

SURFACE USE AND EASEMENT AGREEMENT

This AGREEMENT, dated the 9th day of August 2013, by and between Henes Farms Limited Partnership, whose address is 13260 Road 29 Dolores, CO 81323, ("Grantor") and Kinder Morgan CO2 Company, L.P., ("Grantee").

WITNESSETH:

In consideration of the sum of Ten and More Dollars (\$10.00+), Grantor and Grantee agree as follows:

Grantor agrees to and hereby provides to Grantee the right, privilege, and easement to construct, use, create, relocate, or modify a road or roads not to exceed a width of fifteen (15) feet on each side of center, of the usual (graveled) or customary character, and includes the right, privilege, and easement to construct, operate, maintain, protect, inspect, test repair, alter, replace, move, remove, change the size of and abandon in place a pipeline or pipelines, and flow lines, and includes the right, privilege, and easement to drill, test, complete, re-complete, rework, re-enter, pump, operate, construct and maintain a well, well location, associated production facilities, and pipelines located within the following-described real estate situated in Montezuma County, Colorado, to-wit:

Township 38 North, Range 19 West, N.M.P.M.
Section 27: Lots 3 and 5 (W1/2NW1/4
Montezuma County, Colorado
(the "Land")

1. Grantor and Grantee agree that the premises are to be utilized by the Grantee for the purpose of constructing and utilizing an access road to one (1) CO2 well site located on Grantor's Land.
2. Grantor and Grantee further agree that the payment is for all damages to the real estate, including, but not limited to, damages to growing crops, trees, sod, damage to croplands, Conservation Reserve Program reimbursements or losses, construction of access road and preparation and use of the well location area, preparation and use of reserve pits, and construction, installation, and maintenance of production equipment and production facilities, such as pipelines, separators, tank batteries and other equipment or facilities necessary or convenient for the production, transportation and sale of oil, gas and other materials, and rights of ingress and egress to and from, and at all times over and along and upon the real estate for the purposes herein expressed.
3. This Agreement shall have a term co-extensive with the life of the well to which access is hereby authorized and so long thereafter as needed. Any abandoned well will be plugged and abandoned according to the procedures set by the Colorado Oil & Gas Commission.

4. Grantee shall maintain the road(s) in a condition comparable to other existing trails and roads, and install culverts, cattle guards, and/or gates where appropriate and mutually agreed upon; provided, however, that future changes in the use of the premises by Grantor which require the addition or modification of gates, cattle guards, culverts or similar facilities, shall be the sole responsibility of the Grantor. Grantee agrees to a yearly weed control to keep well pads and roads clear of all types of unwanted weeds.

5. Grantor specifically agrees that it shall exercise its privileges hereunder at its own risk. Grantor further releases Grantee from and shall indemnify and hold Grantee harmless from all liability for damages, costs, losses, and expenses, including attorney's fees, resulting from, arising out of or in any way connected with (1) Grantor's use hereunder; (2) the existence of this Agreement and all rights and obligations arising hereunder; and (3) any claim by and any claim relating to acts or omissions of Grantor's agents, employees, guests, invitees, contractors or licensees while utilizing said real estate, whether or not Grantee was or is claimed to be passively, concurrently or actively negligent, and regardless of whether liability without fault is imposed or sought to be imposed on Grantee, except where such loss, damage, injury, liability or claim is the result of the sole active negligence or willful misconduct of Grantee, and is not contributed to by any act of, or by any omission to perform some duty imposed by law of contract on, Grantor, its contractor, agents or employees.

6. This agreement is subject to an unrecorded Letter Agreement of even date by and between the parties hereto relative to the above-described real estate. No variations, modifications or changes shall be binding upon either party unless set forth in a document duly executed by both parties. Further, this Agreement shall not be interpreted or construed to be an adaptation of any other agreement between the parties hereto, or their predecessors, and nothing contained herein shall in any way be construed to mean the adoption, ratification or waiver of any other agreement between the parties hereto.

7. This Agreement shall be construed, interpreted and governed by the laws of the state where the Land is located. This Agreement is binding upon the heirs, successors and assigns of the parties hereto and the privilege of assigning in whole or in part is expressly allowed.

8. Grantor agrees that the Grantee shall have the right at any time to redeem for Grantors, by payment, any mortgage, taxes or other liens on the above-described real estate in the event of default of payment by the Grantor. The Grantee shall then be subrogated to the rights of the holder thereof and the Grantor agrees that any such payments made by the Grantee for the Grantor may, at Grantee's option, be deducted from any amount of money, which becomes due or payable to the Grantor pursuant to the terms of this Agreement.

9. Surface Owner agrees that the terms of this Agreement reasonably accommodate Surface Owner's use of the Land pursuant to C.R.S. § 34-60-127.

WHEREOF WITNESS my hand as of the day and year first above written.

Grantor:

Henes Farms Limited Partnership

By: Walter E Henes II
Walter E. Henes, II, General Partner

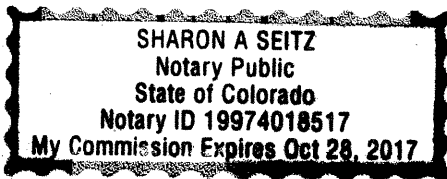
By: Walter E Henes III
Walter E. Henes, III, General Partner

By: Lynne B Henes
Lynne B. Henes, General Partner

STATE OF COLORADO }
 } ss
COUNTY OF MONTESUMA }

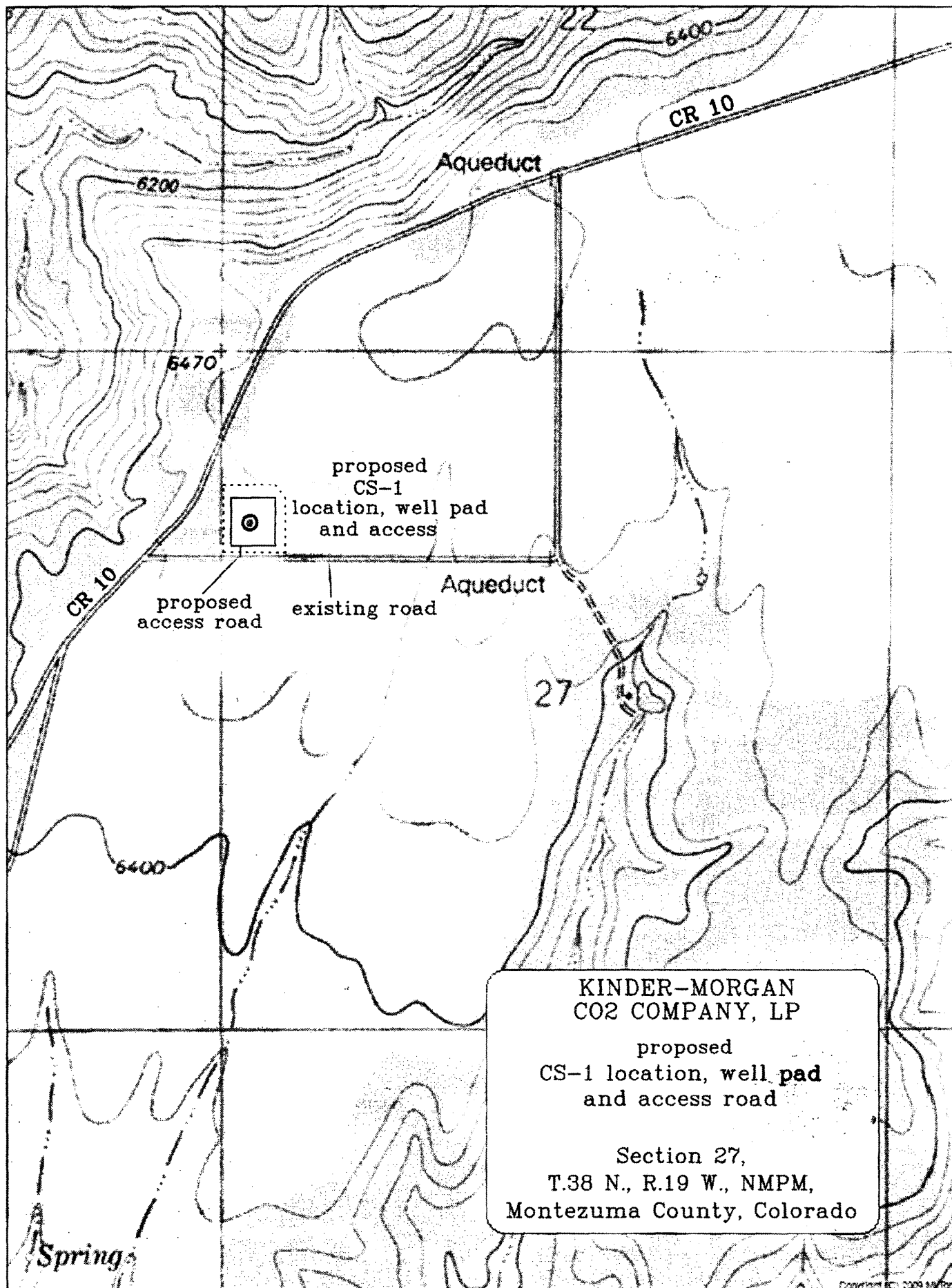
On this 28th day of August, 2013, before me a notary public in and for said county and state personally appeared Walter E. Henes, II, Walter E. Henes, III, and Lynne B. Henes, all as General Partners of the Henes Farms Limited Partnership, on behalf of said Partnership, personally known to me to be the same persons who executed the foregoing instrument and such person acknowledged the same as their voluntary act and deed.

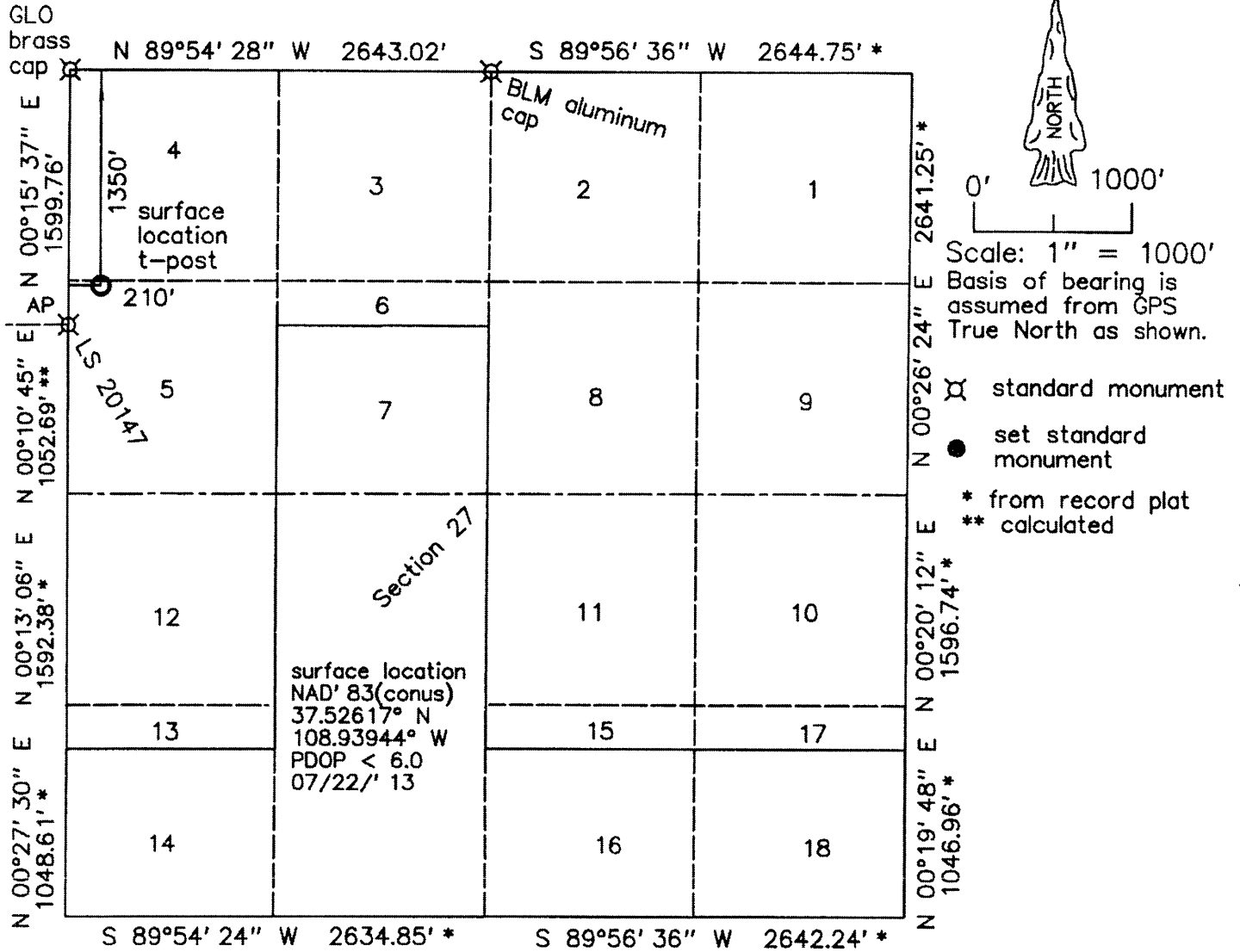
Witness my hand and official seal.



Sharon A Seitz
Notary Public

My Commission Expires: 10/28/17





KINDER MORGAN CO2 COMPANY, LP
CS-1
1350' FNL & 210' FWL
Section 27, T.38 N., R.19 W., NMPM
Montezuma County, CO
6459.0' grd. el. NAVD '88 (from OPUS)

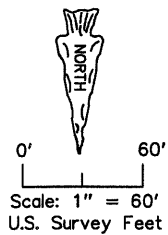
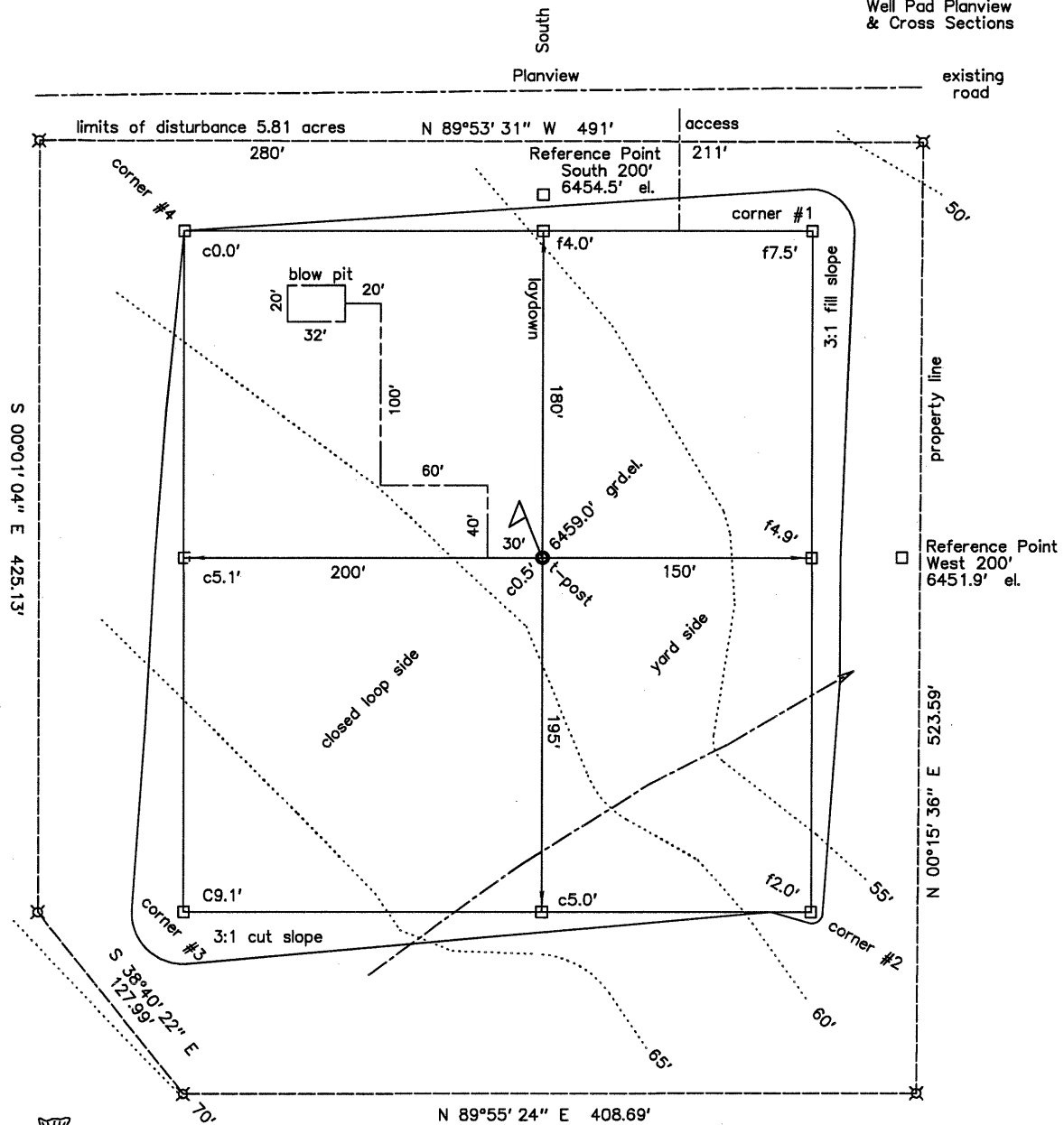
Notes:

- 1) Distances/dimensions are perpendicular to section/aliquot lines.
 - 2) Surface use is Fee irrigated farming.
 - 3) GPS was corrected with OPUS, GPS operator was R.J. Caffey, CO LS 36562.
 - 4) There are no buildings within 500 plus feet, there is a farm/oil & gas road at 250 feet, and various underground water lines outside pad.
- No utility spot was conducted.



KNOW ALL MEN BY THESE PRESENTS that I, GERALD G. HUDDLESTON, do hereby certify that this plat was prepared from field notes of an actual survey made by me or under my supervision and that the same is true and accurate to the best of my knowledge and belief.

date of survey : 07/23/2013
date of plat : 07/24/2013



Cross Sections

- t-post/location
- lath/pin flag
- ✕ U-post/lath

