

SURFACE USE AND DAMAGE AGREEMENT (Sample 1)

This Agreement is made and entered into between _____, of _____, Wyoming ("Owner") and _____, of _____, Wyoming ("Operator").

IT IS AGREED AS FOLLOWS:

1. The Land. Operator holds interests in oil and gas leases covering the following described lands situate in Sheridan County, Wyoming:

Township _____, Range _____,
Sections _____

Sheridan County, Wyoming

and Owner owns the _____, which includes the surface of the above described lands. This Agreement covers Operator's activities on and access across the above described lands only.

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 the Fort Union coal formation. 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 above described lands for the purpose of drilling, completing and producing oil and gas wells on Owner's land. However, access to the above described lands on Owner's portion of the private road known as the " _____ " shall be by separate agreement.

4. Notification and Consultation. Operator shall notify Owner prior to entry upon Owner's land and shall consult with Owner as to the location of each well, road, pipeline, power line, pod or battery site, gathering system and other facility to be placed on Owner's land. To the maximum extent possible, Operator will use existing roads on Owner's land for its operations, and if construction of a new road is required, Operator will consult with Owner, and following such consultation locate the new road in a manner so as to cause the least interference with Owner's operations on the affected lands. If a pipeline or gathering system is to be installed by Operator, Operator will locate the pipeline and gathering system in a manner so as to cause the least interference with Owner's operations on the affected land. Operator shall notify Owner when each drilling and production operation for any well drilled on the above-described land has been completed and when Operator is permanently or temporarily absent from the surface.

5. Termination of Rights. The rights granted by Owner to Operator shall terminate when the Oil and Gas Lease terminates, Operator ceases its operations on the land, upon Operator's notification to Owner of Operator's intention to cease operations, or if Owner so elects, upon a breach of this Agreement by Operator, whichever shall occur first. Upon termination of this Agreement, Operator will execute and deliver to Owner a good and sufficient recordable release and surrender of all of Operator's rights under this Agreement, and will promptly remove all equipment and property used or placed by Operator on Owner's land unless otherwise agreed by Owner in writing.

6. Nonexclusive Rights. The rights granted by Owner to Operator are nonexclusive, and Owner reserves the right to use all access roads and all surface and subsurface uses of the land affected by this Agreement and the right to grant successive easements thereon or across on such terms and conditions as Owner deems necessary or advisable.

7. **Payments.** As compensation for surface damages, Operator will pay to Owner the following:

- a. **Stratigraphic Test.** \$_____ per stratigraphic test (well drilled only to obtain geologic information which is not completed for production) on Owner's land. This amount shall be paid by Operator to Owner before entering upon the premises to drill.
- b. **Well Locations.** \$_____ for each well location. This amount shall be paid by Operator to Owner before entering upon the premises to drill the well. Operator shall also pay to Owner an annual rental of \$_____ per year for each well site location. This annual payment shall be made on the anniversary date of the commencement of drilling of each well in each and every year until the well has been plugged and abandoned and the location of any roads and pipelines constructed in connection therewith have been reclaimed as provided herein.
- c. **Roads.** Operator shall pay to Owner an initial access fee of \$_____ per rod for use of existing roads on Owner's land, and the rate of \$_____ per rod for new roads constructed by Operator or existing roads improved by Operator on Owner's land. Operator shall pay to Owner an annual access rental at the rate of \$_____ per rod for use of roads on Owner's land. The annual payment shall commence one year from the anniversary date set out in Paragraph 7.b. above for the well or wells served by such road, and shall be made on the anniversary date in each and every year thereafter until the road is reclaimed and restored by operator as provided herein. Operator shall provide Owner with a plat showing the location and length of all roads promptly after their first use, construction or improvement.
- d. **Pipelines.**
 - i) For each gas gathering system pipeline and each water pipeline less than 8 inches in diameter installed by Operator, Operator shall pay to Owner the sum of \$_____ per rod for each such pipeline unless pipelines are located in the same ditch, in which case a single payment shall be made. A take up of any such pipeline shall be at the rate of \$_____ per rod. For pipelines 8 inches in diameter or larger installed by Operator, Operator shall pay to Owner the sum of \$_____ per rod for each such pipeline. A take up of any such pipeline shall be at the rate of \$_____ per rod. Payments for pipelines shall be made by Operator to Owner within fifteen (15) days after installation or take up of the pipeline. There shall be no annual rental payment.
 - ii) The pipelines referred to in this paragraph are only those gathering system pipelines used in connection with wells drilled on Owner's land or as allowed pursuant to Paragraph 8 below. Surface damages for high pressure (greater than 970 psi) gas transmission pipelines serving lands other than those owned by Owner shall be by separate agreement.
 - iii) Operator shall be responsible for backfilling, repacking, reseeding and re-contouring the surface so as not to interfere with Owner's operations. Operator shall provide Owner with a plat showing the length and location of all pipelines and gathering systems promptly after their installation. All pipelines and gathering systems located by Operator on the premises shall be buried to the depth of at least three (3) feet below the surface. Owner reserves the right to occupy, use and cultivate the lands affected by such pipelines, and to grant such rights

to others, so long as such use does not interfere with Operator's operations. If Operator fails to use any pipeline for a period in excess of 24 consecutive months, the pipeline shall be deemed abandoned and Operator shall promptly take all actions necessary or desirable to clean up, mitigate the effects of use, and render the pipeline environmentally safe and fit for abandonment in place. All such clean up and mitigation shall be performed in compliance with all federal, state and local laws and regulations.

e. Gathering, Metering and Compression Sites. For each central gathering facility or "battery site" Operator shall pay to Owner an initial fee of \$_____. This amount shall be paid by Operator to Owner before entering upon the premises to construct the battery site. Operator shall also pay to Owner an annual rental of \$_____ per year for each battery site location.

f. Power Lines.

i) 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. 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.

ii) 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. For buried power lines, Operator shall pay Owner a one-time payment of \$_____ per rod unless such power line is installed in the same ditch and at the same time as the pipelines described herein, in which case there will be no duplication of payment.

g. Increase or Decrease in Payments. On the fifth anniversary of this Surface and Damage Agreement, and every five years thereafter, surface damage payments provided for in this paragraph shall be increased or decreased (but never below the amounts stated herein) by a percentage equal to the increase or decrease in the Consumer Price Index as published by the United States Department of Commerce for the preceding five year period.

8. Limitation on Rights. Owner's land may not be used in connection with operations on other lands owned by Owner which are not described herein or on other premises not owned or leased by Owner without Owner's written consent.

9. Locations. All well site locations shall be limited to approximately one (1) acre of land while drilling and no more than one-half (½) acre for permanent facilities. No wells shall be drilled within 1,000 feet of any residence, house or barn on the property without the prior written consent of Owner. No housing or dwelling unit shall be constructed or placed on Owner's land by Operator.

10. Operations. Operator shall at all times keep the well sites and the road rights-of-way safe and in good order, free of noxious weeds, litter and debris, and shall spray for noxious weeds upon reasonable demand therefor by Owner. All cattleguards and fences installed by Operator shall be kept clean and in good repair. Operator shall not permit the release or discharge of any toxic or hazardous chemicals or wastes on Owner's land.

Operator shall remove only the minimum amount of vegetation necessary for the construction of roads and facilities. Topsoil shall be conserved during excavation and reused as cover on disturbed areas to facilitate regrowth of vegetation. No construction or routine maintenance activities will be performed during periods when the soil is too wet to adequately support construction equipment. If such equipment creates ruts in excess of two inches deep, the soil shall be deemed too wet to adequately support construction equipment. All culverts shall be at least 18 inches in diameter. All surface facilities not subject to safety requirements shall be painted to blend with the natural color of the landscape. Only truck mounted drilling rigs will be allowed to drill on the property, and no seismic operations shall be permitted without Owner's written consent.

11. Consolidation of Facilities. Whenever possible, Operator will consolidate its facilities for as many wells as practical. Incoming power will be located at centralized points to minimize to the maximum extent possible the construction of above ground power lines. Battery sites will serve as many wells as possible. The consolidated facilities may not be used for operations connected with lands not owned by Owner or with lands owned or leased by Owner which are not described herein.

12. Dry Hole. If Operator does not discover oil and gas in paying quantities at a well site and determines the well to be a "dry hole" or upon cessation of production, Operator will give Owner thirty (30) days written notice of the opportunity to take over any abandoned well and convert the well to a water well. If Owner elects in writing to take over the abandoned well and convert the well to a water well, then the Owner will assume all liability and costs associated with the well thereafter, and both parties shall execute any and all documents necessary to provide that the water in the well shall become the property and responsibility of the Owner. If Owner does not elect to take over the well and convert it to a water well, then Operator shall fill and level the location, re-contour the location, distribute the top soil, make the location ready for reseeded and reseed the area, and plug and abandon the well as required by applicable law and regulations. All cleanup and restoration requirements shall be completed, if weather permits, by Operator within six (6) months after termination of drilling or production activities at the well site.

13. New Roads. Any new roads constructed by or for Operator shall be limited to twenty (20) feet in width for the actually traveled roadbed, together with a reasonable width, not to exceed fifteen (15) feet from the edge of the actually traveled roadbed for fills, shoulders and crosses. No permanent roads will be constructed unless absolutely necessary and Owner consents to the construction and location of the road. Operator shall annually maintain existing and newly constructed roads used by Operator to the satisfaction of Owner, which maintenance may include shaling, ditching, graveling, blading, installing and cleaning culverts, and spraying for noxious weeds.

14. Fences. Operator shall construct stock-tight fences around any dangerous area, including any pits where Operator drills wells. Operator shall rehabilitate and restore all disturbed areas caused by Operator's operations within six (6) months after termination of drilling or production activities at the well site and right-of-way, unless inclement weather prevents such rehabilitation and restoration within that time period.

15. Cattleguards. Operator shall construct cattleguards with wings at all fence crossings designated by Owner. Installation of the cattleguards shall be at the sole cost and expense of Operator. Cattleguards shall not be less than 16 feet wide by 8 feet across and shall be set on concrete sills not less than 24 inches high by 16 inches wide. Fence braces shall be installed on each side of the cattleguards. Fence braces shall be constructed of like quality material and installed in like style and form as the fence braces currently constructed on Owner's lands. Cattleguards shall be constructed approximately 6 inches above the existing grade of the road so that water does not run into the cattleguard. Operator shall be responsible for maintenance of all cattleguards used by Operator, together with wings and attached braces. All cattleguards currently in existence on roads used by Operator which are not aligned with existing fence lines shall be reconstructed by Operator so as to be in line with the fence.

16. Improvements. No fences, cattleguards or other improvements on Owner's property 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. Upon final termination of Operator's rights under this Agreement, Operator shall return all roads and other rights-of-way or sites as near as practical to the condition which they were in prior to the execution of this Agreement, unless otherwise agreed by Owner. Unless otherwise agreed by Owner, all disturbed areas caused by Operator's activities will be reseeded. Cattleguards shall be removed and fences restored as near as practical to the original condition unless otherwise agreed by Owner,

in which case all cattleguards installed by Operator shall become the property of Owner. All cattleguards and fences installed by Operator shall be kept clean and in good repair.

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

18. 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 Owner's land and, therefore, agrees wherever possible to purchase shale, gravel, or water from Owner.

19. 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 reseeding, 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.

20. Payments. The payments herein provided are acknowledged by Owner as sufficient and in full satisfaction for damages to Owner caused or created by the reasonable and customary entry, rights-of-way and 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 to Owner's wells or water supply on the property. Operator shall be liable for damages if, as a result of its operations hereunder, any water on or under the premises which had been potable is affected to the extent that it is rendered nonpotable for humans, cattle or other ranch animals on Owner's premises, or any such water supply, well or reservoir be destroyed or its output diminished. Operator shall be liable for any downstream damage caused to other lands or the operations of other landowners. This Agreement does not relieve Operator from liability due to Operator's negligence or due to spills or discharges of any hydrocarbon or toxic or hazardous chemicals or wastes, or from leaks or breaks in Operator's pipelines. Damage to livestock and damage to crops shall be paid for by Operator at current market value. Any fires caused by Operator's personnel, agents, or assigns shall be paid for by paying the cost of replacement pasture, the costs of trailing or trucking cattle to replacement pasture plus replacement and/or repair costs for all personal property destroyed or damaged. The cost of replacement pasture will be determined by the amount generally accepted in the area for like kind pasture.

21. Restoration. Unless Owner otherwise agrees in writing, upon termination of any of Operator's operations on Owner's land, Operator shall fully restore and level the surface of the land affected by such terminated operations as near as possible to the contours which existed prior to such operations. Operator shall use water bars and such other measures as appropriate to prevent erosion and nonsource pollution. Operator shall fully restore all private roads and drainage and irrigation ditches disturbed by Operator's operations as near as possible to the condition which existed prior to such operations. All surface restoration shall be accomplished to the satisfaction of Owner.

22. Reseeding. All reseeding shall be done with suitable grasses selected by Owner and during a planting period selected by Owner. Reseeding shall be done at the rate 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 reseeding (except for borrow pits) will be required on any existing access roads. 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 at such times as Owner shall reasonably request in order to determine the growth of ground cover and/or noxious weeds, and 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.

23. No Warranty. Owner makes no warranty of title or otherwise in entering into this Agreement.

24. Nondisturbance. Operator and its employees and authorized agents shall not disturb, use or travel upon any of the land of Owner not subject to this Agreement.

25. Firearms and Explosives. None of Operator's employees or authorized agents or any other person under the direction or control of Operator shall be permitted to carry firearms or any weapon while crossing Owner's property, and such persons shall not hunt or fish on Owner's property and shall not trespass on Owner's property for the purposes of hunting or fishing or recreational uses. No dogs will be permitted on Owner's property at any time. No explosives shall be used on Owner's property. Operator will notify all of its contractors, agents and employees that no dogs, firearms, weapons, hunting, fishing or recreational activities will be allowed on Owner's property.

26. Surface Owner's Water. Operator shall not disturb, interfere with, fill, or block any creek, reservoir, spring, or other source of water on Owner's land. Before conducting any drilling operations, Operator, at its sole cost and expense, will measure or cause to be measured the static water level and productive capacity of all water wells and springs located on Owner's land within one mile of Operator's wells, and will test the water wells for the presence of methane. Operator shall also provide Owner a chemical analysis of all wells and springs within one mile of Operator's wells, which analysis shall measure, at a minimum, the following:

- pH
- Hardness (ppm and grains/gallon)
- Conductivity (mmhos/cm)
- Sodium Absorption Ratio
- Adjusted Sodium Absorption Ratio
- Cation/Anion Ratio
- PPM of Calcium, Magnesium, Potassium, Sodium, Iron
- Total Alkalinity (CaCO₃)
- Carbonate
- Bicarbonate
- Hydroxide
- Chloride
- Sulfur as SO₄
- Salt Concentration (TDS)
- Boron
- Nitrate
- Nitrite
- Ammonia Nitrogen
- Phosphorus
- Methane

Owner shall be notified prior to such testing and measuring and Owner or its agents or representatives shall have the right to be present during such testing and measuring. The results of these tests and measurements will be immediately provided to Owner. Operator shall establish a continuing water well monitoring program to identify changes in the capacity of any water wells located on Owner's land and in the methane content of the wells, and Operator shall immediately provide that monitoring data to Owner.

27. Loss or Impairment of Water Wells or Springs. In the event that any water well or spring located on Owner's land is lost or materially diminished in productivity, or the quality of water produced by such well or spring is reduced so that the water is unusable by livestock or humans (as the case may be), as a result of production of oil, gas, or water by Operator, Operator shall, at its expense, immediately repair or replace any water well or spring which is lost or diminished in productivity with a new water well or spring at least equal in productivity and quality of water to the lost or diminished well or spring, using a water well drilling contractor acceptable to Owner.

28. Produced Water. Surface discharge of produced water will be allowed on Owner's land only with Owner's prior written consent, and only after Owner has approved, in writing, Operator's written water

management plan for each discharge point located on Owner's land. In any event, such discharge will be permitted only if it does not degrade or adversely affect the quality of water in reservoirs and water courses on Owner's land or otherwise damage Owner's land. If Owner does not consent to surface discharge of produced water, Operator shall be responsible for piping water off Owner's land and making appropriate arrangements for discharge with adjacent landowners. All water produced and discharged from Operator's wells shall be produced and discharged in accordance with all applicable rules and regulations of any governmental authority. Whenever possible, and if Owner so consents, the produced water shall be discharged directly into an existing drainage system or reservoir, if allowed by applicable laws and regulations, and if the discharge will not degrade or adversely affect the quality of water in the drainage system or reservoir, so that the Owner may make beneficial use of the water. Produced water shall be discharged in a way so as to cause the least amount of surface disturbance and damage to Owner's land.

29. Reservoirs. If Owner consents to the discharge of produced water 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 acceptable to Owner, building the necessary catchment structures (including pipelines, dikes, dams, and outlet piping) and maintaining the 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. 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.

30. Water Well Mitigation Agreement. Operator is aware that its operations may impact domestic and/or agricultural water wells in the vicinity of coal bed methane producing wells. In order that the parties hereto may avoid potential future conflict regarding loss of use or degradation of existing water wells by Owner, Owner and Operator hereby adopt the terms and conditions of the Water Well Mitigation Agreement attached hereto as Exhibit "A," to the extent that the terms of Exhibit "A" are not inconsistent with the terms of this Agreement.

31. Enforcement Costs. If Operator defaults under this Agreement, Operator shall pay all costs and expenses, including a reasonable attorney's fee, incurred by Owner in enforcing this Agreement.

32. Time. Time is of the essence in this Agreement.

33. 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 or be related to Operator's activities on Owner's property (including, without limitation, any claims that Operator's operations hereunder are either illegal, unauthorized, or constitute an improper interference with any parties' rights, or have damaged the lands or operations of adjacent landowners, and including any claims based on the alleged concurrent negligence of Owner).

34. Compliance with Law. Operator shall conduct operations and activities in accordance with existing local, state and federal laws, rules and regulations.

35. 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 Owner's property.

36. 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.

37. Designated Contact Person. Operator and Owner will each from time to time designate an individual, with appropriate twenty-four hour telephone and fax numbers, who is to be the primary contact person for discussions and decisions concerning matters related to this Agreement.

38. Recording. This Agreement may not be recorded without the written consent of Owner.

39. Construction of Agreement. This Agreement shall be construed under the laws of the State of Wyoming.

40. Nonassignability. This Agreement shall not be assigned by Operator to any other entity either in whole or in part, unless Owner consents in writing to such assignment.

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

DATED this _____ day of _____, 1999.

OWNER

By: _____

Title: _____

Address: _____
_____, _____

OPERATOR

By: _____

Title: _____

Address: _____
