

Authorization ID: COL576  
Contact ID: FGPL  
Expiration Date: 12/31/2029  
Use Code: 631

FS-2700-4 (10/09)  
OMB No. 0596-0082

**U.S. DEPARTMENT OF AGRICULTURE  
FOREST SERVICE, SPECIAL USE PERMIT  
Authority: MINERAL LEASING ACT, AS AMENDED February 25, 1920  
(Ref.: FSH 2709.11, section 41.53)**

Fosset Gulch Pipeline Company LLC, Attn: Steve Muns, 6410 B North Santa Fe Oklahoma City, OK 73116 (hereinafter "the holder") is authorized to use or occupy National Forest System lands in the San Juan National Forest National Forest System, subject to the terms and conditions of this special use permit (the permit).

This permit covers 16.56 acres in Township 34 North, Range 5 West (SUL), Sections 9U, 10U, 16U, 15U, 14U, 13U, and 24, NEW MEXICO PRINCIPAL MERIDIAN, ("the permit area"), as shown on the map attached as Exhibit A.

This permit issued for the purpose of: Construction, operation and maintenance of a natural gas pipeline and associated waterline in the Fosset Gulch area as follows:

1. Within Forest Service Road 613, Fosset Gulch Road: coated 16" X 52 and 4" Side Ratio 7.3 High Density Polyethylene 26, 747 feet.
2. Within Forest Service Road 841, Bull Canyon Road:: coated 12" X 52 and 4" SDR 7.3 HDPE, 4, 925 feet.
3. Well 9U4 to Forest Service Road 841: 4 X 52 and 2" SDR 7.3 HDPE, 323.15 feet.
4. Well 16U#1 to Forest Service Road 841: 4 X 52 and 2" SDR 7.3 HDPE, 1497 feet.
5. Well 9U2 to Forest Service Road 613 4 X 52 and 2" SDR 7.3 HDPE, 460 feet.
6. Well 9U#1 to Forest Service Road 613 4 X 52 and 2" SDR 7.3 HDPE, 2112 feet.

The construction phase will be per Appendix C, Appendix C - Construction Plan for Gas and Water Pipelines in the Fosset Gulch Road By Fosset Gulch Pipeline Company, LLC. Once construction is completed, Appendix C will be terminated via a letter. Appendix B - FOSSET GULCH PIPELINE CO., LLC AND PETROX RESOURCES INC. ROAD AND PIPELINES OPERATION AND MAINTENANCE PLAN will guide the use and maintenance of the facilities on San Juan National Forest System lands. Both of these documents are attached hereto and made a part of this special use authorization.

## TERMS AND CONDITIONS

### I. GENERAL TERMS

**A. AUTHORITY.** This permit is issued pursuant to the Mineral Leasing Act, as amended February 25, 1920 and 36 CFR Part 251, Subpart B, as amended, and is subject to their provisions.

**B. AUTHORIZED OFFICER.** The authorized officer is the Forest or Grassland Supervisor or a subordinate officer with delegated authority.

**C. TERM.** This permit shall expire at midnight on 12/31/2029, twenty years from the date of issuance.

**D. RENEWAL.** This permit is not renewable. Prior to expiration of this permit, the holder may apply for a new permit that would renew the use and occupancy authorized by this permit. Applications for a new permit must be submitted at least 6 months prior to expiration of this permit. Renewal of the use and occupancy authorized by this permit shall be at the sole discretion of the authorized officer. At a minimum, before renewing the use and occupancy authorized by this permit, the authorized officer shall require that (1) the use and occupancy to be authorized by the new permit is consistent with the standards and guidelines in the applicable land management plan; (2) the type of use and occupancy to be authorized by the new permit is the same as the type of use and occupancy authorized by this permit; and (3) the holder is in compliance with all the terms of this permit. The authorized officer may prescribe new terms and conditions when a new permit is issued.

**E. AMENDMENT.** This permit may be amended in whole or in part by the Forest Service when, at the discretion of the authorized officer, such action is deemed necessary or desirable to incorporate new terms that may be required by law, regulation, directive, the applicable forest land and resource management plan, or projects and activities implementing a land management plan pursuant to 36 CFR Part 215.

**F. COMPLIANCE WITH LAWS, REGULATIONS, AND OTHER LEGAL REQUIREMENTS.** In exercising the rights and privileges granted by this permit, the holder shall comply with all present and future federal laws and regulations and all present and future state, county, and municipal laws, regulations, and other legal requirements that apply to the permit area, to the extent they do not conflict with federal law, regulation, or policy. The Forest Service assumes no responsibility for enforcing laws, regulations, and other legal requirements that fall under the jurisdiction of other governmental entities.

**G. NON-EXCLUSIVE USE.** The use or occupancy authorized by this permit is not exclusive. The Forest Service reserves the right of access to the permit area, including a continuing right of physical entry to the permit area for inspection, monitoring, or any other purpose consistent with any right or obligation of the United States under any law or regulation. The Forest Service reserves the right to allow others to use the permit area in any way that is not inconsistent with the holder's rights and privileges under this permit, after consultation with all parties involved. Except for any restrictions that the holder and the authorized officer agree are necessary to protect the installation and operation of authorized temporary improvements, the lands and waters covered by this permit shall remain open to the public for all lawful purposes..

**H. ASSIGNABILITY.** This permit is not assignable or transferable.

#### **I. TRANSFER OF TITLE TO THE IMPROVEMENTS.**

1. **Notification of Transfer.** The holder shall notify the authorized officer when a transfer of title to all or part of the authorized improvements is contemplated.

2. **Transfer of Title.** Any transfer of title to the improvements covered by this permit shall result in termination of the permit. The party who acquires title to the improvements must submit an application for a permit. The Forest Service is not obligated to issue a new permit to the party who acquires title to the improvements. The authorized officer shall determine that the applicant meets requirements under applicable federal regulations.

#### **J. CHANGE IN CONTROL OF THE BUSINESS ENTITY.**

1. **Notification of Change in Control.** The holder shall notify the authorized officer when a change in control of the business entity that holds this permit is contemplated.

a. In the case of a corporation, control is an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the business so as to permit the exercise of managerial authority over the actions and operations of the corporation or election of a majority of the board of directors of the corporation.

b. In the case of a partnership, limited partnership, joint venture, or individual entrepreneurship, control is a beneficial ownership of or interest in the entity or its capital so as to permit the exercise of managerial authority over the actions and operations of the entity.

c. In other circumstances, control is any arrangement under which a third party has the ability to exercise management authority over the actions or operations of the business.

2. **Effect of Change in Control.** Any change in control of the business entity as defined in paragraph 1 of this clause shall result in termination of this permit. The party acquiring control must submit an application for a special use permit. The Forest Service is not obligated to issue a new permit to the party who acquires control. The authorized officer shall determine whether the applicant meets the requirements established by applicable federal regulations.

### **II. IMPROVEMENTS**

**A. LIMITATIONS ON USE.** Nothing in this permit gives or implies permission to build or maintain any structure or facility or to conduct any activity, unless specifically authorized by this permit. Any use not specifically authorized by this permit must be proposed in accordance with 36 CFR 251.54. Approval of such a proposal through issuance of a new permit or permit amendment is at the sole discretion of the authorized officer.

**B. PLANS.** All plans for development, layout, construction, reconstruction, or alteration of improvements in the permit area, as well as revisions to those plans must be prepared by a professional engineer, architect, landscape architect, or other qualified professional based on federal employment standards acceptable to the authorized officer. These plans and plan revisions must have written approval from the authorized officer before they are implemented. The authorized officer may require the holder to furnish as-built plans, maps, or surveys upon completion of the work.

**C. CONSTRUCTION.** Any construction authorized by this permit shall commence by June 1, 2010 and shall be completed by November 15, 2012.

### **III. OPERATIONS.**

**A. PERIOD OF USE.** Use or occupancy of the permit area shall be exercised at least 360 days each year.

**B. CONDITION OF OPERATIONS.** The holder shall maintain the authorized improvements and permit area to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the authorized officer and consistent with other provisions of this permit. Standards are subject to periodic change by the authorized officer when deemed necessary to meet statutory, regulatory, or policy requirements or to protect national forest resources. The holder shall comply with inspection requirements deemed appropriate by the authorized officer.

**C. OPERATING PLAN.** The holder shall prepare and annually revise by an operating plan. The operating plan shall be prepared in consultation with the authorized officer or the authorized officer's designated representative and shall cover all operations authorized by this permit. The operating plan shall outline steps the holder will take to protect public health and safety and the environment and shall include sufficient detail and standards to enable the Forest Service to monitor the holder's operations for compliance with the terms and conditions of this permit. The operating plan shall be submitted by the holder and approved by the authorized officer or the authorized officer's designated representative prior to commencement of operations and shall be attached to this permit as an Appendix B. The authorized officer may require an annual meeting with the holder to discuss the terms and conditions of the permit or operating plan, annual use reports, or other concerns either party may have.

**D. INSPECTION BY THE FOREST SERVICE.** The Forest Service shall monitor the holder's operations and reserves the right to inspect the permit area and transmission facilities at any time for compliance with the terms of this permit. The holder's obligations under this permit are not contingent upon any duty of the Forest Service to inspect the permit area or transmission facilities. A failure by the Forest Service or other governmental officials to inspect is not a justification for noncompliance with any of the terms and conditions of this permit.

#### **IV. RIGHTS AND LIABILITIES**

**A. LEGAL EFFECT OF THE PERMIT.** This permit, which is revocable and terminable, is not a contract or a lease, but rather a federal license. The benefits and requirements conferred by this authorization are reviewable solely under the procedures set forth in 36 CFR Part 251, Subpart C, and 5 U.S.C. 704. This permit does not constitute a contract for purposes of the Contract Disputes Act, 41 U.S.C. 601. The permit is not real property, does not convey any interest in real property, and may not be used as collateral for a loan.

**B. VALID OUTSTANDING RIGHTS.** This permit is subject to all valid outstanding rights. Valid outstanding rights include those derived under mining and mineral leasing laws of the United States. The United States is not liable to the holder for the exercise of any such right.

**C. ABSENCE OF THIRD-PARTY BENEFICIARY RIGHTS.** The parties to this permit do not intend to confer any rights on any third party as a beneficiary under this permit.

**D. SERVICES NOT PROVIDED.** This permit does not provide for the furnishing of road or trail maintenance, water, fire protection, search and rescue, or any other such service by a government agency, utility, association, or individual.

**E. RISK OF LOSS.** The holder assumes all risk of loss associated with use or occupancy of the permit area, including but not limited to theft, vandalism, fire and any fire-fighting activities (including prescribed burns), avalanches, rising waters, winds, falling limbs or trees, and other forces of nature. If authorized temporary improvements in the permit area are destroyed or substantially damaged, the authorized officer shall conduct an analysis to determine whether the improvements can be safely occupied in the future and whether rebuilding should be allowed. If rebuilding is not allowed, the permit shall terminate.

**F. DAMAGE TO UNITED STATES PROPERTY.** The holder has an affirmative duty to protect from damage the land, property, and other interests of the United States. Damage includes but is not limited to fire suppression costs, damage to government-owned improvements covered by this permit, and all costs and damages associated with or resulting from the release or threatened release of a hazardous material occurring during or as a result of activities of the holder or the holder's heirs, assigns, agents, employees, contractors, or lessees on, or related to, the lands, property, and other interests covered by this permit. For purposes of clause IV.F and section V, "hazardous material" shall mean (a) any hazardous substance under section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (c) any petroleum product or its derivative, including fuel oil, and waste oils; and (d) any hazardous substance, extremely hazardous substance, toxic substance, hazardous waste, ignitable, reactive or corrosive materials, pollutant, contaminant, element, compound, mixture, solution or substance that may pose a present or potential hazard to human health or the environment under any applicable environmental laws.

1. The holder shall avoid damaging or contaminating the environment, including but not limited to the soil, vegetation (such as trees, shrubs, and grass), surface water, and groundwater, during the holder's use or occupancy of the permit area. If the environment or any government property covered by this permit becomes damaged during the holder's use or occupancy of the permit area, the holder shall immediately repair the damage or replace the damaged items to the satisfaction of the authorized officer and at no expense to the United States.

2. The holder shall be liable for all injury, loss, or damage, including fire suppression, prevention and control of the spread of invasive species, or other costs in connection with rehabilitation or restoration of natural resources associated with the use or occupancy authorized by this permit. Compensation shall include but not be limited to the value of resources damaged or destroyed, the costs of restoration, cleanup, or other mitigation, fire suppression or other types of abatement costs, and all administrative, legal (including attorney's fees), and other costs. Such costs may be deducted from a performance bond required under clause IV.I.

3. The holder shall be liable for damage caused by use of the holder or the holder's heirs, assigns, agents, employees, contractors, or lessees to all roads and trails of the United States to the same extent as provided under clause IV.F.1, except that liability shall not include reasonable and ordinary wear and tear

**G. HEALTH, SAFETY, AND ENVIRONMENTAL PROTECTION.** The holder shall promptly abate as completely as possible and in compliance with all applicable laws and regulations any activity or condition arising out of or relating to the authorized use or occupancy that causes or threatens to cause a hazard to public health or the safety of the holder's employees or agents or harm to the environment (including areas of vegetation or timber, fish or other wildlife populations, their habitats, or any other natural resources). The holder shall prevent impacts to the environment and cultural resources by implementing actions identified in the operating plan to prevent establishment and spread of invasive species. The holder shall immediately notify the authorized officer of all serious accidents that occur in connection with such activities. The responsibility to protect the health and safety of all persons affected by the use or occupancy authorized by this permit is solely that of the holder. The Forest Service has no duty under the terms of this permit to inspect the permit area or operations and activities of the holder for hazardous conditions or compliance with health and safety standards.

**H. INDEMNIFICATION OF THE UNITED STATES.** The holder shall indemnify, defend, and hold harmless the United States for any costs, damages, claims, liabilities, and judgments arising from past, present, and future acts or omissions of the holder in connection with the use or occupancy authorized by this permit. This indemnification provision includes but is not limited to acts and omissions of the holder or the holder's heirs, assigns, agents, employees, contractors, or lessees in connection with the use or occupancy authorized by this permit which result in (1) violations of any laws and regulations which are now or which may in the future become applicable, and including but not limited to those environmental laws listed in clause V.A of this permit; (2) judgments, claims, demands, penalties, or fees assessed against the United States; (3) costs, expenses, and damages incurred by the United States; or (4) the release or threatened release of any solid waste, hazardous waste, hazardous materials, pollutant, contaminant, oil in any form, or petroleum product into the environment. The authorized officer may prescribe terms that allow the holder to replace, repair, restore, or otherwise undertake necessary curative actions to mitigate damages in addition to or as an alternative to monetary indemnification.

**I. BONDING.** The authorized officer may require the holder to furnish a surety bond or other security for any of the obligations imposed by the terms and conditions of this permit or any applicable law, regulation, or order.

1. As a further guarantee of compliance with the terms and conditions of this permit, the holder shall deliver and maintain a surety bond or other acceptable security, such as cash deposited and maintained in a federal depository or negotiable securities of the United States, in the amount of \$40,000.00. One half of the bond amount (\$20,000.00) to be collected for the construction and rehabilitation period of the Fossett Gulch pipeline, and to be refunded upon acceptance of the project. The additional amount (\$20,000.00) for the term of the permit to cover costs associated with rehabilitation should the pipeline be abandoned. The authorized officer may periodically evaluate the adequacy of the bond or other security and increase or decrease the amount as appropriate. If the bond or other security becomes unsatisfactory to the authorized officer, the holder shall within 30 days of demand furnish a new bond or other security issued by a surety that is solvent and satisfactory to the authorized officer. If the holder fails to meet any of the requirements secured under this clause, money deposited pursuant to this clause shall be retained by the United States to the extent necessary to satisfy the obligations secured under this clause, without prejudice to any other rights and remedies of the United States.

2. The bond shall be released or other security returned 30 days after (a) the authorized officer certifies that the obligations covered by the bond or other security are met and (b) the holder establishes to the satisfaction of the authorized officer that all claims for labor and material for the secured obligations have been paid or released.

3. Prior to undertaking additional construction or alteration not covered by the bond or other security, or when the authorized improvements are to be removed and the permit area restored the holder may be required to obtain additional bonding or security.

**J. STRICT LIABILITY.** The holder shall be strictly liable (liable without proof of negligence) to the United States for up to \$1 million per occurrence for any injury, loss, or damage arising in tort under this permit. Liability in tort for injury, loss, or damage to the United States exceeding the prescribed amount of strict liability in tort shall be determined under the law of negligence.

## **V. RESOURCE PROTECTION**

**A. COMPLIANCE WITH ENVIRONMENTAL LAWS.** The holder shall in connection with the use or occupancy authorized by this permit comply with all applicable federal, state, and local environmental laws and regulations, including but not limited to those established pursuant to the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq., the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., the Oil Pollution Act, as amended, 33 U.S.C. 2701 et seq., the Clean Air Act, as amended, 42 U.S.C. 7401 et seq., CERCLA, as amended, 42 U.S.C. 9601 et seq., the Toxic Substances Control Act, as amended, 15 U.S.C. 2601 et seq., the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. 136 et seq., and the Safe Drinking Water Act, as amended, 42 U.S.C. 300f et seq.

**B. VANDALISM.** The holder shall take reasonable measures to prevent and discourage vandalism and disorderly conduct and when necessary shall contact the appropriate law enforcement officer.

**C. PESTICIDE USE.** Pesticides may not be used outside of buildings to control undesirable woody and herbaceous vegetation (including aquatic plants), insects, rodents, fish, and other pests and weeds without prior written approval from the authorized officer. A request for approval of planned uses of pesticides shall be submitted annually by the holder on the due date established by the authorized officer. The report shall cover a 12-month period of planned use beginning 3 months after the reporting date. Information essential for review shall be provided in the form specified. Exceptions to this schedule may be allowed, subject to emergency request and approval, only when unexpected outbreaks of pests or weeds require control measures that were not anticipated at the time an annual report was submitted. Only those materials registered by the U.S. Environmental Protection Agency for the specific purpose planned shall be considered for use on National Forest System lands. Label instructions and all applicable laws and regulations shall be strictly followed in the application of pesticides and disposal of excess materials and containers.

**D. ARCHAEOLOGICAL-PALEONTOLOGICAL DISCOVERIES.** The holder shall immediately notify the authorized officer of all antiquities or other objects of historic or scientific interest, including but not limited to historic or prehistoric ruins, fossils, or artifacts discovered in connection with the use and occupancy authorized by this permit. The holder shall leave these discoveries intact and in place until directed otherwise by the authorized officer. Protective and mitigative measures specified by the authorized officer shall be the responsibility of the holder.

**E. NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION.** In accordance with 25 U.S.C. 3002(d) and 43 CFR 10.4, if the holder inadvertently discovers human remains, funerary objects, sacred objects, or objects of cultural patrimony on National Forest System lands, the holder shall immediately cease work in the area of the discovery and shall make a reasonable effort to protect and secure the items. The holder shall immediately notify the authorized officer by telephone of the discovery and shall follow up with written confirmation of the discovery. The activity that resulted in the inadvertent discovery may not resume until 30 days after the authorized officer certifies receipt of the written confirmation, if resumption of the activity is otherwise lawful, or at any time if a binding written agreement has been executed between the Forest Service and the affiliated Indian tribes that adopts a recovery plan for the human remains and objects.

**F. PROTECTION OF HABITAT OF THREATENED, ENDANGERED, AND SENSITIVE SPECIES.** The location of sites within the permit area needing special measures for protection of plants or animals listed as threatened or endangered under the Endangered Species Act (ESA) of 1973, 16 U.S.C. 1531 et seq., as amended, or identified as sensitive or otherwise requiring special protection by the Regional Forester under Forest Service Manual (FSM) 2670, pursuant to consultation conducted under section 7 of the ESA, may be shown on the ground or on a separate map. The map shall be attached to this permit as an appendix. The holder shall take any protective and mitigative measures specified by the authorized officer. If protective and mitigative measures prove inadequate, if other sites within the permit area containing threatened, endangered, or sensitive species or species otherwise requiring special protection are discovered, or if new species are listed as threatened or endangered under the ESA or identified as sensitive or otherwise requiring special protection by the Regional Forester under the FSM, the authorized officer may specify additional protective and mitigative measures. Discovery of these sites by the holder or the Forest Service shall be promptly reported to the other party.

**G. CONSENT TO STORE HAZARDOUS MATERIALS.** The holder shall not store any hazardous materials at the site without prior written approval from the authorized officer. This approval shall not be unreasonably withheld. If the authorized officer provides approval, this permit shall include, or in the case of approval provided after this permit is issued, shall be amended to include specific terms addressing the storage of hazardous materials, including the specific type of materials to be stored, the volume, the type of storage, and a spill plan. Such terms shall be proposed by the holder and are subject to approval by the authorized officer.

1. If the holder receives consent to store hazardous material, the holder shall identify to the Forest Service any hazardous material to be stored at the site. Such identification information shall be consistent with column (1) of the table of hazardous materials and special provisions enumerated at 49 CFR 172.101 whenever the hazardous material appears in that table. For hazard communication purposes, the holder shall maintain Material Safety Data Sheets for any stored hazardous chemicals, consistent with 29 CFR 1910.1200(c) and (g). In addition, all hazardous materials stored by the holder shall be used, labeled, stored, transported, and disposed of in accordance with all applicable federal, state, and local laws and regulations.

2. The holder shall not release any hazardous material as defined in clause IV.F. onto land or into rivers, streams, impoundments, or natural or man-made channels leading to them. All prudent and safe attempts must be made to contain any release of these materials. The authorized officer in charge may specify specific conditions that must be met, including conditions more stringent than federal, state, and local regulations, to prevent releases and protect natural resources.

#### **H. CLEANUP AND REMEDIATION**

1. The holder shall immediately notify all appropriate response authorities, including the National Response Center and the authorized officer or the authorized officer's designated representative, of any oil discharge or of the release of a hazardous material in the permit area in an amount greater than or equal to its reportable quantity, in accordance with 33 CFR Part 153, Subpart B, and 40 CFR Part 302. For the purposes of this requirement, "oil" is as defined by section 311(a)(1) of the Clean Water Act, 33 U.S.C. 1321(a)(1). The holder shall immediately notify the authorized officer or the

authorized officer's designated representative of any release or threatened release of any hazardous material in or near the permit area which may be harmful to public health or welfare or which may adversely affect natural resources on federal lands.

2. Except with respect to any federally permitted release as that term is defined under Section 101(10) of CERCLA, 42 U.S.C. 9601(10), the holder shall clean up or otherwise remediate any release, threat of release, or discharge of hazardous materials that occurs either in the permit area or in connection with the holder's activities in the permit area, regardless of whether those activities are authorized under this permit. The holder shall perform cleanup or remediation immediately upon discovery of the release, threat of release, or discharge of hazardous materials. The holder shall perform the cleanup or remediation to the satisfaction of the authorized officer and at no expense to the United States. Upon revocation or termination of this permit, the holder shall deliver the site to the Forest Service free and clear of contamination.

**I. CERTIFICATION UPON REVOCATION OR TERMINATION.** If the holder uses or stores hazardous materials at the site, upon revocation or termination of this permit the holder shall provide the Forest Service with a report certified by a professional or professionals acceptable to the Forest Service that the permit area is uncontaminated by the presence of hazardous materials and that there has not been a release or discharge of hazardous materials upon the permit area, into surface water at or near the permit area, or into groundwater below the permit area during the term of the permit. This certification requirement may be waived by the authorized officer when the Forest Service determines that the risks posed by the hazardous material are minimal. If a release or discharge has occurred, the professional or professionals shall document and certify that the release or discharge has been fully remediated and that the permit area is in compliance with all federal, state, and local laws and regulations.

## **VI. LAND USE FEE AND ACCOUNTING ISSUES**

**A. LAND USE FEES.** The holder shall pay an initial annual land use fee of \$ 779.64 for the period from June 1, 2010 to December 31, 2010, and thereafter on the due date on the Bill For Collection, shall pay an annual land use fee of the amount on the annual Bill for Collection. The annual land use fee shall be adjusted annually using the linear fee indexing factor.

**B. MODIFICATION OF THE LAND USE FEE.** The land use fee may be revised whenever necessary to reflect the market value of the authorized use or occupancy or when the fee system used to calculate the land use fee is modified or replaced.

### **C. FEE PAYMENT ISSUES.**

1. Crediting of Payments. Payments shall be credited on the date received by the deposit facility, except that if a payment is received on a non-workday, the payment shall not be credited until the next workday.

2. Disputed Fees. Fees are due and payable by the due date. Disputed fees must be paid in full. Adjustments will be made if dictated by an administrative appeal decision, a court decision, or settlement terms.

#### 3. Late Payments

(a) Interest. Pursuant to 31 U.S.C. 3717 et seq., interest shall be charged on any fee amount not paid within 30 days from the date it became due. The rate of interest assessed shall be the higher of the Prompt Payment Act rate or the rate of the current value of funds to the Treasury (i.e., the Treasury tax and loan account rate), as prescribed and published annually or quarterly by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. Interest on the principal shall accrue from the date the fee amount is due.

(b) Administrative Costs. If the account becomes delinquent, administrative costs to cover processing and handling the delinquency shall be assessed.

(c) Penalties. A penalty of 6% per annum shall be assessed on the total amount that is more than 90 days delinquent and shall accrue from the same date on which interest charges begin to accrue.

(d) Termination for Nonpayment. This permit shall terminate without the necessity of prior notice and opportunity to comply when any permit fee payment is 90 calendar days from the due date in arrears. The holder shall remain responsible for the delinquent fees.

4. Administrative Offset and Credit Reporting. Delinquent fees and other charges associated with the permit shall be subject to all rights and remedies afforded the United States pursuant to 31 U.S.C. 3711 et seq. and common law. Delinquencies are subject to any or all of the following:

(a) Administrative offset of payments due the holder from the Forest Service.

(b) If in excess of 60 days, referral to the Department of the Treasury for appropriate collection action as provided by 31 U.S.C. 3711(g)(1).

- (c) Offset by the Secretary of the Treasury of any amount due the holder, as provided by 31 U.S.C. 3720 et seq.  
(d) Disclosure to consumer or commercial credit reporting agencies.

## **VII. REVOCATION, SUSPENSION, AND TERMINATION**

**A. REVOCATION AND SUSPENSION.** The authorized officer may revoke or suspend this permit in whole or in part:

1. For noncompliance with federal, state, or local law.
2. For noncompliance with the terms of this permit.
3. For abandonment or other failure of the holder to exercise the privileges granted.
4. With the consent of the holder.
5. For specific and compelling reasons in the public interest.

Prior to revocation or suspension, other than immediate suspension under clause VI.B, the authorized officer shall give the holder written notice of the grounds for revocation or suspension. In the case of revocation or suspension based on clause VII.A.1, 2, or 3, the authorized officer shall give the holder a reasonable time, typically not to exceed 90 days, to cure any noncompliance.

**B. IMMEDIATE SUSPENSION.** The authorized officer may immediately suspend this permit in whole or in part when necessary to protect public health or safety or the environment. The suspension decision shall be in writing. The holder may request an on-site review with the authorized officer's supervisor of the adverse conditions prompting the suspension. The authorized officer's supervisor shall grant this request within 48 hours. Following the on-site review, the authorized officer's supervisor shall promptly affirm, modify, or cancel the suspension.

**C. APPEALS AND REMEDIES.** Written decisions by the authorized officer relating to administration of this permit are subject to administrative appeal pursuant to 36 CFR Part 251, Subpart C, as amended. Revocation or suspension of this permit shall not give rise to any claim for damages by the holder against the Forest Service.

**D. TERMINATION.** This permit shall terminate when by its terms a fixed or agreed upon condition, event, or time occurs without any action by the authorized officer. Examples include but are not limited to expiration of the permit by its terms on a specified date and termination upon change of control of the business entity. Termination of this permit shall not require notice, a decision document, or any environmental analysis or other documentation. Termination of this permit is not subject to administrative appeal and shall not give rise to any claim for damages by the holder against the Forest Service.

**E. RIGHTS AND RESPONSIBILITIES UPON REVOCATION OR TERMINATION WITHOUT RENEWAL.** Upon revocation or termination of this permit without renewal of the authorized use, the holder shall remove all structures and improvements, except those owned by the United States, within a reasonable period prescribed by the authorized officer and shall restore the site to the satisfaction of the authorized officer. If the holder fails to remove all structures and improvements within the prescribed period, they shall become the property of the United States and may be sold, destroyed, or otherwise disposed of without any liability to the United States. However, the holder shall remain liable for all costs associated with their removal, including costs of sale and impoundment, cleanup, and restoration of the site.

## **VIII. MISCELLANEOUS PROVISIONS**

**A. MEMBERS OF CONGRESS.** No member of or delegate to Congress or resident commissioner shall benefit from this permit either directly or indirectly, except to the extent the authorized use provides a general benefit to a corporation.

**B. CURRENT ADDRESSES.** The holder and the Forest Service shall keep each other informed of current mailing addresses, including those necessary for billing and payment of land use fees.

**C. SUPERSEDED PERMIT.** This permit supersedes a special use permit designated N/A.

**D. SUPERIOR CLAUSES.** If there is a conflict between any of the preceding printed clauses and any of the following clauses, the preceding printed clauses shall control.

**E. NONDISCRIMINATION IN EMPLOYMENT AND SERVICES.** During the performance of this permit, the holder agrees that:

1. The holder and employees shall not discriminate by segregation or otherwise against any person on the basis of race, color, sex (in educational activities), national origin, age or disability, by curtailing or by refusing to furnish accommodations, facilities, services, or use privileges offered to the public generally and that the holder and employees shall comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended, section 504 of the Rehabilitation Act of 1973, as amended, Title IX of the Education Amendments, and the Age Discrimination Act of 1975.

2. The holder shall include and require compliance with the above nondiscrimination provisions in any third party agreement made with respect to the operations under this permit.

3. Signs setting forth this policy of nondiscrimination to be furnished by the Forest Service will be conspicuously displayed at the public entrance to the premises, and at other exterior or interior locations as directed by the Forest Service.

The Forest Service shall have the right to enforce the foregoing nondiscrimination provisions by suit for specific performance or by any other available remedy under the laws of the United States or the State in which the breach or violation occurs.

In addition to the above non-discrimination policy, the holder agrees to insure that its program and activities are open to the general public on an equal basis and without regard to any non-merit factor.

**F. NOXIOUS WEED CONTROL.** 1. The holder shall be responsible for the prevention and control of noxious weeds and/or exotic plants of concern on the area authorized by this authorization and shall provide prevention and control measures prescribed by the Forest Service. Noxious weeds and exotic plants of concern are defined as those species recognized by the San Juan National Forest in which the authorized use is located.

2. When determined to be necessary by the authorized officer, the holder shall develop a site-specific plan for noxious weed and exotic plant prevention and control. Such plan shall be subject to Forest Service approval. Upon Forest Service approval, the noxious weed and exotic plant prevention and control plan shall become a part of this authorization, and its provisions shall be enforceable under the terms of this authorization.

3. The holder shall also be responsible for prevention and control of noxious weed and exotic plant infestations which are not within the authorized area, but which are determined by the Forest Service to have originated within the authorized area.

**G. USE OF CERTIFIED NOXIOUS WEED FREE HAY, STRAW OR MULCH.** Only hay, grain, straw, cubes or mulch certified as noxious weed free or noxious weed seed free by an authorized State Department of Agriculture official or designated county official may be used. Each individual bale or container must be tagged or marked as a certified weed free product and reference a written certification, if one exists.

The following are exempted from this requirement:

1. Pelletized feed or grain products.
2. Persons with a permit specifically authorizing the prohibited act.
3. Transporting straw, hay or mulch on Federal, State, and County roads that are not National Forest System roads and trails.

**H. Width of Right-of-Way.** The width of the right-of-way is limited to twenty (20) feet plus the ground occupied by the pipeline.

**I. Standards and Practices Pipelines, Oil and Gas Transmission.** All designs, materials, construction, operation, maintenance, and termination practices employed in connection with this use shall be in accordance with safe and proven engineering practices and shall meet or exceed the following standards:

1. Department of Transportation Regulations, 49 CFR part 192, "Transportation of Natural and Other Gas by Pipelines: Minimum Federal Safety Standards."

**J. Surveys, Land Corners .** The holder shall protect, in place, all public land survey monuments, private property corners, and Forest boundary markers. In the event that any such land markers or monuments are destroyed in the exercise of the privileges permitted by this authorization, depending on the type of monument destroyed, the holder shall see that they are reestablished or referenced in accordance with (1) the procedures outlined in the "Manual of Instructions for the Survey of the Public Land of the United States," (2) the specifications of the county surveyor, or (3) the specifications of the Forest Service.

Further, the holder shall cause such official survey records as are affected to be amended as provided by law. Nothing in this clause shall relieve the holder's liability for the willful destruction or modification of any Government survey marker as provided at 18 U.S.C. 1858.

**K. Revegetation of Ground Cover and Surface Restoration.** . The holder shall be responsible for prevention and control of soil erosion and gully on lands covered by this authorization and adjacent thereto, resulting from construction, operation, maintenance, and termination of the authorized use. The holder shall so construct permitted improvements to avoid the accumulation of excessive heads of water and to avoid encroachment on streams. The holder shall revegetate or otherwise stabilize all ground where the soil has been exposed as a result of the holder's construction, maintenance, operation, or termination of the authorized use and shall construct and maintain necessary preventive measures to supplement the vegetation.

**M. Oil and Gas Pipeline Authorization.** This authorization is issued for a period of twenty years (30 year maximum) ending on 12/31/2029.

Abandonment of the right-of-way or noncompliance with any provision of Section 28 of the Mineral Leasing Act, as amended, or terms and conditions of this authorization may be grounds for suspension or termination of same; if (1) after due notice to the holder of the right-of-way, (2) a reasonable opportunity to comply, and (3) an appropriate administrative proceeding pursuant to Title 5, United States Code, Section 554, the authorized officer determines that any such grounds exist and that suspension or termination is justified.

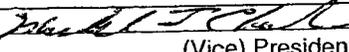
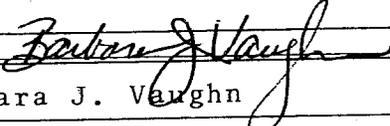
If the authorized officer determines that an immediate temporary suspension of activities within the right-of-way or authorized [permit] area is necessary to protect public health or safety or the environment, such activities may be curtailed prior to an administrative proceeding.

**O. Common-Carrier Operation, Oil and Gas Pipelines.** Pipelines and related facilities authorized herein shall be constructed, operated, and maintained as common carriers. The holder shall accept, convey, transport, or purchase without discrimination, all oil or gas delivered to the pipeline without regard to whether the oil or gas was produced from Federal lands or non-Federal lands. In the case of oil and gas produced from Federal lands or from resources on the Federal lands in the vicinity of the pipeline, the Secretary of the Interior may, after a full hearing with due notice thereof to the interested parties and proper finding of facts, determine the proportionate amounts to be accepted, conveyed, transported, or purchased. Provided, that this stipulation shall not apply to any natural gas pipeline operated by any person subject to regulation under the Natural Gas Act or by any public utility subject to regulation by a State or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the State or municipality. Where natural gas is not subject to State regulatory or conservation laws governing its purchase by pipelines and offered for sale, each such pipeline shall purchase without discrimination any such natural gas produced in the vicinity of the pipeline.

**P. Archaeological-Paleontological Discoveries.** The holder shall immediately notify the authorized officer of any and all antiquities or other objects of historic or scientific interest. These include, but are not limited to, historic or prehistoric ruins, fossils, or artifacts discovered as the result of operations under this authorization, and shall leave such discoveries intact until authorized to proceed by the authorized officer. Protective and mitigative measures specified by the authorized officer shall be the responsibility of the holder.

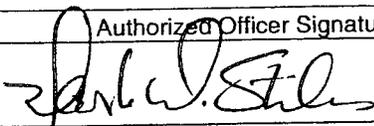
**Q. Improvement Relocation.** This authorization is granted with the express understanding that should future location of United States Government-owned improvements or road rights-of-way require the relocation of the holder's improvements, such relocation will be done by, and at the expense of, the holder within a reasonable time as specified by the authorized officer.

This permit is accepted subject to the conditions set out above.

Date: <u>6/24/2010</u>	CORPORATE NAME
(CORPORATE SEAL) <u>N/A</u>	Fosset Gulch Pipeline Co., LLC
By: <u></u> (Vice) President Michael J. Clark	
ATTEST: <u></u> Barbara J. Vaughn	
_____ (Assistant) Secretary	

The following certificate shall be executed by the secretary or assistant secretary of the corporation:

I, Barbara J. Vaughn certify that I am the Secretary of the corporation that executed the above permit; that , who signed said permit on behalf of said Corporation was then of said Corporation; that I know his/her signature on said permit is genuine; and that said permit was duly signed, sealed, and attested to for and on behalf of said Corporation by authority of its governing body.

(CORPORATE SEAL) <u>N/A</u>	
<u></u> (Assistant Secretary) Barbara J. Vaughn	
U. S. DEPARTMENT OF AGRICULTURE Forest Service	
By: _____ Authorized Officer Signature	
<u></u>	
MARK W. STILES Forest Supervisor, Center Manager	
Date: <u>7/23/2010</u>	

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond, to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0082. The time required to complete this information collection is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and, where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call toll free (866) 632-9992 (voice). TDD users can contact USDA through local relay or the Federal relay at (800) 877-8339 (TDD) or (866) 377-8642 (relay voice). USDA is an equal opportunity provider and employer.

The Privacy Act of 1974 (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552) govern the confidentiality to be provided for information received by the Forest Service.

**Appendix B**  
**FOSSET GULCH PIPELINE CO., LLC AND PETROX RESOURCES INC.**  
**FOSSET GULCH ROAD AND PIPELINES**  
**OPERATION AND MAINTENANCE PLAN**

SUBMITTED BY:  DATE: 6/23/2010  
FOSSET GULCH PIPELINE CO.  
PETROX RESOURCES INC.

APPROVED BY:  DATE: 7/19/10  
MATT JANOWIAK  
DISTRICT RANGER

## **A. Introduction**

This Operation and Maintenance (O&M) Plan is required per the 2720 Special Use Permits issued to Fosset Gulch Pipeline Co., LLC (COL 576 – for the Fosset Gulch Pipeline) and Petrox Resources Inc., (COL578) – for the Fosset Gulch Road). Both entities are referred to hereafter in this document as “The Permittee”. The Permittee will operate all facilities in compliance with technical standards of operation which meet or exceed the required U.S. Department of Transportation (DOT) regulations on file at the Durango Office.

Corrosion protection surveys and line patrol/leak surveys are conducted once annually of the entire alignment pursuant 49 CFR 192 Subparts I, L, and M.

If pipeline conditions indicate corrective action is needed, the Permittee will notify the Forest Service (FS), for approval prior to any necessary repairs. In the case of an emergency, the Permittee will notify the Forest Service as soon as possible after corrective actions have been taken to avoid a catastrophic failure of the pipeline. In an emergency, appropriate action shall be taken and the FS representative shall be promptly notified. Emergencies should also be reported to the San Juan Public Lands Dispatch Center at 970 385-1324. Any resource damage resulting from, or in response to, the emergency shall be rehabilitated as soon as practicable in a manner approved by the authorized FS representative.

Financial sureties and/or bonds have been posted by the Permittee for final abandonment of the pipelines and for annual road maintenance requirements. The pipeline bond will be released when the Forest Service (FS) determines in coordination with the Permittee that the pipeline has been taken out of service and abandoned appropriately, all surface facilities have been removed, and all surface disturbances have been reclaimed to the standards included in Section 5, of this document (Noxious Weeds and Reclamation). The road maintenance bond will be released when the FS determines in coordination with the Permittee that the Permittee has adequately maintained those sections of the Fosset Gulch Road covered by their permit, and that the Permittee will no longer be using the road, or that another entity has assumed maintenance responsibility for said sections of the Fosset Gulch Road.

This O&M Plan will be reviewed annually by the Permittee and updated as necessary. The O&M Plan will be amended by mutual agreement when signed and dated by both parties.

## **B: Industrial Wastes and Toxic Substances:**

### **Drilling Operations**

- 1) It is herein agreed that during all operations, the operator shall maintain structures, equipment and other facilities in a safe, neat and workman like manner. Hazardous sites or conditions resulting from the operations must be marked by signs, fenced, or otherwise identified to protect the public.
- 2) A Spill Contingency Plan shall be provided to the FS representative. A copy of this Plan must be kept on file at the operator’s project office.
- 3) In the event of a spill or leak meeting FS or COGCC reporting requirements, the FS representative and the San Juan Public Lands Dispatch Center (970 385 1324) must be immediately notified. Final cleanup operations for the spill or leak must be

approved by the FS representative who will recommend additional action as necessary.

- 4) Certification or other approval issued by State Agencies with regulations relating to drilling operations above and beyond the requirements of these stipulations will be accepted.

### **Water Resources**

- 1) No surface water will be removed, nor will water be disposed of on public lands without prior written approval from the FS representative. Refer also to the NSJB FEIS and ROD for monitoring and mitigation measures required to protect ground and surface water.
- 2) The operator must provide copies to the FS representative of any monitoring and baseline data reports required by other agencies during the life of the project. The FS may require additional monitoring and mitigation after reviewing project-specific conditions. If indications of induced contamination are observed, measures must be taken to identify and mitigate contamination. If reasonable evidence indicates that actions related to this project have impacted water well quantity or degraded water well quality to less than State drinking water standards, the operator must replace the lost quantity of well water and/or treat or replace well water that has been degraded with water that meets State drinking water standards. Impacts to other surface and ground water sources from this project, if they occur, must be mitigated to specifications determined by the FS and/or other regulatory agencies.

### **C. Inspection, Maintenance and Work Schedules**

Inspection plans are based upon requirements listed in national codes and standards as well as additional requirements contained within company standards, task group findings, recommended practices, guidelines, etc. The Permittee functions in an assurance role to control activities relating to the maintenance inspection and repair procedures. All documents and records surrounding these inspections are maintained by the Permittee and include a progressive record of inspection plans and findings.

Well locations are generally visually inspected on a weekly basis. Pressure is measured and tracked by installed automation 24 hours a day. Any deviations noted are followed by a field visit where operations are then inspected to identify the cause of such deviations. When maintenance or repair is required of equipment items, manufacturer recommended maintenance procedures are used to perform such actions.

There are several methods that are used to maintain pipeline integrity. These methods can be classified into two main subgroups: predictive and preventative. Corrosion coupons are an example of predictive corrosion management. It allows online monitoring of pipeline integrity. For preventative methods, cathodic protection is employed with anode beds or impressed current. Another form of preventative methodology is a corrosion inhibitor that is injected in systems on a routine basis. If the line is properly equipped, pigging is also used in systems to clear debris from pipelines. Right of way (ROW) maintenance will also be done including ROW inspections, line marking, and leak detection

**E. Fire Control:**

Please refer to each site specific Surface Use Plan that includes the Fire Plan for Industrial Operations USDA, Forest Service, San Juan National Forest and FS, San Juan Resource Area.

**F. Long Term Access for the Right of Way**

During the summer months, transportation utilized to conduct all monitoring associated with normal operations and maintenance of the Permittee gathering pipeline consist of four-wheel drive service trucks with tools/monitoring equipment. Service trucks are limited to existing roads for any ROW travel. No vehicles are authorized to travel on those portions of the ROW that are closed to public motorized vehicle use; unless an off road vehicle permit is secured by the Permittee in advance.

Those areas that are closed to motorized use except to those otherwise authorized shall be avoided during periods of wet weather in order to prevent resource damage. Since most normal operation and maintenance activities are conducted during favorable weather conditions, the necessity to access the ROW during unfavorable conditions is very minimal and only if absolutely necessary. No motor vehicle use is permitted from December 1<sup>st</sup> to May 1st each year in the winter closure area, unless authorized in writing by the FS.

The two vehicle traffic gates located on the Fosset Gulch Road shall be kept closed and locked beginning December 1 and ending on May 1 of any given year. Motorized access beyond these gates, when closed, must be authorized by the FS in writing. Construction activities are not permitted without written permission from the FS during this winter closure period.

The Permittee will control unlimited public access by installing and maintaining gates, or physical barriers, and appropriate signage at the locations listed below. If motor vehicle access to a portion of the permitted area is not required by the Permittee or the Forest Service, boulders, fences or other physical barriers may be utilized to prevent access by unauthorized motor vehicles as requested by the Forest Service.

**G: Signs:**

A sign shall be placed on the well pad following construction activities with the following minimum information:

- A. Operator Name
- B. Well Name and Number
- C. Legal Location (1/4-1/4, Section, Township and Range)
- D. County and State
- E. Lease Number.

**H. Contingency Planning**

The operator must notify the Columbine District Ranger or the authorized FS representative 48 hours prior to commencing operations or resuming operations following their temporary cessation.

1. **Wildlife Resources**

- a. Restrict the use of open reserve pits during drilling, unless absolutely necessary.
- b. Where possible, capture all liquid in containers and dispose of in an approved manner.
- c. Nets, screens or covers will be installed over all fluid pits, vents, tanks, and equipment openings to prevent wildlife mortality or wildlife contact with well products, fluids, or equipment openings. More information can be obtained at the U.S. Fish and Wildlife Service's wildlife contaminants website: (<http://mountain-prairie.fws.gov/contaminants/contaminants1c.html>).
- d. Reserve pits will be lined or otherwise made impermeable or closed fluid system used.
- e. Unless otherwise authorized by the FS, automated monitoring systems must be installed at well and pipeline facilities to minimize vehicle trips and reduce human/wildlife conflicts and loss of habitat effectiveness.
- f. To the extent practicable, use noise reduction technologies at all facilities during construction, testing and operation phases.
- g. Prohibit disruptive management activities within 300 feet of any occupied raptor nests during the period May 1 to July 31.
- h. Schedule routine maintenance activities to occur between 0900 and 1500 hours at facilities during the period beginning December 1 and ending April 30 of any given year.
- i. Restrict well access roads not designated as open to the public to authorized CBM operations only. Also prohibit CBM employee use of recreational off road vehicles unless such equipment is necessary for job performance.
- j. Prohibit employees and Operators from bringing dogs or carrying firearms on site. This mitigation reinforces standard working agreements with industry and is applied to reduce wildlife harassment.
- k. The operator should, with FS assistance, conduct periodic wildlife awareness programs covering seasonal wildlife requirements and sensitivities, how disturbance affects wildlife and ways personnel can reduce disturbance.
- l. Refer to the NSJB FEIS and ROD for additional wildlife monitoring and mitigation requirements.

2. **Sanitation and Garbage**

- a. A portable toilet shall be made available. Sewage shall be contained and disposed of at a designated sanitary disposal facility.
- b. The well pad and adjoining areas shall be kept in a neat and safe condition during all phases of the operation.
- c. The operator shall take all reasonable precautions to prevent any dumping or spilling of oil or hazardous materials on public lands. The operator shall take the appropriate preventative measures to ensure that any spill of oil or hazardous material do not enter any stream or other waters. Any spillage of oil or hazardous material shall immediately be picked up and removed from public lands. Used oil resulting from servicing or repair of equipment must not be disposed of on public lands, and must be removed and disposed in a designated disposal site or recycling facility.

- d. The well pad, adjoining area, and access road must be cleaned of all trash, materials and equipment within five days of termination of construction or heavy maintenance operations. Cleanup operations also include removal of all flagging, wooden lath, signs and other identifying devices from public lands. The Operator is also responsible for cleanup and maintenance of their facilities, including access roads, until final reclamation has been completed and approved by the FS representative.
- e. The operator shall dispose of refuse from this use, including waste materials, garbage and rubbish of all kinds by removing it from public lands.
- f. If trash is stored on site prior to complying with 5. above, the trash must be stored in a bear-proof manner.

#### **4. Road Reconstruction, Maintenance, And Snow Removal**

##### **1. Road Maintenance**

The operator shall maintain all public roads used in conjunction with operations as herein outlined:

- a) Take action as necessary to repair any road damage related to pipeline construction activities. This may include adding additional gravel to areas in the road that may have settled as a result of pipeline construction in the road prism.
- b) Remove slides, boulders, fallen timber, overhanging brush, and other material obstructing safe road sight distance and travel.
- c) Replace fills and portions of fills lost and/or which have settled below the original grade and cross-section. Gravel shall be bladed and shaped. Gravel lost during use and maintenance shall be replaced.
- d) Keep drainage channels, ditches, culverts and bridges clear of debris and functioning as intended.
- e) Repair fences, gates, cattle guards, culverts, bridges and other structures to standard specifications.
- f) Blade and shape surface and shoulders to maintain a suitable riding surface. Earth and debris from side ditches, slides, or other sources must not be left on the road or mixed into the surface portions of the road. Blading shall not undercut banks. Gravel or other selected surface material shall not be bladed off the surface of the road. Material from slides or other sources requiring removal from the road shall not be deposited in streams or stream channels or at locations where it will wash into streams and cause damage through silting or obstruction of the streams or reservoirs.
- g) All maintenance shall be performed as needed, in a timely manner or when directed by the FS representative. In addition, at the end of each operating season, maintenance work shall be performed to minimize damage from adverse weather. Such work shall include final blading to remove ruts and other irregularities that would prevent normal surface runoff, and final clearing of ditches and culverts to ensure satisfactory functioning of the road drainage system.

##### **2. Snow Removal**

To facilitate operations, the operator may remove snow from public roads under their special use authorization. Such removal must be done in a manner to preserve and protect roads during operations to the extent necessary to ensure safe and efficient transportation and to prevent excessive erosion damage to roads, streams and other resources.

Snow removal work shall include the following:

- 1) Removal of snow from all of the traveled way, including turnouts for safe and efficient use.
- 2) Culvert inlets shall be maintained in a functioning condition without snow plowed into them so the drainage system will function properly.
- 3) All material, including snow and ice, removed from the road surface shall be deposited away from drainages or stream channels at FS representative approved locations.
- 4) Banks shall not be undercut, nor shall gravel or other surfacing material be bladed off the road. Gravel lost or bladed off the road during snow plowing operations shall be replaced.
- 5) Ditches and culverts shall be kept functioning during operations and upon completion of operations.
- 6) "Snow Berm" is herein defined as a dike of snow, resulting from the operator's snow removal operations, which extends above the surface of the traveled way. The operator shall space, construct, and maintain drainage holes in the snow berm to obtain surface drainage without discharge on erodible fills. The operator shall remove snow berms or construct drainage holes at the end of winter operations or before spring breakup, whichever is sooner.
- 7) Dozers may be used to plow snow with written approval of the FS representative.
- 8) Equipment used to plow snow shall be equipped with shoes or runners to keep the blade a minimum two inches above the surface of the road, unless otherwise agreed to in writing by the FS representative.
- 9) The FS representative shall notify the operator in writing if surfacing material has been bladed off the surface of the road. The notice must state the number of road miles (rounded up to the next 0.1 mile) and the cubic yard equivalent of surfacing bladed off. The FS representative calculation of the cubic yardage will be available for review. Upon such notice, the operator shall replace the surfacing material, in kind, no later than 90 days after notification, unless otherwise agreed to in writing.

## **5. Noxious Weeds and Reclamation**

Any disturbed areas shall promptly be revegetated using the following standards:

- a) All areas of soil disturbance as a result of operations shall be scarified to at least a 4-inch depth and drainage structures installed at FS representative specified locations as necessary.
- b) Certified weed-free straw mulch, hydromulch, or erosion control blankets are recommended following all seeding activities, particularly on sites with slopes greater than 20 percent.
- c) The four components of successful reclamation on lands managed by the San Juan National Forest are recontouring, revegetation, soil erosion, and noxious weeds. Monitoring of these standards by the federal agency should occur one year after reclamation efforts are initiated, and evaluation for compliance with these standards will occur two years after reclamation efforts are initiated.
  - (a) Recontouring Standard: The recontouring component will be considered successful when reclaimed sites are recontoured back to the original contour, and blend in as naturally as possible with the topography of adjacent lands.

- (b) **Revegetation Standard:** The revegetation component will be considered successful when the canopy cover of native grasses on the site exceeds 80 percent of the canopy cover of native herbs (grasses and forbs) found on comparable, nearby, undisturbed sites that have a similar vegetation community and similar soils. The disturbed area will be revegetated using an approved native seed mixture approved by the FS.
- (c) **Soil Erosion Standard:** The soil erosion component will be considered successful when gully erosion is absent, and sheet and rill erosion is absent or minimal (less than 5% of the site shows evidence of sheet and rill erosion in the form of pedestalled plants, sediment accumulation, or rills). Bare soil may be present on the reclaimed sites as comparable, relatively undisturbed adjacent sites naturally display bare soil.
- (d) **Noxious Weed Standard:** The noxious weed component will be considered successful when noxious weeds are absent on the reclaimed site. Noxious weeds shall be treated on all areas disturbed by this project, as necessary to eradicate weeds during the course of operations and reclamation, as described below:
  - (i) The operator shall employ any cleaning methods necessary to ensure that any equipment, including transportation, construction, heavy maintenance and workover equipment, is free of noxious weed material before coming onto public land. If the Operator desires to clean equipment on public land, such as at the end of a project or prior to moving to a new project, the FS representative shall approve methods of cleaning, locations for the cleaning, and control of off-site impacts, if any. New infestations of noxious weeds of concern to the FS representative, identified by either the Operator or the FS representative, on public land in the Project Area or on the route to the Project Area shall be promptly reported to the other party.
  - (ii) The operator shall control, contain, and eradicate noxious weeds (as applicable) on all areas disturbed by this project during the course of construction, operation, and reclamation. Additional noxious weed management guidance can be obtained from the FS representative.
  - (iii) Seed certification tags from the seed bags used for revegetation shall be submitted to the federal agency within 1 month following seed application. When straw, mulch or gravel is needed for construction, operation or reclamation activities, these materials must be certified to be weed-free, and a copy of the certification must be provided to the FS representative to be included in the project record.

**Appendix C - Construction Plan**  
**for**  
**Gas and Water Pipelines in the Fosset Gulch Road**  
**By Fosset Gulch Pipeline Company, LLC**

This Construction Plan is hereby made a part of the Special Use Permit COL576, issued to Fosset Gulch Pipeline Company, LLC, per Clause II. B and. of the permit, authorizing that development, operation and maintenance is in accordance with plans accepted by the Forest Service authorized officer. Upon final acceptance of the entire project and approval of Appendix B, the Annual Operation and Maintenance Plan by the Forest Service the Construction Plan will no longer be in effect. Appendix B will guide the daily and annual operations of the facilities.

Scope: Fosset Gulch Pipeline Company, LLC, will construct gas and water pipelines in the Fosset Gulch Road (NFS Road 613) as per plans submitted by Fleming Engineering, stamped as meeting design requirements and accepted per the letter signed by Matt Janowiak, Acting District Ranger on June 26, 2009. Additional design and construction specifications and requirements are included in the Fosset Gulch Gathering System Plan submitted by the Peregrine Group and reviewed by Joseph C. Coco, Colorado Registered Professional Engineer #33392 and stamped on 2/19/2008. The Construction Plan and accepted documents in the letter are documents guiding the specific performance of the Permittee (also referred to as Operator) during construction.

This permit authorizes construction activity on only the portion of the Fosset Gulch Road beginning on sheet SD11 and ending on sheet SD28 of the accepted Fosset Gulch North Road Design, last revision 6/2/2009, and for all the sheets in the accepted Fosset Gulch South Road Design, last revision 6/2/2009, except SD13, which is not approved at this time. Activities shown on sheet SD13 will be authorized in a separate permit at a later date. Additionally, no construction or access is authorized on the Fosset Gulch Road north of the area shown on SD11 in the Fosset Gulch North Road Design, last revision 6/2/2009.

Fosset Gulch Pipeline Company, LLC, is responsible for actions of the contractor selected for the work.

**I. PROJECT REQUIREMENTS**

- A. The FS point of contact for this project is Walt Brown, Columbine District Geologist, 970 385-1372. An Operator Representative shall be designated, in writing, for on the ground activities. Specific authorities for the Operator Representative shall be noted in the designation letter. The Operator Representative must be on site whenever project work is occurring.
- B. In an emergency, appropriate action shall be taken and the FS representative shall be promptly notified. Emergencies should also be reported to the San Juan Public Lands Dispatch Center at 970 385-1324. Any resource damage resulting from, or in response to, the emergency shall be rehabilitated as soon as practicable in a manner approved by the FS representative.
- C. All construction activities must occur within the area of disturbance associated with the pre-existing Fosset Gulch Road corridor. No new disturbance outside of the original road corridor is allowed unless authorized by the FS representative and field reviewed by an archaeologist approved by the FS.
- D. The FS representative and Operator representative shall schedule and attend a pre-work meeting before any on the ground project activities begin. The meeting should also be attended by any Operator subcontractors that will be working on the project. Coordination meetings to discuss project operations, maintenance and reclamation shall be scheduled as needed by either the FS Representative or the Operator at a mutually agreed upon time and location. Generally, such meetings should occur on at least a weekly basis until the project is finished.
- E. A traffic control safety plan shall be submitted by the operator and accepted by the FS representative before project activities begin. The plan shall address all aspects of traffic control,

including closure procedures for the Fosset Gulch Road as necessary for pipeline construction and road reconstruction activities. The traffic control safety plan shall be prepared by an American Traffic Safety Services Association (ATSSA) certified company, or a qualified traffic control designer, unless otherwise authorized by the FS. The Traffic Control Plan and all signs used shall be in compliance with the Manual of Uniform Traffic Control Devices (MUTCD), unless otherwise authorized by the FS. All necessary signs must be installed before construction activities begin. Signs must not be nailed to trees. For activities on NFS lands, the operator must also submit a Road Use Permit application for review and approval.

- F. The final accepted road design referenced at the beginning of this document must be fully staked and flagged for construction and reviewed by the FS representative immediately prior to commencement of project activities. Such staking can occur in separate phases for large projects. If facility construction varies from the final design drawings, hardcopy and electronic documentation displaying the differences must be submitted to the FS representative as well.
- G. Special Project Specification: Optimum moisture content and maximum dry density shall be determined according the AASHTO T 99 method C. Adjust the moisture content of the backfill material to moisture content suitable for compaction. Compact material in lifts not greater than 12 inches. Determine the in place density and moisture content according to AASHTO T 310 or other approved test procedures. Compact material placed in all layers to at least 90 percent of the maximum dry density. Following backfilling and compaction to sub grade under roadway, a single layer of Tensar Biaxial Geogrid BX1200 or approved equal shall be installed immediately below the road base material. Geogrid shall be installed per manufacturer's specifications for the entire length of pipeline in the road. Alternatively, instead of installing Geogrid or approved equal, the operator may compact lifts as described above to at least 95% of the maximum dry density.
- H. A sampling, testing, and reporting plan for ensuring appropriate compaction, gravel gradation, and material densities must be developed and accepted by the FS Representative before project activities begin. The Operator shall submit to the FS Representative a written report including all inspections, tests, lab results, materials data sheets, work photos, and other relevant documentation describing the methods used to achieve project specifications and designs, materials used, and results of the inspection and testing procedures, for all trench reconstruction compaction over the pipelines when installed in the Fosset Gulch roadway prism, geogrid installation (if applicable), and road reconstruction work. After the FS Representative accepts the report as final, the FS Representative and the Operator shall jointly inspect the work on-site. If the FS Representative finds any deficiencies in the work they shall submit to the Operator a written list of such defects. The Operator will notify the FS Representative when such remedial work is complete. Upon satisfactory completion of the remedial work the FS Representative shall complete the process to release the Operator's financial guarantee mechanism. Said release of the financial guarantee mechanism will not be unreasonably withheld.
- I. Locations for any above ground facilities associated with this project, including valve sets, pipe cans, pig launchers/receivers, etc., must be staked on the ground and accepted by the FS representative before construction for such facilities can begin. The staking must include the actual area of proposed disturbance to construct the facility. If these locations are not in an area of existing disturbance, the location must be field reviewed by a qualified archaeologist approved by the FS.
- J. A storm water management plan shall be developed to address all construction, reconstruction, maintenance, and operational activities and submitted to FS representative. This plan shall conform to all EPA and Best Management Practices (BMP) requirements, as well as the requirements in NSJB FEIS Section 3.6, Surface Water Resources. The plan must be accepted by the FS before project activities begin.
- K. All storm water management controls needed during the construction phase of the project, including temporary culverts and wattles, must be installed before project activities can begin.

- L. Topsoil must be segregated and stored separately from subsurface materials to avoid mixing during construction, storage and interim reclamation. Subsurface materials should never be placed on top of topsoil material at any point during project activities.
- M. A surface reclamation bond must be posted with the FS before project activities begin. See Section XI, Reclamation, for details.
- N. Project activities are only allowed during the period beginning on May 1 and ending on November 30 of any given year unless otherwise authorized by the FS in writing.
- O. Cattle guards and fences shall be installed and constructed upon request of and to the specifications of the FS representative. If existing cattle guards or fences are damaged during operations, they must be repaired to at least the pre-disturbance condition.
- P. During project activities, if paleontologic or cultural resource artifacts or materials are exposed, or raptor nests are discovered, operations in the vicinity shall be halted and the FS representative shall be notified.
- Q. During surveying, clearing, and construction operations, the operator shall protect and preserve all land survey monuments. Records of found corners and monuments shall be furnished to the FS representative. Any corners or monuments destroyed during activities shall be replaced by the operator. All survey work and corner/monument setting shall be under the direction of a Registered Land Surveyor. (RLS)
- R. Air Quality: 1) Dust abatement measures may be required during some phases of the project, depending on seasonal conditions, resource impact and public traffic considerations. The FS representative will determine if such measures are required during operations.
- S. The two vehicle traffic gates located on the Fosset Gulch Road shall be kept closed and locked beginning December 1 and ending on May 1 of any given year. Project activities are not permitted without written permission from the FS, Columbine Field Office, during this winter closure period.
- T. Monitoring – All facets of the project shall be monitored by the FS to assure compliance. This will begin upon receiving notice that the operator will commence work and will continue throughout the active phases of the project on a regular visitation process and will continue on a periodic visitation until abandoned. Refer to the NSJB FEIS and ROD for monitoring and mitigation measures applicable to this project.
- U. The Operator shall maintain an adequate quality control system and perform inspections as necessary to ensure that work on this project conforms to all applicable requirements, including implementation of all required design features and mitigation measures. Such quality control methods and inspections must be documented in reports submitted to the FS representative on a monthly basis during facility construction beginning within one month of construction commencement and ending when the FS has received and accepted the final construction report. The use of third-party contract inspectors funded by the operator and reporting to the FS is encouraged and may be required in some instances.

## II. FIRE PREVENTION

Fire prevention and suppression activities shall comply with the requirements in the attached Fire Plan for Industrial Operations.

To the extent practical, the operator shall take measures to prevent uncontrolled fires on the area of operation and to suppress uncontrolled fires resulting from operations. All fires must be immediately reported to the FS representative and to the San Juan Public Lands Dispatch Center at 970 385 1324.

## VII. PIPELINE CONSTRUCTION

All gas and produced water pipelines used to connect gas wells with a collection system are required to be placed in the access road disturbance corridor, generally within the road prism, unless otherwise authorized. It is recommended that the lines be placed in the same trench at the time of initial road construction prior to gravel surfacing. The pipeline system (mechanical components as well as

construction and reclamation plans) must meet all applicable regulations and be designed under the direction of a professional engineer registered in the State of Colorado, unless otherwise authorized by the FS. Pipeline construction must be conducted in strict accordance with the approved designs by qualified personnel.

The Operator, Operator's employees or Operator's subcontractors shall perform all work with explosives in such a manner as not to endanger life or property in accordance with all state and Federal regulations.

- 1) Construction shall be limited to when soil conditions will meet compaction requirements and will not result in ruts deeper than 4 inches from vehicle traffic. Generally, conditions are considered to be too wet for construction or travel if soils within 4 inches of the surface can be rolled into threads that are 3 mm in diameter without breaking or crumbling.
- 2) Unless otherwise agreed all compaction shall be accomplished with layer placement.
- 3) Erosion control measures and BMPs shall be used to contain sediment inside the disturbance limits during construction and prior to the road being surfaced with gravel and vegetation established on cut and fill slopes. Erosion control structures will be maintained until vegetation is established on cut and fill slopes.
- 4) Minimize erosion at sites located in steep terrain during the construction phase by measures such as contouring, waterbars, temporary ditches, and detention basins, and minimize the period of disturbance.
- 5) Use filter strips and sediment traps if needed to keep all sand sized sediment on the land and disconnect disturbed soil from streams, lakes, and wetlands. Disperse runoff into filter strips.
- 6) Key sediment traps into the ground. Clean them out when 50% full. Remove sediment to a stable, gentle, upland site and revegetate.
- 7) Implement structural erosion and sediment controls such as interim or permanent waterbars, detention ponds, straw bales, silt fenced, earth dikes, and inlet and outlet protection. Provide non-structural erosion control practices such as interim and permanent and temporary seeding, revegetation, and geotextiles.
- 8) Implement BMPs to slow or reduce the flow of surface-water runoff across disturbed areas, including diversion of surface runoff around facilities and installing erosion control devices to prevent sedimentation of nearby water bodies.
- 9) Pipeline construction that crosses ephemeral, intermittent, or perennial streams would require additional mitigation measures. Digging of new open trenches shall not occur more than one week prior to laying pipelines within 100 feet of stream crossings. Within one week post pipeline placement within 100 feet of stream crossings, open trenches must be backfilled, stabilized, and must provide adequate cross drainage.
- 10) Any pipeline construction in areas of known or potential landslide areas shall require a design accepted by the FS representative prior to construction that minimizes to acceptable levels the risk that water from broken or leaking pipelines could activate landslides. Such a design could include leak detection systems or secondary containment systems (e.g., pipe-in-pipe).
- 11) Stockpiling topsoil, spreading topsoil as soon as pipeline construction is completed and prompt revegetation of disturbed areas are required elements of pipeline construction if the pipeline is outside of a road corridor.
- 12) Pipelines that cross stream channels on the surface should be located above the 100-year flood elevation. Where pipelines will be buried under stream channels, an analysis of channel degradation and scour should be completed to ensure the lines are not exposed and broken during extreme runoff events. Without such an analysis, pipeline crossings should be excavated to bedrock and placed beneath all alluvial material. The level of the pipe should be held constant at that same elevation across the floodplain. If the line is placed at shallower depths beneath the floodplain, channel migration may expose the line where it is not designed to pass beneath the channel. (This is to prevent breakage and water contamination during high flow events.)

## VIII. FENCE CONSTRUCTION

The roads and other facilities may need to be fenced and a gate or cattle guard provided where the well access road crosses the fence. If necessary, the fence shall be built within seven days after initial well drilling activities are completed. Any constructed fences must be maintained until otherwise directed by the FS representative. In general, this means that fences must be maintained until the areas not needed for production are revegetated.

Generally, where fences are required, a standard barbed wire fence with wood post construction shall be built. Other fence designs may be acceptable for the site, including the use of stock panels and temporary electric fences. The FS representative shall review and approve any proposed designs before fence construction begins.

## IX. OPERATIONS

The operator must notify the Columbine District Ranger or the authorized FS representative 48 hours prior to commencing operations or resuming operations following their temporary cessation.

### A. Water Resources

No surface water will be removed, nor will water be disposed of on public lands without prior written approval from the FS representative. Refer also to the NSJB FEIS and ROD for monitoring and mitigation measures required to protect ground and surface water.

### B. Wildlife Resources

- 1) Nets, screens or covers will be installed over all fluid pits, vents, tanks, and equipment openings to prevent wildlife mortality or wildlife contact with fluids, or equipment openings. More information can be obtained at the U.S. Fish and Wildlife Service's wildlife contaminants website: (<http://mountain-prairie.fws.gov/contaminants/contaminants1c.html>).
- 2) To the extent practicable, use noise reduction technologies at all facilities during construction, testing and operation phases.
- 3) Prohibit disruptive management activities within 300 feet of any occupied raptor nests during the period May 1 to July 31.
- 4) Schedule routine maintenance activities to occur between 0900 and 1500 hours at facilities during the period beginning December 1 and ending April 30 of any given year.
- 5) Prohibit employees and Operators from bringing dogs or carrying firearms on site. This mitigation reinforces standard working agreements with industry and is applied to reduce wildlife harassment.
- 6) The operator should, with FS assistance, conduct periodic wildlife awareness programs covering seasonal wildlife requirements and sensitivities, how disturbance affects wildlife and ways personnel can reduce disturbance.
- 7) Refer to the NSJB FEIS and ROD for additional wildlife monitoring and mitigation requirements.

### C. Sanitation and Garbage

- 1) A portable toilet shall be made available by the operator for use by personnel on site. Sewage shall be contained and disposed of at a designated sanitary disposal facility.
- 2) The operator shall take all reasonable precautions to prevent any dumping or spilling of oil or hazardous materials on public lands. The operator shall take the appropriate preventative measures to ensure that any spill of oil or hazardous material do not enter any stream or other waters. Any spillage of oil or hazardous material shall immediately be picked up and removed from public lands, and the FS representative notified within 24 hours. Used oil resulting from servicing or repair of equipment must not be disposed of on public lands, and must be removed and disposed in a designated disposal site or recycling facility.

- 3) The project area must be cleaned of all trash, materials and equipment within five days of termination of construction or heavy maintenance operations. Cleanup operations also include removal of all flagging, wooden lath, signs and other identifying devices from public lands.
- 4) If trash is stored on site prior to final removal, the trash must be stored in a bear-proof manner.

#### X. VISUAL RESOURCES

- 1) In facility site planning use existing vegetation and topographic features to screen wells, facilities, and roads to the extent practicable.
- 2) Complete interim reclamation as soon as possible so that successful re-vegetation can be established to stabilize soils and reduce visual impacts.
- 3) Paint all permanent structures (on site for more than 6 months) in a flat, non-reflective, earth tone color that matches surrounding summer vegetation or rocks. The FS representative will approve colors.
- 4) Minimize the use of traffic, regulatory and site identification signs. All posts should be painted a flat, non-reflective dark brown color approved by FS representative.
- 5) Facilities must be designed, constructed and reclaimed to blend with the surrounding landscape to the extent practicable.
- 6) For facility construction, including pipeline installation, where so directed by the FS representative, clear vegetation in a non-linear fashion to avoid a visually dominant straight line. Where so directed by the FS representative, employ vegetative edge feathering in sloped areas that may be visible from sensitive areas, such as roads, use areas, and residences.
- 7) Avoid straight line-of-sight road construction and design roads through wooded areas to follow a curvilinear path using natural topography. Avoid road construction across ridge tops where it may cause a visual contrast in the landscape or add skyline alterations that are visually obvious.
- 8) Install the minimum lighting needed and use light sensitive, motion activated lighting systems that are illuminated only when needed for security or maintenance. Light fixtures should be hooded to prevent horizontal and upward light pollution.
- 9) Generally, any fencing should be limited to temporary electric fencing or typical wire range fencing using wood or painted "T" posts. If other fencing is needed (such as chain link), this should be vinyl clad or painted a flat non-reflective color. All proposed designs and colors must be approved by the FS prior to fence construction.

#### XI. RECLAMATION

- 1) Bonds: The FS has determined that a surface reclamation bond is required for this project. A performance bond, surety, corporate guarantee or other acceptable financial instrument must be posted with the FS before surface disturbing activities can begin.
- 2) Reclamation, Revegetation, and Weeds
  - (1) Certified weed-free straw mulch, hydromulch, or erosion control blankets are recommended following all seeding activities, particularly on sites with slopes greater than 20 percent.
  - (2) Reclamation Standards

The four components of successful reclamation on lands managed by the San Juan National Forest are recontouring, revegetation, soil erosion, and noxious weeds. Monitoring of these standards by the federal agency should occur one year after reclamation efforts are initiated, and evaluation for compliance with these standards will occur two years after reclamation efforts are initiated.

    - (a) Recontouring Standard: The recontouring component will be considered successful when reclaimed sites are recontoured back to the original contour, and blend in as naturally as possible with the topography of adjacent lands. All areas of soil

disturbance as a result of operations shall be scarified to at least a 4-inch depth and drainage structures installed at FS representative specified locations.

- (b) Revegetation Standard: The revegetation component will be considered successful when the canopy cover of native grasses on the site exceeds 25 percent. The 25 percent can include the seeded grasses and other native grasses that have emerged on their own. The 25 percent figure is based on the canopy cover of native herbs (grasses and forbs) found on comparable, undisturbed sites that have a similar vegetation community and similar soils. The disturbed area will be revegetated using the following approved native seed mixture (unless otherwise approved by the FS representative

Arizona fescue ( <i>Festuca arizonica</i> )	6 PLS#/acre
Western wheatgrass ( <i>Pascopyrum smithii</i> )	8 PLS#/acre
Indian Ricegrass ( <i>Oryzopsis hymenoides</i> variety paloma)	6 PLS#/acre

Native seed available from:

Southwest Seed Inc. - Dolores, CO. 970-565-8722

Granite seed - Lehi, Utah. 801-768-4422.

Rocky Mountain Native Plants Co. - Rifle, CO. 970-625-4769

PLS# = pure live seed pounds

- (c) Soil Erosion Standard: The soil erosion component will be considered successful when gully erosion is absent, and sheet and rill erosion is absent or minimal (less than 5% of the site shows evidence of sheet and rill erosion in the form of pedestalled plants, sediment accumulation, or rills). Bare soil may be present on the reclaimed sites as comparable, relatively undisturbed adjacent sites naturally display bare soil.
- (d) Noxious Weed Standard: The noxious weed component will be considered successful when noxious weeds are absent on the reclaimed site. Noxious weeds shall be treated on all areas disturbed by this project, as necessary to eradicate weeds during the course of operations and reclamation, as described below:
- (i) The operator shall conduct a project area pre-disturbance noxious weed inventory to establish baseline conditions and assist the development of appropriate noxious weed management strategies.
  - (ii) The operator shall employ any cleaning methods necessary to ensure that any equipment, including transportation, construction, heavy maintenance and workover equipment, is free of noxious weed material before coming onto public land. If the Operator desires to clean equipment on public land, such as at the end of a project or prior to moving to a new project, the FS representative shall approve methods of cleaning, locations for the cleaning, and control of off-site impacts, if any. New infestations of noxious weeds of concern to the FS representative, identified by either the Operator or the FS representative, on public land in the Project Area or on the route to the Project Area shall be promptly reported to the other party.
  - (iii) The operator shall control, contain, and eradicate noxious weeds (as applicable) on all areas disturbed by this project during the course of construction, operation, and reclamation. Additional noxious weed management guidance can be obtained from the FS representative.
  - (iv) Seed certification tags from the seed bags used for revegetation shall be submitted to the federal agency within 1 month following seed application. When straw, mulch or gravel is needed for construction, operation or reclamation activities, these materials must be certified to be weed-free, and a copy of the

certification must be provided to the FS representative to be included in the project record.

**Fire Plan for Industrial Operations**  
**USDA, Forest Service, San Juan National Forest**

This plan outlines the Operator's responsibilities for fire prevention and suppression activities within the Operator's project area. For the purposes of this provision, the project area is defined as the area within one half mile ( 0.5 miles ) of the project boundary.

**Fire Precautions (9/93)**

**I. SMOKING AND LUNCH FIRE RESTRICTIONS**

Smoking is prohibited except inside a building, developed recreation site, vehicle, or while seated in an area of at least three feet in diameter that is barren or cleared of all flammable materials. 36 CFR 261.52(d), 42 CFR 9212(a).

The building of camp, lunch, warming and other fires within the project area and vicinity is prohibited, except at established camps or at other safe places where all flammable material has been cleared away sufficiently to prevent the start and spread of wildfires. The FS representative may, upon written request, designate specific places where campfires may be built for purposes of heating lunches.

**II. SPARK ARRESTERS AND MUFFLERS**

Operating or using any internal combustion engine, on any timber, brush, or grass covered land, including trails and roads traversing such land, without a spark arrester, is prohibited. The spark arrester must be maintained in effective working order, meeting either (1) Department of Agriculture, Forest Service standard 5100, *Spark Arresters for Internal Combustion Engines* (current edition); or (2) the Society of Automotive Engineers (SAE) recommended Practices J335, *Multiposition Small Engine Exhaust System Fire Ignition Suppression* (current revision), and J350, 36 CFR 261.52(j), 43 CFR 9212.1(h).

Passenger vehicles, pickups, medium and large highway trucks (80,000 GVW) will be equipped with a factory designed muffler system which is specified for the make and model of the respective vehicle/truck or with a muffler system that is equivalent or that exceeds factory specifications.

Exhaust systems shall be properly installed and continually maintained in serviceable condition.

**III. FIRE EXTINGUISHERS AND TOOLS ON EQUIPMENT**

While in use, each piece of equipment with an internal combustion engine shall be provided with at least the following:

1. One fire extinguisher, at least 5# ABC with an Underwriters Laboratory (UL) rating of 3A – 40BC, or greater.
2. One shovel, sharp, size 0 or larger, round-pointed with an overall length of at least 48 inches.
3. One axe, sharp, double bit 3½#, or one sharp Pulaski.

Extinguishers, shovels, axes, and Pulaski's shall be mounted so they are readily available to the operator. All tools shall be maintained in a serviceable condition.

**IV. POWER SAWS**

Each gasoline engine power saw shall be provided with one chemical-pressurized fire extinguisher of not less than 8-ounce capacity by weight, and one size 0 or larger, round-pointed shovel with an overall length of at least 48 inches. The extinguisher and shovel shall be maintained in good working order. The extinguisher shall be with the power saw operator and immediately available for use at all times. The extinguisher shall not be affixed to the saw. The shovel shall be readily available to the operator of the saw at all times. Having the shovel with the gas can used to refuel the saw may be considered "readily available" if not more than 200 feet from the saw. During periods of critical fire danger, the FS may prescribe other precautionary measures.

Any fueling or refueling of a power saw shall be done in an area which has first been cleared of material which will carry fire. The power saw shall be moved at least 10 feet from the place of fueling or refueling before starting.

## **V. BLASTING AND WELDING**

The use of fuses in blasting shall not be permitted except near power lines where the danger of accidental detonation is present, and then only by special written permission of the FS. Whenever the relative humidity falls below 50 percent, the Operator shall place a watchman at each point where blasting is done who shall remain on duty for at least one hour after blasting is finished, and who shall be equipped with a shovel and a water-filled backpack can equipped with hand pump. During periods when the relative humidity falls below 20 percent, blasting shall be discontinued unless authorized, with special provisions, in writing by the FS. Blasting shall not be permitted in any area not cleared to mineral soil without advance written approval of the FS and with such special precautions as may be required.

Prima Cord shall not be used in clearing operations, and in other areas where timber has been felled and slash not burned.

Unless otherwise directed in writing by the FS, all flammable material shall be cleared for 10 feet around any piece of equipment being welded. In addition, the Operator shall provide a fire extinguisher of a size and type designed to extinguish a fire in the flammable materials surrounding the spot being welded.

In order to determine the relative humidity, the operator shall either (a) provide and maintain weather instruments that will measure relative humidity in the area where the blasting will occur; or (b) provide communications to obtain weather data from the FS.

Explosives shall be stored at all times in a locked box marked "Explosives". Powder and blasting caps shall be stored in separate boxes.

## **VI. STORAGE OF FLAMMABLES**

Gasoline, oil, grease and other highly flammable material shall be stored either in a separate building, or at a site where all debris is cleared within a radius of 25 feet. Storage buildings or sites shall be a minimum distance of 50 feet from other structures. Storage buildings shall be adequately posted to warn of the flammables and to prohibit smoking in or around the building.

## **VII. CAMP FIRE PROTECTION**

The ground around all trailers, buildings, and other facilities constructed or placed on or near the project area shall be kept free of flammable material for a distance of at least 20 feet from the wall of such structure. Burning of such flammable material shall be as prescribed by the FS in writing.

Stovepipes of all wood burning stoves shall be equipped with suitable roof jacks and serviceable spark arresters. Stovepipes shall be no closer than 2 feet from any wood or other flammables unless adequately protected by metal or asbestos shield.

### **Fire Precautions and Control**

#### **I. PLANS**

Prior to initiating the Operator's operations during the Fire Precautionary Period, which is from **May 15** thru **October 1**, the Operator shall file with the FS a Fire Prevention and Control Plan providing for the prevention and control of fires on the project area. The Plan shall include a detailed list of personnel and equipment at the Operator's disposal for implementing the Plan. This requirement may be met by preparing a single Plan for more than one project.

#### **II. FIRE PRECAUTIONS**

Specific Fire Precautionary measures listed shall be applicable during the Operator's operations in the Fire Precautionary Period. The Contracting Officer may change the dates of the Fire Precautionary Period by advance written notice, if justified by unusual weather or other conditions. Required tools and equipment shall be kept in serviceable condition and immediately available for fire fighting at all times during the Operator's operations in the Fire Precautionary Period.

##### **A. Substitute Precautions**

The FS may authorize substitute measures or equipment, or waive specific requirements by written notice, if substitute measures or equipment will afford equal protection, or some of the required measures and equipment are unnecessary.

##### **B. Emergency Precautions**

The FS may require the necessary shutting down of equipment on portions of the Operator's operations when emergency fire precautions are necessary. Under such conditions, after the

Operator ceases active operations, the Operator shall release for hire by the FS, if needed, shutdown equipment for fire standby on the project area and personnel for fire standby or fire patrol, when such personnel and equipment are not needed by the Operator for other fire fighting or protection from fire. Equipment shall be paid for at fire fighting equipment rates common in the area or at prior agreed rates and, if Operator requests, shall be operated only by personnel approved by the Operator. Personnel so hired shall be subject to direction and control by the FS and shall be paid by the FS at fire fighting rates common in the area or at prior agreed rates.

### **III. FIRE CONTROL**

The Operator shall, both independently and in cooperation with the FS, take all reasonable and practicable action to prevent and suppress fires resulting from the Operator's operations and to suppress any forest fire on the project area. The Operator's independent initial fire suppression action on such fires shall be immediate and shall include the use of all necessary personnel and equipment at the Operator's disposal on the project area.

#### **A. Operator's Reinforcement Obligations**

Whenever an Operations Fire or Negligent Fire, whether on or off the project area, or any other forest fire on the project area, has not been suppressed by initial action and appreciable reinforcement strength is required, the FS may require further actions by the Operator until such fire is controlled and mopped up to a point of safety. Such actions may include any or all of the following as necessary to fight such fire:

##### **1) Suspend Operations**

To suspend any or all of the Operator's operations.

##### **2) Personnel**

To release for employment by the FS any or all of the Operator's personnel engaged in the Operator's operations. Any organized crew so hired shall include the Operator's supervisor, if any. Personnel so employed shall be paid at the FS standard emergency fire fighting rates.

##### **3) Equipment**

The Operator shall make available for rental to the FS any or all equipment suitable for fire fighting and currently engaged in the Operator's project area. The equipment shall be hired at firefighting equipment rates common in the area or at prior agreed rates.

Equipment shall be operated only by personnel approved by the Operator, if so requested by the Operator.

### **IV. FIRE SUPPRESSION COSTS**

The Operator's obligations for cost of fire suppression vary according to three classifications of fires as follows:

#### **A. Operations Fire**

An Operations Fire is a fire caused by the Operator's operations other than a Negligent Fire.

The FS, except as provided in Section III, shall, under 16 USC 572, perform fire suppression activities on Operations Fires. The Operator agrees to reimburse the FS for such cost for each Operations Fire. The cost of the Operator's actions, supplies, and equipment on any such fire provided pursuant to Section III, or otherwise at the request of the FS, shall be credited toward such maximum. If the Operator's actual cost exceeds the Operator's obligation stated above, the FS shall reimburse the Operator for the excess.

#### **B. Negligent Fire**

A Negligent Fire is a fire caused by negligence or fault of the Operator's operations, including, but not limited to, one caused by smoking by persons engaged in the Operator's operations during the course of their employment, or during rest or lunch periods; or if the Operator's failure to comply with the requirements of Sections II and III results in a fire starting or permits a fire to spread. Damages and the cost of suppressing Negligent Fires shall be borne by the Operator.

#### **C. Other Fires on Project Area**

The FS shall pay the Operator, at fire fighting rates common in the area or at prior agreed rates, for equipment or personnel furnished by the Operator pursuant to Section III, or otherwise at the

request of the FS, on any fire on the Project area other than an Operations Fire or a Negligent Fire.

#### **V. STATE LAW**

The Operator shall not be relieved by the terms of this contract of any liability to the United States for fire suppression costs recoverable in an action based on State law, except for such costs resulting from Operations Fires. Amounts due the Operator for fire fighting expenditures in accordance with BT7.41 shall not be withheld pending settlement of any such claim or action based on State law.

#### **VI. PERFORMANCE BY OPERATOR**

Where the Operator's employees, agents, Operators, subcontractors, or their employees or agents perform the Operator's operations in connection with fire responsibilities, the Operator's obligations shall be the same as if performance was by the Operator.

**Should Fire Restrictions become necessary, the following describes the stage levels.**

#### **I. STAGE I AND STAGE II FIRE RESTRICTIONS**

There will be two fire restriction stages: Stage I and Stage II. Stage III denotes area closure. Each agency within a fire restriction area must write its own agency document that authorizes the restrictions within its jurisdiction. Each agency is responsible for using its own format, citing the specific codes of Federal Regulation (CFR) and United States Code (U.S.C.) and having the appropriate legal counsel review the document to assure it is correct and enforceable. To establish consistency, reduce confusion and standardize restrictions, the following criteria will be used in all restriction documents:

##### **A. STAGE I** The following acts are prohibited until further notice:

- 1) Building, maintaining, attending, or using a fire, campfire, coal or wood burning stove, any type of charcoal fueled broiler or open fire of any type in undeveloped areas.
- 2) Smoking, except within an enclosed vehicle or building, in a developed recreation site or while stopped in an area at least 3 feet in diameter that is barren or cleared of all flammable vegetation.
- 3) Using explosive material: (i.e.: fireworks, blasting caps or any incendiary device which may result in the ignition of flammable material.)
- 4) Welding, or operating acetylene or other similar torch with open flame.
- 5) Operating or using any internal combustion engine without a spark arresting device properly installed, maintained and in effective working order meeting either:
  - (a) Department of Agriculture, FS Standard 5100-1a; or
  - (b) Appropriate Society of Automotive Engineers (SAE) recommended practice J335 (b) and J350 (a).
- 6) Possible Exemptions
  - (a) Persons with a written permit specifically authorizing the otherwise prohibited act or omission.
  - (b) Fires in constructed, permanent fire pits or fire grates within developed recreation sites.
  - (c) Any Federal, State, or local officer or member of an organized rescue or firefighting force in the performance of an official duty.
  - (d) Mechanical stoves and appliances fueled by bottled or liquid gas which allow the operator to control or extinguish the flame with a valve are permitted provided that such devices are approved by Underwriters laboratory Inc.
  - (e) Owners or lessees of land in the restricted area.
  - (f) Residents in the restricted area.

##### **B. STAGE II** The following acts are prohibited until further notice:

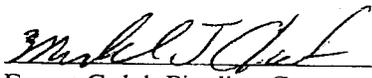
- 1) Building, maintaining, attending, or using a fire, campfire, coal or wood burning stove, any type of charcoal fueled broiler or open fire of any type.
- 2) Smoking, except within an enclosed vehicle or building.
- 3) Using explosive material: (i.e.: fireworks, blasting caps or any incendiary device which may result in the ignition of flammable material.)
- 4) Welding, or operating acetylene or other similar torch with open flame.

- 5) Operating or using any internal combustion engine without a spark arresting device properly installed, maintained and in effective working order meeting either:
  - (a) Department of Agriculture, FS Standard 5100-1a: or
  - (b) Society of Automotive Engineers (SAE) recommended practice J335 (b) and J350 (a).
- 6) Operating a chainsaw without a chemical pressurized fire extinguisher of not less than 8 ounces capacity by weight, and one size 0 or larger round pointed shovel with an overall length of at least 36 it was 48" above inches. The extinguisher shall be with the chainsaw operator. The shovel may be kept with the fueling supplies but readily available.
- 7) Other possible restricted acts under Stage II
  - (a) Operating a motorized vehicle off designated roads and trails.
  - (b) Operating a chainsaw outside the hours of 5 a.m. and 11 p.m.
  - (c) Overnight camping limited to listed campgrounds and recreation sites.
- 8) Possible Exemptions
  - (a) Persons with a written permit specifically authorizing the otherwise prohibited act or omission.
  - (b) Any Federal, State or local officer or member of an organized rescue or firefighting force in the performance of an official duty.
  - (c) Mechanical stoves and appliances fueled by bottled or liquid gas which allow the operator to control and extinguish the flame with a valve are permitted provided that such devices are approved by Underwriters Laboratory Inc.
  - (d) Owners or lessees of land in the restricted area.
  - (e) Residents in the restricted area.

**C. Stage III Fire Restrictions**

- 1) Before the fire season, the "Council" will review the evaluation guidelines and determine threshold levels that substantiate the need for closures.
- 2) Examples include:
  - (a) Potential loss of life due to explosive fire conditions.
  - (b) Potential for extreme or blowup fire behavior.
  - (c) Stage I or Stage II restrictions are not effective in reducing the number of human-caused fires.
  - (d) Resources across the geographic area are at a critical shortage level.
  - (e) Proximity to substantial population centers.
  - (f) The extent of wildland-urban interface.

Terms and Condition Accepted:

  
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 Fosset Gulch Pipeline Company LLC

Approved by:

  
 \_\_\_\_\_  
 MARK W. STILES, Center Manager Forest Supervisor  
 San Juan National Forest