

## SURFACE USE AND DAMAGE AGREEMENT

This Agreement is made and entered into between **William R. Burr and Linda W. Burr** and each of its successors, herein referred to as “**Owners**,” whose address is 5477 Gulfstar Court, Windsor, CO 80528, and **Great Western Operating Company, LLC**, whose address is 1801 Broadway, Suite 500, Denver, CO 80202, and its successors, herein referred to as “**Operator**,” hereby agree to this Surface Use and Damage Agreement “**SUA**” as follows:

### WITNESSETH:

**WHEREAS**, Owner has ownership of certain land(s) located in Weld County, Colorado, identified as follows:

See Exhibit “A” Legal Description attached hereto and incorporated herein by reference containing [approximately 49.64] acres, more or less, known hereafter as “**Subject Lands**.”

**WHEREAS**, Owner anticipates the Subject Lands use will be for Agriculture; and

**WHEREAS**, Owner’s overall objective is to preserve the Subject Lands, vistas and maintain the Subject Lands primarily for Agriculture and future real estate development; and

**WHEREAS**, Owner wishes to insure, through testing and other measures, that water sources, water quality, and the Subject Lands are protected and not adversely impacted by Operator’s exploration and production activities; and

**WHEREAS**, Operator holds or owns the leasehold right to access the Subject Lands to explore for and produce oil and gas therefrom; and

**WHEREAS**, Owner and Operator desire to enter into an agreement to provide for the expeditious development of the oil and gas resources without delay and without the expense of bonding and litigation, and agree that avoidance of such delay in development is a principal inducement for Operator to enter into this Agreement; and

**WHEREAS**, the parties intend by this Agreement to define and assign responsibilities with regard to the activities discussed herein associated with the exploration, capture, production, storage and transportation of oil and/or gas from the Subject Lands and lands pooled therewith; and

**WHEREAS**, Owner and Operator desire to enter into an agreement which will govern Operator’s use of the Subject Lands for the purpose of Operator’s exploration for, development and production of oil and/or gas that may be discovered pursuant to its oil and gas leases in a fashion which will preserve the current and future residential use of the Subject Lands while allowing for the reasonable production of oil and/or gas from the Subject Lands and lands pooled therewith.

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

## SECTION 1- OPERATOR'S RIGHTS

**1.1 Grant of Easement.** Owner hereby grants Operator, its employees and designated agents, a non-exclusive easement ("**Easement**") on the Surface Use Area wherein all surface activity will take place as depicted on Exhibit 1 attached hereto and incorporated herein by reference to enter upon and use only the Surface Use Area (defined as the Temporary Drilling Site (TDS) and Permanent Operations Area (POA) as described in Section 2.4 b.) for the purpose of drilling, staking, completing, equipping, producing and operating oil and gas wells on Operator's leasehold under the Subject Lands and lands pooled therewith. Such Easement includes the right to construct, install and maintain an access road, underground power lines, and flow and gathering lines to gather and transport oil or gas from [REDACTED] sites to the Tank Battery in the Surface Use Area depicted on Exhibit 1. The Easement does not include or confer a right to access or occupy any portion of the Subject Lands other than the easement areas designated on Exhibit 1, and the easement areas may be used only for the purposes specifically set forth in this Agreement such as the displacement of soil at or near the surface, construction of pipelines for electricity and/or gas delivery and/or collection thereof.

**1.2 Subsurface.** The Easement includes all depths below the surface of all the Lands and right to use the subsurface, including pore space, for the purposes of drilling wells for oil, gas, and/or other substances to the Lands or other lands; for installing casing, tubing, and other equipment therein; for reworking, recompleting, repairing, side-tracking, plugging, and abandoning such wells; for gathering information, exploring for, and/or producing oil, gas, and/or other substances from the Lands or other lands through such wells; and/or for injecting substances into the Lands or other lands through such wells only to enhance production.

**1.3 Wells.** The rights granted to Operator hereunder shall cover operations related to the drilling and producing of [REDACTED] oil and gas wells pursuant to the Operator's oil and gas lease rights covering the Subject Lands and lands pooled therewith. It is also agreed that [REDACTED]

**1.4 Termination of Rights.** This SUA and Operator's obligations hereunder will terminate upon the last to occur of: (a) termination of Operator's oil and gas lease or; (b) upon complete reclamation and restoration of the surface according to the standards prescribed herein, and by the state or federal rules, regulations and statutes, as well as approval of such reclamation by state and/or federal authorities which have jurisdiction over such reclamation.

**1.5 Non-Exclusive Rights.** The rights granted by Owner to Operator are nonexclusive, and Owner reserves the right to use all access roads and reserves all surface and subsurface (excluding oil and gas as provided for in said Oil and Gas Lease) uses of the Subject Lands and the right to grant successive easements on or across the Subject Lands on such terms

and conditions as Owner deems necessary or advisable. Any access or use rights granted to any third parties before or after the effective date of this agreement shall not unreasonably interfere with Operator's exercise of its rights and responsibilities as provided herein. Owner agrees to advise Operator in writing of any written approval granted by Owner for the use of roads on the Subject Lands by others so that Operator may assess the other users for maintenance, though Operator shall not assess Owner any maintenance for such use of roads for any reason. Operator shall not assume any liability associated with actions or inactions of any third parties granted access.

**1.6 Conduct of Operations.** Operations upon the Subject Land by Operator shall be conducted pursuant to the terms of the subject Lease, Memorandum of Surface Use Agreement, this Agreement, the rules and regulations of the Colorado Oil and Gas Conservation Commission ("COGCC") and applicable Colorado statutes and case law.

## **SECTION 2 - OPERATIONS ON THE SURFACE USE AREA**

**2.1 Notification, Consultation and Approval.** Operator shall notify and consult with Owner at least 15 days in advance before construction or installation of any facilities contemplated under this Agreement.

### **2.2 Construction of Flow Lines.**

a. The flow lines referred to in this paragraph are not to exceed Three inches (3") in diameter and shall be located on the POA. Except as otherwise agreed to by Owner, in writing, all such flow lines shall be used only for oil or gas produced from wellheads located on the POA.

b. Operator shall be responsible for segregating the topsoil, backfilling, repacking, reseeding and re-contouring the surface of any disturbed areas so as not to interfere with Owner's operations and shall reclaim such areas to be returned to pre-existing conditions as best as possible with control of all noxious weeds. Operator shall provide Owner with a map or as-built drawing showing the surface location of all flow lines, transmission lines, and power lines after their installation. All flow lines located by Operator on the Surface Use Area shall be buried to a depth of at least four feet (4') below the surface. Operator shall install metal locator strips above all lines installed. All easements for flow lines and power lines shall be limited to twenty feet (20') in width, except during construction when the easements shall not exceed 35 feet (35') in width.

c. Subject to certain conditions as described herein, if Operator fails to use any flowline for a period in excess of five (5) consecutive years, the flowline shall be deemed abandoned and Operator shall take the actions necessary to clean up, mitigate the effects of use, including purging any remaining oil or gas from the flow line and render the flow line environmentally safe and fit for abandonment in place. The pipeline easement granted herein which has been deemed so abandoned shall thereon terminate and revert to Owner, and Operator shall execute and file the necessary releases to terminate said easement in the county land records.

d. Owner hereby gives notice to Operator that there may be stock, domestic waterlines, and drain tiles on the Subject Lands, some of which are buried.

### 2.3 Power Lines.

a. Except as otherwise provided, or as otherwise agreed to by Owner, in writing, all power transmission lines built by Operator will be buried with a minimum of four feet (4') of dirt cover and/or constructed so as to cause the least possible interference with Owner's existing or future agricultural and residential use or operations. Existing power lines need not be relocated.

b. To the maximum extent possible, Operator shall use power from any existing power lines that currently cross the Subject Lands. Operator shall pay for an upgrade or other charge resulting from such use.

c. At such time as Operator desires to abandon any buried power line located on the Subject Lands, it shall notify Owner of such desire, and Owner shall have sixty (60) days within which to make a written election to take over such power line for Owner's own use. If Owner elects to take over a power line, Owner shall assume all liability, costs and reclamation obligations associated therewith, and Operator shall have no further liability, nor responsibility for costs or reclamation for the power line, or that portion thereof, which Owner elects to take over. Owner shall promptly file all necessary notices or applications. If Owner does not elect to take over a power line, Operator shall continue to assume all liability, costs and reclamation obligations associated therewith, and Owner shall have no liability, nor responsibility for costs or reclamation for the power line. In the event Owner does not elect to take over a power line, Operator shall de-energize said power lines as soon as reasonably practicable.

### 2.4 Wells and Tank Batteries.

a. **Generally.** As located on the attached Exhibit 1 map, Operator shall be entitled to One (1) surface use Wellhead Site and additional wellheads to be located on the Surface Use Area. To the extent technologically and economically feasible, Operator shall use telemetry to monitor its operations so as to reduce the frequency of travel by Operator's employees, agents, or contractors on the Subject Lands.

b. **Temporary Drilling Site and Permanent Operations Areas.** The Temporary Drilling Site locations shall be situated in the Surface Use Area, as displayed on Exhibit 1. The Temporary Drilling Site and Permanent Operations Area is limited to approximately 8.4 acres of land, not including access roads and other easement areas for purposes of calculating location size, unless otherwise agreed to in writing by Owner. Once drilling is completed, the Permanent Operations Area will be reduced to a total of approximately 2.75 acres for any and all operations of any type.

c. **Tank Battery Site.** The tank battery site location under the Permanent Operations Area shall be limited to necessary oil tanks, water tanks, separators and other

necessary equipment for purposes of the production of oil and gas wells and will be located on the Permanent Operations Area.

**2.5 Maintenance.** Operator shall keep the well sites, road, and other areas used by Operator safe and in good order, including without limitation, control of noxious weeds, litter and debris. Operator shall conduct periodic trash pickup as deemed necessary. Operator shall comply with state and federal laws, rules and regulations governing the presence of any petroleum products, toxic or hazardous chemicals or wastes on the Subject Lands. All equipment and facilities placed on the property by Operator shall be painted in tones consistent with the surrounding area.

**2.6 Noise Walls.** During any and all drilling Operations, except for the North side, Operator shall surround the Temporary Drilling Site and Permanent Operations Area with engineered and designed sound walls not less than Thirty feet (30') tall, and sound shall not exceed Fifty-Five (55) decibels as measured Twenty-Five feet (25') from any noise wall.

**2.7 Roads.** Operator will construct one (1) new all-weather road as located on the Exhibit 1 map, commencing at Weld County Road 66. The road constructed upon the Subject Lands shall be constructed and used to the following specifications:

a. Except in case of emergencies, NO operations shall be conducted in the mud when activity leaves an impression of two inches (2") in depth, unless Operator requires immediate access in its sole opinion and option. Operator agrees, if such immediate access is required during muddy conditions, to repair affected roads as soon as reasonably practicable.

b. The surface of all roadways shall not exceed sixteen feet (16') in width for traveled surface. Improved roads shall be constructed with a two percent (2%) crown from the center of the road to the shoulder to promote positive drainage. Constructed roadway shall be limited to twenty feet (20') from the centerline of each road easement area for fills, shoulders and crossings whenever practicable or unless otherwise dictated by local, state or federal laws or regulations governing such roads. Where requested by Owner, Operator shall install side ditches along roads to transport runoff to appropriate drainage structures.

c. If requested by Owner, access to the Subject Lands of Owner from any County road shall be controlled by a metal, hinged gate, which gate Operator shall construct and install in accordance with the reasonable specifications of Owner. Operator shall not access Owners Subject Lands from any adjoining landowner's property.

d. Operator agrees, if requested by Owner, to place (within reason) an appropriate sign or signs on Owner's roads designating them as "Private Roads, No Trespassing or Hunting" and to assist Owner in the control of the use of such roads by unauthorized users. The size and color of such signs shall be subject to Owner's approval. Owner may lock gates across its private roads, provided that Operator shall have the right to place its own locks on such gates. Owner shall give Operator fifteen (15) days advance notice of Owner's election to lock gates so that Owner and Operator can consult with each other regarding the type of locks to be used and arrangements for Operator's access

e. Operator shall employ best management practices to suppress dust from Owner's roads.

**2.8 Operator's Use of Owner's Improved Roads.** In the interests of safety and dust control, Operator and its contractors, agents, and employees shall not exceed 10 miles per hour on improved roads located on the Surface Use Area. If livestock is present, the speed limit shall be 5 miles per hour. Livestock and wildlife species, including but not limited to deer, antelope, game birds, and songbirds, shall have the right-of-way on improved roads located on the Subject Lands, and Operator and its contractors, agents, and employees shall come to a stop and give ample time for wildlife and livestock to move from the roadway.

**2.9 Fences.** At the request of Owner, Operator shall, at its expense, construct stock type fences around the Temporary Drilling Site and Permanent Operations Areas. The noise walls as provided under 2.6 may serve as the requirement of fencing except to include additional fencing or gates as may be necessary. Operator shall, at its expense, construct permanent fencing around all wellheads, tanks and other surface facilities after conclusion of drilling and fracking operations. All fencing to be constructed shall be approved by Owner, which approval shall not be unreasonably withheld. Maintenance around Operator's surface facilities shall be the responsibility of Operator, and Owner shall not be responsible for damage to such fences or Operator's surface facilities in the event livestock gain access to these areas. Operator shall reasonably repair and/or replace any and all damage done to any fences or gates, or any other improvements of Owner, which result from Operator's operations of the Subject Lands. All fences shall be repaired in a manner consistent with surrounding fences and reasonable and customary ranching practices.

**2.10 Timing of Operations.** Any Operations which utilize the Temporary Drilling Site can take place only during the time period September 10<sup>th</sup> through April 1<sup>st</sup> in order to avoid interference with farming operations and to minimize damage to the Temporary Drilling Site.

**2.11 Improvements, Cultivated Land, Drain Tiles.** No existing fences, cattle guards, drain tiles or other improvements shall be cut or damaged by Operator without the consent of Owner, which consent shall not be unreasonably withheld. In the event existing fences, cattle guards, or other improvements are cut or damaged by Operator, the damage shall be repaired by Operator or Owner shall be compensated for the repair costs.

**2.12 Non-Disturbance.** Operator and its employees and authorized agents shall not disturb, use or travel on any of the land of Owner not subject to this Agreement without Owner's consent.

**2.13 Fire.** Operator shall take reasonable steps to prevent fire and to promptly extinguish fire. No trash or timber slash will be burned or buried by Operator on the Subject Lands. Operator shall reimburse Owner for the reasonable expense of fire suppression incurred by Owner and shall immediately reimburse Owner for any charges assessed to Owner by a local, county, state or federal fire control agency.

**2.14 Trash.** Operator agrees that all trash, refuse, pipe, equipment, liquids, chemicals, or other materials brought on the Subject Land that are not necessary for continued operations of the wells will be removed and legally disposed of no later than 14 days after completion of drilling operations. No such items will be burned or buried on the Subject Land.

**2.15 Behavior of Operator's Employees, Agents and Contractors.**

a. Operator is authorized to use the easement area solely for purposes of oil and gas exploration, production and development; accordingly Operator has no authority to, and Operator shall not permit any of its employees or contractors operating hereunder to, among other things: bring any dog, firearm, explosive device, weapon, alcoholic beverage, or illegal drugs on Owner's property; hunt, prospect for antlers, fossils or antiquities, recreate, consume alcoholic beverages, or carry on any illegal activities on the Subject Lands. In the event Operator discovers any employee, contractor or representative of Operator failing to abide by the terms of this paragraph, Owner shall provide Operator with as much information as possible regarding any individual violating this provision and Operator agrees to take appropriate action regarding such violation.

b. Use of 4-wheelers on the easement areas will be restricted to occasions when surface conditions require their use OR with Owners prior written approval. Recreational activities of a 4-wheeler are forbidden. Operator will notify all its contractors, agents, employees and representatives of this restriction.

**2.16 Pits.** No pits of any type will be permitted to be used or constructed by Operator upon the Subject Lands.

**2.17 Repairs from Damages.** If by reason of the activities of Operator, including but limited to drilling, completing, equipping and operating the Wells, there is damage to personal property of Owner, including but limited to irrigation wells, fences, culverts, bridges, pipelines, ditches, or irrigation systems, and for which Owner has not been previously compensated, Operator will repair or replace such items after consultation with and to the reasonable satisfaction of the Owner. Owner will notify Operator of any items damaged and Operator will repair or replace such items after consultation with the Owner within 15 days of occurrence or discovery, whichever occurs first.

**2.18 Guy Line Anchors.** All guy line anchors for drilling and completion rigs shall be immediately removed after such work is completed.

**2.19 Communication and Contacts Between Owner and Operator.**

Notices as provided for herein shall be made in the manner provided for to:

OWNER:  
William R. Burr and Linda W. Burr  
5477 Gulfstar Court  
Windsor, Co 80528

OPERATOR:  
Great Western Operating Company, LLC  
Attn: Land Manager  
1801 Broadway, Suite 500  
Denver, CO 80202

**2.20 Insurance.** All vehicles traveling upon the Subject Lands and owned or operated by Operator, its contractors, agents, or employees shall be covered by automobile liability insurance covering owned, non-owned, and hired automobiles with limits of at least One Million Dollars (\$1,000,000) for injury to or death of any one person for any one occurrence, and Five Hundred Thousand Dollars (\$500,000) property damage per occurrence. In addition, Operator shall carry comprehensive general liability insurance with minimum coverage limits of One Million Dollars (\$1,000,000) for injury or death for any one occurrence, and One Million Dollars (\$1,000,000) for property damage per occurrence. Operator and its contractors, agents, and employees using the Subject Lands shall provide Owner with certificates evidencing such insurance at the time of initial construction and any time afterward at Owner's request.

**2.21 Equipment Storage and Maintenance; Employee Housing.** Operator's equipment shall not be stacked or stored or maintained on the Subject Lands, nor shall employees be housed on any of the Subject Lands without the express written consent of Owner and additional compensation paid for such storage, except during actual drilling Operations. However, rigs may be stacked on the drill site for not more than fourteen (14) days unless weather or mechanical reasons reasonably prevent such removal.

**2.22 Operator Representation and Warranty as to Third Party Lands.** Operator represents and warrants to Owner that, for any oil and gas produced pursuant to this Agreement from lands other than the Subject Lands, the Operator has, or will timely have, all necessary rights to explore, develop and produce oil and gas from such other lands.

**2.23 Owner's Right to Use or Relocate Easement Area and Facilities.** Owner retains the right to relocate portions of the easement area and/or Operator's facilities at its expense. Owner may use the easement areas as desired; provided, however, that any uses or improvements within the easement area shall not impair Operator's use and Owner shall bear the expense of mitigating any new overlapping use.

**2.24 Seismic Operations.** Operator shall notify Owner prior to the commencement of any seismic operations and shall pay Owner ten dollars (\$10.00) for each surface acre on the Subject Lands. Operator shall not conduct any seismic or geophysical operations whatsoever when surface conditions are not relatively dry. At all times, Operator shall use reasonable efforts to conduct its seismic operations so as to cause the least damage reasonably possible to the surface. Prior to seismic operations being conducted, the parties shall enter into a Seismic Surface Use Agreement in the form set forth in Exhibit 2 attached hereto.

**2.25 Termination.** [REDACTED]

and be considered void. Any payments made prior to the termination date shall remain the property of Owner and not be refunded.

**2.26 Indemnification.** Operator indemnifies Owner against any claims, damages, demands, liabilities and costs (including reasonable attorneys' fees) to the extent arising from or related to the negligence or misconduct of Operator or its employees, agents, contractors or invitees in the course of their exercise of rights granted by this SUA, but not to the extent caused by Owner or its employees, agents, contractors or invitees.

### SECTION 3 – PAYMENTS TO OWNER

As consideration for the rights granted herein by Owner to Operator, Operator shall pay to Owner the amounts set out below.

#### 3.1 Surface Use Payments.

a. amount of [REDACTED]

b. On or before [REDACTED]

**3.2 Payment Limitation.** The payments herein provided are acknowledged as sufficient and in full satisfaction for ordinary damages caused or created by the reasonable and customary entry, rights of way, operation and use of the roads and well sites, but do not include damage to livestock, buildings or improvements or injuries to persons, or to damage or destruction to Owner's water wells or water supply or other amounts that may be due hereunder.

### SECTION 4 – RECLAMATION, LANDSCAPING AND SCREENING

**4.1 Reclamation.** Unless Owner otherwise agrees in writing, upon termination of any of Operator's operations on the Subject Lands or upon drilling or completion of any wells, Operator shall restore and level the surface of the Land affected by such terminated operations as near as possible to the contours which existed prior to such operations. Operator shall use water bars and such other measures as appropriate to prevent erosion and non-source pollution. Where requested, Operator shall restore all private roads, drainage and irrigation ditches disturbed by Operator's operations as near as possible to the condition that existed prior to such operations. Any surface disturbed by Operator's activities shall be reseeded with native grasses in a mixture selected by Owner. Additionally, noxious weeds shall be sprayed or killed by Operator as part of the reseeded operations. Reseeding shall continue until vegetation is established in a healthy growth condition. Any surface facilities no longer in use shall be removed and the surface restored within two (2) years after the date upon which Operator ceases to use such surface

facility. Reclamation upon drilling or completion of any wells shall happen as soon as reasonably practicable, but no later than six (6) months after said drilling or completion activities. In addition, Operator shall comply with all requirements in accordance with the prescribed rules and regulations of the Colorado Oil and Gas Conservation Commission.

**4.2 Landscaping and Screening.** At a practical point, near or at the completion of drilling activities, the Operator shall provide the Owner with a landscaping and screening plan for approval by Owner, which will not be unreasonably withheld.

## **SECTION 5 – ENFORCEMENT AND RESOLUTION OF DISPUTES**

**5.1 Default.** In the event that the Owner or the Operator hereunder shall fail to comply with any of their duties or obligations hereunder, the other party shall so notify the defaulting party in writing by certified mail and if said default is not corrected within sixty (60) days after receipt of said notice or activity is not initiated to cure such default in those instances where said default could not be cured within said sixty (60) day period, the non-defaulting party shall have the right to terminate this agreement, to enforce the provisions of this agreement in law or in equity and/or have such other rights and remedies as may be provided to it under the laws of the State of Colorado. The defaulting party agrees that it shall be responsible for all costs and expenses, including reasonable attorney's fees, incurred by the non-defaulting party as a result of said default as may be determined by a court of law or equity.

## **SECTION 6 – MISCELLANEOUS**

**6.1 No Warranty.** Owner makes no representation or warranty in entering into this Agreement as to any matter of title, condition, suitability for Operator's purposes, or regulatory status of the Subject Lands.

**6.2 Indemnification.** Operator shall indemnify, defend and hold Owner harmless from and against any and all damages, claims, causes of action, actions, losses, liabilities, fines, costs, and expenses (including without limitation reasonable attorneys' fees and expenses and costs of investigation or trial) resulting from Operator's failure to comply with the laws, ordinances, rules and regulations or otherwise resulting from or related to negligent operations conducted by Operator under this easement. Operator shall further indemnify, defend and hold Owner harmless from and against any and all damages, claims, demands, causes of action, actions, losses, liabilities, fines, costs, and expenses (including without limitation reasonable attorneys' fees and expenses and costs of investigation or trial) arising out of damage to livestock and property or injury to or death of Owner's employees or any other person or party, where such injury, death or damage occurs as a result of the Operator's negligent operations under this easement;

Operator shall indemnify and hold Owner harmless from and against any and all claims and liens upon the easement for labor or materials furnished to Operator;

Access to, and egress from the Easement shall be limited to direct access from established public roads or access from those other roads identified by Owner, in writing, as access roads.

Operator shall provide 72 hours' notice of its intent to enter and begin construction. Operator will be responsible for any and all actual damages relating to its use of such access roads, including but not limited to any actual damages resulting from cattle or livestock straying out of the fenced area. Operator will assure that all gates are kept closed after any entry by Operator. If Operator has locked any such gates, Operator shall also lock such gates by use of Grantor's locks and keys only. Operator will assure that at any times that the access roads are being utilized and any and all gates on the access roads are utilized are guarded, while open, so as to keep cattle and livestock within the fenced area and keep unauthorized persons from entering the Property. In addition, after construction is completed, Operator may utilize access roads under the same conditions as herein stated for necessary pipeline maintenance and repair at no additional cost;

**6.3 Drain Tiles.** Operator has been informed of and has determined the locations of underground drain tiles located upon the Subject Lands. Operator shall not cross said drain tiles for any reason unless otherwise agreed to by Owner and Operator. Operator shall maintain a distance of not less than Thirty feet (30') away from said drain tiles so that any Operations conducted upon the Subject Lands do not damage or interfere with said drain tile lines. The approximate location of the drain tiles are shown on attached Exhibit 1.

**6.4 Liability for Damage Resulting from Produced Water.** Operator shall be responsible for complying with the rules and regulations applicable to the removal and/or disposal of waters produced by its operations as established by the State of Colorado and other applicable authorities, and the Operator agrees to indemnify, defend and hold Owner harmless from any claims, demand, judgment or liability arising as a result of damages to persons or property caused by or in connection with the removal or utilization of said water. Nothing in this paragraph shall be interpreted to allow Operator to discharge produced water on Subject Lands, including any leased lands. Nothing herein permits Operator to use free of cost produced water or other water from Subject Lands. In the event that Operator seeks to use said water, Operator shall negotiate with Owner a fair and reasonable price and location.

**6.5 Lien Waiver.** Owner waives any and all lien rights it may now or later have in equipment installed on the Subject Lands pursuant to this SUA. Owner also agrees to immediately notify Operator if Owner becomes aware of any liens filed against the Subject Lands.

**6.5 Compliance with Law.** Owner and Operator shall conduct all of its operations and activities in accordance with all applicable local, state and federal laws, rules and regulations.

**6.6 Duty of Good Faith.** Owner and Operator agree to cooperate in good faith in the reasonable and expeditious development of Operator's leasehold under the Subject Lands.

**6.7 Notice.** Notice may be given to either party to this Agreement by depositing the same via certified mail return receipt requested in the United States Mail postage prepaid, duly addressed to the other party at the address set out in section 2.13 of this Agreement, or at such other address as each party may subsequently provide to the other. Such notice shall be deemed

delivered when the party posting same in the United States Mail receives the returned mail receipt signed by the other party, or one of its authorized representatives.

**6.8 Exhibits.** All exhibits referred to herein are attached hereto and hereby incorporated herein for all purposes.

**6.9 Memorandum of Agreement.** This Agreement shall not be recorded, but either party may record with the County Clerk of the county in which the Subject Lands subject to this Agreement are located, a memorandum reciting that the parties have entered into this Agreement which affects the Subject Lands described in attached Exhibit 1, as modified from time to time.

**6.10 Taxes.** Operator shall also pay to Owner all real property or personal property taxes and assessments, if any, which may be levied or assessed by any lawful authority during the term of this Agreement due to Operators use of the Surface Use Area and any increase in assessed valuation, if any, based upon Operators uses over and above the assessment for irrigated agriculture property.

**6.11 Construction of Agreement and Venue.** This Agreement shall be construed under the laws of the State of Colorado. Venue for any action shall be in Weld County, Colorado.

**6.12 Benefits and Burdens.** The benefits and burdens of this Surface Use and Damage Agreement shall be binding upon and shall inure to the benefit of Owner and Operator, their heirs, assigns, successors and personal representatives. The conditions, covenants and agreements contained herein shall also constitute covenants running with the property and the lease hold interests.

**6.13 Other.** Owner acknowledges and agrees that Operator has consulted in good faith with Owner as to its proposed Operations in accordance with COGCC requirements, or hereby waives such requirements. Owner expressly waives the application of any COGCC setbacks inconsistent with this Agreement.

- A. Operator will provide Owner with the COGCC Form 2A ("Oil and Gas Location Assessment") when submitted to the COGCC, and Operator will undertake to ensure that said Form 2A accurately reflects the provisions of this Agreement.
- B. Owner agrees not to object to the Form 2A, so long as it is consistent with this Agreement, and if consistent with this Agreement, Owner hereby waives any right granted by COGCC rule to comment on the Form 2A, to request an extension of the comment period, to request an onsite inspection pursuant to COGCC policy, or to appeal the approval and issuance of the Form 2A, and any related Form 2 ("Application for Permit to Drill").
- C. Owner shall not oppose Operator in any COGCC or other governmental proceedings related to Operator's operations, including, but not limited to, permitting, formation of drilling units, well spacing, well density, pooling, drilling, completion, stimulation, re-

stimulation, workovers, deepening and recompleting, provided that Operator's position and contemplated undertakings in such proceedings are consistent with this Agreement. Owner will provide Operator or its successors and assigns with any and all written support they may reasonably require to obtain permits from the Colorado Oil and Gas Conservation Commission or any local jurisdiction.

- D. Owner grants consent to locate the Wells greater than 50 feet from an existing well pursuant to COGCC Rule 318A(c). Owner grants consent to locate the proposed Wells outside of the GWA windows as defined in COGCC Rule 318A(a).
- E. Owner understands and acknowledges that the COGCC has rules and regulations that apply to the distance between a wellhead and public roads, production facilities, building units, buildings, and surface property lines, among other things. In order to give full effect to the purposes of this Agreement, Owner hereby waives its right to object to the location of any of Operator's Facilities on the basis of setback requirements in the rules and regulations of the COGCC, including, but not limited to, the 150 foot setback from surface property lines and other requirements of rules 603.a.(2), and 604.a, except that the Parties intend to rely upon one or more exceptions of rule 604.b of the rules and regulations of the COGCC relating to property lines and urban mitigation areas and/or designated outside activity areas, as those terms may change or be defined and amended from time to time. For the operations contemplated by this Agreement, Owner hereby waives the high density setback distances, as required by COGCC rules and regulations.
- F. Owner understands that Operator may provide a copy of this SUA in order to obtain a waiver, exception location, or variance from under the COGCC rules or from a local jurisdiction.

**6.14 Force Majeure.** Should Operator be prevented from complying with any expressed or implied covenants of this Surface Use Agreement, conducting normal operations, or from transporting natural gas or other hydrocarbons there from by reason of scarcity of, or inability to obtain or use equipment or material, or by operation of force majeure, or because of any federal or state law or any order, rule or regulation of a governmental authority then while so prevented, Operator's obligations to comply with such covenant shall be suspended, and Operator shall not be liable in damages for failure to comply therewith; and the express or implied covenant or other provision of the Surface Use Agreement so affected shall be extended while and so long as Operator is prevented by any such cause from conducting normal operations or transportation of natural gas or other hydrocarbons from the leased premises; and the time while Operator is so prevented shall not be counted against the Operator, anything in this Surface Use Agreement to the contrary notwithstanding.

**6.15 Survival.** The Operator's obligations and responsibilities hereunder shall survive the term of this agreement on a well-by-well basis with regard to the Subject Lands, including without limitation, all reclamation obligations and the proper disposal of any hazardous materials.

**6.16 Signatures.** By signing below, the parties signing acknowledge and represent

that each of them has the authority to sign this Agreement and the power to bind both Owner and Operator. The parties further agree that this Agreement may be executed in counterparts.

IN WITNESS WHEREOF, the parties hereto have executed two (2) originals of this Agreement this 25<sup>th</sup> day of July, 2014, the EFFECTIVE DATE hereof.

**Owner:**

**Operator:**

William R. Burr

Great Western Operating Company, LLC

  
\_\_\_\_\_

By:   
\_\_\_\_\_

Linda W. Burr

EC  
PH

  
\_\_\_\_\_

ACKNOWLEDGEMENTS

STATE OF COLORADO )  
 ) ss  
COUNTY OF WELD )

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of July, 2014, by William R. Burr and Linda W. Burr, to me known to be the identical persons described herein, who executed the within and foregoing instrument of writing and acknowledgement to me that they duly executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and official seal.  
My commission expires: 9/28/2016

Stephanie J. Roe  
Notary Public  
**STEPHANIE J ROE  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20124063203  
MY COMMISSION EXPIRES 09-28-2016**

STATE OF COLORADO )  
 ) ss  
COUNTY OF WELD )

The foregoing instrument was acknowledged before me this 31<sup>st</sup> day of July, 2014, by Steve Stacy as Sr. Vice President of Great Western Operating Company, LLC to me known to be the identical person described herein, who executed the within and foregoing instrument of writing and acknowledgement to me that (s)he duly executed the same as his/her free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and official seal.  
My commission expires: 8/26/2017

**PHILIP J. HANCOCK  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20134054000  
MY COMMISSION EXPIRES AUGUST 26, 2017**

Philip J. Hancock  
Notary Public

**Exhibit "A"**

Attached hereto and made a part of that certain Surface Use and Damage Agreement between William R. Burr and Linda W. Burr, as "Owners," and Great Western Operating Company, LLC, as "Operator," dated July 25<sup>th</sup>, 2014.

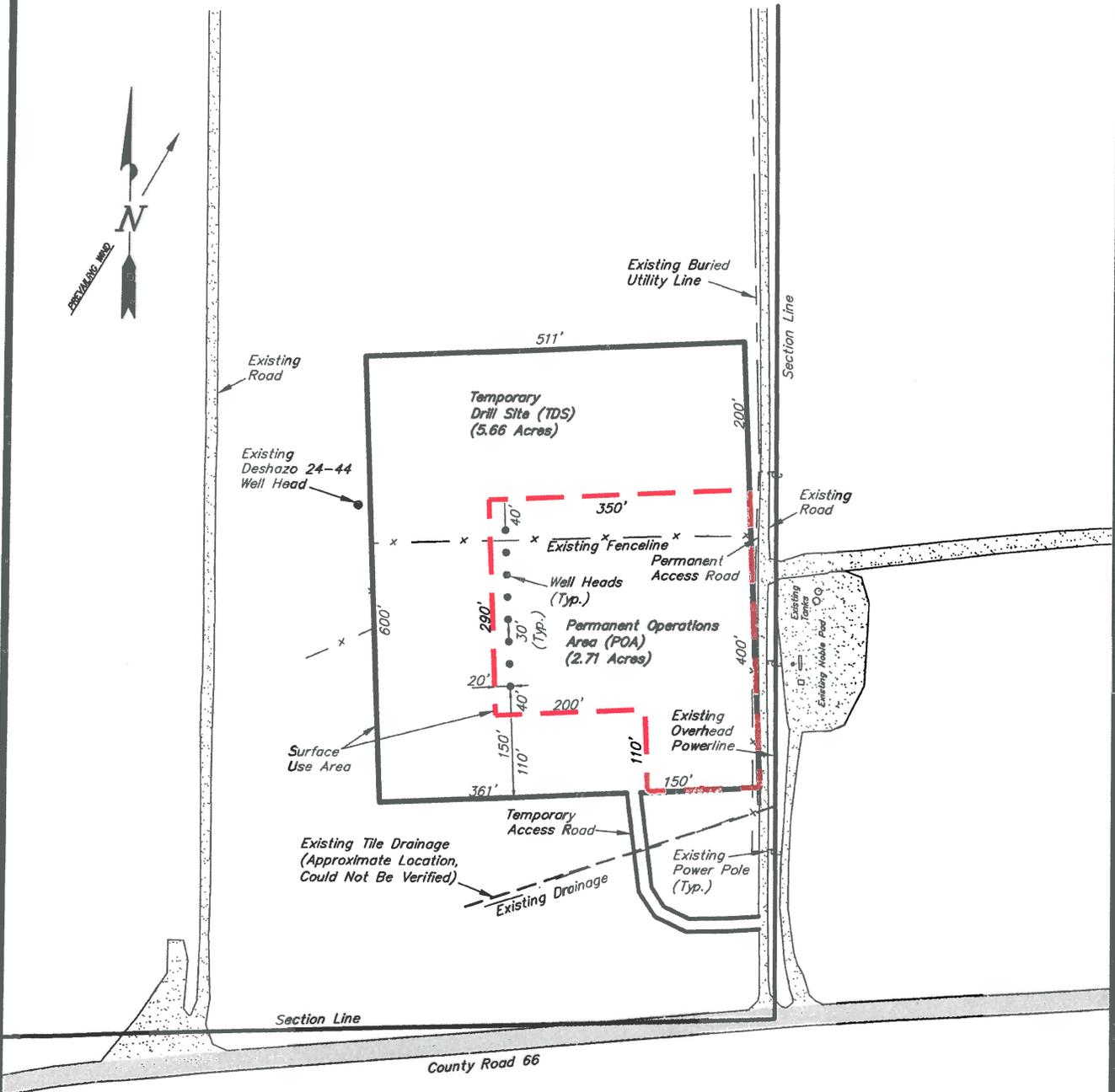
**Property Description:**

Lot B, Recorded Exemption No. 0807-24-1 RE-4354, according to the map recorded May 9, 2006, at Reception No. 3386148, being a portion of the East ½ of Section 24, Township 6 North, Range 67 West of the 6<sup>th</sup> P.M., County of Weld, State of Colorado.

# GREAT WESTERN OIL & GAS COMPANY

## SUA EXHIBIT

Pad Location: SESE Section 24, T6N, R67W, 6th P.M.



SURVEYED BY:	C.S.	DATE SURVEYED:	07-08-14
DRAWN BY:	M.W.	DATE DRAWN:	07-09-14
SCALE:	1" = 200'	REVISED:	M.W. 07-22-14

**Tri State** (435) 781-2501  
 Land Surveying, Inc.  
 180 NORTH VERNAL AVE. VERNAL, UTAH 84078