

SURFACE USE AGREEMENT

This Surface Use Agreement ("**Agreement**") is dated and made effective this 22nd day of June, 2010 (the "**Effective Date**"), and is between **KERR-McGEE OIL & GAS ONSHORE LP**, a Delaware limited partnership with an address of 1099 18th Street, Suite 1800, Denver, Colorado 80202-1918 ("**KMG**"), **KERR-McGEE GATHERING LLC**, a Colorado limited liability company with an address of 1099 18th Street, Suite 1800, Denver, Colorado 80202-1918 ("**KMGG**") and **MORTON LAKES LLC**, a Colorado limited liability company with an address of 4395 Washington Street, Denver, Colorado 80216 ("**Surface Owner**"). **KMG**, **KMGG** and **Surface Owner** may each be referred to herein individually as a "**Party**" or collectively as the "**Parties**."

RECITALS

WHEREAS, **Surface Owner** owns the surface estate of that certain tract of real property located in unincorporated Weld County, Colorado more particularly described in *Exhibit A* hereto (hereinafter the "**Property**");

WHEREAS, the surface estate in the **Property** is subject to the rights of the oil and gas leasehold estate as provided by those certain oil and gas leases listed in *Exhibit B* hereto (the "**Leases**");

WHEREAS, Pursuant to Rule 318A of the rules of the Colorado Oil and Gas Conservation Commission ("**COGCC**"), **KMG** has the right drill oil and gas wells to develop the oil and gas leasehold estate underlying the **Property** and **KMG** has the technical ability to drill oil and gas wells within the Oil and Gas Operations Areas provided for herein that will produce oil and gas from bottom hole locations that are not under the **Property** all of which are referred to as **Future Wells**;

WHEREAS, **Surface Owner** is entering into this **Agreement** to the extent necessary under the rules and regulations of the **COGCC** in effect as of the **Effective Date**, and as the same may be amended from time to time thereafter, to give its consent and to grant the necessary waivers to **KMG** to drill the **Future Wells** at the locations provided for in this **Agreement**;

WHEREAS, **Surface Owner** and **KMG** have met to discuss how the mining of construction aggregate materials and the reclamation of mined land by **Surface Owner** and the development of the oil and gas leasehold estate underlying the **Property** and the drilling of **Future Wells** by **KMG**, shall be coordinated so as to maximize, to the greatest extent possible, the economically efficient recovery of each such resource from the **Property** and the post-mining land use of the **Property**;

WHEREAS, **KMGG** owns and operates a gas gathering line on the **Property** that services existing oil and gas wells on and in the vicinity of the **Property** and that is intended to service the **Future Wells**;



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

WHEREAS, *Exhibit C* to this Agreement consists of four (4) diagrams titled, respectively, (i) "Sheet 1 of 4, Key Map", (ii) "Sheet 2 of 4, Wells 1-7", (iii) "Sheet 3 of 4, Wells 8-16", and (iv) "Sheet 4 of 4, Gas Line Relocation and South Access", which represent the locations on the Property where KMG agrees to operate and where KMGG agrees to relocate, at its sole cost and expense, a portion of the gas gathering line; and

WHEREAS, this Agreement sets forth the Parties' respective rights and obligations to one another regarding the relationship between the construction aggregate mining and reclamation of the Property by Surface Owner, KMG's operation and development of its oil and gas leasehold estate that underlies the Property and other land, as provided below, and KMGG's relocation of the gathering line, such rights and obligations to be binding upon the Parties' and their respective successors and assigns.

NOW THEREFORE, 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:

AGREEMENT

1. AREAS RESERVED FOR FUTURE WELLS.

Surface Owner shall set aside and provide to KMG those portions of the Property depicted on the attached *Exhibit C*, referred to hereinafter as the "Oil and Gas Operations Areas" that KMG will use for the drilling, completion, operation and maintenance operations for the Future Wells, which operations include but are not limited to drilling and production activities, workovers, well deepenings, recompletions, fracturing, re-fracturing and replacement wells. In addition to the Oil and Gas Operations Areas for the Future Wells, *Exhibit C* depicts the location of production facilities, flow lines, gathering lines and access roads in the Oil and Gas Operations Areas (hereinafter the "Existing Operations") which are to be made available to KMG and KMGG for KMG's and KMGG's current and ongoing operations in the Oil and Gas Operations Areas.

a. Except as otherwise provided in this Agreement and with respect to the Oil and Gas Operations Areas and Future Wells, KMG shall not occupy or utilize any surface areas of the Property outside the Oil and Gas Operations Areas, or utilize any access roads and easements associated with flow lines, gathering lines and pipelines except as provided in this Agreement, 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 may occur.

b. KMG shall have the right to locate, build, repair and maintain tanks, separators, dehydrators, compressors and all other associated oil and gas drilling and production equipment and facilities currently located and to be located within the Oil and Gas Operations Areas, but only as such activities relate to the production of oil and gas from the Future Wells.



c. As part of the mutual consideration for this Agreement, Surface Owner hereby waives its right to, and covenants that it will not protest or object to, any exception location or application to drill, redrill, deepen or recomplete any Future Well on the Property so long as any such activity is consistent with this Agreement and so long as such activities relate to the production of oil, gas and associated hydrocarbons from the Future Wells. Similarly, KMG and KMGG waive their right to, and covenant that they will not protest or object to any mining and reclamation plan for the Property that Surface Owner (or any affiliate of Surface Owner) has established and may, from time-to-time, revise or amend, or otherwise object to or interfere with any other use of the surface estate on the Property that Surface Owner (or any affiliate, successors or assigns of Surface Owner) may undertake, so long as such mining and reclamation or other use(s) are consistent with this Agreement.

2. SETBACK REQUIREMENTS APPLICABLE IN OIL AND GAS OPERATIONS AREAS.

Should Surface Owner elect to mine construction aggregate materials within ninety (90) feet of any existing well or any existing production facility in the Oil and Gas Operations Areas, Surface Owner shall notify KMG in writing sixty (60) days prior to commencing such mining and shall first place temporary concrete barriers around all existing, affected wells and/or production facilities as KMG may so direct. The 60-day notice period may be waived by KMG, in which case Surface Owner may commence mining immediately. The 60-day period shall commence upon KMG's receipt of Surface Owner's written notice of intent to mine. Surface Owner shall conduct its mining operations in the affected portions of the Oil and Gas Operations Areas as quickly as reasonably practical. Except as otherwise provided on "Sheet 2 of 4, Wells 1-7" in **Exhibit C**, the setbacks from any existing wells during mining shall comprise a radius ninety (90) feet and a radius of one hundred-fifty (150) feet post mining. The mining of the aggregate materials around any existing wells will be conducted in the "pie shaped" configuration provided for in subparagraph 2.c. below with respect to mining and setbacks in the Oil and Gas Operations Areas. Surface Owner shall not stockpile topsoil, overburden, or any construction aggregate materials within a radius of 90 feet from any existing well. KMG accepts and further represents that these setbacks are consistent with COGCC 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.

Should Surface Owner elect to mine construction aggregate materials from the Oil and Gas Operations Areas prior to the installation of any Future Well or production facilities, Surface Owner will mine and reclaim the Property in the affected Oil and Gas Operations Areas in a manner that allows KMG to establish the setbacks required by the existing rules of the COGCC for the initial drilling of wells (Rule 603. a. (1)), which set backs are set forth in **Exhibit C**. In such case, the mining procedure described in subparagraph 2.c below shall not apply, but the mined area shall be reclaimed to establish a site for KMG's Future Wells. KMG agrees the setbacks as depicted on **Exhibit C** are consistent with existing COGCC rules and regulations that apply to the distance between a wellhead and occupied buildings, public roads, major above ground utilities and railroads.

Surface Owner shall mine and reclaim the areas located in the Oil and Gas Operations Areas as provided in the subparagraphs a through d of this Paragraph 2:

a. The purpose of **Exhibit C** is to specify the only locations of the Future Wells, flow lines, gathering lines, and other related oil and gas production facilities allowed in the Oil and Gas Operations Areas which Surface Owner and KMG find to be mutually acceptable between them. The diagram titled "Sheet 4 of 4, Gas Line Relocation and South Access" in **Exhibit C** shows the portion of the existing gas gathering line KMGG will abandon and the area to which the gas gathering line will be relocated, both at KMGG's sole cost and expense.

b. In the event that KMG intends to drill a Future Well or construct production facilities within the Oil and Gas Operations Areas prior to any mining by Surface Owner, it shall give Surface Owner written notice of its intent to drill at least sixty (60) days prior to the date upon which KMG could commence drilling. The 60-day notice period may be waived by Surface Owner in which case KMG may commence its operations immediately. The 60-day period shall commence upon Surface Owner's receipt of KMG's written notice of intent to drill a Future Well. To give Surface Owner adequate time to conduct its mining operations, KMG agrees not to commence its operations with respect to the drilling of the Future Well(s) identified in the 60-day notice until a total of ninety (90) days have elapsed from Surface Owner's receipt of the notice. The 90-day restriction on the commencement of drilling operations will not apply if (i) Surface Owner has waived the 60-day notice period or (ii) Surface Owner is not conducting aggregate mining operations within 200 feet of the location of the Future Well or Future Wells to be drilled as of the date Surface Owner received the 60-day notice. Unless otherwise agreed in writing on or before the expiration of the 90-day period, Surface Owner and KMG agree that at the end of the 90-day period, Surface Owner will have provided KMG with the Future Oil and Gas Operations Areas for the Future Well(s) identified in the notice and that KMG may commence its operations without additional notice to Surface Owner.

i. The initial well pad for any Future Well shall comprise the area necessary for KMG to establish the setbacks required by the existing rules of the COGCC for the drilling of wells (Rule 603.a.(1)), which set backs are set forth in **Exhibit C** and which will be reduced to a one hundred-fifty (150) foot radius around the wellhead of any Future Well and a two hundred foot radius for any production facilities, which radii establish the setback of Surface Owner's mining from any Future Well to be drilled on the well pad or any production facility. KMG agrees the setback is consistent with existing COGCC rules and regulations.

ii. At the end of the 90-day period KMG shall have priority to drill the Future Well in the Oil and Gas Operations Areas and it may require Surface Owner to adjust temporarily the timing and location of mining within the affected portions of Oil and Gas Operations Areas as reasonably necessary or convenient to conduct oil and gas operations in a safe and efficient manner.



c. In the event that Surface Owner elects to mine construction aggregate materials in the Oil and Gas Operations Areas where KMG has already installed a Future Well, Surface Owner shall conduct the mining and reclamation by excavating pie shaped wedges of construction aggregates and thereafter backfilling and compacting the area with overburden or other suitable material prior to excavating the next pie shaped area; provided, however, in no event shall Surface Owner mine within ninety (90) feet of the installed Future Well and, provided further, that in no event shall more than one quarter circle segment of the pie shape be excavated at any one time.

d. Surface Owner will bear the costs associated with mining and reclaiming mine disturbances in the Oil and Gas Operations Areas, which costs may include permanent or temporary rerouting and replacement of access roads, and flow lines and utility lines to prevent unnecessary interruption of production from any Future Well.

e. Surface Owner hereby agrees that KMG may, in the construction of its drillsites for the Future Wells, excavate and use such top soils and overburden as may be necessary for the construction of the drillsites. Prior to the construction of the drillsites, KMG and Surface owner will consult as to the extent of any such excavation, which will be subject to the prior approval of Surface Owner. To the extent KMG may require sand, gravel or any other processed construction aggregate material for its operations it shall endeavor to purchase such products from Surface Owner or its affiliate Ready Mixed Concrete Company.

3. NOTICE OF OPERATIONS AT FUTURE WELLS.

KMG shall provide at least forty five (45) days prior written notice to Surface Owner of any operations KMG intends to undertake in connection with the reworking, fracturing, refracturing, deepening or recompletion of any Future Well after it has been drilled and completed initially. The 45-day period shall commence upon Surface Owner's receipt of KMG's written notice of intent to rework, fracture, refracture, deepen or recomplete a Future Well. The 45-day notice period may be waived by Surface Owner in which event KMG may commence its operations immediately. Regardless of the foregoing notice requirements, KMG shall have immediate access to any of its facilities in the Oil and Gas Operations Areas in the event of an emergency.

a. After receipt of the above written notice, but not less than twenty (20) days prior to KMG's mobilization to the affected portion of the Oil and Gas Operations Areas, either KMG or Surface Owner may request an on-site meeting. The purpose of the on-site meeting shall be for KMG to inform Surface Owner of the expected activity and to coordinate site access, hazards, barricades, restoration or any other issues that may affect the mining and reclamation of the Property in the affected portion of the Oil and Gas Operations Areas.

4. DIRECTIONAL DRILLING COSTS

All directional drilling costs incurred in the drilling of any Future Wells will be borne solely and exclusively by KMG. It is specifically agreed that Surface Owner will have no liability for any directional drilling costs incurred in the drilling of any of the Future Wells.

5. GATHERING LINES AND FLOW LINES.

Subject to the limitations hereinafter described, KMG has a continuing right and entitlement to own, operate, maintain, repair and replace all flow lines, gathering lines and other pipelines (collectively "**Pipelines**") in the Oil and Gas Operations Areas depicted in ***Exhibit C*** that may be necessary or convenient to its operations on the Property. Although this Agreement is intended to confine the placement of those pipelines to certain specified locations within the Property, nothing herein shall be construed as a limitation on KMG's ultimate right to make all necessary well connections to any Future Wells. The existing gathering line (the "**Existing Pipeline**") depicted on the diagram in ***Exhibit C*** titled "Sheet 4 of 4, Gas Line Relocation and South Access" shall be relocated to the "**Petroleum Pipeline Right-of-Way**" shown on "Sheet 4 of 4, Gas Line Relocation and South Access" in ***Exhibit C***. The Existing Pipeline shall be relocated at KMGG's sole cost and expense and be thereafter referred to as the "**Relocated Pipeline**." Any additional pipelines, flow lines and gathering lines that may be required in the future and in addition to the Relocated Pipeline (hereinafter "**Future Pipelines**") shall be placed within the Petroleum Pipeline Easement and paid for by KMGG or KMG.

a. KMGG shall relocate the Existing Pipeline prior to KMG drilling the first Future Well on the Property or prior to the commencement by Surface Owner of construction aggregate mining operations on the Property, which ever first occurs. Not less than ninety (90) days prior to the commencement of any drilling by KMG or construction aggregate mining by Surface Owner, KMG or Surface Owner, as the case may be, shall give written notice to KMGG, which notice shall establish the date by which the Existing Pipeline must be relocated (if not so previously relocated). The relocated pipeline shall be installed at a depth KMGG deems sufficient, in its sole discretion, to protect the same from heavy mining equipment and vehicles that will operate on the surface of the Petroleum Pipeline Right-of-Way.

b. During such ninety (90) day period, subject to acquiring all necessary permits and authorizations, KMGG shall abandon the Existing Pipeline and remove it from the Property so that it will not interfere with Surface Owner's operations. Upon receipt of the notice provided for in subparagraph a. immediately above, KMGG may begin the construction of the relocated pipeline within the Petroleum Pipeline Right-of-Way. It is agreed that KMGG need not abandon that portion of the Existing Pipeline that is to be relocated until the Relocated Pipeline is in place and ready for use. If it has not already done so, Surface Owner shall also deliver to KMGG an executed and acknowledged non-exclusive Petroleum Pipeline Right-of-Way Grant on the form attached hereto as ***Exhibit D***. The Petroleum Pipeline Right-of-Way shall be thirty feet (30') in width during construction, installation and relocation operations and otherwise reduced to fifteen feet (15') in width for post-construction usage being seven and one half



(7.5) feet on either side of the centerline of the Relocated Pipeline. KMGG shall bear the cost of any surveying required to locate the Petroleum Pipeline Right-of-Way, along with the cost to record the Right-of-Way Grant (with a copy of the recording to be provided to Surface Owner as soon as practicable thereafter).

c. The Relocated Pipeline and all Future Pipelines shall be located within the Petroleum Pipeline Right-of-Way unless otherwise agreed by the Parties. KMG and KMGG acknowledge that the Petroleum Pipeline Right-of-Way Grant shall be non-exclusive and they agree that they will not object to its concurrent 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 the General Guidelines for Design and Construction Activities On or Near KMG and KMGG Pipelines and Related Facilities attached as *Exhibit E*.

d. Surface Owner's mining and reclamation of the Property may require roads that cross over KMG or KMGG Pipelines. For the Relocated Pipeline or Future Pipelines thereafter constructed within the Petroleum Pipeline Right-of-Way, Surface Owner agrees to abide by the requirements and guidelines in the attached as *Exhibit E*.

e. In the Petroleum Pipeline Right-of-Way Surface Owner shall not stockpile topsoil, overburden, construction aggregate materials, or any other material over any KMG flow lines or KMGG gathering lines and Surface Owner shall not construct any temporary or permanent structures, or plant trees or shrubs over such Pipelines.

6. ACCESS.

KMG shall have a continuous non-exclusive right of access to the Future Wells and production facilities shown on "Sheet 3 of 4, Wells 8-16" in *Exhibit C*, starting at the point referred to as the "South Access Point" on "Sheet 4 of 4, Gas Line Relocation and South Access" in *Exhibit C*. The South Access Point shall be the sole point of access to the Future Wells and production facilities shown on "Sheet 3 of 4, Wells 8-16" in *Exhibit C*.

a. KMG shall also have a continuous non-exclusive right of access to the Future wells and production facilities shown on "Sheet 2 of 4, Wells 1-7" in *Exhibit C* starting at the point where the Access Road crosses Lupton Meadows Ditch, which point shall be referred to as the "North Access Point". Except as otherwise provided in subparagraph "c" below, the North Access Point shall be the sole point of access to the Future Wells and production facilities shown on "Sheet 2 of 4, Wells 1-7" in *Exhibit C*.

b. Once KMG has gained access to the Property from either the South Access Point or the North Access Point, the access roads to be used by KMG will either be those roads that currently are in place for the Oil and Gas Operations Areas as depicted in *Exhibit C* or those that are anticipated to be constructed as depicted in *Exhibit C*. All access roads constructed shall be sufficient to allow KMG to conduct its oil and gas operations. Surface Owner's operations on the Property shall not unreasonably interfere with KMG's operations.

c. In connection with the drilling and completion only of the Future Wells to be drilled from the drillsite in the SE/4SE/4 of Section 1, T1N, R67W, 6th PM as depicted on "Sheet 2 of 4, Wells 1-7" in *Exhibit C*, Surface Owner agrees that KMG and its agents and contractors may use a temporary access point and route to that drillsite directly from the property that is to the north and adjacent to the Property in the SE/4SE/4 of said Section 1 known as the "A&W Property". Prior to the use of this temporary route by KMG and its agents and contractors, KMG will install, at its sole cost and expense, a gate at the access point between the Property and the A&W Property for cattle control purposes.

7. BATTERIES AND EQUIPMENT.

KMG shall have the right to locate, build, repair and maintain tanks, separators, dehydrators, compressors and other equipment reasonably necessary for the operation and production of the Future Wells and existing wells that currently use the existing production facilities on the Property. With respect to KMG's equipment and facilities other than flow lines or pipelines:

a. KMG shall install and maintain, at its sole cost and expense, all fences around the Future Wells and production facilities in compliance with the rules and regulations of the COGCC;

b. KMG shall install and maintain, at its sole cost and expense, all gates and locks reasonably necessary for the security of the Future Wells and production 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; and

d. Surface Owner shall not inhibit KMG's access to the Oil and Gas Operations Areas or inhibit KMG's operations in such areas by landscaping or other improvements, unless otherwise agreed upon between Surface Owner and KMG.

8. DRILLING AND COMPLETION OPERATIONS.

KMG shall diligently to pursue any drilling operations to minimize the total time period and to avoid rig relocations or startup during the course of drilling. Surface Owner waives any objection to continuous (i.e., 24-hour) drilling operations, so long as such continuous operations are consistent with or have been approved by the COGCC, Weld County, and any other governmental authority with jurisdiction over KMG's operations.

9. GOVERNMENTAL PROCEEDINGS.

Surface Owner shall not oppose KMG in any agency or governmental proceedings, including but not limited to the COGCC, the Weld County 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 and so long as KMG is not in breach of this Agreement. Similarly, KMG shall not oppose Surface Owner (or any affiliate of Surface Owner) in any agency or governmental proceedings, including but not limited to those of the Colorado Mined Land Reclamation Board, Weld County or any other governing body, related to Surface Owner's (or any of its affiliate's) operations on the Property, provided that Surface Owner's (or its affiliate's) position in such proceedings is consistent with this Agreement and so long as Surface Owner is not in breach of this Agreement.

10. LIMITATION OF LIABILITY, RELEASE AND INDEMNITY.

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.

a. Except as to claims arising out of pollution or environmental damage (which claims are governed by Paragraph 11 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 interests in 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 Party, its officers, directors, employees, successors and assigns, and the successors to any of them, 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.

b. Upon the assignment or conveyance of a Party's entire interest in the Property, that Party shall be released from its indemnification in subparagraph 10.a. above, for all actions or occurrences happening after such assignment or conveyance.

c. KMG's and KMGG's obligation to indemnify as stated herein shall cease in all manner and respect upon the termination of the Leases or operations (whichever occurs later) that are being conducted pursuant to this Agreement. Surface Owner's obligation to indemnify as stated herein shall cease in all manner and respect upon the date of release of the reclamation bond Surface Owner is required to post with the Colorado Mined Land Reclamation Board before commencing its mining operations on the Property.



11. ENVIRONMENTAL INDEMNITY.

The provisions of Paragraph 10 above, except for Paragraph 10.a., shall not apply to any environmental matters, which shall be governed exclusively by the following, subject to the Paragraph 10.a. above:

a. **“Environmental Claims”** shall mean all Claims asserted by governmental bodies or other third parties or a Party 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 estate (or any interest therein), whichever is applicable, and all cleanup and remediation costs, fines and penalties associated therewith, including but not limited to any Claims arising from Environmental Law or relating to any Hazardous Material or Hazardous Substance, or 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. The terms **“Hazardous Material”** and **“Hazardous Substance”** shall include, without limitation, any material, substance, waste, chemical, compound, product, solid, gas, liquid, byproduct, pollutant or contaminant which is: (a) listed in the United States Department of Transportation Hazardous Materials Table (49 C.F.R. § 171.101, including the Appendix thereto); (b) identified by the United States Environmental Protection Agency as a hazardous substance (40 C.F.R. Part 301); (c) designated as a “hazardous substance” in Section 311 of the federal Water Pollution Control Act (33 U.S.C. §§ 1251, et seq.); (d) defined as a “hazardous waste” under Section 1004 of the federal Resource Conservation Recovery Act of 1976, (42 U.S.C. §§ 6901, et seq.); (e) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response Compensation Liability Act, 42 U.S.C §§ 9601, et seq. (**“CERCLA”**), as amended by the Superfund Amendments and Reauthorization Act of 1986 (**“SARA”**); (f) any material containing asbestos above regulated levels; (g) any radioactive materials; (h) any regulated petroleum hydrocarbon, petroleum hydrocarbon product, or natural gas material; (i) defined as “hazardous waste,” “hazardous material,” “hazardous substance,” or words of similar import under any applicable federal, state or local, environmental or worker health and safety laws; or (j) which is prohibited, limited, or regulated under any amendments, revisions, supplements or replacements of any of the above and any regulations implementing any of the above.

c. **“Environmental Law”** means any federal, state or local law, statute, ordinance, code, rule, regulation, license, authorization, decision, order, injunction, decree, or rule of common law, and any judicial interpretation of any of the foregoing, which pertains to health, safety, any hazardous material, hazardous substance, hazardous waste, or the environment (including but not limited to ground or air or water or noise pollution or contamination, and underground or aboveground storage tanks) and shall include, without limitation, the Resource Conservation Recover Act of 1976, 42 U.S.C. § 6901 et seq. (**“RCRA”**); the Comprehensive Environmental Response, Compensation and

Liability Act of 1980, 42 U.S.C. § 9601 et seq. ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"); the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; the National Flood Insurance Act ("NFIA"), which created the National Flood Insurance Program ("NFIP") administered by Federal Emergency Management Agency ("FEMA"), 42 U.S.C. 4001 et seq., and any other state or federal environmental statutes, and all rules, regulations, orders and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

d. KMG and KMGG shall protect, indemnify, and hold harmless Surface Owner from any Environmental Claims relating to the Property that arise out of KMG's or KMGG's operations in the Oil and Gas Operations Areas and its ownership and operation of the Petroleum Pipeline Right-of-Way. KMG's and KMGG's obligation to indemnify as stated herein shall cease in all manner and respect upon the termination of the Leases or operations (whichever occurs later) that are being conducted pursuant to this Agreement. Surface Owner shall fully protect, defend, indemnify and hold harmless KMG from any and all Environmental Claims that arise out of the mining and reclamation of the Property. Surface Owner's obligation to indemnify as stated herein shall cease in all manner and respect upon the release of the reclamation bond that is posted with the Colorado Mined Land Reclamation Board for mining on the Property.

12. 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.

13. NOTICE OF CLAIM FOR INDEMNIFICATION.

If a Claim or an Environmental Claim is asserted against a Party for which the other Party would be liable under the provisions of Section 10 or 11 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 or Environmental Claim setting forth all particulars of the Claim or the Environmental Claim, as known by the indemnified Party, including a copy of the Claim of the Environmental Claim (if either is written). The indemnified Party shall make a good faith effort to notify the indemnifying Party within fourteen (14) days of receipt of a Claim or an Environmental Claim and shall affect such notice in all events within such time as will allow the indemnifying Party to defend against such Claim or Environmental Claim.

14. 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.

15. SUCCESSORS AND ASSIGNMENT.

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 (and KMGG, if applicable), the successors and assigns shall be deemed to be limited to lessees under the Leases listed in **Exhibit B** hereto. Surface Owner may assign this Agreement to an affiliate entity, which assignment shall require notice to, but not the consent of KMG.

16. TERM.

This Agreement shall become effective when it is fully executed by the Parties and, except at otherwise provided in Paragraphs 11 and 12 above, it shall remain in full force and effect until KMG's leasehold estate expires or is terminated, as the same relates to the Leases listed in **Exhibit B**, or until: (a) KMG's operations that are being conducted pursuant to this Agreement have been concluded which ever is later; (b) KMG has plugged and abandoned all the wells subject to this Agreement that are owned all or in part by KMG; and (c) KMG has complied with the requirements of the Leases and the COGCC pertaining to removal of equipment, reclamation, cleanup and all other applicable provisions of the Leases and existing laws and regulations. KMG will cooperate with Surface Owner in making any filing necessary or required to formally terminate KMG's operations on the Property at the end of any applicable Lease term or upon termination of any such Lease.

17. 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
1099 18th Street, Suite 1800
Denver, Colorado 80202
Attn: Director of Land Denver Basin

If to KMGG:

Kerr-McGee Gathering LLC
1099 18th Street, Suite 1800
Denver, Colorado 80202
Attn: Director of Land Denver Basin

If to Surface Owner:

Morton Lakes LLC
4395 Washington Street
Denver, Colorado 80216
Attn: Bill Timmons

With copies to (neither of which shall



constitute notice to Morton Lakes LLC):

Ernest C. McLean III
Vice President and General Counsel
Boral Industries Inc.
200 Mansell Court East, Suite 310
Roswell, Georgia 30076
(770) 552-3361

Jeffrey W. Schwarz, Esq.
Carver Schwarz McNab & Bailey LLC
1600 Stout Street, Suite 1700
Denver, Colorado 80202

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

18. 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.

19. 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, gathering line, or pipeline constructed within the Petroleum Pipeline Easement. KMG may provide a copy of this Agreement to the COGCC as evidence of this waiver.

20. COMPLIANCE WITH LAW AND REGULATION

The Parties shall conduct their respective operations on the Property in a manner that complies in all material respects with any applicable federal, state and local laws, regulations, orders, permits, licenses, approvals, ordinances and directives including, without limitation, any applicable Environmental Law as that term is defined in subparagraph 11.c of this Agreement. The Parties expressly disclaim that this Paragraph 20 establishes, in any way, a private right of action under this Agreement to enforce said federal, state and local laws, regulations, orders, permits, licenses, approvals, ordinances and directives or, any applicable Environmental Law.

21. ARBITRATION.

In the event of any dispute, disagreement, controversy or claim arising out of, relating to or connected with this Agreement, the Parties shall use reasonable, good faith efforts to settle the same through negotiations with each other. If such negotiations fail to produce a mutually acceptable resolution of the disputed matter, the matter shall be resolved by arbitration before a sole arbitrator to be chosen by the Parties from the pool of arbitrators at Judicial Arbitrator Group, Inc., 1601 Blake St, Suite 400, Denver, CO 80202 (known as "JAG"). Any proceeding before the arbitrator shall be conducted in accordance with the CPR Institute for Dispute Resolution Rules for Non-Administered Arbitration then currently in effect. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The place of arbitration shall be at the offices of JAG in Denver, Colorado. Each Party to the arbitration proceeding will be responsible for its own costs and fees incurred in connection with the arbitration except the fees for JAG which shall be borne equally between or among the Parties to the arbitration.

22. APPLICABLE LAW.

This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. The Parties agree that the general rule that ambiguities are to be construed against the drafter shall not apply to this Agreement. In the event that any language of this Agreement is found to be ambiguous, each Party shall have an opportunity, in any legal proceeding, to present evidence as to the actual intent of the Parties with respect to any such ambiguous language.

23. ENTIRE AGREEMENT/INVALIDITY OR UNENFORCEABILITY.

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. The Parties agree that if, for any reason, any provision, term, or portion of any provision or term of this Agreement shall be held invalid, illegal, or unenforceable, this Agreement shall automatically be conformed to such holding, and the validity, legality, and enforceability of the remaining terms, provisions or portions of provisions and terms of Letter Agreement shall not be impaired but shall continue in full force and effect.

24. NO THIRD PARTY BENEFICIARIES.

This Agreement creates no rights benefiting third parties, and no third party shall have any right to enforce any provision hereof, except as may be specifically provided herein.

25. ADDITIONAL DOCUMENTS.

The Parties agree to execute additional documents, and perform such further acts, as may be reasonably necessary to give effect to the purposes of this Agreement.

26. EXECUTION AND BINDING EFFECT.

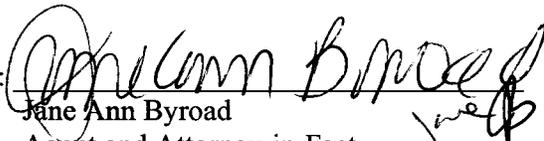
This Agreement may be executed in any number of counterparts each of which shall be deemed an original instrument but all of which together shall constitute one and the same instrument, and shall be binding upon and inure to the benefit of the Parties, and each of their respective heirs, executors, administrators,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

27. EXECUTION BY KMGG.

KMGG's execution of this Agreement binds KMGG to the provisions calling for the relocation of the gas gathering line, access, and indemnity as referred to above. Unless otherwise expressly provided herein, Surface Owner agrees that KMGG's execution of this Agreement does not render KMGG liable for any duty or obligation undertaken by KMG hereunder.

The Parties have executed this Agreement on the day and year first above written.

KERR-McGEE OIL & GAS ONSHORE LP
A Delaware Limited Partnership

By: 
Jane Ann Byroad
Agent and Attorney-in-Fact

KERR-MCGEE GATHERING LLC
A Colorado Limited Liability Company
By Its Manager Kerr-McGee Oil & Gas Onshore LP

By: 
Jane Ann Byroad
Agent and Attorney-in-Fact

MORTON LAKES LLC
A Colorado Limited Liability Company
By its Manager Ready Mixed Concrete Company

By: 
Ron Henley
President, Ready Mixed Concrete Company

ACKNOWLEDGMENTS

STATE OF TEXAS)
) ss.
COUNTY OF MONTGOMERY)

The foregoing instrument was acknowledged before me this 21st day of June, 2010, by Jane Ann Byroad, as Agent and Attorney-in-Fact of Kerr-McGee Oil & Gas Onshore LP.

Witness my hand and official seal.



Jeanine Palmer
Notary Public
My Commission Expires: 11/6/2012

STATE OF TEXAS)
) ss.
COUNTY OF MONTGOMERY)

The foregoing instrument was acknowledged before me this 21st day of June, 2010, by Jane Ann Byroad as Agent and Attorney-in-Fact for Kerr-McGee Oil & Gas Onshore LP, a Delaware Limited Partnership, in its capacity as Manager of Kerr-McGee Gathering LLC, a Colorado limited liability company, on behalf of such company.

WITNESS my hand and official seal.



Jeanine Palmer
Notary Public
My Commission Expires: 11/6/2012

STATE OF COLORADO)
CITY AND) ss.
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 7th day of June, 2010 by Ron Henley as President of Ready Mixed Concrete Company, a Colorado Corporation, in its capacity as Manager of Morton Lakes LLC .

Witness my hand and official seal.



Mary Young
Notary Public
My Commission Expires: 7-29-10



3704380 07/09/2010 11:24A Weld County, CO
17 of 32 R 166.00 D 0.00 Steve Moreno Clerk & Recorder

EXHIBIT A
To
Surface Use Agreement

Property Description

Lot B of Recorded Exemption No. 1469-12-1-RE 1525, as per the map recorded January 6, 1994 in Book 1421 at Reception No. 2367922, being a part of the SE $\frac{1}{4}$ of Section 1 and the NE $\frac{1}{4}$ of Section 12, both in Township 1 North, Range 67 West of the 6th P.M., County of Weld, State of Colorado.



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EXHIBIT B

To
Surface Use Agreement

List of Leases that Comprise Oil & Gas Leasehold Estate on the Property
And Areas to be Accessed from the Property

Lessor	Lessee	Date	Description	Gross Acreage	Reception No.
Lena Ackerson Estate	T.S. Pace	March 19, 1970	Section 1, T1N-R67W of the 6 th P.M. West 30 acres of the W/2SE/4	572.41	1545940
August G. & Rose J. Lambrecht	T.S. Pace	March 31, 1970	Section 1, T1N-R67W of the 6 th P.M. East 50 acres of the W/2SE/4 & E/2SE/4 less the North 20 acres of the East 25 acres of the West 30 acres Section 12, T1N-R67W of the 6 th P.M. NE/4	251.10	1547181
Carl C. & Marguerite M. Bateman	The Anschutz Corporation Inc.	November 17, 1970	Section 1, T1N-R67W of the 6 th P.M. The North 20 acres of the East 25 acres of the West 30 acres of the NESE	20	1559896



3704380 07/09/2010 11:24A Weld County, CO
19 of 32 R 166.00 D 0.00 Steve Moreno Clerk & Recorder

EXHIBIT C

To

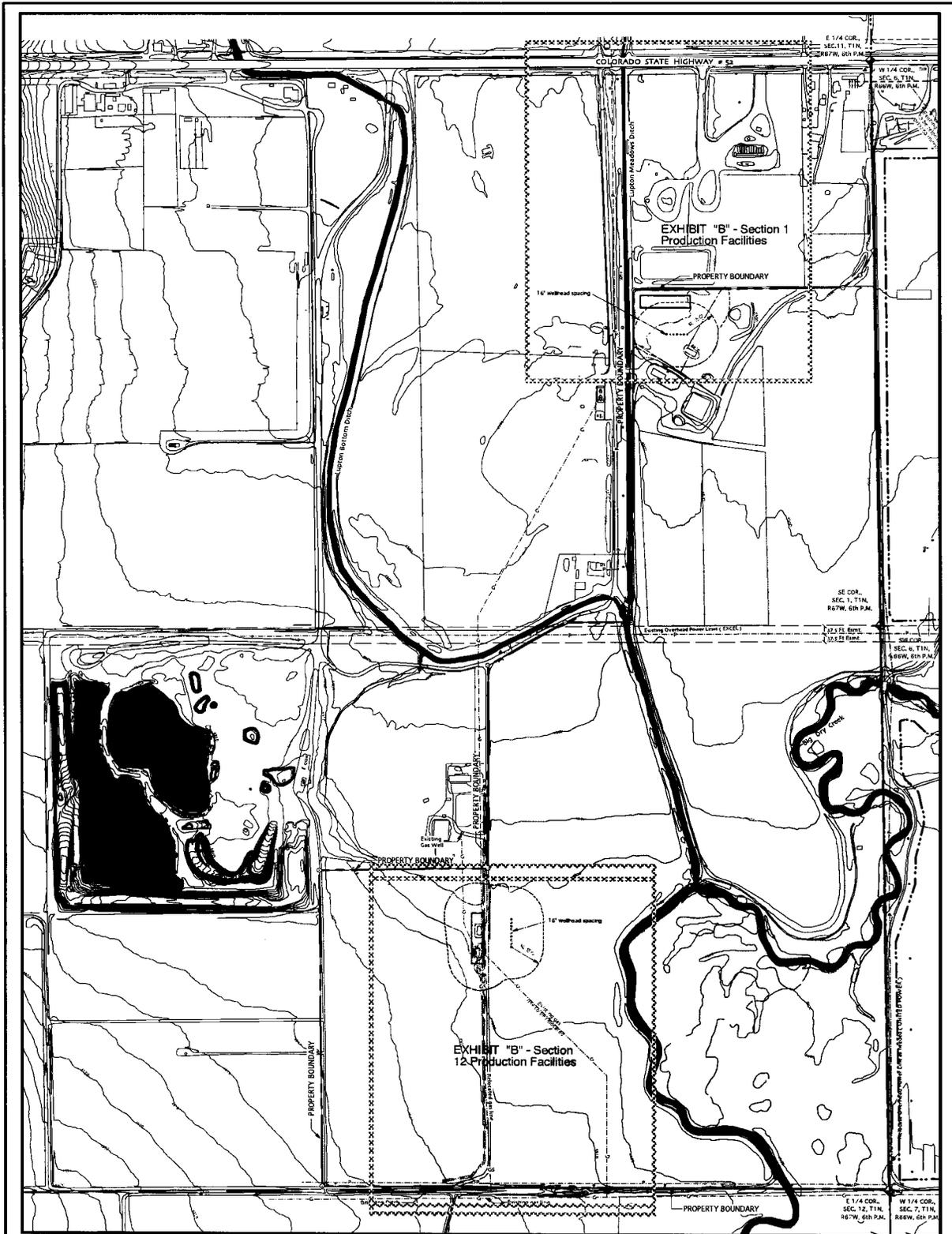
Surface Use Agreement

Sheet 1 of 4, Key Map

Sheet 2 of 4, "Wells 1-7"

Sheet 3 of 4, "Wells 8-16"

Sheet 4 of 4, "Gas Line Relocation and South Access"



LEGEND

	Property boundary		Port Reclamation Oil & Gas Operation Area
	Existing Overhead Power Line		Proposed Petroleum Pipeline
	Existing Buried Gas Line		Proposed Relocated Gas Pipeline
	Existing Buried Electric		Future Kern-McGee Tank Battery Area
	Existing Open Water		Future Kern-McGee Gas Well
	Existing Gas Well		
	Existing Tank Battery		

PROJECT: MORTON LAKES SUA

SHEET TITLE: EXHIBIT "C"
Key Map

Applicant:
READY MIXED CONCRETE CO.
14585 BRIGHTON ROAD
BRIGHTON, CO. 80601
303-659-0630

Prepared by:
Hart Environmental
P.O. Box 1303
Boulder, Colorado
80502
(303) 444-6602
nhart01@gmail.com

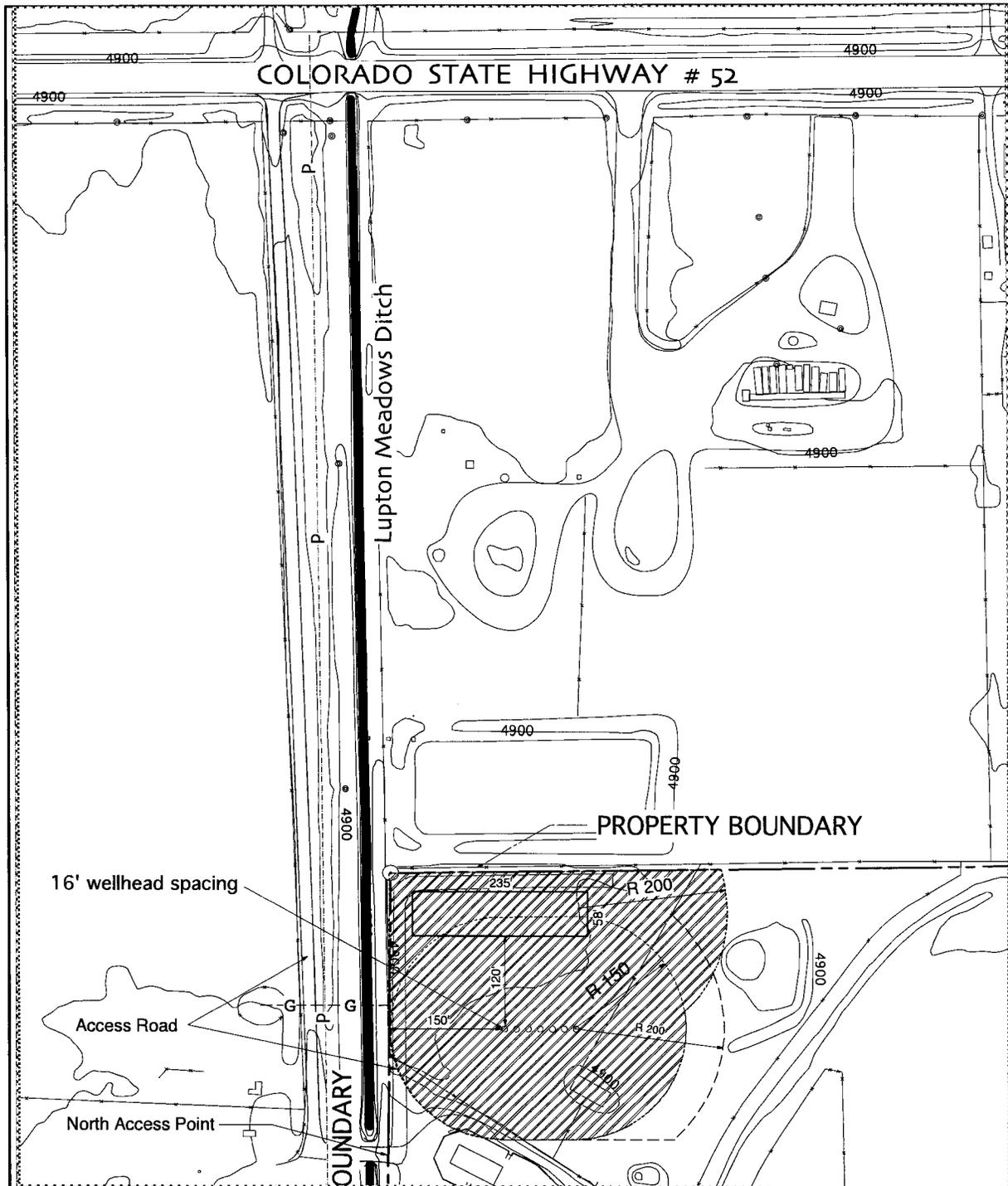
Greg L. Thrush
930 Glenview Dr.
Berthoud Co.
80513
(970) 532-5989
gthrush@colomail.com

NO.		DATE	BY	DESCRIPTION
53	100	3/17		
102	225	4/17		

Scale: As Noted
Preparation Date:
Jan. 31, 2010
Drawn by:
Greg Thrush
File: 7777

Sheet
1
of
4


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LEGEND	
	Property Boundary
	Existing Overhead Power Line
	Existing Buried Gas Line
	Existing Buried Electric
	Existing Open Water
	Existing Gas Well
	Existing Tank Battery
	Post Reclamation Oil & Gas Operation Area - The pre-drilling radius will be 200 feet on the east end of the Oil & Gas Operation Area
	Proposed Petroleum Pipeline
	Proposed Relocated Gas Pipeline
	Future Kerr-McGee Tank Battery Area
	Future Kerr-McGee Gas Well



PROJECT: MORTON LAKES SUA
 SHEET TITLE: EXHIBIT "C" Wells 1-7
 SE1/4, SE1/4 Section 1; T1N; R67W

Applicant:
READY MIXED CONCRETE CO.
 14585 BRIGHTON ROAD
 BRIGHTON, CO. 80601
 303-659-0630

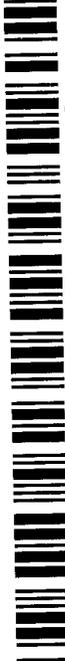
Prepared by:
 Hart Environmental
 P.O. Box 1303
 Boulder, Colorado
 80306
 (303) 444-6602
 mhart01@gmail.com

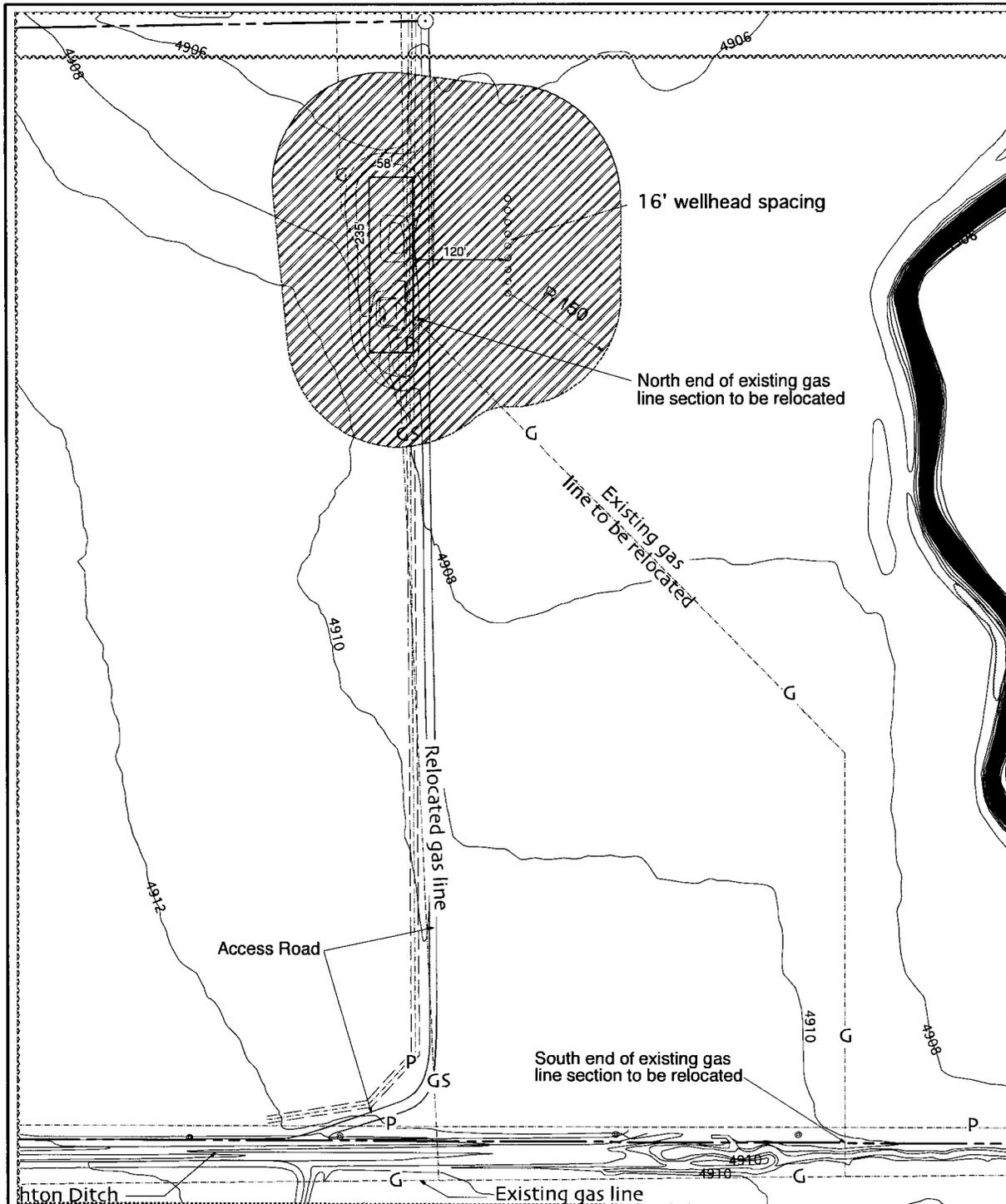
Greg L. Thruan
 930 Glenview Dr.
 Berthoud Co.
 80513
 (970) 532-5989
 gthruan@colostate.com

REVISIONS			
NO.	DATE	BY	DESCRIPTION
1	11-11-09	GLT	Initial
2	01-22-10	GLT	Revised

Scale: As Noted
 Preparation Date:
 Jan. 31, 2010
 Drawn by:
 Greg Thruan
 File: 1111

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4


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 22 of 32 R 166.00 D 0.00 Steve Moreno Clerk & Recorder

LEGEND

<ul style="list-style-type: none"> Property Boundary Existing Overhead Power Line Existing Buried Gas Line Existing Buried Electric Existing Open Water Existing Gas Well Existing Tank Battery 	<ul style="list-style-type: none"> Post Reclamation Oil & Gas Operation Area Proposed Petroleum Pipeline Proposed Relocated Gas Pipeline Future Kerr-McGee Tank Battery Area Future Kerr-McGee Gas Well
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PROJECT: MORTON LAKES SUA
 SHEET TITLE: Exhibit "C" Wells 8-16
 SW1/4, NE1/4 Section 12; T1N; R67W

Applicant:
READY MIXED CONCRETE CO.
 14585 BRIGHTON ROAD
 BRIGHTON, CO. 80601
 303-659-0630

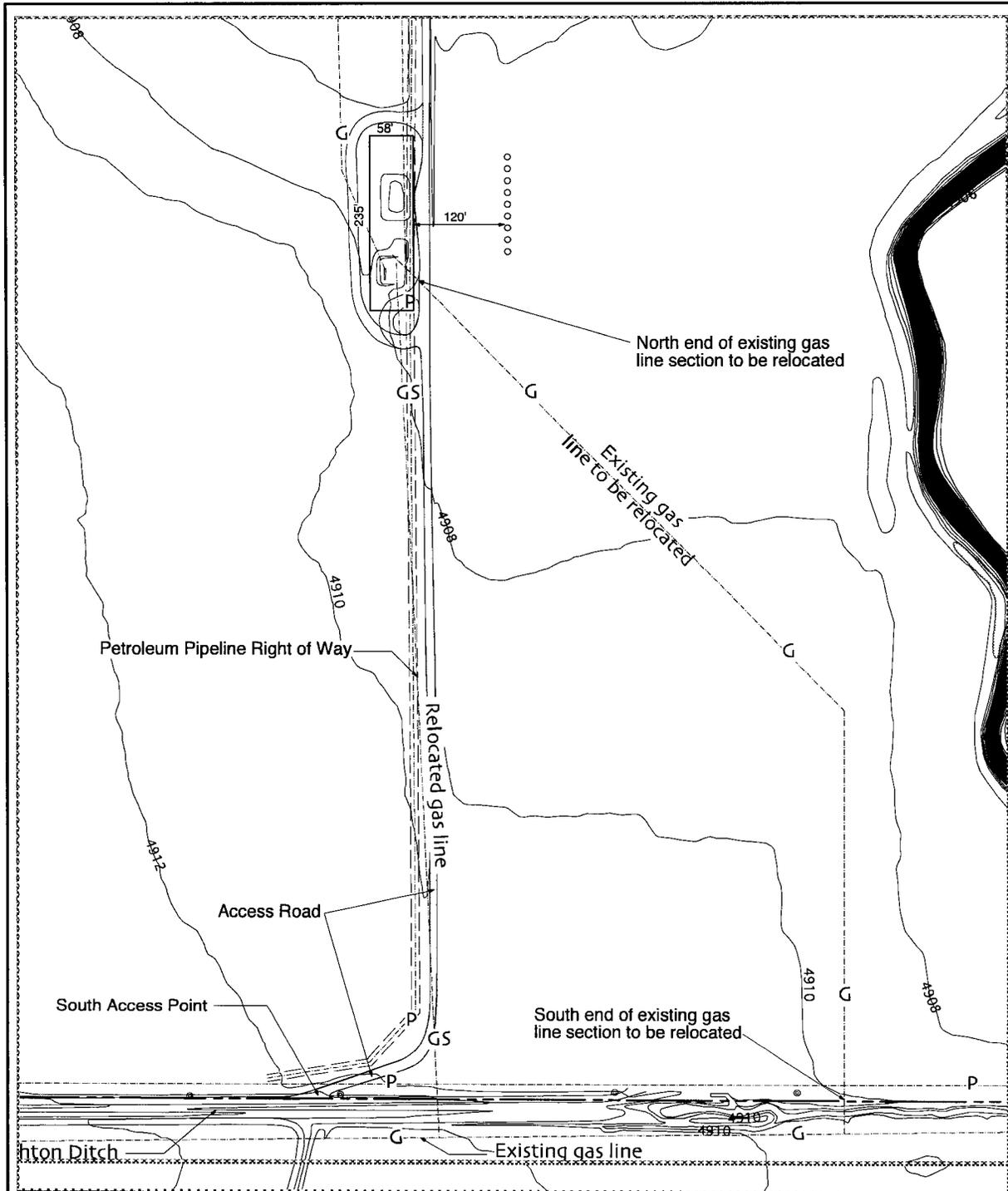
Prepared by:
 Hart Environmental
 P.O. Box 1303
 Boulder, Colorado
 80306
 (303) 444-6602
 njhart01@gmail.com

Greg L. Trush
 930 Glenview Dr.
 Berthoud Co.
 80513
 (970) 532-5888
 gtrush@colomail.com

NO.		DATE	BY	CHKD	DESCRIPTION
22	10	11/22/10	SLT		
23	10	11/22/10	SLT		
24	10	11/22/10	SLT		

Scale: As Noted
 Preparation Date:
 Jan. 31, 2010
 Drawn by:
 Greg Trush
 File: 7777

Sheet: **3**
 of **4**



LEGEND	
	Property Boundary
	Existing Overhead Power Line
	Existing Buried Gas Line
	Existing Buried Electric
	Existing Open Water
	Existing Gas Well
	Existing Tank Battery
	Post Reclamation Oil & Gas Operation Area
	Proposed Petroleum Pipeline
	Proposed Relocated Gas Pipeline
	Future Kerr-McGee Tank Battery Area
	Future Kerr-McGee Gas Well

PROJECT: MORTON LAKES SUA	Applicant: READY MIXED CONCRETE CO. 14585 BRIGHTON ROAD BRIGHTON, CO. 80601 303-659-0630	Prepared by: Hart Environmental P.O. Box 1303 Soulard, Colorado 80306 (303) 444-6602 mhart01@gmail.com	Greg L. Thrush 930 Glenview Dr. Berthoud Co. 80513 (970) 532-5989 gthrush@comcast.net	<table border="1"> <thead> <tr> <th colspan="4">REVISIONS</th> </tr> <tr> <th>NO.</th> <th>DATE</th> <th>BY</th> <th>DESCRIPTION</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>11/09</td> <td>GLT</td> <td>INIT</td> </tr> <tr> <td>2</td> <td>11/09</td> <td>GLT</td> <td>REVISED</td> </tr> <tr> <td>3</td> <td>11/09</td> <td>GLT</td> <td>REVISED</td> </tr> </tbody> </table>	REVISIONS				NO.	DATE	BY	DESCRIPTION	1	11/09	GLT	INIT	2	11/09	GLT	REVISED	3	11/09	GLT	REVISED	Scale: As Noted Preparation Date: Jan. 31, 2010 Drawn by: Greg Thrush File: 7777	Sheet 4 of 4
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2	11/09	GLT	REVISED																							
3	11/09	GLT	REVISED																							
SHEET TITLE: EXHIBIT "C" Gas Line Relocation and South Access																										


 3704380 07/09/2010 11:24A Weld County, CO
 23 of 32 R 166.00 D 0.00 Steve Moreno Clerk & Recorder



3704380 07/09/2010 11:24A Weld County, CO
24 of 32 R 166.00 D 0.00 Steve Moreno Clerk & Recorder

EXHIBIT D

To
Surface Use Agreement

Petroleum Pipeline Right-of-Way Grant
Kerr-McGee Gathering LLC



3704380 07/09/2010 11:24A Weld County, CO
25 of 32 R 166.00 D 0.00 Steve Moreno Clerk & Recorder

PETROLEUM PIPELINE RIGHT-OF-WAY GRANT

THIS PETROLEUM PIPELINE RIGHT-OF-WAY GRANT ("Grant) is made this ___ day of _____, 2010, from MORTON LAKES LLC, a Colorado limited liability company whose address is 4395 Washington Street, Denver, Colorado 80216 ("Grantor"), 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, relocate, construct, maintain, inspect, operate, repair, alter, replace, modify, change the size of, reconstruct, mark, monitor, abandon or remove, at KMGG's election, a petroleum pipeline 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 1 NORTH, RANGE 67 WEST, OF THE 6TH PM

Lot B of Recorded Exemption No. 1469-12-1-RE 1525, as per the map recorded January 6, 1994 in Book 1421 at Reception No. 2367922, being a part of the SE ¼ of Section 1 and the NE ¼ of Section 12, both in Township 1 North, Range 67 West of the 6th P.M., County of Weld, State of Colorado.

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. The parties have agreed that the width of the Right-of-Way Lands is to be thirty feet (30') during construction, installation and relocation operations and otherwise reduced to fifteen feet (15') in width for post-construction usage being seven and one half (7.5) feet on either side of the centerline pipeline.

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 42 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.

IN WITNESS WHEREOF, Grantor has executed and delivered this Right-of-Way Grant as of the date first above written.

Grantor:

MORTON LAKES LLC
A Colorado Limited Liability Company
By Its Manager Ready Mixed Concrete Company

By: _____
Ron Henley
President, Ready Mixed Concrete Company

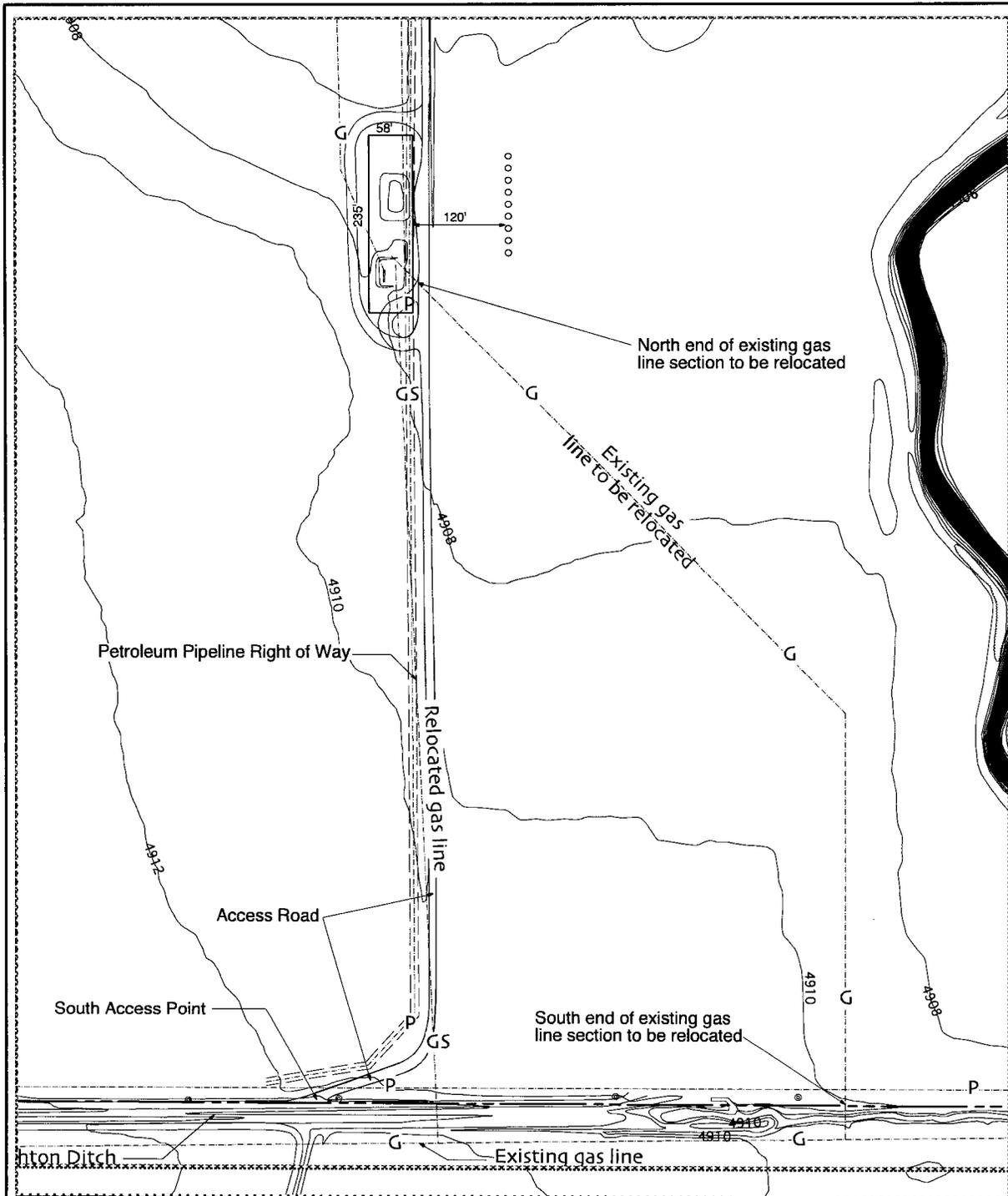
STATE OF COLORADO)
)ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day of _____, 2010 by Ron Henley as President of Ready Mixed Concrete Company, a Colorado Corporation, in its capacity as Manager of Morton Lakes LLC .
Witness my hand and official Seal.

My Commission Expires: _____

Notary Public

(SEAL)



3704380 07/09/2010 11:24A Weld County, CO
 27 of 32 R 166.00 D 0.00 Steve Moreno Clerk & Recorder

LEGEND

	Property Boundary		Post Reclamation Oil & Gas Operation Area
	Existing Overhead Power Line		Proposed Petroleum Pipeline
	Existing Buried Gas Line		Proposed Relocated Gas Pipeline
	Existing Buried Electric		Future Kerr-McGee Tank Battery Area
	Existing Open Water		Future Kerr-McGee Gas Well
	Existing Gas Well		
	Existing Tank Battery		

Exhibit A
 Petroleum Pipeline Right-of-Way Grant
 By and Between
 Morton Lakes LLC ("Grantor")
 And
 Kerr-McGee Gathering LLC ("KMGG")

Prepared by:		REVISIONS		Scale: As Shown	Sheet
Hart Environmental P.O. Box 1303 Boulder, Colorado 80306 (303) 444-6602 mhart01@gmail.com	Greg L. Thrush 930 Glenview Dr. Berthoud Co. 90513 (970) 532-5989 gltrush@colomak.com	NO.	DATE	BY	DESCRIPTION
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EXHIBIT E

To
Surface Use Agreement

**General Guidelines for Design and Construction Activities On or Near
KMG and KMGG Pipelines and Related Facilities**



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 manipulated by the requesting entity to be less than 48" nor more than 72". All cover that exceeds 72" or less than 48" will be approved in writing by KMGG. This does not preclude KMGG from installing the pipeline at a minimum cover of 36" as provided for in CFR 49 Part 192. 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**



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

representative will require discontinuation of any work that, in his or her opinion, endangers the operations or safety of personnel, pipelines or facilities.

- **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.



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

- ♦ **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.
- ♦ 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