

SURFACE USE AGREEMENT

This Surface Use Agreement ("this Agreement") is entered into this 19 day of September 2006, between ~~Kerr-McGee Rocky Mountain Corporation~~ ("KMRMC") with an address of 1999 Broadway, Suite 3600, Denver, CO 80202, and Saddleback Hills Lake & Conservancy #2, LLC with an address of 5460 S. Quebec Street, Suite 300, Greenwood Village, CO 80111 ("Surface Owner"). KMRMC and Surface Owner may be referred to herein individually as a "Party" or collectively as the "Parties".

- A. Surface Owner represents that it presently owns the surface estate of a tract of land located in Section 29 of Township 2 North, Range 67 West of the 6th P.M., Weld County, Colorado (the "Property").
- B. Surface Owner represents and acknowledges that surface ownership of the Property is subject to the rights of the owners of the oil and gas mineral estate to, among other things, drill, develop, operate, maintain, recomple, rework or replace existing and future oil and gas wells and related oil and gas pipelines, equipment and facilities.
- C. KMRMC represents that it presently owns 100% of the oil and gas leasehold estate as to all depths below the Sussex/Shannon formations in the NW/4 of Section 29, Township 2 North, Range 67 West, Weld County, Colorado. KMRMC also represents that it presently operates oil and gas wells and related oil and gas pipelines, equipment and facilities on or near these same lands.
- D. It is the intent of this Agreement to define certain of the respective rights and obligations of KMRMC and Surface Owner, and their respective successors and assigns.
- E. The effective date and term of this Agreement are defined in Section 20 herein.

In consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. AREAS RESERVED FOR EXISTING AND FUTURE WELLS.

Surface Owner agrees that the portions of the Property designated as "Oil and Gas Operations Areas" on Exhibit A attached hereto (referred to herein as "Oil and Gas Operations Areas") shall be set aside and preserved in their present condition for use by KMRMC as lands from which to conduct oil and gas operations and development activities including, but not limited to, drilling, production, workovers, well deepenings, recompletions, fracturing, sidetracking, twinning or replacement. Surface Owner agrees to set aside and preserve the Oil and Gas Operations Areas by, among other things:

- A. Disclosing, depicting and designating them as such in all proposed or final plats of the Property, or any portion thereof, for which it seeks approval from any government; and
- B. Disclosing, depicting and designating them as such in all proposed or final plats of the Property, or any portion thereof, which it files or records in the public records of any town or county.

Surface Owner shall also disclose, depict, describe and explain the purpose of Oil and Gas Operations Areas in all plats, maps, subdivision regulations or covenants relating to the Property that it proposes, distributes, files or records.

KMRMC agrees to confine operations relating to its existing oil and gas wells to those portions of the surface estate of the Property designated as Oil and Gas Operations Areas, except that the Parties agree that KMRMC may also access and use nearby roads, rights of way and easements associated with flowlines, gathering lines and pipelines. Future oil and gas wells and equipment will be located sufficiently inside the Oil and Gas Operations Areas, such that its setbacks do not extend outside of the Oil and Gas Operations Areas. Surface Owner also agrees that, in connection with its present or future oil and gas operations, KMRMC may make reasonable emergency, incidental or temporary use of portions of the Property not designated as Oil and Gas Operations Areas. KMRMC shall be responsible for any damages it causes to portions of the Property not designated as Oil and Gas Operations Areas.

2. FUTURE WELLS AND PAYMENT FOR DIRECTIONAL WELLS.

KMRMC shall have the right to develop, drill and operate future oil and gas wells at any location within the Property, including wells that produce from or drain lands other than the Property (which lands are pooled with portions of the Property), provided that such locations are permitted under the applicable well spacing regulations of the Colorado Oil and Gas Conservation Commission ("COGCC") or exceptions thereto granted by the COGCC or its Director.

Notwithstanding the foregoing, Surface Owner shall have the right to elect to require that KMRMC drill any future oil and gas well from a location within one of the designated Oil and Gas Operations Areas, to be selected by KMRMC, by timely fulfilling the requirements of either Section 2.A or 2.B.

- A. If KMRMC proposes to drill a future oil and gas well on the Property, Surface Owner may elect to require KMRMC to drill the proposed future oil and gas well within an Oil and Gas Operations Area, to be selected by KMRMC, by timely doing the following:
 - 1. Within 15 days after Surface Owner's receipt of a written notice from KMRMC that it intends to drill an oil and gas well on the Property, delivering

written notice to KMRMC advising that it has elected to require KMRMC to directionally drill the proposed oil and gas well from one of the Oil and Gas Operations Areas; and

2. Within 30 days of the delivery of Surface Owner's written notice of election to require directional drilling, delivering a payment in the amount agreed upon by the Parties in the letter agreement dated the 19 day of September, 2006 (the "Funds") to KMRMC for each oil and gas well it elects to require KMRMC to directionally drill from one of the Oil and Gas Operations Areas.
3. KMRMC will drill the well within 12 months of receipt of the Funds or it will return the Funds. If KMRMC returns the Funds, to Surface Owner under the conditions of the preceding sentence, then nothing herein contained shall prevent KMRMC from again proposing drilling of a future well at the same location and receiving the Funds from Surface Owner as provided herein.

If, but only if, Surface Owner timely complies with the requirements of Sections 2.A.1 and 2.A.2, then KMRMC shall hereby agree to confine its operations related to the future oil and gas well for which Surface Owner has elected to require directional drilling to those portions of the Property designated as Oil and Gas Operations Areas, including those access roads and all access and necessary easements associated with flowlines, gathering lines and pipelines and shall execute and record a Non-Disturbance Agreement in the form attached as Exhibit B for each of the legal locations directionally drilled. Surface Owner also agrees that, even if it has timely complied with the requirements of Sections 2.A.1 and 2.A.2, KMRMC may make reasonable emergency use of portions of the Property not designated as Oil and Gas Operations Areas. KMRMC shall be responsible for any damages it causes to portions of the Property not designated as Oil and Gas Operations Areas.

B Surface Owner may also elect to require KMRMC to drill one or more future oil and gas wells within an Oil and Gas Operations Area, to be selected by KMRMC, by timely doing the following:

1. Obtaining governmental approval of and recording a final plat proposing surface development on all or any portion of the Property on which KMRMC would also have the legal right to drill an oil and gas well according to COGCC regulation and spacing orders and other applicable law. If requested, KMRMC shall consult with Surface Owner and assist it in determining whether a proposed, approved and/or recorded final plat covers some or all of a potential drilling location; and
2. Within one year of the date of governmental approval of the final plat discussed in paragraph 2.B.1, delivering a payment in the amount agreed

upon by the Parties in the letter agreement dated the 19 day of September 2006 to KMRMC for every such well location covered, in whole or in part, by the approved final plat.

If, but only if, Surface Owner timely complies with the requirements of Sections 2.B.1 and 2.B.2 outlined above, KMRMC shall agree to confine its operations related to the future oil and gas well or wells for which Surface Owner has elected to require directional drilling to those portions of the Property designated as Oil and Gas Operations Areas, including those access roads and all access and necessary easements associated with flow lines, gathering lines and pipelines and shall execute and record a Non-Disturbance Agreement in the form attached as Exhibit B for each of the legal locations directionally drilled. Surface Owner also agrees that, even if it has satisfied the conditions in Sections 2.B.1 and 2.B.2, KMRMC may make reasonable emergency use of portions of the Property not designated as Oil and Gas Operations Areas. KMRMC shall be responsible for any damages it causes to portions of the Property not designated as Oil and Gas Operations Areas.

3. SETBACK REQUIREMENTS.

Surface Owner understands, acknowledges and agrees that the COGCC, the Town of Firestone, Weld County and perhaps other governmental entities have rules and regulations defining the distance that oil and gas wells, equipment and facilities on the Property must be located away from public roads and rights of way, residential units, businesses, schools and other uses of property.

Surface Owner agrees to configure and preserve the Oil and Gas Operations Areas provided for herein such that they satisfy all setback requirements of the COGCC and any other applicable governing body that are in place on the date this Agreement becomes effective. To this end, Surface Owner agrees not to locate or authorize the construction of any building or other structure within an Oil and Gas Operation Area. Surface Owner also acknowledges and agrees that KMRMC's operations and use of the surface estate within the designated Oil and Gas Operation Areas may include all reasonably necessary uses of the surface relating to development and operations conducted by KMRMC in connection with existing or future oil and gas wells, including, but not limited to, activities relating to production, workovers, well deepenings, recompletions, fracturing, sidetracking, twinning or replacement.

Surface Owner also understands, acknowledges and agrees that the COGCC, the Town of Firestone, Weld County and perhaps other governmental entities may, in the future, change their rules and regulations governing the setback requirements for oil and gas wells and related equipment, facilities, flowlines, gathering lines and pipelines. **In exchange for the consideration provided for in this Agreement, and with a complete understanding of its rights and obligations, Surface Owner, to the extent permitted by applicable law, hereby voluntarily waives any and all setback requirements, and its right to object to any oil and gas well or operation on the basis of setback requirements, as provided in COGCC Rule 603, or any successor rule or amendment to the COGCC setback rules, any rules and regulations of the Town of Firestone, Weld County and/or any other local or state setback requirements or other requirements or regulations that are or**



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become inconsistent with this Agreement or that would prohibit or interfere with the rights of KMRMC, its successors and assigns, to explore for and produce the oil and gas in accordance with this Agreement.

Surface Owner also agrees to expressly advise all of its future successors and assigns, as well as any future owners of the surface estate it intends to acquire, in writing of the terms of this Agreement and, in particular, that KMRMC or its successors and assigns may cite this Agreement and the waiver of rights outlined in the previous paragraph to the COGCC, the Town of Firestone, Weld County or any other governmental entity as proof of the surface owner's knowing and voluntary waiver of its right to object to any request by KMRMC or its successors to locate any future oil and gas well or related equipment, facilities, flowlines, gathering lines and pipelines at some location different from that provided in any setback requirements established now or in the future by the COGCC, the Town of Firestone, Weld County or any other governmental entity.

In addition, Surface Owner agrees to provide KMRMC with whatever written support they may reasonably require to obtain permits or other approvals from the COGCC, the Town of Firestone, Weld County or any other governmental entity that are consistent with the terms and conditions of this Agreement.

4. RELOCATED FLOWLINES, GATHERING LINES AND PIPELINES.

Surface Owner's present development plans contemplate the flowline, gathering line and pipeline relocations shown on Exhibit A. The Parties acknowledge and agree that different or additional relocations may be required as development of both the surface estate and the oil and gas mineral estate move forward. Surface Owner shall have the right to require KMRMC to relocate any of KMRMC's flowlines, gathering lines and pipelines on the Property if, but only if, the following conditions are satisfied:

- A. Surface Owner delivers a written notice of its demand for relocation to KMRMC that outlines in detail the proposed relocation.
- B. The terms and conditions of the demand for relocation are, from a technical and engineering standpoint, reasonable and comply with all applicable codes, rules, regulations and other laws.
- C. The demand for relocation provides KMRMC with a reasonable time frame to KMRMC to obtain the necessary governmental and other approvals and complete the relocation.
- D. Surface Owner agrees in its written notice to bear all costs of the relocation.



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5. ACCESS.

Surface Owner shall at all times provide KMRMC with continuous and uninterrupted access to all of the Oil and Gas Operations Areas. Surface Owner shall provide to KMRMC all necessary easements for access to the Oil and Gas Operation Areas and other portions of the Property where oil and gas operations and development activities may take place pursuant to the terms of this Agreement. Such access shall be mutually agreed upon by the Parties and shall be of sufficient scope to allow KMRMC to conduct any activities or operations contemplated for existing and future oil and gas operations. The access roads to be used by KMRMC will be those roads either that are in place or those that are anticipated to be constructed by Surface Owner, at Surface Owner's sole cost and expense, as part of Surface Owner's development of the Property. Access roads or portions of access roads that are constructed by Surface Owners shall be thirty (30) feet or more in width, and Surface Owner shall construct or improve all paved or improved access roads to withstand the weight of oilfield equipment. Specifically, Surface Owner shall construct the roads so that they can be used to withstand the weight of 104,000 pounds and 26,000 pounds per axle.

6. BATTERIES AND EQUIPMENT.

KMRMC shall have the right to locate, build, repair, maintain and replace tanks, separators, dehydrators, and other equipment reasonably appropriate for the operation and production of existing and future wells, including such operations associated with the existing oil and gas wells and relocated facilities, on those portions of the Property specified in this Agreement at locations whereby the setbacks do not extend outside of the overall area. Compressors shall not be located on the Property. With respect to KMRMC's equipment and facilities other than flowlines, gathering lines and pipelines:

- A. KMRMC shall install and maintain, at its sole cost and expense, all fences around its equipment and facilities as are required by the COGCC or any other governmental entity. If Surface Owner desires that KMRMC install fences of a different kind that also comply with all COGCC or other applicable rules, KMRMC shall do so and Surface Owner shall promptly reimburse KMRMC for all additional costs of installation of the requested fence;
- B. KMRMC shall install and maintain, at its sole cost and expense, all gates and locks necessary for the security of any oil and gas wells or facilities on the Property. Such gates and locks shall be the standard gates and locks used by KMRMC;
- C. KMRMC shall paint any production facilities for any wells, including wellhead guards, with paint of a color selected by Surface Owner so long as the color and type of paint are also approved by the COGCC and any other applicable governmental entity; and



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- D. Surface Owner may install and maintain, at its sole cost and expense, any landscaping around any wells, facilities and the Oil and Gas Operations Areas so long as this landscaping and any related improvements do not inhibit KMRMC's access to its wells, facilities or the Oil and Gas Operations Areas, and the landscaping and related improvements are not inconsistent with COGCC or applicable governmental rules.

7. FLOWLINES, GATHERING LINES AND PIPELINES.

KMRMC shall have the right to lay, inspect, maintain, repair, relocate or replace any and all flowlines, gathering lines and pipelines for gas and/or liquids necessary in connection with KMRMC's production and transportation of oil and gas from any wells on the Property in accordance with the terms of this Agreement. Surface Owner shall grant KMRMC or its gas purchaser the rights of way needed for any new flowlines, gathering lines or pipelines such that they may be located in the existing easements depicted on Exhibit A or new easements mutually agreed upon by the Parties and created for this purpose. All flowlines, gathering lines and pipelines shall be located at a depth of approximately 48 inches from the surface. The construction and burying of additional flowlines, gathering lines and pipelines shall be at the sole cost and expense of KMRMC or its gas purchaser. Should Surface Owner wish to request any future or additional relocation of existing flowlines, gathering lines or pipelines, it agrees to comply with the terms and conditions outlined in paragraph 4 above. Surface Owner shall maintain a minimum of 48 inches and not more than 72 inches of cover over all pipelines and flowlines during any development operations, unless approved in writing in advance by KMRMC, which approval shall not be unreasonably withheld. Provided they do not interfere with the operation of, maintenance of, or KMRMC's access to KMRMC's facilities in the rights-of-way described herein, Surface Owner shall have the right to cross the rights-of-way with roads, utilities and fences built at substantially right angles to the rights-of-way. Other utilities may be placed in the easements, so long as the placement and existence of such other utilities does not interfere with KMRMC's use of the easements and so long as Surface Owner pays the cost, if any, incurred by KMRMC in connection with the placement of other utilities in the easements. Provided however, Surface Owner shall not permit, nor shall it place any other utility or structure within ten feet horizontally or two feet vertically of any KMRMC pipeline. KMRMC shall have no liability for any loss or damage to any such improvements by Surface Owner, homeowner's association or homeowners pursuant to an exercise of its rights of ingress and egress on the lands for the uses contemplated hereunder for the easements. If KMRMC needs to excavate or otherwise gain access to its facilities, and roads, fences, utilities or facilities of others are damaged thereby, KMRMC shall have no obligation to repair such assets or otherwise compensate Surface Owner or the owner of any assets located in the rights-of-way, for such damage.

8. CHANGES TO DEVELOPMENT PLAN.

The Parties acknowledge that Exhibit A is a preliminary development plan. Should modifications to such plan be necessary due to changes in law or regulations pertaining to oil and gas operations, or should oil and gas drilling or production techniques require additional use of the Property, or if plan changes or modifications are necessary or desirable to obtain plan approval by



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county or municipal agencies, the Parties will negotiate in good faith to modify the development plan.

9. NOTICE OF FUTURE OPERATIONS.

KMRMC shall provide at least fifteen days prior written notice to Surface Owner of any operations in connection with the drilling, reworking, fracturing, deepening or other non-emergency or routine operation on any existing or future well or any replacement well. Regardless of the foregoing notice requirements, KMRMC shall have immediate access in the event of an emergency.

The notification of operations shall describe the following:

- A. The proposed starting date for the proposed activity;
- B. The proposed operations to be performed at the site; and
- C. The approximate duration of the proposed activities.

Within five (5) working days of receipt of a notice from KMRMC to conduct subsequent operations, either KMRMC or Surface Owner may request an on-site meeting. The purpose of the meeting shall be to inform Surface Owner of the expected activity and to coordinate site access, hazards, barricades, restoration or any other issues that affect the use of and the safety of the Property.

10. NOTICE OF FUTURE PUBLIC HEARINGS

Surface Owner shall notify KMRMC at least thirty (30) days prior to any public hearing held on the property and shall also provide KMRMC copies of the plats submitted to the Town of Firestone for each hearing.

11. NOTICES TO HOMEOWNERS AND BUILDERS.

Surface Owner shall furnish all of its assignees and persons who purchase portions of the surface estate of the Property with a plat or map and written materials disclosing, depicting, describing and explaining the purpose of Oil and Gas Operations Areas and the location of all other oil and gas operations then on the Property. In addition, Surface Owner shall provide notice to all builders, homeowners and other buyers of the Property and all homeowner associations that:

- A. Such buyers are not purchasing and do not own any interest in the oil and gas mineral estate;
- B. There may be ongoing oil and gas operations and production in the Oil and Gas Operation Areas and on other portions of the Property;



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- C. There are likely to be additional future oil and gas wells and facilities drilled or located on the Property pursuant to the terms of this Agreement that may affect the surface of the Property;
- D. Future purchasers of all or a portion of the Property, as successors in interest to Surface Owner, shall be acquiring a proportionate interest in Surface Owner's rights under this Agreement and assuming those obligations undertaken by Surface Owner pursuant to this Agreement; and
- E. Homeowner associations and buyers of individual lots or homes, as successors in interest to Surface Owner, shall be acquiring a proportionate interest in Surface Owner's rights under this Agreement, and will be subject to all terms of this Agreement, the waivers underlined in bold italics contained in Sections 3, 12, 13, 14 and 15 and the covenants contained in Section 3 prohibiting the location of any building or structure within the Oil and Gas Operation Area and waiving objection to any setback rules of the COGCC or any other jurisdiction.

12. DRILLING AND COMPLETION OPERATIONS.

KMRMC shall endeavor to diligently pursue any drilling operations to minimize the total time period and to avoid rig relocations or startup during the course of drilling. **Surface Owner waives any objections to continuous (i.e., 24-hour) drilling operations. Surface Owner also waives any right to require that wellhead or production equipment be located in conformance with any setback requirements (including but not limited to those concerning any "high density" Rules of the COGCC) that are more restrictive than those specified in Section 3 or as depicted on Exhibit A.** Subject to the waiver of setback requirements as set forth above, KMRMC shall conduct its operations in compliance with the provisions of the Rules and Regulations of the COGCC set forth in Rule 603.

13. GOVERNMENTAL PROCEEDINGS.

Surface Owner shall not oppose, and hereby waives its right to oppose, KMRMC in any agency or governmental proceedings, including but not limited to the COGCC, the Town of Firestone, Weld County or other governing body proceedings, related to KMRMC's operations on the Property, including but not limited to drilling, workovers, well deepenings and recompletions, provided that KMRMC's position in such proceedings is consistent with this Agreement.

14. LIMITATION OF LIABILITY, RELEASE AND INDEMNITY.

- A. **No Party shall be liable for, or be required to pay for, special, punitive, exemplary, incidental, consequential or indirect damages to any other Party for activities undertaken within the scope of this agreement;**

CB JAH



- B. *Except as to claims arising out of pollution or environmental damage (which claims are governed by Section 15 below) or out of other provisions of this Agreement (which claims shall be governed by the terms of this Agreement), each Party shall be and remain responsible for all liability for losses, claims, damages, demands, suits, causes of action, fines, penalties, expenses and liabilities, including without limitation attorneys' fees and other costs associated therewith (all of the aforesaid herein referred to collectively as "Claims"), arising out of or connected with each such Party's ownership or operations on the Property, no matter when asserted, subject to applicable statutes of limitations. Each such Party shall release, defend, indemnify and hold the other Parties, their officers, directors, employees, successors and assigns, harmless against all such Claims. This provision does not, and shall not be construed to, create any rights in persons or entities not a Party to this Agreement, nor does it create any separate rights in Parties to this Agreement other than the right to be indemnified for Claims as provided herein;*
- C. KMRMC shall have the right to file an operator's lien against other owners of the oil and gas leasehold interest to recover amounts owed to KMRMC; and
- D. Upon the assignment or conveyance of a Party's entire interest in the Property, that Party shall be released from its indemnification in Section 14.B. above, for all actions or occurrences happening after such assignment or conveyance.

15. **ENVIRONMENTAL INDEMNITY.**

The provisions of Section 14 above, except for Section 14.A., shall not apply to any environmental matters, which shall be governed exclusively by the following, subject to the limitations of Section 14.a. above:

- A. "Environmental Claims" shall mean all Claims asserted by governmental bodies or other third parties for pollution or environmental damage of any kind, arising from operations on or ownership of the Property or ownership of the oil and gas leasehold interest, whichever is applicable, and all cleanup and remediation costs, fines and penalties associated therewith, including but not limited to any Claims arising from Environmental Laws or relating to asbestos or to naturally occurring radioactive material. Environmental Claims shall not include the costs of any remediation undertaken voluntarily by any Party, unless such remediation is performed under the imminent threat of a Claim by a governmental body or other third party;
- B. "Environmental Laws" shall mean any laws, regulations, rules, ordinances, or order of any governmental authority(ies), which relate to or otherwise impose liability, obligation, or standards with respect to pollution or the protection of the environment, including but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. ' 9601 et seq.), the



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Resource Conservation and Recovery Act of 1976 (42 U.S.C. ' ' 6901 et seq.), the Clean Water Act (33 U.S.C. ' ' 466 et seq.), the Safe Drinking Water Act (14 U.S.C. ' ' 1401-1450), the Hazardous Material Transportation Act (49 U.S.C. ' ' 1801 et seq.), the Clean Air Act, and the Toxic Substances Control Act (15 U.S.C. ' ' 2601-2629); and

- C. Environmental Indemnification. KMRMC shall protect, indemnify, and hold harmless Surface Owner, any association of homeowners on the Property and any lot owner who purchases a lot on the Property from Surface Owner from any Environmental Claims relating to the Property or oil and gas leasehold thereunder that arise out of KMRMC's ownership and operation of the Oil and Gas Operations Areas or its rights-of-way on the Property. **Surface Owner shall fully protect, indemnify and hold harmless KMRMC and its gas and oil purchasers from any and all Environmental Claims relating to the Property that arise out of Surface Owner's development of the Property.**

16. EXCLUSION FROM INDEMNITIES.

The indemnities of any Party herein shall not cover or include any amounts, which the indemnified Party may recoup from any third party, or that for which the indemnified Party is reimbursed by any third party. The indemnities in this Agreement shall not relieve any Party from any obligations to third parties.

17. NOTICE OF CLAIM FOR INDEMNIFICATION.

If a Claim is asserted against a Party for which another Party would be liable under the provisions of Section 14 or 15 above, it is a condition precedent to the indemnifying Party's obligations hereunder that the indemnified Party give the indemnifying Party written notice of such Claim setting forth all particulars of the Claim, as known by the indemnified Party, including a copy of the Claim (if it is a written Claim). The indemnified Party shall make a good faith effort to notify the indemnifying Party within five days of receipt of a Claim and shall affect such notice in all events within such time as will allow the indemnifying Party to defend against such Claim.

18. REPRESENTATIONS.

Each Party represents that it has the full right and authority to enter into this Agreement. KMRMC does not represent that it has rights to settle matters for all of the mineral owners in the Property, and this Agreement shall only apply to and bind the KMRMC leasehold interest in the property.

19. SUCCESSORS.

The terms, covenants and conditions hereof shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, devisees, executors, administrators, successors and



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assigns; provided, as to KMRMC, successors and assigns shall be deemed to be limited to lessees under the oil and gas leases which KMRMC owns and successors to easements granted hereunder.

20. EFFECTIVE DATE AND TERM.

This Agreement shall become effective when it is fully executed and shall remain in full force and effect until KMRMC's leasehold estate expires or is terminated, and KMRMC has plugged and abandoned all wells owned all or in part by KMRMC and complied with the requirements of all applicable oil and gas leases pertaining to removal of equipment, reclamation, cleanup and all other applicable provisions of the leases and existing laws and regulations.

When this Agreement ceases to be in full force and effect, the Parties shall execute any and all releases necessary, to evidence the fact that this Agreement shall no longer apply to the Property.

21. NOTICES.

Any notice, payment or communication required or permitted under this Agreement shall be sufficient if deposited in U.S. Mail, postage prepaid, addressed to each of the following:

If to KMRMC:

Kerr-McGee Oil & Gas Onshore LP
Kerr McGee Rocky Mountain Corporation
1999 Broadway, Suite 3700
Denver, Colorado 80202
Attention: Denver Basin Land Manager

If to Surface Owner:

Saddleback Hills Lake & Conservancy #2, LLC
5460 S. Quebec Street, Suite 300
Greenwood Village, CO 80111
Attention: Clint Blum

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

22. RECORDING.

This Agreement or any amendment hereto, shall be recorded by Surface Owner in the real property records of Weld County, Colorado. Surface Owner shall provide KMRMC with a certified copy thereof showing the recording information as soon as practicable thereafter. Any release entered into pursuant to Section 20 above, shall be recorded by KMRMC, which shall provide the other Parties with a copy showing the recording information as soon as practicable thereafter.

23. WAIVER OF SURFACE DAMAGES.

In consideration of the Parties' rights and obligations provided herein, this Agreement shall constitute the agreement for surface damages required pursuant to the COGCC's rules and regulations and any other applicable governing authority. Surface Owner waives any claim for surface damages, including all damages provided for under any oil and gas lease or leases now or hereafter covering the Property, with respect to any operations conducted on the Oil and Gas Operations Areas or upon access roads, flowlines, gas gathering pipelines, or other easements used in connection with the Oil and Gas Operations Areas. The waiver of surface damages provided herein shall include any claim for excessive surface use insofar as the Oil and Gas Operations Areas are used to produce oil and gas from any portion of the Property or other lands pooled therewith.

24. ARBITRATION.

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be resolved by arbitration conducted in Denver, Colorado and shall be administered by the American Arbitration Association under its commercial rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

25. APPLICABLE LAW.

This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, without reference to its conflict of laws provisions.

26. ENTIRE AGREEMENT.

This Agreement sets forth the entire understanding among the Parties hereto regarding the matters addressed herein, and supersedes any previous communications, representations or agreement, whether oral or written. All Parties have played a role in drafting and reviewing it and have been represented by counsel. This Agreement shall not be amended, except by written document signed by all Parties.

27. EXECUTION AND BINDING EFFECT.

This Agreement may be executed in any number of counterparts each of which shall be deemed an original instrument but all of which together shall constitute one and the same instrument, and shall be binding upon and inure to the benefit of the Parties, and each of their respective heirs, executors, administrators, successors and assigns and is executed by the Parties as of the Effective Date set forth in Section 20.



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

→ KERR-MCGEE OIL & GAS ONSHORE LP
~~KERR-MCGEE ROCKY MOUNTAIN CORPORATION~~

By: _____

~~JAMES P. WASON~~
Attorney-in-Fact

JOSEPH H. LORENZO *TELE*

SADDLEBACK HILLS LAKE & CONSERVANCY #2, LLC

By: _____

ROBERT BEISENHERZ
Managing Member

Robert Beisenherz by Anita H. Blum his attorney in fact

ACKNOWLEDGMENTS

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

The foregoing instrument was acknowledged before me this 21st day of September, 2006, by JAMES P. WASON, as Attorney-in-Fact for Kerr McGee Rocky Mountain Corporation, on behalf of such corporation. ^{JOSEPH H. LORENZO} ^{Kerr-McGee Oil & Gas Onshore LP}

Witness my hand and official seal.

(SEAL)

My Commission Expires

3-5-2008



My Commission Expires 03/15/2008

Lisa M. Williams
Notary Public



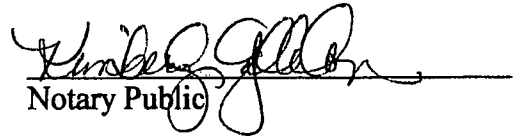
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STATE OF COLORADO)
) ss.
COUNTY OF Arapahoe)

The foregoing instrument was acknowledged before me this 9 day of March,
2007, by ROBERT BEISENHERZ as Managing Member of Saddleback Hills Lake & Conservancy
#2, LLC, on behalf of said company.

Witness my hand and official seal.

(SEAL)


Notary Public

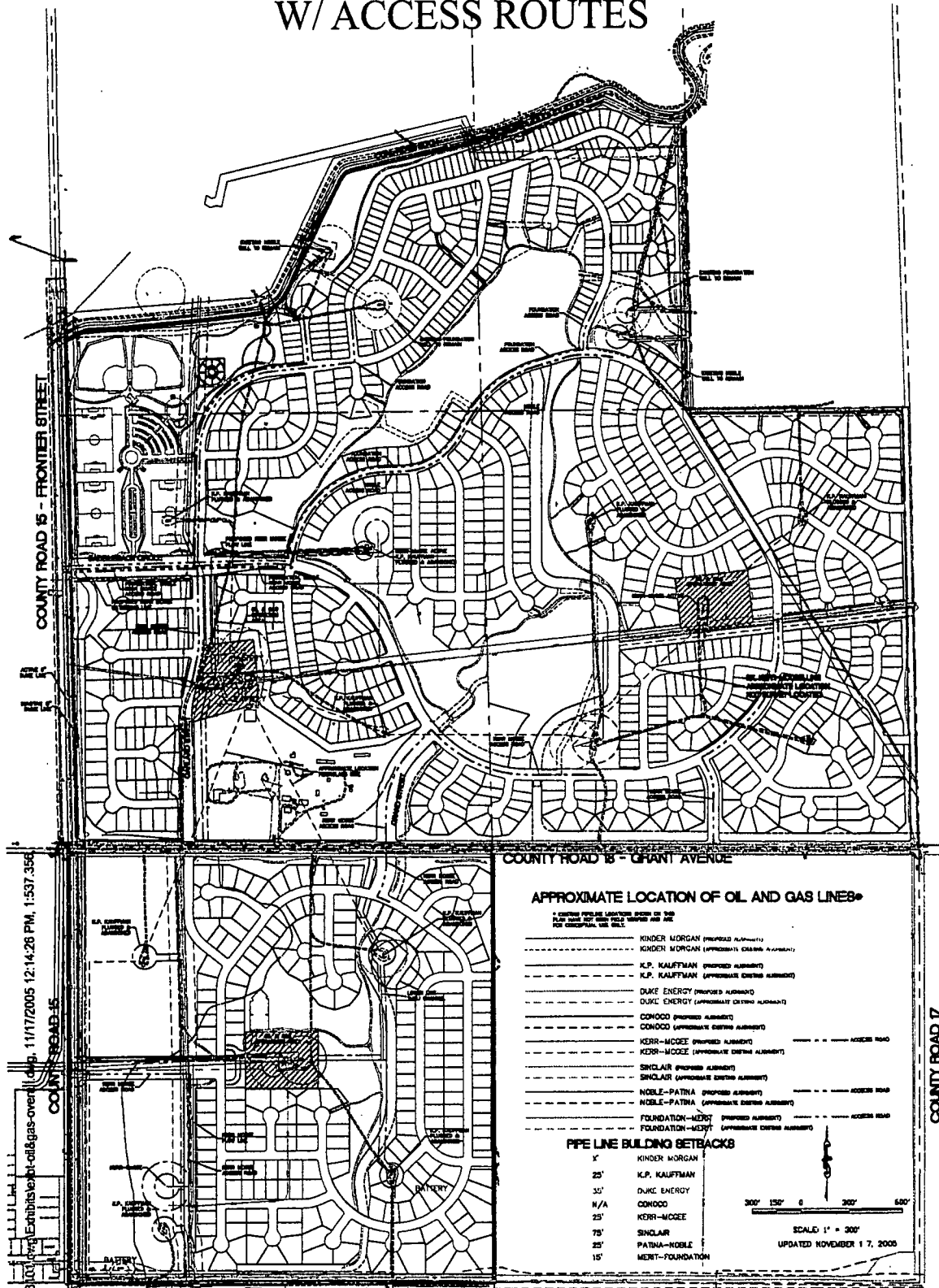
My Commission Expires: 1/21/2007

S



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EXHIBIT "A" OIL AND GAS OVERALL EXHIBIT MAP W/ ACCESS ROUTES

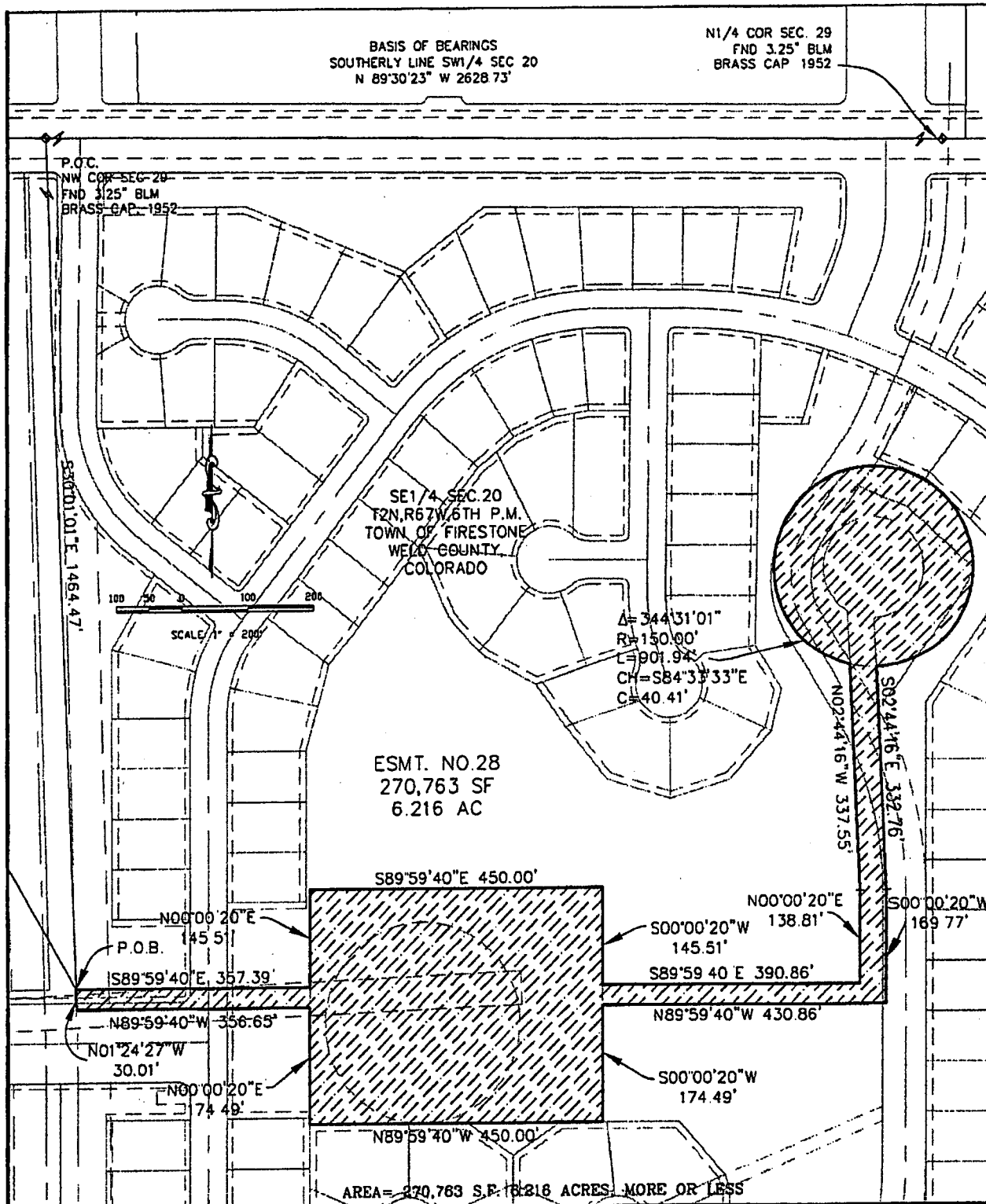


N:\Projects\01803\01803-Exhibit-A-Oil&Gas-overall.dwg, 11/17/2005 12:14:28 PM, 1:537.356
JDS



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EXHIBIT A



EXHIBIT

Date: 11/17/05

Job No: 01803101

THE VILLAGES OF SADDLEBACK HILLS
KERR MCGEE - EASEMENT NO. 35
SHEET 1 OF 1

This drawing is intended only to accompany the attached legal description and does not represent a monumented land survey.



CONSULTANTS, INC. OF COLORADO

CIVIL ENGINEERING LAND SURVEYING LAND PLANNING

7901 E Belleview Avenue
Suite 150
Englewood, CO 80111
Tel: (720) 482-9526
Fax: (720) 482-9546



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November 17, 2005
Job No. 01803101

LEGAL DESCRIPTION
THE VILLAGES OF SADDLEBACK HILLS
KERR MCGEE
EASEMENT NO. 35

A PARCEL OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 29, TOWNSHIP 2 NORTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF FIRESTONE, COUNTY OF WELD, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: BEARINGS ARE BASED ON THE NORTHERLY LINE OF THE NORTHWEST QUARTER OF SECTION 29 AS BEARING NORTH 89°30'23" WEST A DISTANCE OF 2628.73 FEET BETWEEN THE FOLLOWING DESCRIBED MONUMENTS:

- THE NORTH QUARTER CORNER BEING A 3.25" BLM BRASS CAP, 1952.
- THE NORTHWEST CORNER BEING A 3.25" BRASS CAP, 1952.

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 29;
THENCE SOUTH 30°01'01" EAST A DISTANCE OF 1464.47 FEET TO THE **POINT OF BEGINNING**;

THENCE SOUTH 89°59'40" EAST A DISTANCE OF 357.39 FEET TO A POINT;

THENCE NORTH 00°00'20" EAST A DISTANCE OF 145.51 FEET TO A POINT;

THENCE SOUTH 89°59'40" EAST A DISTANCE OF 450.00 FEET TO A POINT;

THENCE SOUTH 00°00'20" WEST A DISTANCE OF 145.51 FEET TO A POINT;

THENCE SOUTH 89°59'40" EAST A DISTANCE OF 390.86 FEET TO A POINT;

THENCE NORTH 00°00'20" EAST A DISTANCE OF 138.81 FEET TO A POINT;
THENCE NORTH 02°44'16" WEST A DISTANCE OF 337.55 FEET TO A POINT;
THENCE ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 344°31'01" A RADIUS OF 150.00 FEET AN ARC LENGTH OF 901.94 FEET AND A CHORD BEARING SOUTH 84°33'33" EAST A DISTANCE OF 40.41 FEET TO A POINT;

THENCE SOUTH 02°44'16" EAST A DISTANCE OF 332.76 FEET TO A POINT;

THENCE SOUTH 00°00'20" WEST A DISTANCE OF 169.77 FEET TO A POINT;

THENCE NORTH 89°59'40" WEST A DISTANCE OF 430.86 FEET TO A POINT;

THENCE SOUTH 00°00'20" WEST A DISTANCE OF 174.49 FEET TO A POINT;

THENCE NORTH 89°59'40" WEST A DISTANCE OF 450.00 FEET TO A POINT;

THENCE NORTH 00°00'20" EAST A DISTANCE OF 174.49 FEET TO A POINT;

THENCE NORTH 89°59'40" WEST A DISTANCE OF 356.65 FEET TO A POINT;



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THENCE NORTH 01°24'27" WEST A DISTANCE OF 30.01 FEET TO THE **POINT
OF BEGINNING.**

CONTAINING 270,763 SQUARE FEET OR 6.216 ACRES, MORE OR LESS.

CURTIS M. LANDRY, P.L.S. 28275
FOR AND ON BEHALF OF
CVL CONSULTANTS OF COLORADO, INC.

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Exhibit "B"

Attached to and made a part of that certain Surface Use Agreement dated September 19, 2006, by and between Kerr-McGee Oil & Gas Onshore LP and Saddleback Hills Lake & Conservancy #2, LLC.

Non-Disturbance Agreement

This Non-Disturbance Agreement is entered into as of the ____ day of _____, _____ by and among Kerr-McGee Oil & Gas Onshore LP, a Limited Partnership ("KMRMC"), 1999 Broadway, Suite 3600, Denver, Colorado, 80202 and Saddleback Hills Lake & Conservancy #2, LLC with an address of 5460 S. Quebec Street, Suite 300, Greenwood Village, CO 80111 ("Surface Owner"). KMRMC and Surface Owner may be referred to herein individually as a "Party" or collectively as the "Parties".

Recitals

On the ____ day of _____, 2006, the Parties entered into a Surface Use Agreement and a Letter Agreement. Paragraph 2 of the Surface Use Agreement contemplates that a Non-Disturbance Agreement will be recorded upon the occurrence of certain events.

Pursuant to Paragraph 2 of the Surface Use Agreement and the terms of the Letter Agreement, on _____, _____, Surface Owner delivered written notice of its election to require directional drilling and in accordance with the Surface Use Agreement and the Letter Agreement, Surface Owner subsequently paid the directional drilling payment contemplated by the Parties. This Non-Disturbance Agreement is entered into pursuant to that notice and payment.

Agreement

In consideration of the foregoing recitals and the terms, covenants and conditions contained herein and in the Surface Use Agreement, it is agreed as follows:

KMRMC will not use the surface of the Property except for the oil and gas operations area(s) (including drillsite locations and production facilities), roads, and pipeline and flowline easements as shown on Exhibit A. Use of the Property by KMRMC and by Surface Owner shall be in compliance with the terms and conditions of the Surface Use Agreement between the Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Non-Disturbance Agreement the day and year first above written.



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KERR MCGEE OIL & GAS ONSHORE LP

Name: _____
 Title: _____

SADDLEBACK HILLS LAKE &
 CONSERVANCY #2, LLC

By: _____
 Title: _____

STATE OF COLORADO)
) ss.
 COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ of _____,
 200__ by _____ of Kerr McGee Oil & Gas Onshore LP on behalf of said
 corporation.

WITNESS my hand and official seal.

My Commission expires: _____

(Seal)

 Notary Public



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[illegible]

The foregoing instrument was acknowledged before me this _____ of _____,
200__ by _____, Managing Member of Saddleback Hills Lake &
Conservancy #2, LLC on behalf of said limited liability company.

WITNESS my hand and official seal.

My Commission expires: _____

(Seal)

**Exhibit A
to
Non-Disturbance Agreement**

[Oil and Gas Exhibit describing location of oil and gas operations areas (including drillsite locations and production facilities), roads, flowlines and pipelines.]



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