conflict of laws provisions.

25. ENTIRE AGREEMENT.

This Agreement sets forth the entire understanding among the parties hereto regarding the matters addressed herein, and supersedes any previous communications, representations or agreement, whether oral or written. This Agreement shall not be amended, except by written document signed by all parties.

26. EXECUTION AND BINDING EFFECT

This Agreement may be executed in any number of counterparts each of which shall be deemed an original instrument but all of which together shall constitute one and the same instrument, and shall be binding upon and inure to the benefit of the parties, and each of their respective heirs, executors, administrators, successors and assigns and is executed by the parties as of the Effective Date set forth above.



363597 07/13/2009 02:03P Weld County, CO
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KERR-McGEE OIL & GAS ONSHORE LP

By: *[Signature]*
Name: **Hank Wood**
Title: **Agent and Attorney-in-Fact**

[Handwritten initials]

VARRA COMPANIES, INC.

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENTS

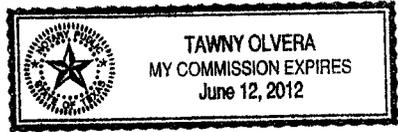
STATE OF TEXAS)
) ss.
COUNTY OF MONTGOMERY)

The foregoing instrument was acknowledged before me this 26th day of May, 2009, by Hank Wood, as Attorney-in-Fact of Kerr-McGee Oil & Gas Onshore LP, on behalf of such corporation.

Witness my hand and official seal.

Tawny Olvera
Notary Public

My Commission Expires: 6-12-2012



STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2009, by _____, on behalf of Varra Companies, Inc.

Witness my hand and official seal.

Notary Public

My Commission Expires: _____



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Exhibit A

The E/2 of the SW/4 and the W/2 of the SE/4 of Section 2, Township 2 North, Range 68 West of the 6th P.M., County of Weld, State of Colorado

EXCEPT that portion of said premises deeded to Weld County by Deeds recorded August 30, 1991 in Book 1309 as Reception Nos. 2261418 and 2261419, also known by street and number as vacant land, Longmont, Colorado



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<p>DISTRICT COURT, COUNTY OF WELD, COLORADO</p> <p>915 10th Street P. O. Box 2038 Greeley, CO 80632</p> <hr/> <p>Plaintiff(s): VARRA COMPANIES, INC.</p> <p>Defendant(s): KERR-MCGEE OIL & GAS ONSHORE LP</p> <hr/> <p>Lance Astrella T. R. Rice ASTRELLA & RICE P.C. 1801 Broadway, Suite 1600 Denver, Colorado 80202 Tel: (303) 292-9021 Fax: (303) 296-6347 Email: lance @astrellalaw.com tr@astrellalaw.com Atty. Reg. # 5136 and # 13436</p>	<p>▲ COURT USE ONLY ▲</p> <hr/> <p>Case Number: 07 CV 675</p> <p>Div: _____</p>
FIRST AMENDED COMPLAINT	

COMES NOW the Plaintiff, by and through counsel, and hereby alleges, avers and complains as follows:





A. Parties and Venue

1. Plaintiff is a Colorado corporation which may be found at 8120 Gage Street, Erie, CO.

2. Defendant is a Delaware limited partnership which may be found at 1999 Broadway, Denver, CO.

3. The subject matter of this complaint involves the use of real property located in the County of Weld, CO, and as such, venue is proper pursuant to C.R.C.P. 98(a).

B. Facts

Prefatory Facts

4. Plaintiff owns the surface estate, the gravel, and the water rights associated with the following-described real property (the "Land"):

Township 3 North, Range 67 West
Section 2: E/2SW, W/2SE



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The Land is located on the northeast side of the intersection of Interstate 25 and Highway 119 and is approximately one-quarter mile east of the interstate.

5. Plaintiff does not own the oil and gas rights underlying the Land. The exploration and development rights for the oil and gas under the Land are leased to Defendant pursuant to an oil and gas lease dated April 29, 1970 (the "Lease"). A copy of the Lease is attached hereto as Exhibit 1. As the owner of the surface estate and other interests associated with the Land which are affected by oil and gas operations, the Plaintiff is a third-party beneficiary under the Lease.

Oil and Gas Operations Upon the Property

6. To date, one oil and gas well has been drilled upon the Land, and Defendant has indicated that it plans to drill another eight wells. Defendant has previously articulated, and continues to articulate, that the wells and associated surface equipment will be located such that more of the surface estate of the Land will be used and occupied than is reasonable and necessary for the drilling and production of oil and gas from the wells.

7. Plaintiff is under contract to sell certain portions of the Land to a third party. However, in order for the contract to close, the purchaser has required that there be a reasonable level of certainty as to where the wells and surface equipment of the Defendant



will be located. Absent such certainty, or if the Defendant proposes to drill wells at locations that are not conducive to the reasonable development of the surface, the sale will not be consummated, or if it is consummated, the price to be paid will be significantly less than originally negotiated by the parties.

8. On or about May 29, 2007, the Colorado legislature approved and adopted HB 07-1252, which amended C.R.S. § 34-60-127. The legislation was approved by the governor, and the provisions thereof are now law.

9. In relevant part, C.R.S. § 34-60-127 provides as follows:

- a. An oil and gas operator has the obligation to conduct "oil and gas operations" in a manner that accommodates the surface owner by minimizing intrusion upon and damage to the surface.
- b. "Minimizing intrusion" means selecting alternative locations for wells, etc. that prevent, reduce, or mitigate the "impacts of oil and gas operations" on the surface where alternatives are practical and reasonable.



- c. An operator's failure to meet the foregoing requirements "shall give rise to a cause of action by the surface owner", and in such action, the surface owner "may seek compensatory damages or such equitable relief as is consistent with the purposes of the statute".
- d. In such litigation, the owner of the surface is obligated to present evidence that the oil and gas operations materially interfered with the use of the surface by the owner.

10. C.R.S. § 34-60-103(6.5) defines "oil and gas operations", and included in that definition is the siting of wells. Also included in the definition is the broader term, "exploration for oil and gas". "Exploration" is commonly understood in the oil and gas industry as, "The search for oil and gas. Exploration operations include: aerial surveys, geophysical surveys, geological studies, core testing and the drilling of test wells (wildcat wells)." Manual of Oil and Gas Terms, Williams and Meyers (Matthew Bender, 5th Ed.). The foregoing is consistent with the industry accepted definition of operations, which is, "The exploring, testing surveying or otherwise investigating the potential of the subject lands for oil and gas, the actual drilling or preparation for drilling of wells therefor, or any other actions directed towards the eventual production or attempted production of oil and gas from such lands." Id. To site, or "siting" is "the place where a structure, or a group of



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structures, was, is, or is to be located". The American Heritage Dictionary of the English Language (Houghton Mifflin Company, 4th Ed.).

11. On July 3, 2007, Defendant caused that letter attached hereto as Exhibit 2 to be forwarded to counsel for the Plaintiff. The letter indicates the desire of the Defendant to drill certain wells on the Land and sites wells that needlessly, and in violation of C.R.S. § 34-60-127, intrude upon the Plaintiff's use of the surface.

12. The oil and gas operations of the Defendant upon the Land includes the siting of a well to be drilled from the Land that will be bottom-holed on the land of another.

13. Demand has been made that Defendant conduct its oil and gas operations in an alternative manner that is technologically sound, economically practicable, and reasonably available to the Defendant. Defendant has refused to do so.

14. The siting of these wells and related facilities has caused damage to Plaintiff. "Damage" includes "every loss or diminution of what is a man's own". Black's Law Dictionary (West Publ. Co., 5th Ed.).

Pollution Caused on the Property

15. When the Lease was executed in 1970, the Land was zoned agricultural and was used for agricultural purposes by the owner of the surface. In 1997, the Land was re-zoned to commercial/office and commercial/mixed use. In conjunction with the gravel mining operations on the land, a 1,500 acre feet reservoir was constructed at a cost of approximately \$4,000,000. The surface dimensions of the reservoir are approximately 1,500 feet by 1,970 feet.

16. Plaintiff believes that the Land is worth at least \$7.50 per square foot. Plaintiff presently plans mixed residential and commercial development upon the Land with the existing reservoir providing a water supply for the development and acting as a recreational facility for the residents.

17. In May 2006, a spill was discovered that originated from a leak in an oil and gas production tank owned and operated by Defendant. Considerable oil and associated hydrocarbons have leaked onto the Land and into the groundwater. Plaintiff has demanded that Defendant remediate the contaminated soil and water to the condition that it was in prior to the leak. Defendant has refused and claims that it only has the obligation to remediate the spill to the lenient statewide standards set by the COGCC.



C. Summary of Claims

18. Plaintiff seeks damages for the oil spill in an amount equivalent to the cost of remediating the Land and groundwater to the condition it was in prior to the spill and to such other damages that Plaintiff has incurred as a result of the spill.

19. Plaintiff seeks recovery of damages to the Land as provided for under the Lease.

20. Plaintiff seeks to recover from Defendant the value of the portions of the Land for which Plaintiff has incurred damage arising from Defendant's oil and gas operations in excess of that which is reasonable and necessary to develop the oil and gas thereunder.

21. Plaintiff seeks a decree that Defendant may not site a directional well on the surface of the Land, the bottom of which well is located on adjacent property not a part of the Lease.

22. Plaintiff is cognizant of the holding in Burkett v. Amoco Production Co., 85 P 3f 576 (Colo. App. 2003). Assuming, arguendo, that Burkett was properly decided under the then existing law, the decision in that case is inapposite to the matter before this Court. By way of example, but not limitation, Plaintiff notes as follows:



- a. Burkett was decided years before the adoption of HB 07-1252. The legislative enactment creates an immediate cause of action for all damage suffered by virtue of oil and gas operations, and Defendant is engaging in oil and gas operations on the Land which have caused, and will continue to cause, damage to the Plaintiff.

- b. The existence of a contract between Plaintiff and a third party which is being impacted by the actions of the Defendant creates the existence of an actual case and controversy that was arguably not present in Burkett.

D. Claims for Relief

First Claim for Relief
(Trespass/Pollution on the Property)

23. On or about June 2006, it was discovered that a tank and pipes leading to and from the tank on the Land, which tank and pipes are owned and operated by Defendant, had leaked into the ground and groundwater. Such leak has contaminated the ground and groundwater with hydrocarbons, and constituted, and continues to constitute, a physical intrusion of real property owned by the Plaintiff. Prior to the contamination by

the Defendant, there was no hydrocarbon contamination on the Land or in the groundwater.

24. Defendant maintains that it only intends to remediate the soil and groundwater to the minimal statewide requirements imposed by the Colorado Oil and Gas Conservation Commission (the "COGCC"). Remediating the Land and groundwater only to that minimal level will preclude development of portions of the Land affected by the contamination for residential and/or commercial purposes.

25. Plaintiff has been damaged in the amount of the cost to restore the Land and groundwater under the Land to the condition that it was in prior to the trespass.

Second Claim for Relief
(Negligence/Negligence Per Se)

26. In exploring for and developing the oil and gas reserves which underlie the Land, Defendant owed a duty to Plaintiff, among others, to conduct such operations in a good and workmanlike manner and to assure that its operations did not cause pollution upon the surface.

27. Further, and in the event of a spill of oil and gas production or chemicals associated with such production, Defendant owed a duty to Plaintiff, among others, to remediate the spill.

28. The foregoing duties are provided for both by the common law and by statute and/or regulation. Plaintiff is within the class of persons whose interest was intended to be protected and whose interest has been invaded.

29. Plaintiff has been damaged by the actions of the Defendant both in causing the pollution and its failure to properly remediate the same.

Third Claim for Relief
(Violation of C.R.S. § 34-60-127 - Wells Sited on the Land)

30. By siting certain well locations on the Land to be bottom-holed on the Land, Defendant has used more of the Land than is reasonable and necessary in its oil and gas operations on the Land, and has created unnecessary and unreasonable obstacles to the quiet use and full and reasonable enjoyment of the Land, thus causing damage.

Fourth Claim for Relief
(Violation of C.R.S. § 34-60-127 - Siting of a Directional Well on the Land to be Bottom-Holed on an Adjacent Lease)

31. Defendant has asserted that it has a right to use the Land for the purpose of directionally drilling a well, the surface of which will be located on the Land and the bottom of which will be on property adjacent to the Land. Defendant has sited a surface location for the well on the Land.

32. Defendant claims such right under a declaration of pooling pursuant to a pooling clause in the 1970 oil and gas lease.

33. The Lease was executed before directional drilling was commercially feasible in this area and, therefore, such directional well could not have been within the contemplation of the parties at the time the Lease was signed.

34. Siting the surface of a directional well on the Land as opposed to locating a vertical well on the adjoining property to access the minerals lying below the adjoining property constitutes an excessive use of the Land and is in violation of the statute herein above referenced.

35. Defendant's actions have resulted in damage to the Plaintiff.



Fifth Claim for Relief
(Violation of C.R.S. § 34-60-127 - The Siting of a Vertical Well and the Cost of Directional Drilling)

36. Defendant asserts that, based on topographical considerations, one of the wells to be drilled on the Land may be drilled vertically and has sited the well accordingly.

37. Plaintiff has demanded that the well be sited as a directional well with the wellhead being located adjacent to other wells on the Land in order to minimize the use and occupancy of valuable surface.

38. Plaintiff has been damaged by the loss of valuable property. Plaintiff may be further damaged by its inability to perform under a contract to sell certain parts of the Land which are encumbered by Defendant's excessive oil and gas operations.

39. Such damage is actionable pursuant to the statute herein above referenced.

40. The siting of a vertical well as opposed to the siting of a directional well constitutes an excessive use of the Land and is in violation of the statute herein above referenced. By statute, the cost of drilling any directional well sited by Defendant is to be borne by the Defendant.



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41. The actions of the Defendant have caused damage to the Plaintiff.

WHEREFORE, Plaintiff prays for judgment in its favor in a manner consistent with the foregoing, plus an award of costs, interest and attorney fees as found to be appropriate.

DATED this 20th day of December, 2007.

Respectfully submitted,

Original signature on file

Lance Astrella, #5136
T.R. Rice, #13436
ASTRELLA & RICE P.C.
1801 Broadway, Suite 1600
Denver, Colorado 80202
(303) 292-9021

ATTORNEYS FOR PLAINTIFF



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Certificate of Service

I hereby certify that on the 20th day of December, 2007, a true and correct copy of the foregoing was served via Court Link upon the following:

David R. Little
Matthew Grove
Bjork, Lindley, Little PC
1600 Stout St., Suite 1400
Denver, CO 80202

Original signature on file



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EXHIBIT 1



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STATE OF 626 Colorado)
 COUNTY OF Weld Boulder) ss. **INDIVIDUAL(S) ACKNOWLEDGEMENT** (Colorado, Nebraska,
 Wyoming, Utah, Kansas, North Dakota, South Dakota, Montana)
 On April 29 2009, before me personally appeared Cap. H. Adler 1547776 2-2

to me known to be the person(s) described in and whose name(s) is (are) subscribed and who executed the foregoing instrument and acknowledged to me that he (she/they) duly executed the same as his (her/their) free and voluntary act and deed, including the release and waiver of the right of homestead, the said wife (wives) having been by me fully apprised of her (their) right(s) and effect of signing and acknowledging the said instrument. Given under my hand and seal the day and year last above written.



Harold K. Dawson
 Notary Public
 Residing at _____

STATE OF _____)
 COUNTY OF _____) ss. **INDIVIDUAL(S) ACKNOWLEDGEMENT** (Colorado, Nebraska,
 Wyoming, Utah, Kansas, North Dakota, South Dakota, Montana)
 On _____ 19____, before me personally appeared _____

to me known to be the person(s) described in and whose name(s) is (are) subscribed and who executed the foregoing instrument and acknowledged to me that he (she/they) duly executed the same as his (her/their) free and voluntary act and deed, including the release and waiver of the right of homestead, the said wife (wives) having been by me fully apprised of her (their) right(s) and effect of signing and acknowledging the said instrument. Given under my hand and seal the day and year last above written.

STATE OF _____)
 COUNTY OF _____) ss. **INDIVIDUAL(S) ACKNOWLEDGEMENT** (Colorado, Nebraska,
 Wyoming, Utah, Kansas, North Dakota, South Dakota, Montana)
 On _____ 19____, before me personally appeared _____

to me known to be the person(s) described in and whose name(s) is (are) subscribed and who executed the foregoing instrument and acknowledged to me that he (she/they) duly executed the same as his (her/their) free and voluntary act and deed, including the release and waiver of the right of homestead, the said wife (wives) having been by me fully apprised of her (their) right(s) and effect of signing and acknowledging the said instrument. Given under my hand and seal the day and year last above written.

Notary Public
 Residing at _____

OIL AND GAS LEASE

No. 1547776

780N

TO _____

Date _____

Section _____ Twp. _____ Rpt. _____

No. of Acres _____

County _____

STATE OF _____)
 County of _____)

This instrument was filed for record on the
10 day of MAY 2009
 at _____, _____, and duly recorded
 to Book 626, Page _____
 of the records of this office.
Harold K. Dawson
 Notary Public
 Residing at _____

When recorded, returns to _____

STATE OF _____)
 COUNTY OF _____) ss. **CORPORATE ACKNOWLEDGEMENT** (Colorado, Nebraska,
 Wyoming, Utah, Kansas, North Dakota, South Dakota, Montana)
 On _____ 19____, before me personally came the above named _____
 _____, being by me duly sworn, did say that he is the _____

President of _____ a corporation, and that the seal affixed to said instrument is the corporate seal of said corporation) who is personally known to me and acknowledged the instrument to be his free and voluntary act and deed and the free and voluntary act and deed of said corporation; that said corporation authorized said instrument and that said instrument was executed, signed and sealed on behalf of said corporation by authority of its Board of Directors or by authority of its By-Laws.

My Commission Expires: _____

Notary Public
 Residing at _____



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EXHIBIT 2



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BJORK • LINDLEY • LITTLE • PC

LAWYERS

PETER A. BJORK*
LAURA LINDLEY
DAVID R. LITTLE
ROBERT C. MATHES*
DARIN B. SCHER*
KATHLEEN S. CORR
JILL D. CANTWAY*
CHRISTOPHER G. HAYES*

*Of Counsel
*Also admitted in Wyoming
*Also admitted in the District of Columbia

July 3, 2007

Lance Astrella
Astrella & Rice PC
1801 Broadway, Suite 1600
Denver, CO 80202-3800

Re: Carl Adler Tank Battery #1
S/2 Section 2, Township 2 North, Range 68 West
Weld County, Colorado

Dear Lance:

This letter is in response to yours of June 26.

The enclosed diagram depicts Kerr-McGee's plan for the reconstruction of the Carl Adler Tank Battery. The Carl Adler Gas Unit B #1 well has been shut in for thirteen months while the company has discussed acceptable tank locations with Mr. Varra. Mr. Varra and KMG have discussed several alternative locations for this tank battery. The inset to the enclosed diagram depicts a location that Mr. Varra has verbally stated is generally acceptable. The tanks and separator will be rebuilt in the indicated location, sometime within the next two weeks depending on KMG's construction schedule, and the Carl Adler GU B #1 well will be put back into production. The facilities will be located in the southern part of the facilities area to leave room for operations in connection with the Sand wells, which will be drilled in the locations shown within the next few months.

The inset in the diagram shows where KMG intends to locate the four Sand wellheads and the reserve pit and topsoil stockpiles for their drilling, after the Carl Adler tanks are re-installed. The wells are as close to the ditch as KMG believes is prudent, about 150 feet. The inset does not show the locations of the tanks and separators that will service the Sand wells; those have been depicted in previous diagrams sent to you, and are shown in the bigger picture of which the inset is a part. The purpose of this inset diagram is to show how the wells will relate to the tanks and separator for the Carl Adler GU B#1 well; those will be on the ground when the Sand wells are to be drilled, and the tanks and separators serving the Sand wells will be installed after those wells are drilled, in the area between the Carl Adler tank and the wellheads.



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Astellla & Rice
July 3, 2007
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The access drive around those facilities is also shown. The driveway configuration reflects the anticipated condition at the end of installation of all wells and facilities. KMG's engineers have done three reviews of this site, and have concluded that this layout is as compact as they can make it, considering the requirement to drill four wells, install tanks and separators for those four plus four more for the wells to be drilled from the northeastern OGO area, maintain a safe distance for passage of trucks through the access drive, and preserve access for hydrofracturing and workover activities in the future.

As I stated in my last letter, the flow lines can be laid five feet apart, since they will all be done at once.

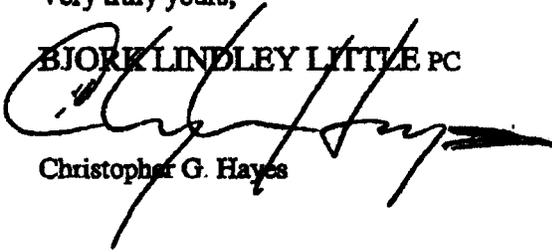
KMG proposes that the parties enter into a surface use agreement to reflect all of these operational issues. I will send you a draft agreement within the next week, and look forward to reaching a workable accommodation on new wells and surface facilities. However, the company does not believe that it is necessary to delay the reinstallation of the Carl Adler GU B#1 battery while the parties conclude an SUA for the eight new wells to be drilled.

Of course, KMG will continue with its remediation activities at the site of the former tank battery.

We look forward to working with you on this matter.

Very truly yours,

BJORK LINDLEY LITTLE PC


Christopher G. Hayes

Encl

cc: Joe Lorenzo
Terry Enright
Jeff Fiske



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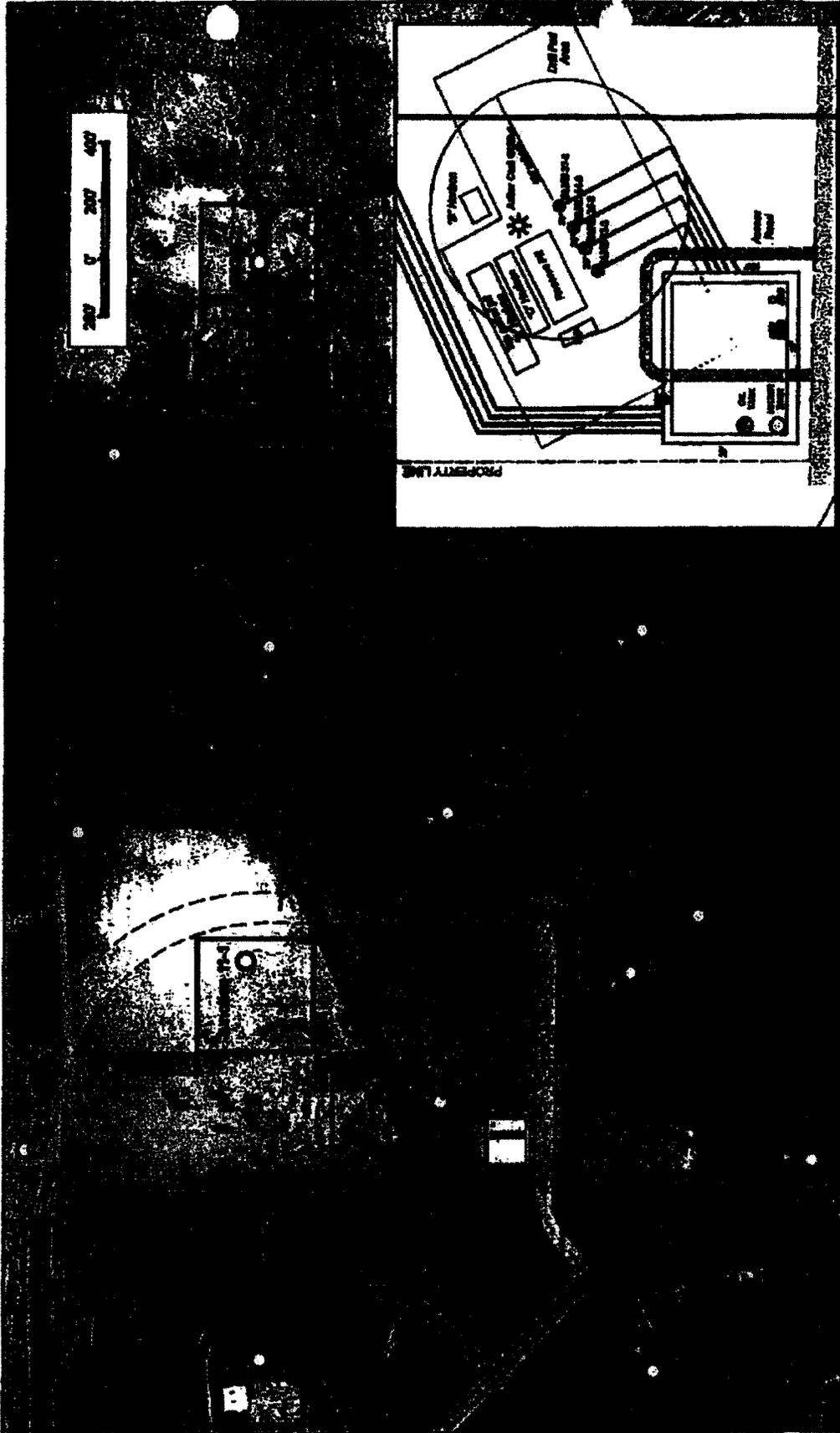
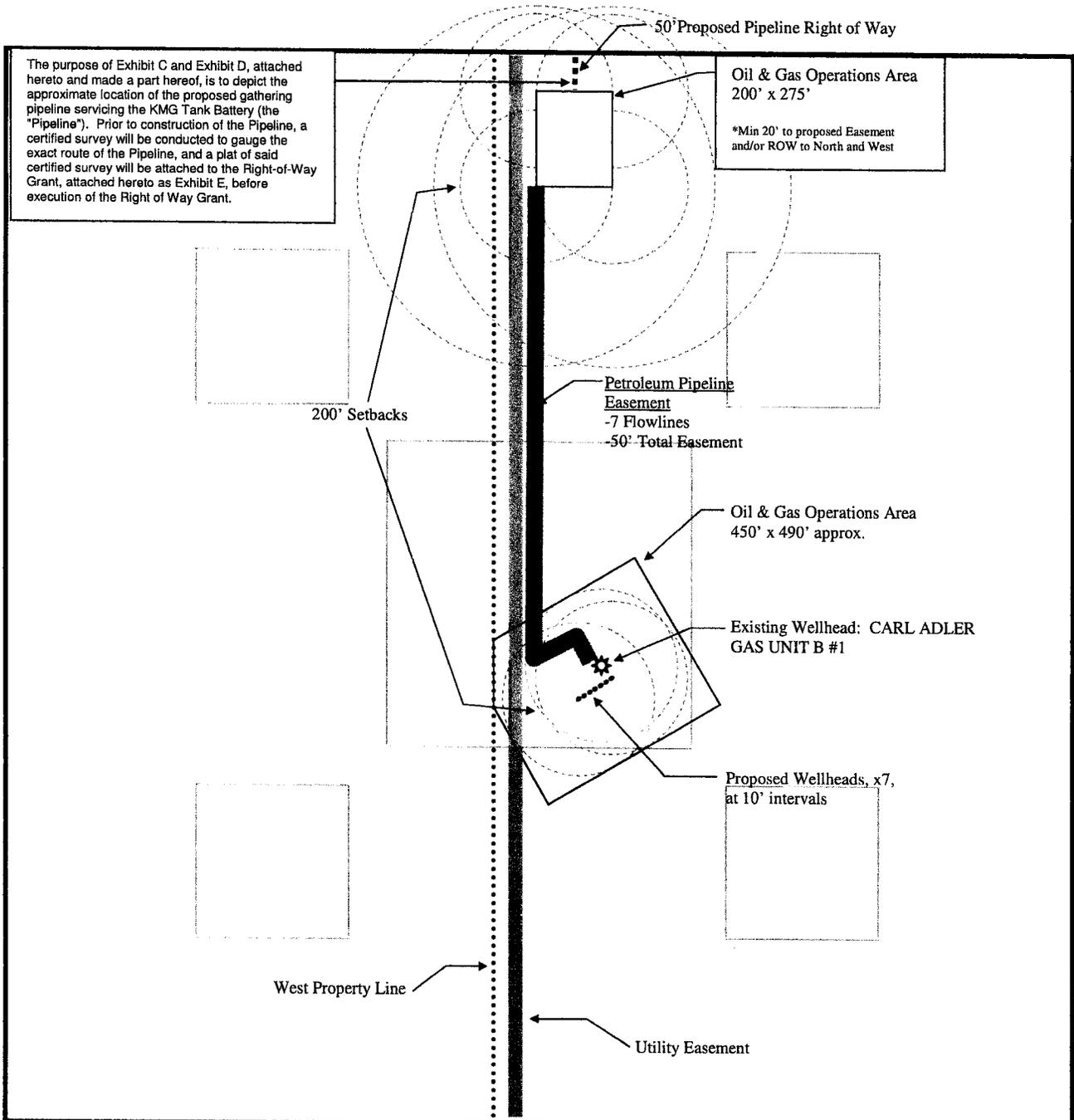


EXHIBIT C
TOWNSHIP 2 NORTH RANGE 68 WEST SECTION 2
SW/4



Kerr McGee Oil & Gas Onshore LP
 635 N 7TH AVE
 BRIGHTON, CO 80601

VARRA COMPANIES INC
TOWN OF FIRESTONE
COUNTY OF WELD
STATE OF COLORADO

DATE:
3/23/2009

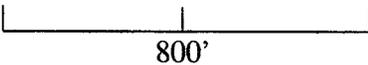
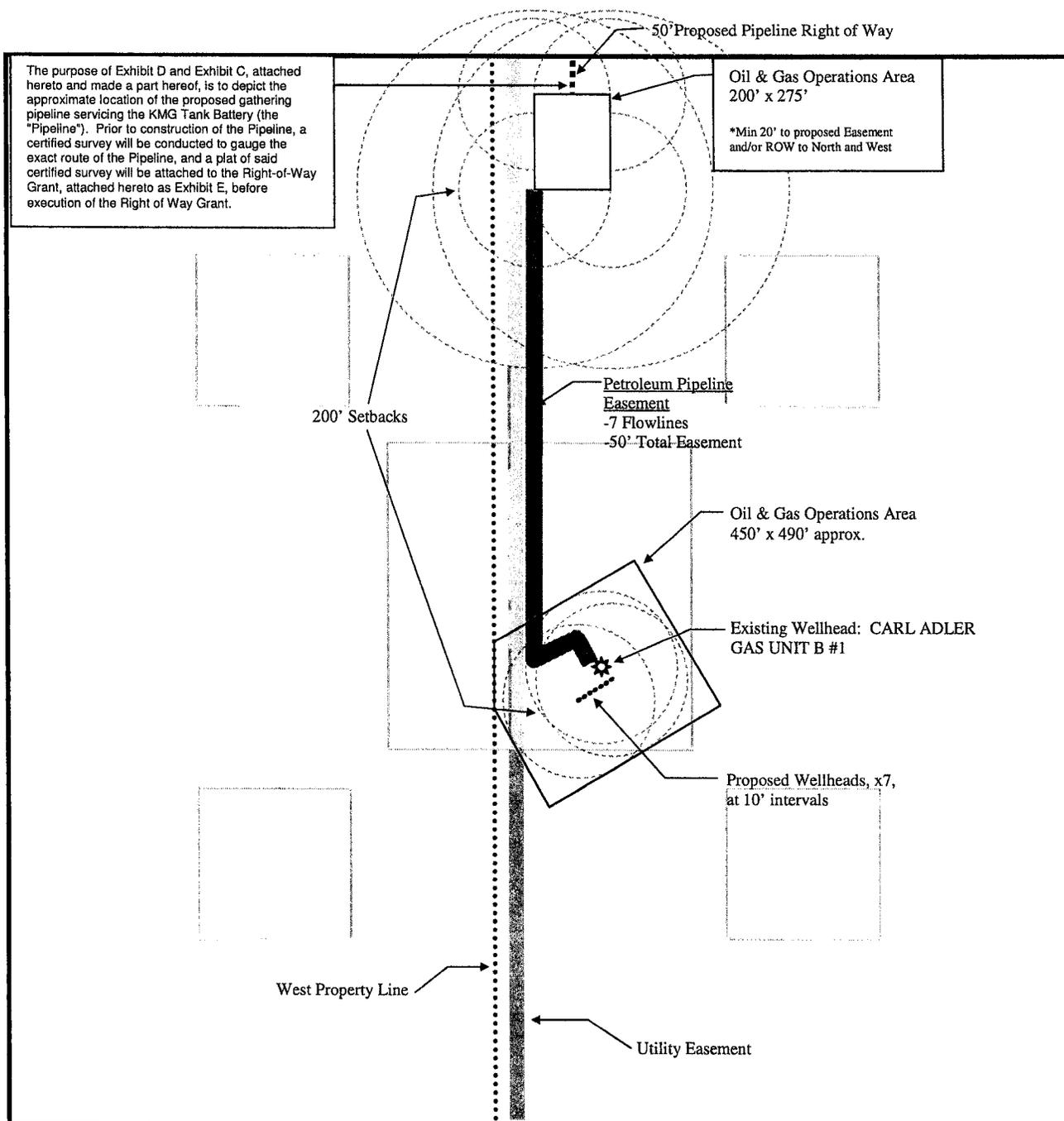


EXHIBIT D
TOWNSHIP 2 NORTH RANGE 68 WEST SECTION 2
SW/4



The purpose of Exhibit D and Exhibit C, attached hereto and made a part hereof, is to depict the approximate location of the proposed gathering pipeline servicing the KMG Tank Battery (the "Pipeline"). Prior to construction of the Pipeline, a certified survey will be conducted to gauge the exact route of the Pipeline, and a plat of said certified survey will be attached to the Right-of-Way Grant, attached hereto as Exhibit E, before execution of the Right of Way Grant.

Oil & Gas Operations Area
200' x 275'

*Min 20' to proposed Easement
and/or ROW to North and West

200' Setbacks

Petroleum Pipeline Easement
-7 Flowlines
-50' Total Easement

Oil & Gas Operations Area
450' x 490' approx.

Existing Wellhead: CARL ADLER
GAS UNIT B #1

Proposed Wellheads, x7,
at 10' intervals

West Property Line

Utility Easement

Kerr McGee Oil & Gas Onshore LP

635 N 7TH AVE
BRIGHTON, CO 80601

VARRA COMPANIES INC
TOWN OF FIRESTONE
COUNTY OF WELD
STATE OF COLORADO

DATE:
3/23/2009

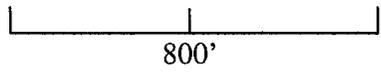




Exhibit E

RIGHT-OF-WAY GRANT

THIS RIGHT-OF-WAY GRANT ("Grant) is made this ___ day of _____, 200___, from _____, whose address is _____ ("Grantor" whether one or more), to KERR-MCGEE GATHERING LLC, a Colorado limited liability company, whose address is 1099 18th Street, Suite 1800, Denver, Colorado 80202 ("KMGG"). The parties agree as follows:

For and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby grants, conveys and warrants unto KMGG, its successors and assigns, a perpetual right-of-way and easement to survey, construct, maintain, inspect, operate, repair, alter, replace, modify, change the size of, reconstruct, mark, monitor, abandon or remove, at KMGG's election, ___ pipeline(s) and all appurtenances, below or above ground, convenient for the transportation or transmission of oil, gas, petroleum products, water, hydrocarbons and any other substances, whether fluid, solid or gaseous, and any products, derivatives, combinations or mixtures of any of the foregoing, in, on, over, under, or through the lands situated in Weld County, State of Colorado, being described as follows:

TOWNSHIP X NORTH, RANGE Y WEST, 6TH PM

Section Z : Part of the /

The specific route and course of the right-of-way and easement conveyed hereby ("Right-of-Way Lands") are more particularly described on Exhibit "A" attached hereto and made a part hereof.

This Grant hereby incorporates by this reference all of the terms and conditions set out in the Surface Use Agreement dated and made effective on the 20th day of May, 2009, between Kerr-McGee Oil & Gas Onshore, LP and Varra Companies, Inc. (the "Surface Use Agreement"). To the extent that other terms and conditions set out in this Grant are inconsistent with the terms and conditions set out in the Surface Use Agreement, the terms of the Surface Use Agreement shall control and be binding on the parties.

To the extent not inconsistent with the terms and conditions of the Surface Use Agreement, the Grant shall also be subject to the following terms and conditions.

The parties have agreed that the width of the Right-of-Way Lands is fifty feet (50') during construction, and subsequent to construction the width of the Right-of-Way Lands will be thirty feet (30').

After the initial construction of the pipeline(s) KMGG may require, from time to time, temporary additional work space parallel and adjacent to the Right-of-Way Lands to survey, construct, maintain, inspect, operate, repair, alter, replace, modify, change the size of, reconstruct, mark, monitor, abandon or remove the pipeline(s) together with all appurtenances. Grantor agrees to negotiate in good faith with KMGG to allow KMGG the use of this temporary additional work space.



Grantor represents and warrants to KMGG that Grantor is the sole owner in fee simple of the Right-of-Way Lands, subject to the burden of the Right-of-Way and has full right, power and authority to enter into this Grant.

The pipe constructed hereunder shall be placed at a depth of not less than 36 inches below the surface of the ground. Grantor agrees not to increase or decrease the surface elevation on the Right-of-Way Lands without KMGG's prior written permission. KMGG shall repair and/or restore any fence on or adjacent to the Right-of-Way Lands removed or severed by KMGG in the course of the operations provided for in this Grant to the condition such fence was in prior to the removal by KMGG. If necessary to prevent the escape of Grantor's livestock, KMGG shall construct temporary gates or fences in those areas affected by KMGG's operations as provided for in this Grant.

KMGG shall level and restore any lands affected by KMGG's operations that may have excessive settling and sufficiently compact the soil within a reasonable period of time after completion of construction to the condition that existed at the time immediately prior to the placement of KMGG's pipeline(s), to the extent reasonably practicable.

Grantor agrees not to build, create, construct or permit to be built, created or constructed, any obstruction, building, fence, reservoir, engineering works or other structures or improvements over, under, on or across the Right-of-Way Lands without the prior written consent of KMGG.

KMGG shall have all rights, privileges and benefits necessary or convenient for the full use and enjoyment of this Grant, including but not limited to, the right of ingress and egress over and across Grantor's lands lying adjacent to the Right-of-Way Lands for any and all purposes necessary and incidental to exercising KMGG's rights hereunder.

KMGG shall be obligated to pay for, repair, replace or otherwise compensate Grantor for any damages resulting from KMGG's activities and operations on the Right-of-Way Lands, except for any damage to structures or improvements placed in the Right-of-Way Lands contrary to the terms contained herein; and, Grantor shall pay for, reimburse, indemnify and hold KMGG harmless from any and all claims or damages resulting from Grantor's activities on the Right-of-Way Lands. Grantor shall have the right to use and enjoy the Lands, subject to the rights herein granted.

This Grant cannot be modified, except by an instrument in writing signed by Grantor and an authorized representative of KMGG.

The rights granted herein may be assigned in whole or in part, and the terms, conditions, and provisions of this Grant are a covenant running with the land and shall extend to and be binding upon the successors, and assigns of Grantor and KMGG.

KMGG shall record an original of this Right-of-Way Grant in the records of the County in which the Right-of-Way Lands are located. By recording this Right-of-Way Grant, KMGG shall be deemed to have accepted all of the terms and conditions hereof.

This Grant may be executed in counterparts each of which shall be considered one and the same agreement.



Exhibit F

General Guidelines for Design and Construction Activities On or Near Kerr- McGee Gathering LLC Pipelines and Related Facilities

This list of design, construction and contractor requirements, including but not limited to the following, is for the design and installation of foreign utilities or improvements on Kerr McGee Gathering LLC (KMGG) right-of-way (ROW). These are not intended to, nor do they waive or modify any rights KMGG may have under existing easements or ROW agreements. For information regarding KMGG's rights and requirements as they pertain to the existing easements, please reference existing easements and amendments documents. This list of requirements is applicable for KMGG facilities on easements and in road rights of ways only. Encroachments on fee property should be referred to the Land & ROW Department. Any reference to KMGG in the below requirements is meant to include and apply to any Kerr McGee entity.

Design

- ♦ KMGG shall be provided sufficient prior notice of planned activities involving excavation, blasting, or any type of construction on KMGG's ROW or near its facilities. This is to determine and resolve any location, grade or encroachment problems and allow for the protection of KMGG's facilities and the general public. This prior notification is to be made **before** the actual work is to take place.
- ♦ The encroaching entity shall provide KMGG with a set of drawings for review and a set of final construction drawings showing all aspects of the proposed facilities in the vicinity of KMGG's ROW. The encroaching entity shall also provide a set of "as-built drawings" and submit to KMGG, showing the facilities in the vicinity of KMGG's ROW upon completion of the work.
- ♦ Only facilities shown on drawings reviewed by KMGG will be approved for installation on KMGG's ROW. All drawing revisions that affect facilities proposed to be placed on KMGG's ROW must be approved by KMGG in writing.
- ♦ KMGG shall approve the design of all permanent road crossings.
- ♦ Any repair to surface facilities following future pipeline maintenance or repair work by KMGG on its "prior rights" ROW will be at the expense of the developer or landowner. In addition, any repair to surface facilities following future pipeline maintenance or repair work by KMGG on replacement ROW granted to relocate KMGG facilities will also be done at the expense of the developer or landowner unless expressly addressed in surface use agreements and approved in writing by KMGG.
- ♦ The depth of cover over the KMGG pipelines shall not be increased or reduced nor surface modified for drainage without KMGG's written approval.
- ♦ Construction of any permanent structure within KMGG pipeline easement is **not** permitted without written approval by KMGG.
- ♦ Planting of shrubs and trees is not permitted on KMGG pipeline easement without written approval by KMGG.
- ♦ Irrigation equipment i.e. backflow prevent devices, meters, valves, valve boxes, etc. shall not be located on KMGG easement without written approval by KMGG.
- ♦ Foreign utility installations, IE, distribution gas, oil and gas gathering, water, electric, telephone, cable and sewer lines, etc., may cross perpendicular to KMGG's pipeline within the ROW, provided that a minimum of eighteen inches (18") of vertical clearance is maintained between KMGG pipeline(s) and the foreign utility. Any installation by a foreign utility with less than 18" of vertical separation is not allowed without written approval by KMGG. In no case will vertical separation be less than 12". Constant line elevations must be maintained across KMGG's entire ROW width, gravity drain lines are the only exception and must be approved in writing. Foreign line crossings below the KMGG pipeline must be evaluated by KMGG to ensure that a significant length of the KMGG line is not exposed and unsupported during construction. Foreign line crossings above the KMGG pipeline with less than 18" of clearance must be evaluated by KMGG to ensure that additional support is not necessary to prevent settling on top of the KMGG natural gas pipeline. A KMGG representative must be on site during any crossing activities to verify clearance depths and to assure the integrity and support of the KMGG facility. All installations of foreign crossings done by boring and or jacking require the KMGG facility to be exposed to verify clearances.



General Guidelines for Design and Construction Activities On or Near Kerr- McGee Gathering LLC Pipelines and Related Facilities

- Foreign utilities shall not run parallel to KMGG pipelines within the KMGG easement without written permission by KMGG. A minimum of 10 feet of horizontal separation must be maintained in parallel installations whether the foreign utility is placed within the KMGG easement or adjacent to the KMGG easement. Any deviation from the 10' horizontal requirement must be approved in writing by KMGG and an "as built survey" provided to KMGG after installation. In the instance that high voltage electric lines, greater than 20kV, are installed parallel to a KMGG pipeline a minimum horizontal distance of 15' must be maintained.
- The foreign utility should be advised that KMGG maintains cathodic protection on its pipelines and facilities. The foreign utility must coordinate their cathodic protection system with KMGG's. At the request of KMGG, foreign utilities shall install (or allow to be installed) cathodic protection test leads at all crossings for the purposes of monitoring cathodic protection interference. The KMGG CP technician and the foreign utility CP technician shall perform post construction CP interference testing. Interference issues shall be resolved by mutual agreement between foreign utility and KMGG. All costs associated with the correction of cathodic protection interference issues on KMGG pipelines as a result of the foreign utility crossing shall be borne by the foreign utility for a period of one year from date the foreign utility is put in service.
- The developer shall understand that KMGG, whether specifically required per federal law or by company standard, will mark the routing of its underground facilities with aboveground pipeline markers and test leads and maintain those markers and test leads. Markers will be installed at every point the pipeline route changes direction and adequate markers will be installed on straight sections of pipeline to insure, in the sole opinion of KMGG, the safety of the public, contractor, KMGG personnel and KMGG facilities.
- On all foreign utility crossings and / or encroachments, metallic foreign lines shall be coated with a suitable pipe coating for a distance of at least 10 feet on either side of the crossing.
- AC Electrical lines must be installed in conduit and properly insulated.
- On all foreign pipelines, DOT approved pipeline markers shall be installed so as to indicate the route of the foreign pipeline across the KMGG ROW.
- No power poles, light standards, etc. shall be installed in the KMGG easement without written approval by KMGG.
- KMGG installs above ground appurtenances at various locations that are used in the operation of its facilities. Kerr McGee will install protective enclosures at the above ground appurtenances to protect them from outside damage. The design and placement of these above ground appurtenances and protective enclosures is done at KMGG's sole discretion, and may exceed any regulatory requirements.

Construction

- If KMGG will be relocating KMGG facilities for any entity, grading in the new KMGG ROW shall be +/- 6 inches before KMGG will mobilize to complete the relocation. Final cover after the completion of the project will not be less than 48" nor more than 72". All cover that exceeds 72" or less than 48" will be approved in writing by KMGG. Cover during all construction activities will NEVER be less than 36" unless approved in writing and a KMGG representative is on site during the time cover is reduced.
- The entity requesting relocation shall survey top of pipe after installation but before backfill to determine proper final elevation of KMGG facilities. The entity requesting relocation is solely responsible for the final depth of cover over the relocated KMGG facility. Any deviation from cover requirements as outlined above will be corrected at the sole expense of the entity requesting relocation.
- Contractors shall be advised of KMGG's requirements and be contractually obligated to comply.
- The continued integrity of KMGG's pipelines and the safety of all individuals in the area of proposed work near KMGG's facilities are of the utmost importance. Therefore, contractor must meet with KMGG representatives prior to construction to provide and receive notification listings for appropriate area operations and emergency personnel. **KMGG's on-site representative will require discontinuation of any work that, in his or her opinion, endangers the operations or safety of personnel, pipelines or facilities.**



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- The Contractor must expose all KMGG pipelines prior to crossing to determine the exact alignment and depth of the lines. A KMGG representative must be present.
- The use of probing rods for pipeline locating shall be performed by KMGG representatives only, to prevent unnecessary damage to the pipeline coating. A KMGG representative shall do all line locating.
- Notification shall be given to KMGG at least 72 hours before start of construction. A schedule of activities for the duration of the project must be made available at that time to facilitate the scheduling of KMGG's work site representative. Any Contractor schedule changes shall be provided to KMGG immediately.
- Heavy equipment will not be allowed to operate directly over KMGG pipelines or in KMGG ROW unless written approval is obtained from KMGG. Heavy equipment shall only be allowed to cross KMGG pipelines at locations designated by KMGG. Haul roads will be constructed at all crossings. The haul roads will be constructed using lightweight equipment. The existing depth of cover over the pipeline must be verified. Cover will be added such that a total of 8' of fill exists over the pipeline and extends a minimum of 10' on each side of the pipeline. Depth of cover will then taper as required for equipment access. Steel plates may be used for load dissipation only if approved in writing by KMGG.
- Contractor shall comply with all precautionary measures required by KMGG, at its sole discretion to protect its pipelines. When inclement weather exists, provisions must be made to compensate for soil displacement due to subsidence of tires.
- Excavating or grading which might result in erosion or which could render the KMGG ROW inaccessible shall not be permitted unless the contractor agrees to restore the area to its original condition and provide protection to KMGG's facility. At no time will cover be reduced to less than 36" without written approval by KMGG and a KMGG representative on site.
- A KMGG representative shall be on-site to monitor any construction activities within twenty-five (25) feet of a KMGG pipeline or aboveground appurtenance. The contractor **shall not** work within this distance without a KMGG representative being on site. Contractor shall use extreme caution and take any appropriate measures to protect KMGG facilities.
- Ripping is only allowed when the position of the pipe is known and not within ten (10) feet of KMGG facility. KMGG personnel must be present.
- Temporary support of any exposed KMGG pipeline by Contractor may be necessary if required by KMGG's on-site representative. Backfill below the exposed lines and 12" above the lines shall be replaced with sand or other selected material as approved by KMGG's on-site representative and thoroughly compacted in 12" lifts to 95% of standard proctor dry density minimum or as approved by KMGG's on-site representative. This is to adequately protect against stresses that may be caused by the settling of the pipeline.
- No blasting shall be allowed within 1000 feet of KMGG's facilities unless blasting notification is given to KMGG Including complete Blasting Plan Data. A pre-blast meeting shall be conducted by the organization responsible for blasting.
- KMGG shall be indemnified and held harmless from any loss, cost of liability for personal injuries received, death caused or property damage suffered or sustained by any person resulting from any blasting operations undertaken within 500 feet of its facilities. The organization responsible for blasting shall be liable for any and all damages caused to KMGG's facilities as a result of their activities whether or not KMGG representatives are present. KMGG shall have a signed and executed Blasting Indemnification Agreement before authorized permission to blast can be given.
- No blasting shall be allowed within 200 feet of KMGG's facilities unless blasting notification is given to KMGG a minimum of one week before blasting. The organization responsible for blasting must complete Blasting Plan Data. KMGG shall review and analyze the blasting methods. A written blasting plan shall be provided by the organization responsible for blasting and agreed to in writing by KMGG. A written emergency plan shall be provided by the organization responsible for blasting.
- KMGG shall have a signed and executed Blasting Indemnification Agreement before authorized permission to blast can be given. A pre-blast meeting shall be conducted by the organization responsible for blasting.
- **Any** contact with any KMGG facility, pipeline, valve set, etc. shall be reported immediately to KMGG. If repairs to the pipe are necessary, they will be made and inspected before the section is re-coated and the line is back-filled.



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- KMGG personnel shall install all test leads on KMGG facilities.

Local Kerr-McGee Gathering LLC Representation:

Manager of Construction & Facilities Engineering:	Kevin R. Osif, P.E.	Phone: 303 655 - 4307
Facilities Engineer:	Joseph E. Sanchez, P.E.	Phone: 303 655 - 4319
Operations Engineer:	Erik Smith	Phone: 303 655 -4359
Pipeline Foreman:	James Phillips	Phone: 303 655 - 4343
Pipeline Foreman:	Rick Noffsinger	Phone: 303-655 - 4326

Emergency Contacts:

On call supervisor	Phone: 303-559 - 4001
Kerr McGee 24 hour emergency number	Phone: 303-659 - 5922
One Call Emergency	Phone: 811