

May 4, 2001

### Surface and Damage Agreement

This Agreement is made and entered into between \_\_\_\_\_ (“Owner”) whose address is \_\_\_\_\_ and \_\_\_\_\_ (“Operator”) whose address is \_\_\_\_\_.

#### It is agreed as follows:

**1. Oil and Gas Lease.** Owner owns the surface within the (name specific watershed or landowner group) more fully described in Exhibit A to this Agreement, located in \_\_\_\_\_ (County), \_\_\_\_\_ (State) under which mineral interests are subject to oil and gas and coalbed methane (CBM) leases now held or hereafter acquired by Operator, and hereafter referred to as the “Lands.”

**2. Shallow Rights Only.** Notwithstanding any other provision of this Agreement, the rights granted to Operator hereunder shall be limited to operations related to the drilling and producing of wells to (a) the Fort Union coal formation, or (b) 2,500 feet below the surface, whichever is less. Surface damages for operations related to the drilling and producing of wells to greater depths shall be by a separate agreement to be negotiated by Operator and Owner.

**3. Right-of-Way.** Owner grants Operator, its employees and designated agents, a private right-of-way to enter upon and use the Lands for the purpose of drilling, completing, producing and operating oil, gas and CBM wells on the Lands and for constructing and maintaining access roads and power lines and installing pipelines to gather gas and water produced from wells drilled on the Leased Lands, subject to the terms of this Agreement.

**4. Development Plan.** Prior to the commencement of operations on the Lands, Operator shall present to Owner a draft of a **Development Plan** which details the scope and timing of development. Owner and Operator shall jointly develop a final

version of the **Development Plan** (which may be revised from time to time as conditions warrant), and it shall become the document from which orderly development proceeds. The **Development Plan** shall provide the general framework for Operator's activities on all of Owner's lands. **The Development Plan** shall include a base map or maps, either USGS 7.5 minute series topographic quadrangles or maps of similar detail and quality, which show the locations of Operator's proposed roads, power lines, pipelines, wells and facilities, with the locations of existing roads and Owner's existing facilities. Owner and Operator shall from time to time revise the **Development Plan** to be sure that all of Operator's facilities are accurately accounted for and displayed on a current version of the map. The **Development Plan** shall within a reasonable time period contain at least the following:

**a.** A base map or maps showing the location of all of Owner's existing roads, fences, buildings, springs, wells, water sources, domestic water supplies and sources, facilities, residences, headquarters, and other assets. Other base maps or overlays may be developed to show the vegetative cover, timber assets, existing power lines and rights-of-way, parcels of federally and state owned lands within Owner's Lands, drainage patterns, important geologic features such as clinker beds, hydrologic characteristics, meteorological characteristics including rain and snowfall with dry/wet and hot/cold time periods, wildlife assets, visually important features, archaeological and historic assets, gas seeps, burning coals, bad water, areas of fire and safety concern, irrigated lands, cattle grazing patterns, migration routes, and any other characteristic which Owner and Operator or both consider important to be established as baseline considerations.

**b.** A base map or maps showing the location of Operator's proposed access points, additional roads, water and gas gathering lines, power lines, approximate drilling locations, pod buildings, central facilities, compressors and central compression facilities, water treatment facilities, water impoundments and distribution lines, central electric facilities, telemetry and other communications facilities and sites, equipment storage yards, vehicle storage and service yards, secure storage areas for chemicals and hazardous materials or wastes, locations of gas line drips and pig launchers/receivers, employee rest and residence areas, toilet facilities, emergency medical locations, vehicle inspection areas, fire suppression stations, and other sites or facilities considered important for baseline identification purposes.

**c.** A preliminary schedule of development showing the project build-out in years. The first two years of activity detailed by month, especially relating activity to weather limitations, describing how surface damage is controlled and minimized by appropriate scheduling of operations. The relationship between Operator's and Owner's operations on the Lands will be described.

**d.** The general standards for construction of building used on the Lands, including size and number, location, access, floors, siding, roofs, drainage, security, fencing, colors, landscaping, and other important features.

**e.** The general standards for pond and water impoundment construction, including size of ponds, heights of dams, contouring, reseeding, landscaping, quality and quantity of liner materials, size and location of inlets and outlets, general plan for filling and releasing times and quantities, relationship to downstream uses and storage, and other important features.

**f.** A detailed description and schematic of the various combinations of common corridor/shared right-of-way gathering and power lines, showing the standards for excavation, back-filling, reclamation and revegetation, and other important features.

**g.** The general standards for gas gathering line construction, including size and type of pipe, pressure ranges, measuring points, compression requirements and locations, drips, dehydration, cleaning facility locations, and other important features.

**h.** The general standards for landscaping on the Lands, including species, size, distribution, and location of trees, types of grasses and reseeded flora.

**i.** The specific plan for protecting Owner's domestic water supplies, including analysis by a professional hydrologist if necessary.

**j.** The communication plan, including methods, times, personnel, and procedures for both routine and emergency communication between Owner and Operator.

**k.** The fire plan, including methods and time of notification, location and activation of fire-suppression and fighting personnel and equipment, evacuation and treatment of injured personnel.

**l.** The gas and water leak detection and remediation plan, including methods and time of notification, schedule and procedure of remediation.

**m.** The automation plan, including methods, times, and access procedures for telemetric or other well control and data transmission.

**n.** The general location and standards for construction of roads, fences, cattleguards, culverts, road cuts, land fills, and stock watering tanks.

**o.** The main points of entry to the lands.

**p.** The size, construction quality, and design specifications of all cattleguards and gates for both main road points of entry and minor road minor points of entry.

**q.** The size, design specifications, fencing, time of use, reclamation period, and standards, waste and hazardous waste removal, and disposal of fluids for drilling pits.

**r.** Methods of weed control to be employed by Operator, which may include the reseeded of disturbed areas, the inspection of vehicles, and the washing or spraying of vehicles.

**s.** The dates of the big game hunting seasons applicable to the lands and the efforts which will be undertaken by Operator to minimize the effects of its operations on hunting activity on the Lands.

**t.** The dust control methods to be used by Operator on various parts of the Lands.

**u.** The portable toilet facilities to be installed by Operator on the Lands.

**5. Geophysical Operations.** The **Development Plan** shall describe the general scope of anticipated geophysical operations, including numbers, timing and location of proposed test wells, coring operations, seismic testing, production evaluations, or other investigations with respect to each geophysical operation proposed on the Leased Lands, the **Development Plan** shall contain a complete Summary and Prognosis. The Summary shall:

**a.** approximately identify the proposed test well locations;

**b.** describe the route and method of access for purposes of both surveying and operations. The quality of roads to be used shall be described, and the amount of off-road activity for surveying shall be estimated. An estimate of existing road and off-road damage shall be provided;

**c.** provide the estimated time for start of proposed operations, the estimated duration, and completion time;

**d.** describe the equipment to be used, including size, weight, and number of trips for vehicles;

**e.** detail the interaction between Operator's work and Owner's surface operations, including how cattle will be secured by fencing and gates;

**f.** describe the amount, type, and duration of location preparation and use; and

**g.** describe the amount, type, and timing for location and access reclamation and restoration.

The Prognosis shall provide:

**a.** a complete list of the proposed drilling depth with anticipated depths of formation horizons;

**b.** a list of proposed logs to be run and tests to be accomplished;

**c.** an estimate of the total time for downhole operations;

d. the plan for protecting Owner's subsurface water resources, identifying and testing new fresh water sources;

e. the casing and cementing plan for running casing to a discovered fresh water source; and

f. the schedule for providing Owner with downhole data and test results.

**6. Drilling and Completion Operations.** The **Development Plan** shall present Operator's rationale for the project, and describe in detail the mineral development which Operator is proposing, including:

a. the total number of well units (multiple well bores on single drilling locations);

b. the drilling unit spacing;

c. the number of well bores generally planned for each well;

d. a description of the drilling activity for the typical well unit, showing the drilling sequence;

e. a schematic of the typical well unit showing placement of the well bores and surface equipment ;

**f.** the general time frame for completion operations of the typical well unit;

**g.** the type and number of vehicle trips required to prepare, drill, and complete the typical well unit;

**h.** the detailed time frame and flow chart for drilling by year and geographic area, showing the proposed progress of development. The first two years shall be reasonably detailed by month. Alternative cases shall be presented ranging from minimal to maximum (accelerated) case activity;

**i.** a list of the equipment proposed to be used for drilling operations and completion operations, including access, road, and location preparation, drilling and completion rig and associated equipment gathering system installation equipment, and building and facilities construction;

**j.** a list of chemicals used in all phases of operations, including specifically hazardous materials, herbicides, anti-microbial agents, water and gas treatment chemicals, and fuels;

**k.** an estimate and flow chart of the number of personnel proposed to be working on the Lands during the upcoming two years, by month

**l.** a general estimate and flow chart of vehicular traffic during the upcoming two years, including type, size, weight, and frequency of vehicle trips;

**m.** an estimate of the type, amount, and rate of progress of main access road improvement to be accomplished in the upcoming two years; and



n. an estimate of reclamation progress for drilling and completion pits in the upcoming two years

Owner will be allowed access to the drilling locations at all times. Owner will, subject to a general agreement of confidentiality with Operator, be timely provided with all test data proposed in the Prognosis as well as any additionally acquired data.

**7. Notification.** Operator shall notify Owner 72 hours prior to initial entry upon the Lands and shall consult with and receive Owner's approval as to the location of each well, road, pipeline, power line and gathering system to be placed on the Lands. To the maximum extent possible, Operator will use existing roads on the surface of the Lands for its operations, and, if construction of a new road is required, Operator will locate the new road in a manner so as to cause the least interference with Owner's operations on the Lands. If a pipeline, power line or gathering system is to be installed by Operator, Operator will locate the pipeline, power line and gathering system in a manner so as to cause the least interference with Owner's operations on the Lands. The location of all new roads, pipelines and power lines must be approved by Owner before construction or installation, which approval will not be unreasonably withheld. Operator shall notify Owner 48 hours prior to commencing operations for any well drilled on the Leased Lands.

**8. Termination of Rights.** This Surface and Damage Agreement and Operator's obligations hereunder will terminate upon the latter of (a) termination of the oil and gas leases underlying the Leased Lands, or (b) upon complete reclamation and restoration of the surface according to the standards prescribed herein and approval of such reclamation by state and/or federal authorities have jurisdiction over such reclamation. In addition, in the event of default by Operator many of the terms and conditions of this Agreement, and the failure of Operator to cure such default within the time specified in this Agreement, Owner may elect to suspend the rights of Operator hereunder until such default is cured, or to terminate this Agreement.

**9. Non-exclusive Rights.** The rights granted by Owner to operator are non-exclusive, and Owner reserves the right to use all access roads and all surface and subsurface uses of the Lands and the right to grant successive easements therein or across on such terms and conditions as Owner deems necessary or advisable, except that successive easements shall not interfere with or obstruct Operator's rights of access or

damage roads or rights-of-way constructed by Operator or materially increase Operator's cost to maintain the easement.

**10. Limitation on Rights.** Except as otherwise provided for in agreements among members of the (name specific watershed) group, the Lands may not be used by Operator in connection with operations on other premises without Owner's written consent. Except as otherwise provided for in agreements among members of the (name specific watershed group), Operator shall not cause or allow water discharged from Operator's wells on the Lands to flow across the other lands of Owner without Owner's written consent, nor shall Operator cause or allow water discharged on the Lands to flow across lands owned by other parties without the consent of the owner of such lands. No seismic operations will be conducted by Operator on the Lands without Owner's written consent.

**11. Payments by Operator to Owner.**

**a. Initial Payment.** Upon execution of this Agreement, Operator shall pay to Owner the sum of \$ \_\_\_\_\_. This amount shall be a one-time payment and shall not be recoupable against overriding royalties paid to Owner by Operator as provided for below.

**b. Overriding Royalty Interest.** As consideration for the rights granted herein by Owner to Operator, Operator shall convey to Owner, or as Owner may otherwise direct, an undivided \_\_\_\_\_ overriding royalty interest in oil and gas leases affecting the Lands, which overriding royalty interest shall not be proportionately reduced. Such overriding royalty interest shall be conveyed to Owner by a good and recordable assignment, in the form attached hereto as Exhibit B, prior to the commencement of any surface disturbing activities on Owner's Lands.

In the event that Operator acquires leasehold interests in other mineral interests located in or under other lands over which Owner owns the surface estate (including minerals owned by the United States or by the States of Montana or Wyoming), within sixty (60) days after Operator's acquisition of such additional leasehold interests, Operator shall convey to Owner an overriding royalty interest in such additional leasehold interests equal to one-half of the difference between existing leasehold burdens and twenty percent (20%), but in no event less than \_\_\_\_\_ which

conveyance shall be in the form attached hereto as Exhibit B. Upon the conveyance of such overriding royalty interest to Owner, the scope of this Agreement shall be expanded to include such additional leasehold interests, Exhibit A shall be revised accordingly, and the surface estate over such additional leasehold interests will become part of the Lands.

c. **Additional Payment.** In addition to the overriding royalty interest provided for above, Operator shall pay to Owner the following additional amounts:

i. \_\_\_\_\_ dollars per strat test (well drilled only to obtain geologic information which is not completed for production) on the lands.

ii. \_\_\_\_\_ dollars for each coalbed methane well bore located on the Lands. This amount shall be paid by Operator before entering upon the premises to drill the well. Operator shall also pay an annual rental of \_\_\_\_\_ per year for each CBM well bore located on the Lands. This annual payment shall be made on June 1 in each and every year until the CBM well bore has been plugged and abandoned and the location of any roads and pipelines constructed in connection therewith have been reclaimed as provided for herein.

iii. \_\_\_\_\_ per rod for use of new and existing roads located on the Lands. Operator shall pay to Owner an annual payment at the rate of \_\_\_\_\_ per rod for use of these roads. The initial payment shall be made before using the roads for access and the annual payment shall be due and payable on June 1 of each and every year thereafter until the roads have been reclaimed as provided for herein.

iv. For each gas or water gathering line or power line right-of-way installed by Operator on the Lands, Operator shall pay the sum of \_\_\_\_\_ per rod for each such right-of-way placed on the Lands. If gas or

water gathering lines and power lines are consolidated in the same easement, Operator shall \_\_\_\_\_ per rod of right-of-way. A take-up of any gas or water gathering line shall be at the rate of \_\_\_\_\_ per rod. Payments for gas or water gathering lines and power line rights-of-way shall be made by Operator within thirty (30) days after installation or take-up of the right-of-way. Annual payments will continue until reclamation is complete.

All of the foregoing payments shall be made by Operator to Owner prior to commencement of construction of any of the facilities referred to above. The payments provided for in this paragraph shall be in addition to the overriding royalty interest to be conveyed to Owner, and shall not be recouped by Operator out of overriding royalty payments made to Owner.

**12. Construction of Gas and Water Gathering Line and Power Line Rights-of-Way.**

The gas or water gathering lines and power lines referred to in this paragraph are gas or water gathering lines and power lines used in connection with wells drilled on the Lands, and, except as otherwise provided for in the **Development Plan** and in agreements among members of the (name specific watershed group), all such gas or water gathering lines shall be used only for gas and water produced from wells on the Lands and all such power lines shall be used only to supply power to facilities located on the Lands. Surface use and damages for gas or water transmission pipelines and power lines serving lands other than those owned by Owner shall be by separate agreement to be negotiated by Owner and Operator. Operator shall be responsible for backfilling, repacking, reseeding and recontouring the surface so as not to interfere with Owner's operations. Operator shall provide Owner with a map or as-built drawing showing the precise surface location and depth of all gas or water gathering lines, power lines and gas or water gathering systems promptly after their installation. All gas or water lines and power lines and gas or water gathering systems located by Operator on the premises shall be buried to a depth of at least five (5) feet below the surface or to a depth below the frost line, whichever is deeper. All rights-of-way for gas or water gathering lines and power lines shall be limited to twenty (20) feet in width, being ten (10) feet on each side of the centerline of the gas or water gathering line, except during construction when the right-of-way shall be 50 feet in width.

**13. Construction of Pod Buildings and Compressor Stations.** To the greatest extent possible, and in accordance with the **Development Plan**, buildings and facilities which serve groups of wells will be located on well pads. No other pod buildings or compressor stations will be located on the Lands without Owner's prior written consent. Compressors which serve the Lease may be located on lands other than the Lands.

**14. Power Lines.** Operator will consult with Owner and with the independent power company supplying power to Operator with respect to the location of overhead power lines prior to construction, and the location of overhead power lines shall be described in the **Development Plan**. Overhead power lines will be constructed so as to cause the least possible interference with Owner's visual landscape and Owner's existing and future ranching operations, and, to the maximum extent possible, overhead power lines will be constructed along fence lines or property lines. Construction shall not begin unless Owner has consented to the location of such power lines. Except as otherwise provided in the **Development Plan**, overhead power lines shall not be constructed in cultivated or irrigated fields, and all power lines constructed by Operator downstream of the independent power company's meters shall be buried and all power line trenches shall be fully reclaimed and reseeded to the satisfaction of Owner.

**15. Locations.** The general location of well sites shall be reviewed and must be approved by Owner prior to Operator filing an Application for Permit to Drill (APD). A copy of each proposed APD will be provided to Owner when filed with the issuing authority by Operator. All CBM well site locations shall be limited to approximately one (1) acre of land, not including access roads. No wells shall be drilled within 2,640 feet of any residence or occupied house or within 2,640 feet of any barn, corral, feedlot, windmill or water well on the Lands without the prior written consent of Owner.

**16. Maintenance.** Operator shall at all times keep the well sites, road rights-of-way, and other areas used by Operator safe and in good order, free of noxious weeds, litter and debris. Operator shall not permit the release or discharge of any petroleum products or toxic or hazardous chemicals or wastes on the Lands. All buildings, equipment and facilities placed on the property by operator which can be painted shall be painted in earth tones consistent with the surrounding area and colors shall be specified in the **Development Plan**.

**17. Discharge of Produced Water.**

**a.** Surface discharge of produced water shall be permitted on the Lands only with Owner's prior written consent, and only after Owner has approved in writing a water management plan for each water discharge point located on the Lands and each water discharge point located off the Lands where produced water will or is likely to flow onto the Lands. Any such water management plan shall identify the CBM well or group of wells from which the consent to discharge is sought, by lease, well name, well number, and the location of such well; include a copy of the application for NPDES permit filed or to be filed by Operator with respect to each discharge point; describe in detail the water management plan which will govern the discharge of produced water from the well or group of wells for which consent to discharge is to be granted. Such water management plan shall, at a minimum, identify (i) the exact location of all discharge points, discharge structures, and reservoirs; (ii) the method of conveying water to the discharge points or reservoirs; (iii) the estimated average and estimated maximum quantity of water proposed to be discharged; (iv) the quality of the water proposed to be discharged, including copies of water analyses showing all parameters required by the Montana Department of Environmental Quality or the Wyoming Department of Environmental Quality, including but not limited to adjusted SAR and electrical conductivity; (v) the predicted or potential erosion which may be caused by such discharge; (vi) schematic showing the design of all discharge points, outfall structures, and reservoirs.

**b.** Owner, and Operator will jointly develop a water management plan for the discharge of produced water. The preferred method of handling produced water is treatment by filtration, with the clean water produced by the filtration process to be sequestered in near surface aquifers, stored in surface ponds or clinker beds, used for riparian restoration, fed to livestock, used for irrigation, or for other beneficial uses, or transported off the Lands for disposal elsewhere. The dirty water (concentrate) produced by the filtration process shall be either reconcentrated to reduce volume, dehydrated, or solidified, and shall be disposed of by an acceptable means in landfills or deep disposal wells.

**c.** If Owner and Operator are unable to agree on an acceptable water management plan, Owner may reject any water management plan proposed by Operator and require Operator to reinject all produced water into subsurface formations in compliance with state and federal law or transport the water off the Lands by pipeline. Likewise, Operator may

reject any proposed water management plan suggested by Owner and, instead, either reinject produced water into subsurface formations, provided that such reinjection is conducted in all respects in compliance with state and federal law, or transport the water off the Lands by pipeline.

**d.** Surface discharge or produced water will be permitted by Owner only if (1) the discharged water meets all governmental standards for discharged water and will not create wetlands, (2) the discharged water does not unreasonably degrade or adversely affect the quality of water and water courses on or damage the Lands, and (3) the produced and discharged water is suitable for livestock. Operator shall follow all applicable rules and regulations of any governmental authority concerning the method, quality, and location of the discharge of produced water. Produced water will be discharged in a way so as to minimize surface disturbance and damage to Owner's property and so as not to cause erosion, floods, ice flows, sedimentation, or creation of new wetlands and so as to not restrict Owner's access to any portion of the Lands. Operator will not appropriate any of the produced water for beneficial use, and Operator will fully cooperate with Owner to permit Owner, if Owner so desires, to appropriate and apply the produced water for beneficial use.

**e.** Operator shall test the quality of produced water from each CBM well at the commencement of production in accordance with the requirements of the States of Montana and Wyoming and every six months thereafter and immediately provide the results of these tests to Owner. The water shall be tested for total dissolved solids, pH, sulfates, chlorides, conductivity, bicarbonate, iron, calcium, magnesium, potassium, and sodium. If the test results show that the produced water from any CBM well does not meet the standards for discharged water imposed by the States of Montana or Wyoming, Operator shall immediately cease the surface discharge of produce water from that CBM well until the discharged water again meets governmental standards.

**f.** In the event Owner reasonably determines that any water management plan previously agreed to by Owner and Operator is causing, or is likely to cause, damage to Owner's water, soil, or vegetation resources, Owner may require Operator to cease the discharge of produced water and submit a revised water management plan addressing Owner's concerns with respect to the previous water management plan. If Owner gives Operator notice that the previously agreed to water management

plan is causing, or is likely to cause, damage to Owner's water, soil, or vegetation resources, Operator will have three months within which to develop and implement a revised water management plan acceptable to Owner or to reinject the water or transport the water off the Lands by pipeline, as provided above.

## **18. Reservoirs and Crossings.**

**a.** If Owner permits the surface discharge of produced water into reservoirs but does not wish Operator to discharge any of its produced water into Owner's existing reservoirs, Operator shall be solely responsible for finding a suitable water discharge location agreeable with the Owner, building the necessary catchment structures (including pipelines, dikes, dams, and outlet piping) and maintaining same at its sole cost, risk and expense. Similarly, if Operator requests and is granted permission to use any of Owner's reservoirs, should any such reservoirs require modification, upgrading and/or improvement to be able to hold Operator's produced water, any such modification, upgrading or improvement shall be done at Operator's sole cost, risk and expense.

**b.** Operator shall be responsible for obtaining all necessary permits prior to construction and, if requested by Owner, shall name Owner as co-applicant for any project requiring permits that will be constructed on Owner's property. Owner shall not be responsible for payment of any cost associated with Operator's development activities which shall include, but not be limited to water discharge, catchment of produced water or maintenance of any related facilities.

**c.** Owner reserves the right to have any such structures that are constructed or modified by Operator retained or fully reclaimed by the Operator at such time as Operator's use of said structure(s) has ended. Reservoir sediments for all reservoirs used by Operator shall be sampled and analyzed for toxic or hazardous constituents at Operator's expense and if necessary, Operator shall properly dispose of such material in accordance with state and federal law. All water rights for any reservoirs constructed or modified by the Operator that are retained following cessation of Operator's activities shall revert to the Owner if so requested



by Owner and approved by the Montana Department of Natural Resources or the Wyoming State Engineer's Office, as appropriate.

d. In the event that Operator's produced water is discharged into existing ephemeral drainage channels or other conveyances on Owner's property and Owner's operations require dry crossings to be constructed, Operator shall properly design, supply and construct such crossings at Operator's sole cost, risk and expense. Each crossing shall be structurally sufficient to allow for its intended use and shall safely pass all discharge water volume plus an acceptable amount of precipitation runoff without accumulation of water on the upstream side of the structure. Crossing structures shall be designed to be safely over-topped for precipitation events of greater magnitude than the event used for passing capacity design. Operator shall be solely responsible for maintenance of such structures until Operator's activities cease. Owner may require Operator to remove crossings at that time or allow crossing(s) to remain in place for future use.

e. In the event that one or more of the reservoirs used by Operator are found to leak or seep and Owner is of the view that such leakage or seepage may cause damage to soils or vegetation located on the Lands, Owner may require Operator to cease discharging produced water into such reservoir and to develop an alternative method or location for the containment or disposal of produced water. Operator shall cease the discharge of produced water into such leaking or seeping reservoir within 72 hours after receipt of Owner's notice and alternative facilities shall be constructed and shall be in use within three months after Operator's receipt of Owner's notice.

## **19. Protection of Existing Water Resources.**

a. Owner shall, prior to the commencement of Operator's operations, and in accordance with the **Development Plan**, assist Operator in preparing a map showing the locations of all of Owner's water wells which are located within the Lands and within an area one mile outside the

exterior boundaries of any parcel of land contained within the Lands. Owner shall also assist Operator in compiling the following information:

**(i)** a copy of the valid State of Montana or Wyoming (or applicable governmental agency) permit for each of such wells;

**(ii)** any available records of flowing or pumping capacity;

**(iii)** a list and schematic of the well's casing, showing the dates of purchase and installation;

**(iv)** a list and schematic diagram of the well's down-hole equipment showing the dates of purchase, records of maintenance and service;

**(v)** a current water analysis (on a certified or mutually-observed flowing sample) from the well, showing major cations and anions, Total Dissolved Solids, pH, Specific Gravity, Resistivity, Hardness as CaCO<sub>3</sub>, Alkalinity as CaCO<sub>3</sub>, Fecal Coliform content, Methane content, and any other measure which Owner presently considers or might in the future consider important and a potential obligation of Operator;

**(vi)** the static water level and productive capacity of the well;

**(vii)** an estimate of Owner's actual volumetric use of water from the well during the past five years or

during the well's productive life, whichever period is longer;

**b.** Owner and Operator shall at a mutually agreeable time prior to the commencement of Operator's operations, witness a flow rate test of the well and thereafter prior to the commencement of Operator's operations, sign a letter confirming the observed flow rate.

**c.** Upon commencement of operations, Owner shall notify Operator in writing within 30 days of any change in the status of any of Owner's water wells described in a. and b. above. If any of Owner's water wells become, in Owner's reasonable opinion, impaired due to operations of Operator, Owner shall first take reasonable steps to verify that the impairment is not due to mechanical, electrical, downhole integrity, or pump problems, and if none of these problems appear to be the cause of the impairment, Owner shall timely notify Operator telephonically and subsequently in writing of the alleged impairment. Owner shall include in such written notification the investigative steps taken to evaluate the causes of impairment listed in the previous sentence. Owner shall also provide an estimate of the amount of water taken from the well since the inception of operations under this Agreement, the well's daily flow rate, and an estimate of the water use, whether domestic or for livestock.

**d.** Operator agrees that upon telephonic notice of impairment and during the subsequent curative periods provided below, to provide and make available within 24 hours replacement water of domestic quality for domestic use, and of livestock quality for livestock use, in quantities equal to those amounts normally utilized by Owner from the impaired well in its operations for domestic and livestock purposes during similar periods of the year. Owner shall use its best efforts to immediately relocate livestock so as to relieve suffering and avoid potential loss and damages. Within fifteen (15) days of receipt of notice of alleged impairment Operator shall evaluate Owner's notice, and present a proposal to Owner which represents Operator's best efforts to restore water to the site of impairment. Upon Owner's acceptance of such proposal, Operator shall within thirty (30) days, weather permitting, execute the proposal.

e. Operator agrees that during the thirty (30) day execution period, Operator will timely provide and make available water of quality and volume equal to that described in a. and b. above.

f. At any time that Operator undertakes activities to restore Owner's legally permitted water well quality or capacity, or both, as a result of an acknowledged valid impairment, Operator shall pay the costs of any permits and permissions required by the States of Montana or Wyoming or other regulatory agency having jurisdiction, and Owner shall timely aid and assist Operator in obtaining such permits and permissions necessary to perform the restoration.

g. Owner may have developed springs which are used for livestock water. Each of these shall be identified (except as to governmental permits) in the manner described in a. and b. above. Each developed spring shall be managed according to the method and time periods described for water wells above, and upon Operator's acknowledgment of an alleged impairment as valid, Operator shall use its best efforts to replace the volume, flow rate, and quality of water lost. Owner agrees, for purposes of livestock watering, to accept produced water from Operator's coalbed methane wells which is of quality acceptable for livestock use.

## **20. Owner's Water Sources.**

Operator shall not without the Owner's prior written consent use any water from existing wells, reservoirs and springs on the Lands. Operator shall not disturb, interfere with, fill, or block any creek, reservoir, spring or other source of water on the Lands.

**21. Owner's Gas Tap.** Owner may take gas free of charge from any one well for use in a dwelling on the Leased Lands. Owner may additionally take gas free of charge for use in other dwellings and ranch buildings at the rate of one well per 5,000 acres of Owner's surface above Operator's operations. Any gas used by Owner for this purpose shall be free of royalty payment to Owner by Operator, and royalty and taxes, if any, on this gas will be reported and paid by Owner. Operator will provide, at Owner's expense, a gas tap from the selected well, and will locate a connection point at a safe distance from the well. Owner will equip the tap from Operator's connection point and extend a safe gas line to Owner's point of use. Owner and Operator will execute a mutually acceptable agreement governing the installation and use of such gas tap, in

which Operator will be indemnified by Owner from any liability whatsoever arising out of Owner's use of the tap and the gas flowing from it.

**22. Consolidation.** Whenever possible, and in accordance with the **Development**

**Plan** Operator will consolidate its gathering and processing facilities for as many wells as practical. Operator will locate in-coming electric power at a central point and construct all well-site power lines underground where practical. Operator will place all roads, power lines, water gathering lines, and pipelines in common corridors or rights-of-way. The consolidated facilities may not be used for operations connected with lands outside the Lands without Owner's written permission, except as otherwise provided for in agreements among members of the (name specific watershed group)

**23. Dry Holes, Abandonment.** If Operator does not discover oil or gas in paying quantities at a well site containing multiple well bores and determines a well to be a "dry hole" or upon cessation of production from a well, Operator may use the well for various needs within the spaced area such as, without limitation, a relief well for compressor downtime, an re-injection or stimulation well for produced water, a secondary recovery injection well, a monitoring well for gas or water, or other legally permissible production-related activity. Upon cessation of production or Operator's other activities from all wells in the well site, Operator shall offer one or more of the well bores to Owner for use as a water well. If Owner elects not to accept such well, Operator shall abandon, reclaim and restore the site.

**24. Roads.** In accordance with the **Development Plan**, existing two track, unimproved roads shall be used by operator whenever possible. New all weather roads will be constructed when necessary. Operator shall provide Owner with a plat showing the location and length of all roads promptly after their first use, construction or improvement. Any road constructed upon the Lands shall be constructed and maintained to the following specifications:

- a. The surface of all roadways shall not exceed sixteen feet (16') in width for traveled surface.

**b.** Access to the lands of Owner from any County road, or from the land of any adjoining landowner, shall be controlled by gate, which said gate Operator shall construct and install in accord with the reasonable specifications of Owner; and such perimeter access to the lands of Owner by Operator shall not be permitted or accomplished through the installation of any cattle guard, or similar structure.

**c.** Culverts shall be placed in low areas for proper drainage.

**d.** All roads shall be limited to fifteen feet (15') from the centerline of each road for fills, shoulders and crossings, unless altered by the parties in writing.

**e.** No off-road travel is permitted, and particularly no off-road travel which has the effect of widening the road or area of damage.

**f.** Operator agrees to keep its roads free of weeds, debris, litter, and trash, and, if necessary, shall perform periodic trash pickup when requested by Owner.

**g.** Operator shall negotiate the location of all new roads with the Owner prior to construction, and at that time the parties shall determine what low spots or other specific locations have a need for graveling, and whether road repairs might be needed on existing roads, including the installation of culverts and cattle guards.

**h.** Owner shall have no responsibility for road maintenance and Owner shall have the right to close said private road to all traffic for one twenty-four (24) hour period during each twelve-month period and shall give Operator at least ten (10) days' notice of when said road shall be closed. Owner shall provide Operator access during this period of time.

i. The use and construction of roads by Operator across the Lands is a non-exclusive use and Owner may allow other parties to use said road and make a charge therefor. However, Operator shall have the right to assess other users of the road for their share of maintenance work performed by Operator.

j. Operator agrees, if requested by Owner, to place an appropriate sign or signs on any roads designating them as "Private Roads" and to assist Owner in the control of the use of such roads by unauthorized users.

**25. Livestock, Cattleguards and Fences.** Operator shall pay Owner the fair market value of any livestock killed or injured as a result of its operations. In accordance with the **Development Plan**, Operator shall construct stock-tight fences around any drilling or production area or any water reservoir, pit, or impoundment created by Operator, and any area which Owner may designate for storage or maintenance of Operator's equipment. All cattleguards and fences installed by Operator shall be kept clean and in good repair. Cattleguards will be installed in the main fences with metal gates unless otherwise agreed by Owner.

**26. Improvements, Hay Land and Stock Water Pipeline.** No existing fences, cattleguards, or other improvements shall be cut or damaged by Operator without the prior written consent of Owner and the payment of additional damages or the institution of other safeguards to protect the rights and property of the Owner. Parts of the Lands are customarily used for the production of hay and crops. In accordance with the **Development Plan**, in addition to the other payments provided for in this Agreement, Operator shall pay to Owner for all such lands in production which are taken out of production, whether by well sites, new roads or otherwise as a result of Operator's activities, at the rate of one hundred \_\_\_\_\_ per acre per year for hay lands actually taken out of production and at the rate of \_\_\_\_\_ per acre per year for crop lands actually taken out of production. Payment shall be made at the time lands are removed from production and until they are available to be placed back in production. Operator shall use its best efforts not to place any above ground facilities on any hay or crop land.

In accordance with the **Development Plan**, Operator shall not place or construct any facilities over any underground stock water pipelines on the Lands and, except for the work necessary to replace the underground stock water pipeline, shall not disturb, damage or destroy the stock water pipelines or tanks used in connection with the pipelines.

**27. Reclamation.** In accordance with the **Development Plan**, Operator shall rehabilitate and restore to its original condition, as near as possible, all areas disturbed by Operator's operations. If a well is plugged and abandoned, Operator shall restore the location, access road and other disturbed areas to its original condition. Operator shall, in accordance with the **Development Plan**, restore the surface of all land disturbed by the construction or maintenance of any well pad, gas or water gathering line or power line to its original condition and contours.

**28. Reseeding and Weed Control, Agricultural Emergencies.**

**a.** All reseeded shall be done in accordance with the **Development Plan** with suitable grasses selected by Owner and during a planting period selected by Owner. Reseeding shall be done at the rate specified in the **Development Plan** of twelve (12) pounds of seed per acre for range land, and an amount to be determined by Owner for irrigated ground. In the absence of direction from Owner, no reseeded (except for borrow pits) will be required on any access roads existing prior to Operator's development. It shall be the duty of Operator to insure that a growing ground cover is established upon the disturbed soils and Operator shall reseed as necessary to accomplish that duty. It shall further be the duty of Operator to inspect and control all noxious weeds as may become established within areas used or disturbed by Operator. Operator shall inspect disturbed areas from time to time and as Owner shall reasonably request in order to determine the growth of ground cover and/or noxious weeds. Operator shall reseed ground cover and control noxious weeds from time to time to the extent necessary to accomplish its obligations hereunder. Operator recognizes that this shall be a continuing obligation and Operator shall reseed ground cover and/or control noxious weeds until areas disturbed by Operator are returned to as good condition as existed prior to construction.

**b.** Operator shall certify and provide evidence that vehicles being used in operations are either not coming from areas which are contaminated with noxious weed species, or that vehicles will have been washed prior to entering the Lands. In the event that contamination is believed to be occurring, and at Owner's request, Operator shall be prepared to install and operate a vehicle-washing facility at the entrance to the Lands.





c. In the event of agricultural emergencies such as diseases of livestock, Operator shall co-operate with Owner in attempts to prevent the spread of infectious disease as needed. Specifically with reference to hoof and mouth disease, Operator shall consult with Owner prior to allowing any vehicle on the Lands or Leased Lands. Operator may be required to establish prevention activities including, without limitation, washing, spraying, or dipping stations at access points on the border of the Lands or Leased Lands. Operator may also be required to enforce restrictions on human and other animal activity on the Lands.

**29. Fencing of Access Roads.** Operator will not fence any access roads without the prior written consent of Owner.

**30. Payments Sufficient.** The payments herein provide are acknowledged as sufficient and in full satisfaction for 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 any damage or destruction caused by Owner's wells or water supply. This Agreement does not relieve Operator from liability for damage caused by Operator's negligence or by spills or discharges of any hydrocarbon or toxic or hazardous chemicals or wastes due to Operator's operations or by gas or water leakage due to Operator's operations or by leaks or breaks in Operator's gas or water gathering lines.

**31. No Warranty.** Owner makes no warranty of title in entering into this Agreement.

**32. 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 prior consent, except as provided for in agreements among members of the (Name specific watershed group)

**33. Fire and Use Restrictions, Identification and Communication.** Operator shall take reasonable steps, including those provided for in agreements among members of the Hanging Woman Basin Group, to prevent fire and to promptly extinguish

fire, including, but not limited to, (a) maintaining a fire extinguisher, shovel, ax, bucket, and filled water backpack spray in each service vehicle entering upon the property, and (b) utilizing spark arresters on all gas or diesel powered equipment. Operator shall endeavor to use diesel powered vehicles whenever possible to avoid fires resulting from catalytic converters. Operator may not construct open fires on the property. No trash or timber slash will be burned by Operator on the Lands. Operator shall promptly and fully compensate Owner for all damages caused by fire arising out of Operator's operations, including, without limitation, any charges incurred by Owner for fire suppression and the reasonable cost of moving livestock to unburned pastures.

Operator shall not permit any of its employees or contractors operating hereunder to bring any firearm, explosive device, weapon, alcoholic beverage, or illegal drug on Owner's property. Operator's employees shall at all times carry identification. Operator's employees will not bring dogs or other animals in vehicles or otherwise on to Owner's lands. Operator shall not place any trash, rubbish or debris on Owner's land. No employee or contractor of Operator shall hunt, prospect for antlers, fossils or antiquities, consume alcoholic beverages or carry on any illegal activities on the Lands.

Prior to the commencement of operations, Operator shall identify the individuals who will be conducting operations on Owner's property and specify which are representatives of and who have authority to act in behalf of each other. Owner and Operator shall also provide to each other details for rapid communications among authorized representatives, including 24-hour office and cell telephone and fax numbers, and e-mail addresses.

**34. Purchase of Shale and Water.** To the extent that Operator's activities require the use of shale, gravel, or water, where reasonable and practicable Operator shall purchase shale, gravel, or water from Owner at the rates prevailing in the area. Operator recognizes Owner's concern about importation of noxious weeds onto the Lands and, therefore, agrees wherever possible to purchase shale or gravel from Owner.

**35. First Preference for Work.** Operator shall give first preference to Owner in awarding contracts for any work required to be performed on Owner's land pursuant to the terms of this Agreement, including but not limited to earthmoving, grading or plowing roads, spraying noxious weeds, or reseeded, provided that Owner has the equipment necessary to accomplish the work, is capable of adequately performing the work and is willing to perform the work at rates prevailing in the area.

**36. Equipment Storage and Maintenance.** Absent Owner's consent, Operator's equipment shall not be stacked or stored on the Lands nor shall equipment be maintained on any of the Lands. Owner may, by separate agreement, lease certain lands designated by Owner for the purpose of stacking or storing equipment or maintenance of equipment.

**37. Enforcement Costs.** If either party defaults under this Agreement, such party shall pay all costs and expenses, including a reasonable attorney's fee, incurred by the other party in enforcing this Agreement.

**38. Indemnification.** To the maximum extent permitted by law, Operator will indemnify, defend and hold Owner, and, if applicable, owner's officers, directors, employees, agents, successors and assigns harmless from any and all claims, liabilities, demands, suits, losses, damages and costs (including, without limitation, any attorney fees) which may arise out of Operator's activities on the Lands including, without limitation, any claims that Operator's operations are either illegal, unauthorized, or improper and any claims asserted by any person or state or federal agency for environmental damage or flooding or pollution resulting from operator's activities.

**39. Damage to Lands Owned by Other Landowners.** Specifically as provided for in agreements among members of the (name specific watershed group), Operator shall be liable for any damage to other lands or the operations of other landowners, including but not limited to, roads, road crossings, bridges, fences, buildings and other improvements, livestock, crops, forage, and hay meadows, resulting from Operator's activities on the Lands, including damage resulting from the quality or quantity of produced water being discharged or escaping from Operator's control.

**40. Compliance with Law.** Operator shall conduct operations and activities in accordance with applicable local, state and federal laws, rules and regulations.

**41. Release.** To the maximum extent permitted by law, Operator releases and waives and discharges Owner, and, if applicable, Owner's officers, directors, employees, agents, successors and assigns from any and all liabilities for personal injury, death, property damage or otherwise arising out of Operator's operations under this Agreement or use of the Lands.

**42. Notice.** Notice may be given to either party to this Agreement by depositing the same in the United States mail postage prepaid, duly addressed to the other party at the address set out below the party's signature on this Agreement. Such notice shall be deemed delivered when deposited in the United States Mail. Operator shall promptly notify Owner in writing of the name and address and telephone number of any person or entity to whom Operator assigns all or any portion of its rights under any oil or gas or CBM lease which affects the Lands.

**43. Construction of Agreement.** This Agreement shall be construed under the laws of the state in which the Lands, or the majority of them, are located.

**44. Binding Effect.** This Agreement is binding upon the successors and assigns of the parties.

**45. Default.** If Operator defaults under this Agreement, Owner shall give Operator written notice of the default. If Operator fails to correct the default within 60 days after the delivery of the notice of default, Owner may, in addition to any other rights and remedies available to Owner, suspend the right of Operator to enter upon and use the Lands until the default is cured or terminate this Agreement. If Owner elects to terminate this Agreement, Operator shall remove all of its property and facilities from the Lands and restore and reclaim the property as required herein.

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

**47. Taxes.** Operator shall pay all additional taxes which may be assessed against the Lands by reason of any improvements placed thereon by Operator.

**48. Assignment.** Other than to a successor operator of the wells drilled, produced, serviced, operated, and/or maintained pursuant to this Agreement, this Agreement may not be assigned in whole or in part without the prior written consent of

Owner. Operator is given the express right to assign Operator's rights under this Agreement to any successor operator for the wells and operations engaged in hereunder, provided, however, that any such assignment by Operator shall not relieve Operator of its obligations hereunder and upon any such assignment Operator and its assignees and successor assignees shall remain jointly and severally responsible in the full, faithful and complete performance of all promises and obligations undertaken herein by Operator.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

**OWNER:**

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Address

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**OPERATOR:**

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Address

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