

SURFACE USE AGREEMENT

THIS SURFACE USE AGREEMENT ("**Agreement**") dated effective this 20th day of September, 2013, is made by and between the undersigned, Donald Wickstrom, whose address is 33176 Morgan CR 3, Orchard, CO 80649 herein called "**Owner**", and Foundation Energy Management, LLC, whose address is 16000 Dallas Parkway, Suite 875, Dallas, TX 75248 herein called "**Foundation**".

WHEREAS, Owner represents that they are the surface owners and in possession of an interest in part or all of the surface estate for the following described lands in Weld County, Colorado, said land herein called "**Lands**", to wit;

Township 7 North, Range 59 West, 6th P.M.
Section 6: NW/4

WHEREAS, Owner recognizes that Foundation, as successor in interest to Diversified Operating Corporation, has the right to conduct oil and gas exploration operations on the Lands pursuant to an Oil and Gas Lease dated November 15, 2002 between Donald L. Wickstrom and Diversified Operating Corporation covering the Lands, and the corresponding right to use so much of the surface as is reasonably necessary for such operations taking into account Owner's surface use. Owner and Foundation desire to minimize any surface damage to the Lands and to reach an agreement regarding such surface damage;

NOW, THEREFORE, in consideration of ten dollars and other good and valuable consideration, the sufficiency of which is hereby acknowledged, Owner and Foundation agree as follows:

1. **Compensation.** Prior to commencement of drilling operations on the Lands, Foundation shall pay Owner the following sum as the initial settlement and satisfaction for damages growing out of, incident to, or in connection with the usual and customary exploration, drilling, completion, deepening, refracing, recompletion, reworking, equipping and production operations (collectively the "**Operations**"), unless otherwise specifically provided herein:
 - A. **Surface Location and Access Roads.** Foundation shall pay to Owner four thousand dollars (\$4,000.00) (the "**Initial Payment**") for each proposed vertical wellsite (the "**Wellsite**") located on the Lands in which Owner owns the entire surface estate, as the minimum payment due for three (3) acres of Land for the Wellsite and associated access roads to the Wellsite together with one thousand five hundred (\$1,500.00) per acre for any additional Lands used for the Wellsite, access roads, production facilities, pipelines, flowlines or other reasonably necessary facilities in connection with the Wellsite, should more than three (3) total acres be disturbed or used for Operations. In no event shall Owner be obligated to return any of the Initial Payment.

- B. Buried Pipelines. If Foundation determines it necessary to bury pipelines or if the Owner so requests, Foundation shall bury all pipelines below normal plow depth, and shall pay Owner Thirty Dollars and 00/100 (\$30.00) per rod for the length of the buried pipeline as compensation for surface damage associated with the installation of the Pipeline. Foundation shall consult with Owner prior to locating and burying any pipeline(s), and shall cooperate with Owner regarding the location and construction timing for any pipeline burial in order to minimize disturbance of Owner's ongoing farming and ranching operations. The width for any subsurface pipeline easement shall not exceed twenty (20) feet without additional proportionate compensation to Owner. Compensation for pipelines shall be calculated and paid after pipelines are in the ground for accuracy of measurement, provided such pipelines are located and compensation is paid.
- C. Temporary Water Lines. If temporary water transfer lines (laid for no more than ninety (90) days) are needed for completion of a Well, Owner shall allow reasonable use of the Access Roads for such temporary water transfer lines. Foundation shall consult with Owner as to route for any temporary water transfer lines. If any portion of the Property, or the Owner's adjacent surface estate is used for water lines for which Owner has not previously been compensated, Owner shall be compensated at the rate of \$1,500 per acre for any portion of Owner's Lands used therefor. Foundation shall promptly notify the Owner of any leak or breach of any temporary water transfer line and the Parties agree to cooperate in determining appropriate remediation consistent with COGCC rules and regulations and to pay for any damages to the Owner's property arising out of such spill or release.
- D. Access Route Limitations. Owner hereby grants, demises and conveys the easements and rights-of-way and access to the Well(s) as set forth on Exhibit A. Should Foundation deviate from the Approved Access Routes, whether intentionally or unintentionally, Foundation shall promptly repair the damage to Owner's surface estate, and shall compensate Owner for unauthorized travel at the rate of \$1,500.00 per acre of additional disturbed lands.
- E. Additional Damage. If, by reasons resulting from Operations of Foundation, there is damage to real or personal property upon the Lands which is not associated with usual and customary operations, including, but not limited to, damage to livestock, structures, buildings, fences, culverts, cement ditches, irrigation systems, and natural water ways, such damage will be promptly repaired or replaced by Foundation, or Foundation will pay reasonable compensation to Owner for such additional actual damage or an amount equal to the reasonable costs to repair such actual damages. The prompt repair shall occur no later than thirty (30) days after Owner notifies Foundation of the damage, unless such damage shall take longer to repair in which case the remedy may be effected in a reasonable time provided Foundation diligently commences and pursues same to completion. If Foundation does not pay for such damage within the timeframe herein, and Owner remedies the damage, Foundation shall pay Owner's costs within ten

(10) days of receipt of an invoice therefor. Foundation shall determine no later than sixty (60) days after commencement of Operations whether Foundation has required more than three (3) acres of Land for Operations. If the Land used exceeds three (3) acres Foundation shall remit payment according to Section 1.A. within fifteen (15) business days after confirmation of the excess Lands used.

- F. Tenant Notice. Owner agrees to notify any surface tenant that may be affected by Foundation's operations on the Lands and Owner may allocate the payments made hereunder with such surface tenant as they shall mutually determine between themselves and Foundation shall have no liability thereof.
- G. Use Limitations. Should any Wellsite be proposed for horizontal wells Foundation shall notify the Owner and the parties shall negotiate appropriate surface use provisions therefor. .

2. Foundation's Obligations. In conducting operations on the Lands, Foundation shall:

- A. Locate the Wellsites, access roads, flowlines, tank batteries, and other associated production facilities only as depicted on Exhibit "A" attached hereto and by this reference made a part of this Agreement.
- B. Separate the topsoil at the time of excavation of pits so that the topsoil and subsurface soil can be placed back in proper order as nearly as possible.
- C. Reclaim the Wellsites as nearly as practicable to its original condition. Weather permitting, reclamation operations shall be completed within three months following drilling and subsequent related operations, unless Foundation and Owner mutually agree to postponement because of crop or other considerations.
- D. For any Wellsites located in a field with cultivated crops, Owner agrees to reseed the affected area and receive payment from Foundation in the amount of Seven Hundred and Fifty Dollars (\$750.00) per acre upon notice of such reseeding by Owner. Such payment will constitute Owner's acceptance of responsibility for compliance with Colorado Oil and Gas Conservation Commission ("COGCC") Rule 1003(e)(1), *Revegetation of crop lands*, insofar as any perennial forage crops that were present before disturbance shall be re-established. If the Owner's reseeding efforts does not result in an initial stand of the reseeded crop, Owner shall notify Foundation, and Foundation shall reimburse Owner for one additional year of reseeding efforts consistent with the compensation set forth in this paragraph.
- E. Maintenance Obligations. Foundation shall (i) remove all debris resulting from Operations and (ii) keep each drill site and any production facilities clean and free of

weeds and trash and (iii) be responsible for the cleaning and removal of any spills of any nature caused by Grantee's operations upon Grantors' Lands. Access Roads shall be reasonably maintained, including at Owner's request the application of an adequate amount of crushed aggregate and lighter gravel on top of the surface to the length of the Access Road. Without Owner's advance approval only one (1) access road per Wellsite shall be used. Foundation agrees that all Access Roads shall not permanently exceed twenty (20) feet in width where straight, but may be wider on turns, to accommodate equipment, not to exceed thirty (30) feet in width. During dry months Foundation shall apply fresh water (or water to a standard suitable for irrigation purposes) to the surface of the Access Roads in order to limit dissemination of dust.

- F. Spills and Releases. Foundation shall immediately respond and remediate any spill or release at the Property, and shall give the Owner simultaneous notice of any spill or release that is reported to the COGCC. Foundation shall be responsible for, and shall promptly remediate any surface or subsurface impacted by any spills or release of any nature arising out of or related to Foundation's use and occupancy of the Property, or the Owner's adjacent surface.
- G. Contractors. Access Roads and the Wellsites shall only be used by Foundation, Foundation's employees, its co-owners, its designated agents, contractors and subcontractors ("Contractors"), state, local and federal regulators and any other person as required by law or court order to conduct Operations. Off road driving shall be strictly prohibited. All roads may also be used by Owner and Owner's tenants (if any) consistent with the Owner's surface use.
- H. Prohibited Activities. Neither Foundation nor its Contractors shall possess or use drugs, alcohol or firearms on the Property. No dogs shall be allowed on the Property. No hunting, camping (recreational), or fishing will be allowed on the Property, or adjoining lands owned by Owner.
- I. Fences. At the request of the Owner Foundation agrees to fence all Wellsites and associated production facilities no later than one hundred twenty (120) days from the date of the Owner's request.
- J. Standard of Care. Foundation and its Contractors shall conduct all operations in a good, careful, safe, and workmanlike manner, consistent with industry standard industry practice and in compliance with all federal, state and local laws, rules, and regulations regarding land use, environmental laws and all other applicable rules and laws. Foundation shall strictly comply with all existing, and any future modifications to, the rules of the Colorado Oil and Gas Conservation Commission, provided if there is any more restrictive term or provision contained in this

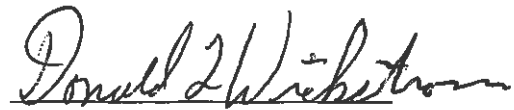
Agreement the terms of the Agreement shall prevail.

- K. **Notice and Right to Cure.** Owner shall promptly notify Foundation in writing of any default under this Agreement. Foundation shall have thirty (30) days after receipt of written notification to remedy the default, unless additional time is reasonably required and the continuation of actions to remedy the default are diligently pursued.
3. **Default.** If either Party is required to undertake legal proceedings to enforce the provisions of this Agreement, and because damages may be difficult to assess, in addition to any court awarded damages, if a Party is determined to be in default in a final non-appealable judicial determination, such Party shall be liable to the other Party for liquidated damages associated with the default of not less than five hundred dollars (\$500.00) per day while the default continues after the court has rendered the final non-appealable ruling if the defaulting Party fails to undertake and diligently pursue action to remedy the default.
4. **Waivers.** Owner hereby agrees to provide Foundation with all reasonably requested waivers and/or written approvals to locate the Wellsite identified herein. Specifically, Owner waives the following: 1) exception location for the proposed Wickstrom 6-4 well to be located in the NW/4NW/4 of Section 6 T7N-R59W, which is closer than 1,200' from the existing Wickstrom 6-5, which is a well producing from the same horizon. This requirement is prescribed in COGCC Rule 318.c. *Surface locations.* Owner further agrees to provide such other waivers and/or written approvals which are reasonably requested by Foundation and that are consistent with COGCC Rules and this Agreement.
5. **Successors and Assigns.** When Foundation is used in this Agreement, it shall also mean the successors and assigns of Foundation, as well as its employees and officers, agents, affiliates, contractors or subcontractors. This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of Owner and Foundation, provided Foundation first notifies Owner of the transferee. Upon Foundation's confirmation that the transferee has sufficient financial resources and industry experience to continue to comply with the terms of this Agreement and the transferee assumes in writing all of the provisions hereof approval of the assignment shall not be unreasonably withheld, conditioned or delayed.
6. **Use for Owner's Operations Only.** Access roads approved and paid for as required by this Agreement may be used for additional locations upon Owner's property, or upon other premises, provided such premises are pooled or unitized with the Owner's mineral interest for royalty payment purposes. Permission from the Owner and additional compensation shall be required before Foundation may use any road for ingress or egress, pipeline or other facility on Owner's property for any well that is not pooled or unitized with the Owner's mineral estate, or that will not result in payment of a royalty to the Owner. Permission from the Owner, and additional compensation shall be required before Foundation may use any Wellsite for wells that will not result in payment of a royalty to the Owner.

7. **INDEMNITY.** FOUNDATION AGREES TO INDEMNIFY, DEFEND AND HOLD OWNER, OWNER'S TENANTS, AGENTS, ASSIGNS, EMPLOYEES AND INVITEES ("**OWNER GROUP**") HARMLESS FROM ANY AND ALL CLAIMS, DEMANDS, ACTIONS, LOSSES, LIABILITIES, DAMAGES, INCLUDING REASONABLE LEGAL FEES AND DISBURSEMENTS AND COSTS OF INVESTIGATION, LITIGATION, SETTLEMENT, JUDGMENT, INTEREST AND PENALTIES, ARISING FROM OR IN ANY WAY RELATED TO FOUNDATION'S OPERATIONS ON THE PROPERTY, INCLUDING WITHOUT LIMITATION ANY CLAIM BY OTHER MINERAL OWNERS, LESSEES OR OPERATORS OR ANY REGULATORY ENTITY (COLLECTIVELY THE "**CLAIMS**"). THE DUTY TO DEFEND AND INDEMNIFY SHALL EXTEND TO, BUT SHALL NOT BE LIMITED TO, CONFLICTING CLAIMS OF PROPERTY USE, ENVIRONMENTAL DAMAGE DUE TO SURFACE SPILLAGE OR THE UNDERGROUND RELEASE OF CONTAMINATED FLUIDS. THIS INDEMNITY AND DUTY TO DEFEND SHALL SURVIVE TERMINATION OF THIS AGREEMENT AND SHALL NOT TERMINATE, AND SHALL CONTINUE TO BE IN FORCE AND EFFECT FOR ALL CLAIMS AS TO FOUNDATION, OR AS TO FOUNDATION'S ASSIGNS AND ANY LEGAL SUCCESSOR TO FOUNDATION, INCLUDING WITHOUT LIMITATION ANY SUCCESSOR BY MERGER OR ACQUISITION OF FOUNDATION REGARDLESS OF WHEN SUCH CLAIMS ARE RAISED.
8. **Confidentiality.** Owner agrees to keep the terms hereunder confidential and shall not disclose such information without the advance written consent from Foundation except as may be necessary to obtain advice and review of Owner's agents (including legal and accounting review), or as may be ordered by any court of competent jurisdiction. Foundation may record a memorandum evidencing the existence of this Agreement, with a copy of the recorded Memorandum provided to Owner for review in advance of recording.
9. **Authority.** Each of the undersigned principals of the Parties represents and warrants that such person has the requisite corporate or legal authority to bind the respective Parties to this Agreement.
10. **Governing Law/ Venue.** This Agreement shall be interpreted according to the laws of the State of Colorado. Venue for any dispute shall be Weld County, Colorado. Should Owner bring an action to enforce any provision of this Agreement, whether in Court, or through a mutually agreed to third party dispute resolution provided (whether mediation, arbitration or some combination thereof) and Owner substantially prevails, Foundation shall pay Owner's reasonable attorney fees associated with such enforcement action.
11. **Written Modifications/Notices.** This agreement may only be amended in writing signed by both parties. All notices to either party shall be in writing addressed to the parties at the address first set forth above.
12. This Agreement may be executed in counterparts and by fax or pdf signature, each of which shall be considered an original signature and together shall constitute a fully executed Agreement for all purposes.

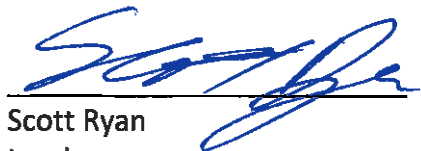
AGREED TO AND ACCEPTED AS OF THE DATE FIRST WRITTEN ABOVE.

Owner

A handwritten signature in black ink, appearing to read "Donald L. Wickstrom", written over a horizontal line.

Donald L. Wickstrom

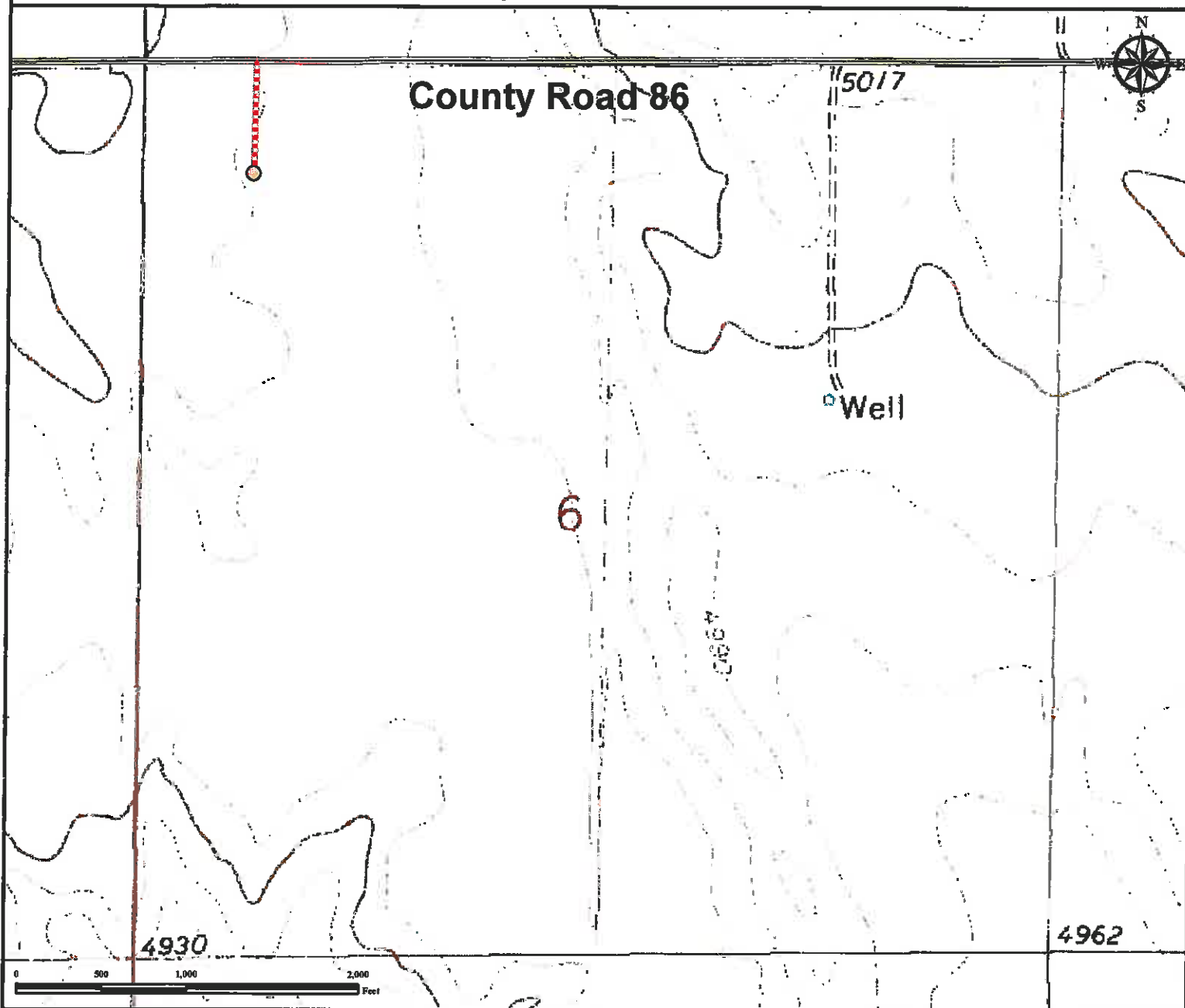
Foundation Energy Management, LLC

A handwritten signature in blue ink, appearing to read "Scott Ryan Landman", written over a horizontal line.

Scott Ryan
Landman

WICKSTROM 6 - 4

Lot 4 SECTION 6, TOWNSHIP 7 NORTH, RANGE 59 WEST OF THE 6TH PRINCIPAL MERIDIAN



From Briggsdale, CO: From the intersection of 5th Ave and CO14.

Drive East: on CO14 ± 17.8 miles to County Road 113.

Drive South: on County Road 113 ± 1 mile to County Road 86.

Drive West: on County Road 86 ± 1.9 miles to proposed access road.

Drive South: on proposed access road ± 656 feet to proposed well pad location.

Total distance from Briggsdale, Co is ± 20.8 miles.

Legend

○ Proposed Well - - - - - Proposed Access Road = = = = = Public Road

Reference Location

** All measurements are made from Reference Well WICKSTROM 6-4 **

Lat: 40.609774° Long: -104.028382° (NAD83)
Elevation: 4957 Feet



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Field Date: 10/11/2013
Drafting Date: 10/15/2013
Drafter: JLF
Revision:

Data Sources:
- Topo courtesy of USGS

Prepared for:

**Foundation Energy
Management, LLC**

Location Drawing

WICKSTROM - 67N59W

Lots 3 & 4 SECTION 6, TOWNSHIP 7 NORTH, RANGE 59 WEST OF THE 6TH PRINCIPAL MERIDIAN



- | | |
|--|--|
| <p>1. Proposed WICKSTROM 67N59W Facility Expansion.</p> <p>2. Existing Facilities are $\pm 84'$ N, $\pm 134'$ NW and $\pm 153'$ NE.</p> <p>3. Operational Disturbance Area.</p> <p>4. 500' Radius.</p> <p>5. ECD is $\pm 147'$ NE.</p> | <p>6. Private Road is $\pm 19'$ W.</p> <p>7. Fence is $\pm 230'$ N.</p> <p>8. Co Rd 86 is $\pm 257'$ N.</p> <p>9. Produced Water Pits are $\pm 176'$ NE and $\pm 648'$ NW.</p> <p>10. Flares are $\pm 161'$ NE and $\pm 685'$ NW.</p> |
|--|--|

Legend

- | | | |
|--|---|---|
| <p> Existing Well</p> <p> ECD</p> <p> Flare</p> <p> Disturbance Area</p> | <p> 500' Radius</p> <p> Proposed Facility Expansion</p> <p> Facility Enclosure</p> <p> Produced Water Pit</p> | <p> Pipeline</p> <p> Public Road</p> <p> Private Road</p> <p> Fence</p> |
|--|---|---|

Building (Residence) -	$>5280'$ E
Public Road - (County Road 86)	$\pm 257'$ N
Property Line - (Wickstrom Donald L)	$\pm 247'$ N
Utility (Power Line) -	$>5280'$ W
Surface Water (Produced Water Pit)	$\pm 176'$ NE
Railroad -	$>5280'$ NE
Water Well -	$\pm 2240'$ NE SWL = 123'
Permit: 120874,	Receipt: 9066344

Reference Location

**** All measurements are made from Reference Point ****

Lat: 40.610860° Long: -104.025991° (NAD83)
Elevation: 4968 Feet

Current Surface Use: Rangeland
Future Surface Use: Rangeland



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Field Date: 10/11/2013
Drafting Date: 10/15/2013
Drafter: JLF
Revision:

Data Sources:
- Aerial courtesy of NAIP (2013)

Disturbance Acreage:
1.96 Acres Drilling Operations
1.96 Acres Interim Reclaim

Prepared for:
Foundation Energy Management, LLC