

**UNITED STATES DISTRICT COURT  
DISTRICT OF KANSAS  
KANSAS CITY DIVISION**

UNITED STATES OF AMERICA and the	)	
STATE OF KANSAS, by and through the	)	
KANSAS DEPARTMENT OF HEALTH AND	)	NO. 08 - cv - 02532
ENVIRONMENT,	)	
	)	
Plaintiffs,	)	CONSENT DECREE
	)	
v.	)	
	)	
MAGELLAN AMMONIA PIPELINE, L.P.;	)	
ENTERPRISE PRODUCTS OPERATING, L.P.;	)	
and MID-AMERICA PIPELINE COMPANY, LLC,	)	
	)	
	)	
Defendants.	)	
_____	)	

This Consent Decree (“Consent Decree”) is made and entered into by and among the United States of America (“the United States”), on behalf of itself and the Department of the Interior (“DOI”) in its capacity as trustee for federal Natural Resources, and the State of Kansas by and through the Kansas Department of Health and Environment (“KDHE”) and Roderick L. Bremby, Secretary of KDHE in their capacity as trustee for state Natural Resources in Kansas (collectively, the “Plaintiffs”), and Magellan Ammonia Pipeline, L.P. (“Magellan”), Enterprise Products Operating, L.P. (“Enterprise”), and Mid-America Pipeline Company, L.L.C. (“MAPL”) (collectively, the “Defendants” or “Settling Defendants”).

## **INTRODUCTION**

A. The United States, on behalf of DOI in its capacity as natural resource trustee for federal Natural Resources, and the State of Kansas, KDHE and the Secretary of KDHE in their capacity as trustee for state Natural Resources in Kansas, concurrently with the filing of this Consent Decree, have joined in filing a Complaint in this action under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9606, et. seq., and the Federal Water Pollution Control Act (“Clean Water Act”), 33 U.S.C. § 1321, and various State laws, seeking the recovery of damages, including damage assessment costs, for injury to, destruction of, and loss of Natural Resources resulting from releases of hazardous substances into the environment.

B. The Complaint alleges that Magellan is the owner of, and Enterprise and MAPL are the operators of, an anhydrous ammonia pipeline from which there was a release of anhydrous ammonia on October 27, 2004, in Kingman, Kansas.

C. Numerous investigations have concluded that the release of anhydrous ammonia from the pipeline in Kingman, Kansas resulted in the contamination of aquatic resources with elevated levels of anhydrous ammonia in such concentrations and amounts as to cause injury to Natural Resources including, but not limited to, habitat loss, fish and macroinvertebrates in an unnamed tributary leading to Smoots Creek. The Parties agree that these investigations satisfy and are in full compliance with the Natural Resource Damages Assessment provisions of 43 C.F.R. Part 11, Subparts A-F.

D. The Settling Defendants do not admit any liability arising out of the occurrence alleged in the Complaint, including the alleged release of hazardous substances and Natural Resource Damages.

E. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that implementation of this Consent Decree will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, with the consent of the Parties to this Consent Decree, it is hereby ORDERED, ADJUDGED AND DECREED:

## **I. JURISDICTION AND VENUE**

1. The Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1367, Sections 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9607, 9613(b), 33 U.S.C. § 1321, K.S.A. 65-3452a *et seq.*, K.S.A. 65-3430 *et seq.*, and K.S.A. 65-161 *et seq.*, and the Court has personal jurisdiction over the Settling Defendants. Venue lies in this District pursuant to 28 U.S.C. § 1391(b), (c) and § 1395(a) and Section § 113(b) of CERCLA. For purposes of this Consent Decree only, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District.

## **II. PARTIES BOUND**

2. The obligations of this Consent Decree apply to and are binding upon the Plaintiffs and their departments, agencies and instrumentalities, and upon Settling Defendants and their respective successors and assigns. Any change in ownership or corporate status of a Settling Defendant, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the Settling Defendants' responsibilities under this Consent Decree. All obligations of the Settling Defendants under this Consent Decree are joint and several. The failure of one Settling Defendant to comply with a provision of this Consent Decree does not excuse non-compliance by the other Settling Defendant. The compliance with a provision of this Consent Decree by one Settling Defendant shall be deemed compliance with that provision by the other Settling Defendant.

### **III. DEFINITIONS**

3. This Decree incorporates the definitions set forth in Section 101 of CERCLA, 42 U.S.C. § 9601, and in Section 11.14 of the Natural Resource Damages (“NRD”) regulations, 43 CFR § 11.14 as well as 33 U.S.C. § 1321(f) Federal Water Pollution Act (“Clean Water Act”). In addition, whenever the following terms are used in this Decree, they shall have the following meanings:

a. “Kingman Anhydrous Ammonia Release” shall mean the release of anhydrous ammonia from the pipeline owned by Settling Defendant Magellan and operated by Settling Defendant MAPL that occurred near Kingman, Kansas on or about October 27, 2004. The precise location of the release was in the South Half of the Southwest Quarter of Section 21, Township 27 South, Range 6 West, Kingman County, Kansas.

b. “Damage Assessment Costs” shall mean all costs associated with the planning, design, implementation, and oversight of the Plaintiffs’ damage assessment process. The damage assessment process addresses the extent and quantification of the injury to, destruction of, or loss of Natural Resources and the services provided by those resources resulting from the release of hazardous substances, and the planning of restoration or replacement of such Natural Resources and the services provided by those resources, or the planning of the acquisition of equivalent resources or services, and any other costs necessary to carry out the Plaintiffs’ responsibilities with respect to those Natural Resource injuries resulting directly or indirectly from the releases of hazardous substances, including all related enforcement costs.

c. “Date of Lodging” shall mean the date on which the Plaintiffs give the Court notice of the Consent Decree, subject to the public comment period referred to in Section XIII.

d. “Day” means a calendar day unless expressly stated to be a “Working Day.”

e. “Defendants” or “Settling Defendants” shall mean Magellan Ammonia Pipeline, L.P., Enterprise Products Operating, L.P. and Mid-America Pipeline Company, LLC collectively.

f. “Effective Date” shall mean the date that the Court signs the Consent Decree and enters it as a judicial order.

g. “Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

h. “KDHE” shall mean the Kansas Department of Health and Environment.

i. “Natural Resource” or “Natural Resources” shall mean land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources, belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States or the State of Kansas.

j. “Natural Resource Damages” shall mean any past and future damages recoverable by the United States or the State on behalf of the public, for injury to, destruction of, loss of, loss of use of, or impairment of the services or functions of Natural Resources resulting from the Kingman Anhydrous Ammonia Release, including, but not limited to (i) Damage Assessment Costs; (ii) the costs of restoration, rehabilitation, or replacement of injured or lost Natural Resources or of acquisition of equivalent Natural Resources; (iii) the costs of planning such restoration activities; (iv) compensation for injury, destruction, loss, loss of use, or impairment of Natural Resources; and (v) each of the categories of recoverable damages described in 43 C.F.R. 11.15 Part II and applicable requirements of the State of Kansas.

k. “NRDAR Fund” means DOI’s Natural Resource Damage Assessment and Restoration Fund.

l. “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral.

m. “Parties” shall mean the Plaintiffs and Settling Defendants.

n. “Plaintiffs” shall mean the United States on behalf of DOI, and the State of Kansas, by and through KDHE and the Secretary of KDHE.

o. “Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

p. “State” shall mean the State of Kansas, including its departments, agencies, and instrumentalities.

q. “Trustees” shall mean the Natural Resource Damages Trustees who are

the Secretary of the Kansas Department of Health and Environment and the United States Department of Interior, Fish and Wildlife Service.

r. "United States" shall mean the United States of America, including its departments, agencies, and instrumentalities.

#### **IV. STATEMENT OF PURPOSE**

4. The mutual objectives of the Parties in entering into this Consent Decree are: (i) to provide herein for the payment by Settling Defendants of the costs of acquisition and management of property equivalent to the Natural Resources allegedly injured, destroyed, or lost as a result of the Kingman Anhydrous Ammonia Release; (ii) to provide for the transfer of the property provided for in Section VI, representing some equivalent Natural Resources and paid for by Settling Defendant Magellan, to the Wichita State University Foundation or another entity acceptable to the Trustees; (iii) to provide for payment in advance by Settling Defendants to KDHE for the benefit of the Wichita State University Foundation or another entity acceptable to the Trustees in accordance with a final restoration plan developed by KDHE and the Department of Interior Fish and Wildlife Services of all costs of future Natural Resource Damages relating to the Kingman Anhydrous Ammonia Release, including but not limited to the long-term management of such Natural Resources; (iv) to provide for reimbursement by the Settling Defendants of past Natural Resource Damage Assessment Costs incurred by the United States and the State of Kansas; (v) to resolve Defendants' liability for Natural Resource Damages as provided herein; and (vi) to avoid potentially costly and time-consuming litigation.



## **V. PAYMENTS**

5. The Settling Defendants shall pay a total of four hundred fifty-two thousand, five hundred and thirty five dollars (\$452,535.00) plus Interest as indicated in paragraph a. below to Plaintiffs as follows:

a. Within thirty (30) days of the Effective Date of this Consent Decree, the Settling Defendants shall make a payment of \$11,975.00 plus Interest calculated from the Date of Lodging to the United States to reimburse the DOI for past costs associated with assessing federal Natural Resource Damages arising from Kingman Anhydrous Ammonia Release. This payment shall be made by Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with current EFT procedures, referencing DOJ Case Number 90-5-1-1-06074/3, USAO No 2008V00282, NRDAR Account No. 14X5198, and "United States Natural Resource Damages Past Costs re: Kingman, KS." Payment shall be made in accordance with written instruction provided to the Settling Defendants by the Financial Litigation Unit of the United States Attorney's Office of the District of Kansas after the Date of Lodging.

b. Within thirty (30) days of the Effective Date of this Consent Decree, Settling Defendants shall make a further payment of \$440,560.00 to the State by certified or cashier's check payable to the "Kansas Department of Health and Environment." The \$440,560.00 shall be used by KDHE for the assessment, planning, restoration, rehabilitation, replacement, and/or acquisition of the equivalent of injured

Natural Resources in the area surface waters impacted by Kingman Anhydrous Ammonia Release, and long-term management of such Natural Resources in accordance with a final restoration plan developed by the KDHE and the DOI's Fish and Wildlife Service.

The total amount paid under this paragraph \$440,560.00 shall be delivered to:

Bureau of Environmental Remediation  
Attn: Leo Henning  
Charles Curtis Building  
1000 SW Jackson, Suite 410  
Topeka, Kansas 66612-1367

## **VI. PROPERTY ACQUISITION**

6. The Settling Defendants shall make best efforts to arrange for the transfer of title, free and clear of all liens and encumbrances, to the Wichita State University Foundation or an alternate entity acceptable to the Trustees, of approximately 160 acres of riparian corridor and terrestrial habitat along Smoots Creek. The property to be acquired is the southwest quarter of Section 23, Township 27 south, Range 6 west, Kingman County, Kansas. The Parties know the property as the "Gerber Property" as indicated on Attachment No. 1.

7. The acquisition of the Gerber Property shall be made by payment by Settling Defendants of the purchase price and transfer of title to the Wichita State University Foundation or another entity approved by the Trustees. All real estate transaction costs including but not limited to the costs of surveying, platting, and title search shall be paid by the Settling Defendants.

8. In the event that Settling Defendants are not able to transfer title to the Gerber Property to the Wichita State University Foundation or an alternate entity

approved by the Trustees in accordance with this Section by January 31, 2009, Settling Defendants shall pay KDHE the amount of \$360,000.00 in Natural Resource Damages in lieu of the property acquisition described in Section VI. This payment required under Paragraph 8 shall be made by January 31, 2009 and is in addition to the payments required by Paragraph 5 above. This payment shall be made by the method described in Paragraph 5b above.

9. Trustees have reviewed and approved a draft conservation easement in accordance with the Uniform Conservation Easement Act, K.S.A. 58-3810 *et seq.* that is enforceable under the laws of the State of Kansas and is acceptable to the owner of the Gerber Property and all Parties, pursuant to which is attached hereto as Attachment No. 2 as of the Date of Lodging of this Consent Decree.

10. Defendants have submitted to the Trustees for review and approval a current title insurance commitment, or some other evidence of title for the owner of the Gerber Property that shows title to the land described in the easement to be free and clear of all prior liens and encumbrances or identifying clearly any such liens and encumbrances which is attached as Attachment No. 3.

11. At the time of title transfer to the Wichita State University Foundation or alternative entity approved by the Trustees, Settling Defendants shall update the title search to ensure that nothing has occurred since the effective date of the commitment to affect the title adversely and shall record the easement with the Register of Deeds of Kingman County, Kansas, and pay for the Gerber Property. Within fifteen (15) days of the recording of the easement, Settling Defendants shall direct the title insurance

company to provide the owner, with a copy to the Trustees, a final title insurance policy, or other final evidence of title acceptable to the owner and Trustees, and a certified copy of the original recorded easement showing the clerk's recording stamps.

12. Within forty-five (45) days after recording the approved conservation easement on the Gerber Property and payment for the property as set forth in Paragraph 10 above, Settling Defendants shall use their reasonable commercial efforts to transfer ownership of the Gerber Property, for no consideration, to the Wichita State University Foundation or another entity approved by the Trustees which is authorized to acquire and hold conservation easements under K.S.A. 58 - 3810 and amendments thereto, and is qualified at the time of transfer under Section 170(h) of the Internal Revenue Code, and amendments thereto, and the applicable regulations promulgated thereunder. The Trustees shall have sole discretion regarding their approval or disapproval of a proposed property recipient. Prior to making the property transfer of the acquired property, the Settling Defendants shall ensure that all real estate and other taxes applicable to the acquired property are paid in full and that no liens or encumbrances not reflected on the prior title search have been put on the property.

13. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of their authorities and rights to obtain access and information under CERCLA, RCRA and any other applicable statute or regulations.

## **VII. PENALTIES FOR LATE PAYMENTS**

14. If any payment required by Sections V (Payments) or VI (Property Acquisition) is not made by the date specified in that Section, Settling Defendants shall

be liable for Interest and for the following stipulated penalties for each day such payment is late:

<u>Days Late</u>	<u>Penalty</u>
1 – 30	\$1,000/day
31 – 60	\$2,000/day
Beyond 60 days	\$3,000/day

15. Penalties shall accrue as provided in this Section regardless of whether Plaintiffs have notified Settling Defendants of the payment delinquency or made a demand for payment but Penalties are not required to be paid until thirty (30) days following receipt by Settling Defendants of a written demand by any of the Plaintiffs for payment of such stipulated penalties. Any such written notice and demand shall identify to which Plaintiff payment shall be made, with a copy to all parties to this Consent Decree.

16. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree. While the amount of any penalty may be split between the United States and State, as determined by the Plaintiffs, Settling Defendants shall not be required to pay to each Plaintiff the full amount of a penalty.

17. All stipulated penalties owed by Settling Defendants with respect to late payment of past costs to the United States shall be paid to the United States. All stipulated penalties owed by Settling Defendants with respect to payment of past costs to the State shall be paid to the State. All other stipulated penalties owed by Settling

Defendants shall be paid to NRDAR account described in Paragraph 5a. All payments of stipulated penalties shall be made as follows:

a. To the State:

By certified or cashier's check payable to the "Kansas Department of Health and Environment" and delivered to:

Bureau of Environmental Remediation  
Attn: Leo Henning  
Charles Curtis Building  
1000 SW Jackson, Suite 410  
Topeka, Kansas 66612-1367

b. To the NRDAR Account:

By certified or cashier's check payable to the "U.S. Department of the Interior" and delivered to:

U.S. Department of the Interior  
NBC/Division of Financial Management Services  
Branch of Accounting Operations  
Mail Stop D-2777  
7401 W. Mansfield Avenue  
Lakewood, Colorado 80235

The following information is to be included with the check:  
Account No. 14X5198 (NRDAR)  
Kingman, KS Ammonia Spill

18. In addition to the stipulated penalties and Interest on late payments as provided in this Section, if the payments required by Section V or VI of this Consent Decree or the stipulated penalties provided for by this Section are not made, Settling Defendants shall be liable for Interest on such penalties and any costs and attorneys fees incurred by Plaintiffs in collecting any amounts owing.

19. Payments due under this Section shall be in addition to any other remedies or sanctions that may be available to the Plaintiffs on account of Settling Defendants' failure to comply with the terms of this Consent Decree.

#### **VIII. COVENANT NOT TO SUE BY PLAINTIFFS**

20. Except as specifically provided in Paragraphs 23-24 of this Decree, Defendants' payments under Section V and the land acquisition costs or alternative payment to KDHE under Section VI fully resolve the Plaintiffs' natural resource damage claims against Defendants relating to the Kingman Anhydrous Ammonia Release. The Plaintiffs covenant not to sue or to take civil or administrative action against Settling Defendants for Natural Resource Damages resulting from the Kingman Anhydrous Ammonia Release under CERCLA, 42 U.S.C. § 9607, the Clean Water Act, 33 U.S.C. § 1321(f), or other applicable federal, State or common law. This covenant not to sue takes effect upon the Effective Date and is conditioned upon satisfactory performance by the Settling Defendants of their obligations under this Consent Decree. This Covenant Not to Sue extends only to Settling Defendants and does not extend to any other person.

21. The United States covenants not to sue or take administrative action against KDHE or other agencies of the State of Kansas for costs incurred or to be incurred by the Plaintiffs in assessing Natural Resource Damages resulting from the Kingman Anhydrous Ammonia Release or in overseeing projects related to the Kingman Anhydrous Ammonia Release under CERCLA, 42 U.S.C. § 9607, the Clean Water Act, 33 U.S.C. § 1321(f), or other federal, State or common law. These covenants take effect on the Effective Date.

22. The KDHE covenants not to sue or to take administrative action against the United States for costs incurred or to be incurred by the Plaintiffs in assessing Natural Resource Damages resulting from the Kingman Anhydrous Ammonia Release or in overseeing projects related to the Kingman Anhydrous Ammonia Release under CERCLA, 42 U.S.C. § 9607, the Clean Water Act, 33 U.S.C. § 1321(f), or other federal, State or common law. These covenants take effect on the Effective Date.

### **IX. RESERVATION OF RIGHTS**

23. Notwithstanding any other provision of this Consent Decree, the Plaintiffs reserve their rights to institute proceedings against the Settling Defendants in this action or in a new action seeking recovery of Natural Resource Damages if conditions, factors or information involving the Kingman Anhydrous Ammonia Release, not known to the Trustees at the Date of Lodging of this Consent Decree are discovered that, together with any other relevant information, indicate that there is a threat to the environment, or injury to destruction of, or loss of Natural Resources of a type unknown or of a magnitude significantly greater than was known at the Date of Lodging of this Consent Decree which is attributable to Defendants. Except as provided in Paragraph 28 below, Settling Defendants preserve all of their defenses in such proceedings.

24. Notwithstanding any other provision of this Consent Decree, the covenants not to sue in Paragraph 20 shall apply only to matters addressed in that paragraph and Plaintiffs reserve all other claims including but not limited to:

a. claims based on a failure by the Settling Defendants to satisfy any requirement imposed upon it by this Consent Decree;



- b. claims for criminal liability;
- c. claims for recovery of the costs of removal or remedial action, injunctive relief or administrative order enforcement under any provision of federal or state law including but not limited to: Section 311 of the CWA, 33 U.S.C. § 1321 or Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606, 9607, including claims under Section 107(a)(4)(D) of CERCLA, 42 U.S.C. § 9607 (a)(4)(D), for the costs of any health assessment or health effects study carried out under 42U.S.C. § 9604(I); and
- d. claims for natural resource damages not resulting from the Kingman Anhydrous Ammonia Release.

#### **X. COVENANTS OF SETTLING DEFENDANTS**

25. The Settling Defendants hereby covenant not to sue or to assert any judicial, administrative or legislative claims or causes of action against the United States or the State, or their contractors or employees, with respect to Natural Resource Damages resulting from the Kingman Anhydrous Ammonia Release or the payments required by this Consent Decree, including, but not limited to:

- a. Any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;
- b. Any claims against the United States, including any department, agency or instrumentality of the United States or the state of Kansas, under CERCLA

Sections 107 or 113, relating to Natural Resources Damages resulting from the Kingman Anhydrous Ammonia Release;

c. Any claims against the State of Kansas before the Kansas joint committee on special claims relating to Natural Resource Damages resulting from the Kingman Anhydrous Ammonia Release.

#### **XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

26. The Parties agree, and by entering this Consent Decree, this Court hereby finds, that the Settling Defendants are entitled as of the Effective Date, to protection from contribution actions or claims provided by Section 113 (f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), or other applicable law for “matters addressed” by this Consent Decree. The “matters addressed” in this Consent Decree are all Natural Resource Damages resulting from the Kingman Anhydrous Ammonia Release incurred by the United States, the State of Kansas or the Settling Defendants.

27. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Consent Decree may have under applicable law. This consent decree does not affect, waive or in any way impair any agreements Settling Defendants may have between themselves. Except as provided by Paragraphs 20-22, each of the Parties, including the Settling Defendants, expressly reserve any and all rights (including, but not limited to, any right to contribution) defenses, claims, demands and causes of action that it may have against any person not a signatory hereto.

28. In any subsequent administrative or judicial proceeding initiated by the United States pursuant to Section IX (Reservation of Rights) for injunctive relief, recovery of response costs, penalties, natural resource damages or other relief relating to the Kingman Anhydrous Ammonia Release, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case; provided however, that nothing in this Paragraph affects the enforceability of the Covenants Not to Sue by the United States and the State set forth in Section VIII of this Consent Decree.

29. The Settling Defendants agree that, with respect to any suit or claim for contribution brought by them for matters related to Natural Resource Damages relating to the Kingman Anhydrous Ammonia Release or this Consent Decree, they will notify the United States and the State in writing no later than sixty (60) days prior to the initiation of such suit or claim, unless the giving of such advance notice would subject such suit or claim to a defense that it is barred by the statute of limitations or other time-related defense.

30. The Settling Defendants also agree that, with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree, they will notify in writing the United States and the KDHE within ten (10) days of service of the complaint. In addition, Settling Defendants shall notify the United States and the KDHE within ten (10) days of receipt of any Motion for Summary Judgment with respect

to such a claim, and within ten (10) days of receipt of any order from a court setting such a case for trial.

31. Nothing in this Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611 or 40 C.F.R. § 300.700(d).

## **XII. CONSENT DECREE MODIFICATIONS**

32. Any material modification of this Consent Decree shall be made by agreement of all of the Parties to this Consent Decree, in writing, and shall not take effect unless approved by the Court. Any non-material modification of this Consent Decree shall be made by agreement of all of the Parties to this Consent Decree in writing. Nothing in this Consent Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

## **XIII. LODGING AND PUBLIC COMMENT**

33. The Parties acknowledge that this Consent Decree will be subject to a public comment period of not less than thirty (30) days. Consequently, entry of the Decree after lodging shall be deferred to allow the time necessary for the Plaintiffs to obtain and evaluate public comments on this Consent Decree. The Plaintiffs reserve the right to withdraw their consent to this Consent Decree if comments received disclose facts or considerations that show that this Consent Decree is inappropriate, improper, inadequate, or otherwise not in the public interest. Settling Defendants consent to the entry of this Consent Decree by the Court without further notice. Settling Defendants further agree not to oppose entry of this Consent Decree by the Court or to challenge any

provision of the Consent Decree, unless either the United States or the State of Kansas has notified the Defendants in writing that they no longer support entry of the Consent Decree.

#### **XIV. NOTICE**

34. Any notice required hereunder shall be in writing and shall be delivered to the following:

As to the United States:

Section Chief  
U.S. Department of Justice  
Environment and Natural Resources Division  
Environmental Enforcement Section  
P.O. Box 7611  
Washington, D.C. 20044

As to the United States Department of the Interior:

Restoration Fund Manager  
Natural Resource Damage Assessment and Restoration Program  
U.S. Department of the Interior  
1849 C Street, NW, MS - 4449  
Washington, D.C. 20240  
Re: Kingman, Kansas Ammonia Spill Oct. 27, 2004

Field Supervisor  
Manhattan Ecological Services Field Office  
U.S. Fish and Wildlife Service  
2609 Anderson Ave.  
Manhattan, KS 66502

As to the Kansas Department of Health and Environment:

Leo Henning  
Environmental Assessment and Restoration Section  
Bureau of Environmental Remediation  
Charles Curtis Building  
1000 SW Jackson, Suite 410  
Topeka, Kansas 66612-1367

As to the Settling Defendant Magellan:

Associate General Counsel  
Magellan Ammonia Pipeline Company, L.P.  
One Williams center, Suite 2800  
Tulsa, OK 74121-2186

As to Settling Defendant Enterprise:

Raymond P. Albrecht  
Secretary and General Counsel  
Mid-America Pipeline Company, LLC  
1100 Louisiana Street  
Houston, TX 77210-4324

As to Settling Defendant MAPL:

Raymond P. Albrecht  
Secretary and General Counsel  
Mid-America Pipeline Company, LLC  
1100 Louisiana Street  
Houston, TX 77210-4324

35. Each Party to this Consent Decree may change the person(s) it has designated to receive notice for that party, or the addresses for such notice, by serving a written notice of such change on each of the other Parties to this Consent Decree.

#### **XV. SIGNATORIES/SERVICE**

36. Each undersigned representative of each Settling Defendant certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree, to legally execute this Consent Decree, and to bind the party he or she represents to this Consent Decree.

37. This Consent Decree may be signed in counterparts and such counterpart signature pages shall be given full force and effect.

38. Settling Defendants hereby agree to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable Local Rules of Civil Procedure and other applicable Local rules of this Court including, but not limited to, service of a summons.

#### **XVI. ENTIRE AGREEMENT**

39. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding between the Plaintiffs on the one hand and the Settling Defendants on the other hand with respect to the settlement embodied in the Consent Decree and supersedes all prior agreements and understandings, whether oral or written between the Plaintiffs and Settling Defendants. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

#### **XVII. JUDGMENT**

40. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between the Plaintiffs and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

**IT IS SO ORDERED**

**DATED:** 12/10/2008

s/ Carlos Murguia

**UNITED STATES DISTRICT JUDGE**

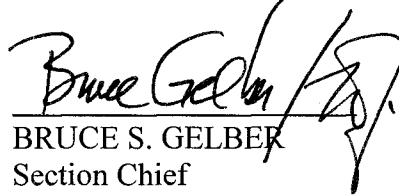
**DISTRICT OF KANSAS**




FOR THE UNITED STATES OF AMERICA:

WE HEREBY CONSENT to the entry of the Consent Decree in United States et al. v. Magellan Ammonia Pipeline L.P. et al. subject to the public notice and comment requirements of Section XIII of this Consent Decree.

Dated: 10/21/08

  
BRUCE S. GELBER  
Section Chief  
Environmental Enforcement Section  
U.S. Department of Justice

Dated: 10/21/08

  
ELIZABETH L. LOEB  
Trial Attorney  
Environmental Enforcement Section  
United States Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
(202) 514-4180 fax  
(202) 616-8916 direct  
Elizabeth.Loeb@usdoj.gov

Dated October 23, 2008

MARIETTA PARKER  
Acting United States Attorney  
District of Kansas

s/ Christopher Allman  
CHRISTOPHER ALLMAN  
Assistant United States Attorney  
500 State Avenue, Suite 360  
Kansas City, Kansas 66101  
Ks. S.Ct. No. 14225  
(913) 551-6730 (telephone)  
(913) 551-6541 (facsimile)  
E-mail: [Chris.Allman@usdoj.gov](mailto:Chris.Allman@usdoj.gov)

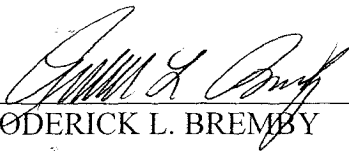
FOR THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT:

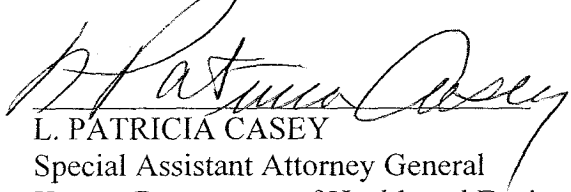
WE HEREBY CONSENT to the entry of the Consent Decree in the United States et al. v.

Magellan Ammonia Pipeline L.P. et al., subject to the public notice and comment requirements of

Section XIII of this Consent Decree.

Dated: 9-2-2008

  
RODERICK L. BREMBY  
Secretary  
Kansas Department of Health and Environment

  
L. PATRICIA CASEY  
Special Assistant Attorney General  
Kansas Department of Health and Environment


FOR SETTLING DEFENDANT MAGELLAN AMMONIA PIPELINE:

WE HEREBY CONSENT to the entry of the Consent Decree in United States et al. v.

Magellan Ammonia Pipeline L.P. et al. subject to the public notice and comment

requirements of Section XIII of this Consent Decree.

Date 9-15-08



Name Richard A. Olson

Title Senior Vice President of Operations

Address One Williams Center, Ste. 2800, Tulsa, OK 74172

Phone 918-574-7500

Fax 918-574-7003

Email Rick.Olson@Magellanlp.com

Agent Authorized to Accept Service on Behalf of Above Signed Party:

Name: The Corporation Co.

~~Title:~~ \_\_\_\_\_

Address: 515 S. Kansas Ave.

Topeka, KS 66603

Phone Number: 785-233-0593

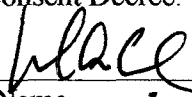

FOR SETTLING DEFENDANT ENTERPRISE PRODUCTS OPERATING, LLC

WE HEREBY CONSENT to the entry of the Consent Decree in United States et al. v.

Magellan Ammonia Pipeline L.P. et al. subject to the public notice and comment

requirements of Section XIII of this Consent Decree.

Date 9/12/08

  
Name Michael Creel   
Title President  
Address 1100 Louisiana St., Houston, TX 77002  
Phone  
Fax  
Email

Agent Authorized to Accept Service on Behalf of Above Signed Party:

Name: Raymond P. Albrecht

Title: Secretary and General Counsel

Address: 1100 Louisiana Street

Houston, TX 77210-4324

Phone Number: 713-381-8380

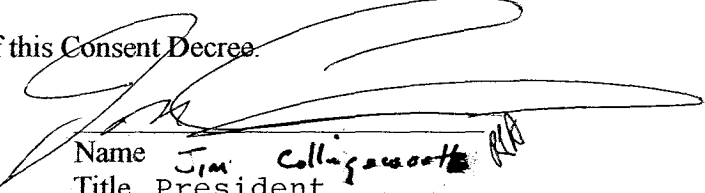
FOR SETTLING DEFENDANT MID-AMERICA PIPELINE COMPANY, LLC

WE HEREBY CONSENT to the entry of the Consent Decree in United States et al. v.

Magellan Ammonia Pipeline L.P. et al. subject to the public notice and comment

requirements of Section XIII of this Consent Decree.

Date 9/12/08

  
Name Jim Collingsworth  
Title President  
Address 1100 Louisiana St., Houston, TX 77002  
Phone \_\_\_\_\_  
Fax \_\_\_\_\_  
Email \_\_\_\_\_

Agent Authorized to Accept Service on Behalf of Above Signed Party:

Name: Raymond P. Albrecht

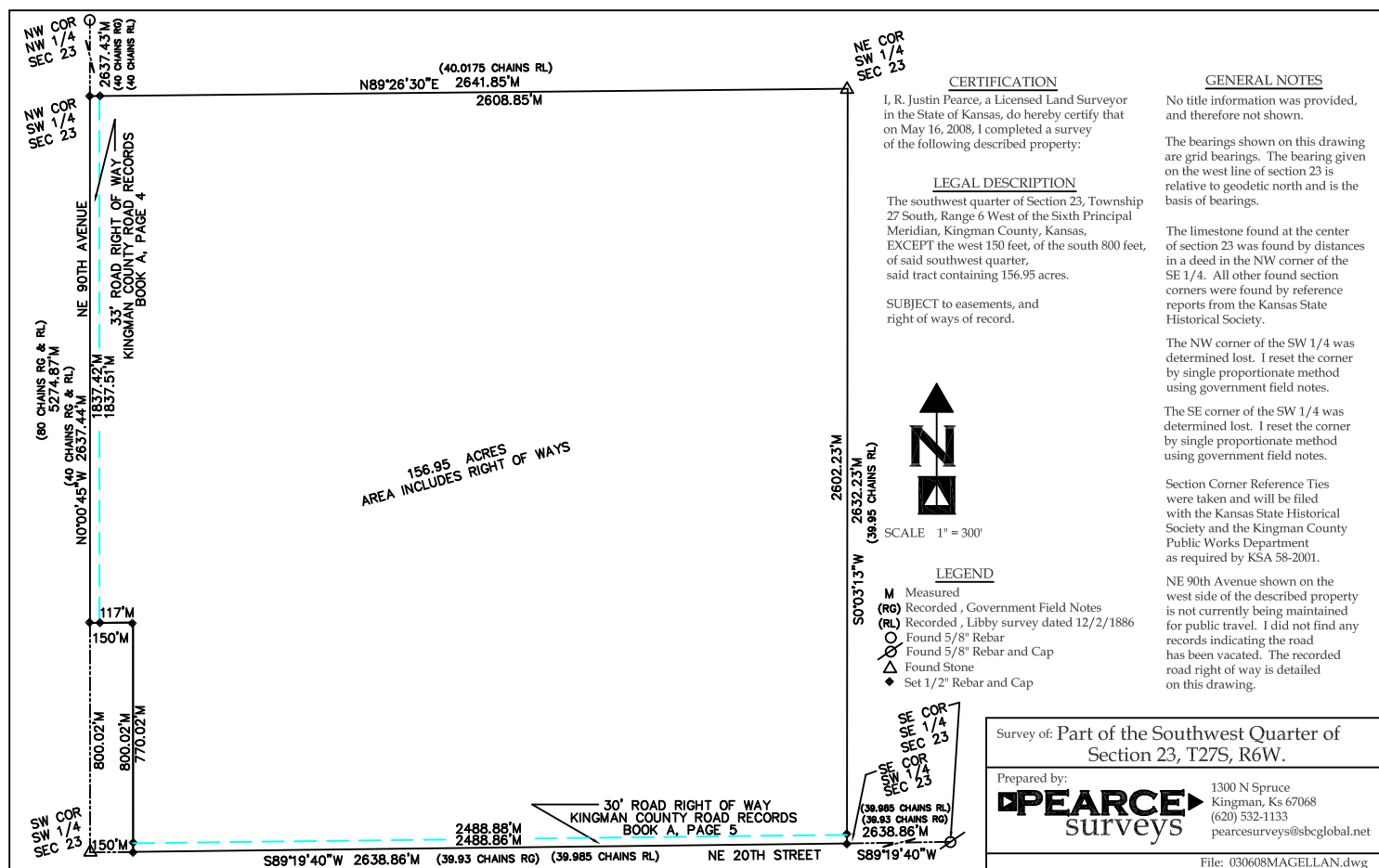
Title: Secretary and General Counsel

Address: 1100 Louisiana Street

Houston, TX 77210-4324

Phone Number: 713-381-8380

# **ATTACHMENT 1**





# **ATTACHMENT 2**

## DEED OF CONSERVATION EASEMENT

**THIS DEED OF CONSERVATION EASEMENT** ("Easement") is granted this \_\_\_\_ day of \_\_\_\_\_, 2008, by Joan A. Gerber as Trustee of the JOAN A. GERBER LIVING TRUST dated May 1, 2000, having an address of 1313 N. River Blvd., Wichita, Kansas 67203 ("Grantor"), in favor of Wichita State University, a state educational institution of Kansas as defined in K.S.A. §76-711(a) and a governmental body empowered to hold an interest in real property under the laws of the state of Kansas, having an address of 1845 Fairmount Street, Wichita, Kansas 67260-0005 ("Grantee"), and the state of Kansas by the Secretary of the Kansas Department of Health and Environment as Natural Resource Trustee for the state of Kansas ("KDHE") (collectively hereafter the "parties" and each a "party").

### WITNESSETH:

**WHEREAS**, Grantor, is the sole owner in fee simple of certain real property in Kingman County, Kansas, more particularly described in Exhibit A attached hereto and incorporated by reference herein (the "Property"); and

**WHEREAS**, the Property possesses significant natural, scientific, educational, habitat, wildlife, wetland, and aquatic ecological values, as well as other ecological values (collectively hereafter "Conservation Values") of great importance to Grantor, the people of Kingman County and the people of the State of Kansas; and

**WHEREAS**, in particular, the portions of Smoots Creek that transverse the Property provide designated critical habitat for the Arkansas Darter, *Etheostoma cragini*, a fish species protected by the Kansas Nongame and Endangered Species Conservation Act, K.S.A. §32-957 through 32-963, 32-1009 through 32-1012, 32-1033 and K.S.A. §32-960a, 32-960b and applicable administrative regulations as a species included on a list of threatened species adopted pursuant to K.S.A. §32-960; and

**WHEREAS**, the specific Conservation Values of the Property are further documented in an inventory of relevant features of the Property, titled Preliminary Floristic Quality Assessment and dated September 23, 2006, attached hereto as Exhibit "B" and incorporated by reference herein ("Baseline Documentation"), which consists of reports, maps, photographs, and other documentation that the parties agree provide, collectively, an accurate representation of the Property at the time of this Easement and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this Easement; and

**WHEREAS**, Grantor further intends, as owner of the Property, to convey to Grantee the right to preserve and protect the Conservation Values of the Property in perpetuity; and

**WHEREAS**, the Secretary of the Kansas Department of Health and Environment as Natural Resource Trustee for the State of Kansas has determined that Grantee is qualified as a holder of a conservation easement pursuant to K.S.A. §58-3810 and is a qualified organization under the Internal Revenue Code pursuant to 26 USC 170(b) (1) (A) (ii), 170 (b) (1) (A) (V) and 26 USC 170(h) (3); and

**WHEREAS**, Grantor further intends, as owner of the Property, to convey a Third-party right of enforcement to the State of Kansas to enforce the terms of this Easement as provided in Kansas Statutes Annotated §58-3810(c) with the Secretary of the Kansas Department of Health and Environment as Natural Resource Trustee for the State of Kansas designated to effectuate the Third-party right of enforcement conveyed herein; and

**WHEREAS**, Grantee and KDHE have executed a separate agreement detailing the terms and conditions whereby Grantee will receive reimbursement payments from settlement proceeds held by KDHE for certain expenses incurred by Grantee for maintenance of the Property as long as said settlement proceeds remain in existence and contingent upon Grantee's fulfilling its responsibilities under this Easement; and

**WHEREAS**, Grantee agrees by accepting this Easement to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the Conservation Values of the Property for the benefit of Kansas residents and for future generations of Kansas residents;

**NOW, THEREFORE**, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of Kansas and in particular, Kansas Statutes Annotated §58-3810 through §58-3817, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth herein. Said Easement shall be subject to preexisting leases including an unrecorded oral grazing lease expiring on August 10, 2008, rights of way, easements and all other restrictions of record. Further, Grantor hereby voluntarily grants and conveys in perpetuity a Third-party right of enforcement to the State of Kansas with the same to be effectuated by the Secretary of the Kansas Department of Health and Environment (“KDHE”) as Natural Resource Trustee for the State of Kansas.

**1. Purpose.** It is the purpose of this Easement to assure that the Property will be retained forever to preserve its Conservation Values and to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property. Grantor intends that this Easement will preclude uses of the Property described in Paragraph 4, below.

**2. Rights, Responsibilities and Obligations of Grantee.** To accomplish the purpose of this Easement the following rights, responsibilities and obligations are conveyed to Grantee by this Easement:

- (a) To preserve and protect the Conservation Values of the Property;
- (b) To enter upon the Property at anytime to effectuate and further the terms of this Easement; and
- (c) To implement the management plan for the Property (“the KDHE-approved management plan”) that is consistent with the purpose of this Easement. The KDHE-approved management plan will be developed by KDHE in cooperation with the Grantee and approved by the Secretary of KDHE as Natural Resource Trustee for the State of Kansas; and
- (d) To monitor Grantor’s and any subsequent Property Owner’s compliance with and otherwise enforce the terms of this Easement and use its best efforts to prevent any activity on or use of the Property that is reasonably determined to be inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to Paragraph 6 below. The term “Property Owner” used throughout this Easement shall mean each owner of fee title to the Property, but only and solely during such Property Owner’s period of fee title ownership of the Property; and
- (e) To conduct research, studies, training of students and group or individual tours or seminars consistent with educational purposes; and
- (f) To maintain partition fencing which KDHE shall install on the property line of the entire perimeter of the Property (except along those portions intersected by Smoots Creek) no later than two years after the date that this Easement is recorded. The fence shall consist of no less than four strands of barbed wire with metal or wood posts or its equivalent. KDHE shall also install fence posts capable of carrying electrical fencing along those portions of the Property boundary intersected by Smoots Creek. KDHE shall provide a sufficient quantity of electrical fencing wire to allow for initial completion of the fencing across Smoots Creek. Grantee may elect to utilize the fence posts to string electrical fencing wire across the portion of the Property intersected by Smoots Creek. Joan A. Gerber and Jerome Gerber (collectively “the Gerbers”) who are also owners of the adjacent property immediately to the west of the Property may elect to utilize the fence posts to string electrical fencing wire across the portion of the Property boundary intersected by Smoots Creek. Prior to exercising any such election, the Gerbers must provide a minimum of four weeks written notice to Grantee and KDHE. The Gerbers or the Grantee completing the electrical

fencing shall be solely responsible for removing logs, snags or other debris that may become caught up as a result of the fencing crossing Smoots Creek and for any expenses associated with the removal. In the event that animals belonging to the Gerbers or their lessees stray onto the Property, the Gerbers or their authorized agent shall notify Grantee by telephone as quickly as reasonably possible, provided that a telephone number is available at the Property pursuant to Section 4(b). The Gerbers or their authorized agent may enter onto the Property for the sole purpose of retrieving the strayed animals by the method that is the least likely to adversely impact the Conservation Values using reasonable judgment. In the event the electrical fencing was disconnected prior to or as a part of the retrieval, the Gerbers or their authorized agent shall reconnect it upon exiting the property. In the event that the electrical fencing is damaged so that it is no longer fit for the purpose of confining cattle, the party who desires to use it for that purpose shall be responsible for repairing or replacing the electrical fencing so that it will once again be useful for that purpose. Grantee shall have the obligation to keep the entire perimeter fence in good repair at all times except along those portions intersected by Smoots Creek, which are to be handled and addressed as noted above. Nothing in this Easement shall supersede the requirements of K.S.A. §29-301 et. seq. and amendments thereto including but not limited to the maintenance of partition fencing in equal shares by owners of adjoining lands as the requirements may apply to persons other than the Gerbers. KDHE and the State of Kansas shall have no duty to repair or maintain any fencing on or partitioning the Property after completion of the initial installation

**3. Rights of Third-party Enforcer.** To accomplish the purpose of this Easement the following rights are conveyed to the State of Kansas to be effectuated by KDHE:

- (a) To take any actions reasonably necessary to enforce the terms of this Easement, thereby assuring the purpose of preserving and protecting the Conservation Values of the Property is achieved;
- (b) To enter upon the Property at anytime to monitor Grantee's compliance with the approved management plan, restoration, maintenance, use and condition of the Property; and
- (c) To remove the designated Grantee after notice as detailed herein and replace the designated Grantee with a successor Grantee in the event the KDHE determines that the Grantee has failed to carry out the purposes of this Easement as detailed herein and in the KDHE-approved management plan for the Property.

**4. Prohibited Uses – Restrictive Covenants.** These prohibited uses and covenants run with the land and are in perpetuity. Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. The Property Owner, the Grantee and KDHE may each take such actions with respect to the Property as are necessary to enforce the prohibited uses and restrictive covenants specified in this Easement and to protect the health and safety of the public and the persons using the Property; provided that if any such action is contrary to a restriction contained herein, the action shall be limited to the minimum variation necessary to afford the required protection. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

- (a) **Structure.** No construction or placing of any Structure on the Property. The term "Structure" includes, but is not limited to, a house, garage, barn or other building, recreational athletic courts or playing fields, landing strip, mobile home, swimming pool, asphalt, concrete or asphalt pavement, antenna, storage tank, utility poles, utility lines, utility system, tower, lights, any other temporary or permanent improvement of a similar nature or with similar characteristics; provided, however that Structures designed to facilitate the Conservation Values

of the Property will be permitted if advance approval is obtained in writing from the KDHE. Any KDHE-approved Structure anticipated to cover more than 1,000 square feet in land area or more than 20 feet in height above ground shall also be approved advance in writing by the Gerbers who are also owners of the adjacent real property immediately to the west or immediately to the north of the Property.

(b) **Signs.** No construction or placing of any billboard or signs on the Property except: 1. Small unlighted signs for the following purposes: to state the name and address of the Property, Grantee, Property Owner, holder of Third party right of enforcement and the KDHE; to explain the history or protection of the Property; to prohibit trespassing or regulate uses; to interpret natural features of the Property; to provide information concerning educational activities conducted; to mark the boundaries or provide directions and to provide Grantee's telephone number (which telephone number Grantee shall make available for public view upon signage located near the perimeter of the Property). 2. A monument (along with a supporting and surrounding area, bollard poles, and other similar supporting and security features) to be designed by, installed by and dedicated to the Gerber family, may be erected on the Property in an area on or adjacent to the designated parking area (A parking area that KDHE shall have installed on the Property as soon as practicable following the date of this Easement and no later than two years following the recording date of this Easement. The entrance to the parking area shall be located at least 200 feet East of the Property's West boundary line at the Southwest corner of the Property). Such monument shall be installed no further than 25 feet from the edge of the designated parking area. Such monument shall be made of granite or similar material, and such monument area (including all bollard poles and other supporting and security features, if any) shall not exceed a height of 9 feet above ground and a total land area of 1,000 square feet.

(c) **Subdivision.** The Property may not be divided, partitioned, subdivided or conveyed except in its current configuration as a single unit. The entire Property is to remain as a single, indivisible tract managed for the purpose of this Easement. The conveyance of any part except as a whole shall be prohibited.

(d) **Mining, Surface Alteration, and Topography.** Subject to easements, leases and other matters of record as of the date of execution of this Easement, there shall be no mining, drilling, exploring for, excavation, or removal of any minerals, soil, sand, peat, gravel, rock, or any other materials on or from the Property nor any alteration of the surface or topography of the Property, except as performed for the purposes of habitat creation or enhancement or otherwise to maintain Conservation Values of the Property.

(e) **Oil, Gas and other Minerals.** Subject to easements, leases and other matters of record as of the date of execution of this Easement, there shall be no exploration for, development of, or extraction of oil, gas, and other minerals of any kind whether a liquid, solid, or gas hydrocarbon or non-hydrocarbon at or below the ground surface on the Property. Any royalties, other compensation or proceeds payable to Property Owner pursuant to the terms of any leases of record shall be deposited in the State of Kansas natural resources damages trust fund.

(f) **Soil and Water.** Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant depletion or pollution of any surface or subsurface waters is prohibited.

(g) **Watershed and Wetlands.** With the exception of activities designed to create, enhance, or restore aquatic habitat and designed and constructed using appropriate fluvial geomorphic techniques in accordance with the KDHE-approved management plan and approved in writing in advance by KDHE, there shall be no damming, impoundment or channelization of the streams or watercourses on the Property. There shall be no alteration or manipulation of existing water bodies. Draining, filling, dredging, diking, or other alteration of the wetland areas is also prohibited. For the purpose of this Easement, a water body means a creek, stream, intermittent stream, drainage way, river, pond, lake, surface or subsurface spring, wetland or other body of water.

(h) **Plowing.** There shall be no tilling or plowing of the Property except as necessary to facilitate the re-establishment or enhancement of native plant species in accordance with the KDHE-approved management plan.

(i) **Dumping.** There shall be no dumping or storage on or under the Property of any trash, garbage, construction materials, sewage, ashes, manure, trees, brush, hazardous or toxic substance or materials, discarded or salvageable materials such as junk cars, or other unsightly or offensive material. There shall also be no dumping or stockpiling of any soil, sawdust, gravel, or sand with the exception of materials stored on or adjacent to the parking area to be used for maintenance of the parking area. This is not intended to prohibit mulching excess brush or other plant material generated on the Property by activities permitted in this Easement, provided that mulched materials shall not be piled within one hundred feet of the ordinary high water mark of any water body and provided that any pile of mulched materials greater than 10 feet in height shall not be located within 500 feet of the Property line between the Property and adjacent property owned by any of the Gerbers.

(j) **Roads.** There shall be no building of new roads on the Property or granting of new rights of way or easements on the Property.

(k) **Plant Removal and Introduction.** Excavation or removal of native plants on the Property is prohibited except for the express purpose of scientific study or experimentation by those possessing any and all necessary and valid scientific or other collecting permits and licenses. No non-native trees, grasses or other plant species shall be planted on the Property. Controlled burns, livestock grazing and haying shall be allowed in accordance with the KDHE-approved management plan for the Property. Any proceeds from approved haying shall be the exclusive property of the Grantee.

(l) **Timber Harvest.** There shall be no timber harvest from the Property except as may be specifically approved in writing by KDHE. Any timber harvest shall be consistent with the KDHE-approved management plan.

(m) **Reptiles, Amphibians, Fish, Birds, and Mammals.** There shall be no removal or taking of native reptiles, amphibians, fish, birds, and mammals from the Property except for the express purposes of scientific study or experimentation by those possessing any and all necessary and valid scientific or other collecting permits and licenses.

(n) **Spraying.** Herbicides may be used for the control of state designated noxious weeds and for the control of other invasive plant species, but their use will be designed to minimize the impact on the plant diversity of native species. Any herbicides, insecticides, fungicides, or rodenticides shall be used only in those amounts and with a frequency of application that constitute the minimum necessary for control; shall be used in compliance with any and all applicable



regulations and label application recommendations, and shall not be applied with aerial spraying.

(o) **Vehicles.** Except as otherwise provided in this Easement or as a part of restoration, operation, maintenance, monitoring or oversight activities conducted by Grantee or KDHE, motorized vehicles, including but not limited to, cars, trucks, tractors and recreational vehicles, such as snowmobiles, dune buggies, motorcycles, all-terrain vehicles, shall not be operated on the Property.

(p) **Commercial Activities.** Commercial activities, commercial hunting and commercial fishing, shall not be permitted on the Property. The Property may not be used as a game farm, shooting preserve, fur farm or deer farm. Commercial recreational activities are prohibited.

(q) **Animal confinement.** There shall be no confinement facilities for livestock on the Property. For purposes of this Easement, livestock means farm animals that are kept for human use or raised for sale or profit, including, but not limited to, bovine animals, sheep, goats, swine, poultry, llamas, ostriches, emus and equine animals.

(r) **Recreational Hunting and Fishing.** The Property may not be used for recreational hunting or fishing, except as permitted in Paragraph 5 below.

**5. Rights Reserved and Granted.** Grantor reserves to itself and hereby grants to certain identified persons the following limited rights:

(a) **Limited Rights of Access.** Joan A. Gerber shall have the right to enter upon the Property during her lifetime for the following purposes: picnicking, taking walks and fishing in the pond. During each such entry, she shall have the right to be accompanied by up to a total of four other persons. She shall provide reasonable notice of not less than forty eight (48) hours to Grantee of any intent to enter upon the Property. Such notice shall be conveyed in writing or by telephone to: Wichita State University, Attn: Dean of the Fairmount College of Liberal Arts & Sciences, 1845 Fairmount Street, Wichita, KS 67260-0005, telephone (316) 978-6659.

(b) **Limited Rights of Access to Monument Area for the Gerbers.** A right to enter upon and access the Property for the sole purpose of maintaining, repairing and replacing the monument area improvements is hereby granted to the Gerbers. The right to maintain, repair and replace the monument area improvements pursuant to this Sub-Paragraph 5(b) of this Easement shall not create any obligation to perform such maintenance, repair or replacement. Any maintenance, repair and replacement of the monument area improvements by the Gerbers as authorized herein shall be performed at the sole expense of the Gerbers.

(c) **Conveyance.** A Property Owner may sell, give or otherwise convey the Property, provided that such conveyance is subject to this Easement and written notice is provided to the Grantee and to KDHE in accordance with Paragraph 15 herein.

**6. Remedies.** If the State of Kansas as the designated Third-party with rights of enforcement effectuated through KDHE determines that another party is in violation of the terms of this Easement or the KDHE-approved management plan or that a violation is threatened, KDHE shall give written notice to the other party of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured. If the offending party fails to cure the violation within thirty (30) days after receipt of notice thereof from the KDHE, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, the KDHE may bring an action at law or in equity in the District Court of Shawnee County, Kansas, or other Court of competent jurisdiction to enforce the terms of this Easement, to assess damages to which it may be entitled for violation of the terms of this Easement for injury to any rights and values protected by this Easement, to assign another Grantee and to require the restoration of the Property to the condition that existed

prior to any such injury. Without limiting the offending party's liability therefore, the KDHE, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. If the KDHE, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to its rights under this Easement, it may pursue its remedies under this paragraph without prior notice to the other party or without waiting for the period provided for cure to expire. The parties' rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement. The remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

**6.1. Costs of Enforcement.** Any costs incurred by the KDHE in enforcing the terms of this Easement or incurred by Grantee or any of the Gerbers in enforcing against another party the rights granted herein to the enforcing party, including, without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by the violation of the terms of this Easement shall be borne by the non-prevailing party. Nothing in this paragraph shall result in any assignment of liability or costs to the KDHE or Grantee prohibited under Kansas statutes, applicable regulations and policies or that would result in the KDHE or Grantee being held liable or assessed costs for any act or omission of its employees, agents, assigns, or contractors beyond the liability granted by the Kansas Tort Claims Act, K.S.A. 75-6101 et seq.

**6.2. Enforcement Discretion.** Any forbearance by a party to exercise its rights under this Easement in the event of any breach of any term of this Easement by another other party shall not be deemed or construed to be a waiver by said party of such term or of any subsequent breach of the same or any other term of this Easement or any of said party's rights under this Easement. No delay or omission by any party in the exercise of any right or remedy upon any breach by the other party shall impair such right or remedy or be construed as a waiver.

**6.3. Acts Beyond the Property Owner's Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against the Property Owner for any injury to or change in the Property resulting from causes beyond the Property Owner's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by the Property Owner under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

**7. Access.** Except for the access rights granted and reserved pursuant to Paragraph 5 above, no right of access by the general public to any portion of the Property is conveyed by this Easement. The Grantee may allow access to groups of students, individual students and other persons for educational purposes, subject to advance request to Grantee and Grantee's approval, which will not be unreasonably withheld. Access to the State of Kansas and its agents including the KDHE, employees, contractors and assigns is conveyed by this Easement and shall not require advance notification or approval.

**8. Costs and Liabilities.** Property Owner retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property applicable to the rights reserved herein to Property Owner. Grantee retains all responsibilities and shall bear all costs and liabilities of any kind related to the operation, upkeep, and maintenance of the Property applicable to the rights granted to Grantee herein by Grantor, which includes maintenance, upkeep and repair of the monument area and parking area as deemed necessary by both Grantee and the KDHE, using reasonable discretion. Property Owner and Grantee, individually, shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred respectively by Property Owner or Grantee. In no event shall a party be responsible for any costs or obligations incurred by the other party with respect to the Property, except as specifically provided for in Paragraph 6 and Paragraph 6.1.

**8.1. Taxes.** Property Owner shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.

**9. Extinguishment.** If circumstances arise in the future such as render the conservation purposes of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. Furthermore, the Easement may be extinguished only under the following circumstances: 1. All of the Property is taken by exercise of the power of eminent domain



or acquired by purchase in lieu of condemnation, or a portion is taken or transferred, provided that such taking or transfer renders the conservation purposes of this Easement impossible to accomplish, or 2. The Property Owner, Grantee and the KDHE all agree that a subsequent, unexpected change in the condition of or surrounding the Property makes it impossible to accomplish the Purpose of the Easement.

**10. Proceeds from Extinguishment.** If the Easement is terminated or extinguished in whole or in part pursuant to paragraph 9 of this Easement, the Grantee and the State of Kansas shall be entitled to compensation in accordance with the applicable law. Any such compensation or proceeds received by the Grantee or by the State of Kansas shall be deposited in the State of Kansas natural resources damages trust fund with reasonable efforts made to use the proceeds to acquire similar replacement property in a nearby location with a conservation easement to be applied to said property wherein Wichita State University would be designated as Grantee. In the event that such reasonable efforts were not successful or Wichita State University declined to serve as Grantee the proceeds would be designated and used in a manner consistent with K.S.A. §75-5672 and the conservation purposes of this Easement. Nothing in this paragraph shall be interpreted to require Grantor to pay compensation to another party or to be entitled to receive any compensation in the event of such termination or extinguishment.

**11. Amendment.** If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantee and the State of Kansas are free to jointly amend this Easement; provided that no amendment shall be allowed that will affect the qualification of this Easement or the status of Grantee under any applicable laws, including K.S.A. §58-3810 through §58-3817 (or any successor provision then applicable) and Section 170(h) of the Internal Revenue Code (or any successor provision then applicable), and any amendment shall be consistent with the purpose of this Easement, and shall not affect its perpetual duration. However, each of the following paragraphs of this Easement shall not be amended unless the amendment has also been executed by the individuals and entities named in or referenced in that paragraph: Paragraphs 4(a), 4(b), 5, 7, 8 and 16. Paragraph 2(f) shall not be amended to remove the requirement for Grantee to maintain the fencing or the rights granted to the Gerbers as described in that paragraph. Paragraph 4(r) shall not be amended to remove the reservation provided to Joan A. Gerber in Paragraph 5 or to allow for any hunting on the Property with firearms. Paragraph 8 shall not be amended to remove the requirement for Grantee to maintain and provide upkeep and repair of the monument area. Paragraphs 4(p), 11 and 17(h) shall not be amended. Any amendment of this Easement shall be recorded in the official records of Kingman County Register of Deeds, Kingman County, Kansas.

**12. Assignment and Transfer Requirements.** This Easement is transferable upon the prior written approval of the KDHE and the Property Owner, said approval not to be unreasonably withheld, but Grantee may assign its rights and obligations under this Easement only to (i) another governmental body of the State of Kansas authorized to acquire and hold conservation easements under K.S.A. §58-3810 (or any successor provision then applicable), or (ii) an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under K.S.A. §58-3810 (or any successor provision then applicable). As a condition of such transfer, Grantee shall require that the conservation purpose of this grant of Easement continue to be carried out as specified herein. Grantee agrees to give written notice of an assignment at least thirty (30) days prior to the date of such assignment to the KDHE, to each Property Owner and to Grantor if such transfer occurs during the lifetime of any of the Gerbers. The failure of Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Easement or limit its enforceability in any way.

**13. Executory Limitation.** If Grantee shall cease to exist or to be a qualified organization under Section 170(h)(3) of the Internal Revenue Code, or cease to be authorized to acquire and hold conservation easements under Kansas statutes, then Grantee's rights and obligations under this Easement shall become immediately vested in an organization to be designated by the KDHE which is authorized to acquire and hold conservation easements under K.S.A. §58-3810 (or any successor provision then applicable), or such organization as a court of competent jurisdiction shall direct pursuant to applicable Kansas law and consistent with the requirements for an assignment pursuant to section 12 of this Easement.

**14. Subsequent Transfers.** Each Property Owner agrees to incorporate the terms of this Easement by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Each Property Owner shall give written notice to Grantee and the State of Kansas of the transfer of any interest at least twenty (20) days prior to the intended date of such transfer.

The failure of a Property Owner to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

**15. Notices.** With exception of the notice of straying animals referenced in Section 2(f) which may be made to Grantee by telephone, any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor: JOAN A. GERBER LIVING TRUST dated May 1, 2000, Joan A. Gerber, as Trustee  
1313 N. River Blvd.  
Wichita, Kansas 67203

To Grantee: Wichita State University  
Attn: Dean of the Fairmount College of Liberal Arts & Sciences  
1845 Fairmount Street  
Wichita, KS 67260-0005

and to: Wichita State University  
Attn: General Counsel  
1845 Fairmount Street  
Wichita, KS 67260-0205

To State of Kansas: Kansas Dept. of Health and Environment  
Bureau of Environmental Remediation  
Charles Curtis State Office Building  
1000 SW Jackson, Suite 410  
Topeka, Kansas 66612-1367

or to such other address as either party from time to time shall designate by written notice to the other.

**16. Recordation.** Grantor shall record this instrument in timely fashion in the official records of Kingman County, Kansas and a Property Owner, Grantee or KDHE may re-record it at any time required to preserve this Easement.

**17. General Provisions.**

(a) **Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of Kansas.

(b) **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of Section 58-3810 of the Kansas Statutes. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) **Severability.** If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(d) **Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating solely to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Paragraph 11.

(e) **No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of a Property Owner's title in any respect.

(f) **Joint Obligation.** The obligations imposed by this Easement upon each Property Owner shall be joint and several.

(g) **Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

(h) **Termination of Rights and Obligations.** Notwithstanding anything herein to the contrary, a party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer and except that the rights reserved and granted pursuant to Paragraphs 2(f), 4(a), 4(b), 4(r) and 5 of this Easement to the Gerbers shall survive any subsequent transfer of ownership of the Property. Upon any transfer of ownership of the Property from the Grantor, the Grantor and the Grantor's Trustee shall have no continuing liability or obligations with respect to the Property and shall be released of any such liability and obligations except for any acts or omissions of the Grantor and the Grantor's Trustee occurring prior to such transfer. All parties hereby acknowledge that this Easement is to be placed upon the Property completely "as is" without any warranty, representation or covenant of any kind except as may be expressly set forth herein.

(i) **Captions.** The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

(j) **Counterparts.** The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by all parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

(k) **No Merger.** If at any time subsequent to the date hereof Grantee acquires fee title to the Property, the fee title to the Property covered by this Easement and the Easement herein granted shall not merge but shall always remain separate and distinct, notwithstanding the union of said estates either in the Grantee or in a third party by purchase or otherwise.

**TO HAVE AND TO HOLD** unto Grantee, its successors, and assigns forever.

**IN WITNESS WHEREOF** the parties have set their hands on the day and year first above written.

**Grantor:**

By \_\_\_\_\_  
Joan A. Gerber, as Trustee of the JOAN A. GERBER LIVING TRUST  
dated May 1, 2000

**Grantee:**

By \_\_\_\_\_  
Donald L. Beggs, President, Wichita State University

**State of Kansas Natural Resource Trustee:**

By \_\_\_\_\_  
Roderick L. Bremby, Secretary, Kansas Department of Health and  
Environment and Natural Resource Trustee for the State of Kansas

STATE OF KANSAS            )  
  ) ss:  
COUNTY OF SEDGWICK    )

This Deed of Conservation Easement was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2008 by Joan A. Gerber, as Trustee of the JOAN A. GERBER LIVING TRUST dated May 1, 2000, of lawful age.

\_\_\_\_\_  
Notary Public

My appointment expires:

\_\_\_\_\_

STATE OF KANSAS            )  
  ) ss:  
COUNTY OF SEDGWICK    )

This Deed of Conservation Easement was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2008 by Donald L. Beggs, President and duly authorized representative of Wichita State University, of lawful age.

\_\_\_\_\_  
Notary Public

My appointment expires:

\_\_\_\_\_

STATE OF KANSAS            )  
  ) ss:  
COUNTY OF SHAWNEE    )

This Deed of Conservation Easement was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2008 by Roderick L. Bremby, Secretary of the Kansas Department of Health and Environment and Natural Resource Trustee for the State of Kansas, of lawful age.

\_\_\_\_\_  
Notary Public

My appointment expires:

\_\_\_\_\_

# **ATTACHMENT 3**

Form No. 1068-2  
ALTA Plain Language Commitment

Commitment No.: **973122**  
Page Number: 1

**First American Title Kansas Agency, Inc.  
dba Kingman Abstract & Title Company  
221 North Main  
Kingman, KS 67068-0375**

April 17, 2008

Bob Hiser  
Magellan Midstream Partners, L.P.  
One Williams Center, MD27-2  
Tulsa, OK 74172

Title Officer: Alice Sander  
Phone: (620)532-2011

Order Number: 973122 B-3662

Property: SW/4 of Sec. 23-27-6  
Murdock, Kansas 67111

Attached please find the following item(s):

Commitment

Thank You for your confidence and support.

*Customer First!*

Form No. 1068-2  
ALTA Plain Language Commitment

Commitment No.: 973122  
Page Number: 2

## **FIRST AMERICAN TITLE INSURANCE COMPANY OF KANSAS**

### **INFORMATION**

The Title Insurance Commitment is a legal contract between you and the company. It is issued to show the basis on which we will issue a Title Insurance Policy to you. The Policy will insure you against certain risks to the land title, subject to the limitations shown in the policy.

The Company will give you a sample of the Policy form, if you ask.

The Commitment is based on the land title as of the Commitment Date. Any changes in the land title or the transaction may affect the Commitment and the Policy.

The Commitment is subject to its Requirements, Exceptions and Conditions.

This information is not part of the title insurance commitment.

### **TABLE OF CONTENTS**

	Page
Agreement to Issue Policy	3
Schedule A	
1. Commitment Date	4
2. Policies to be Issued, Amounts and Proposed Insured	4
3. Interest in the Land and Owner	4
4. Description of the Land	4
Schedule B-1 - Requirements	
Schedule B-2 - Exceptions	
Conditions	

**YOU SHOULD READ THE COMMITMENT VERY CAREFULLY.**  
**If you have any questions about the Commitment,**  
**please contact the issuing office.**



Form No. 1058-2  
ALTA Plain Language Commitment

Commitment No.: 973122  
Page Number: 3

COMMITMENT FOR TITLE INSURANCE

Issued by

*First American Title Insurance Company of Kansas*

Agreement to Issue Policy

We agree to issue a policy to you according to the terms of this Commitment.

When we show the policy amount and your name as the proposed insured in Schedule A, this Commitment becomes effective as of the Commitment Date shown in Schedule A.

If the Requirements shown in this Commitment have not been met within six months after the Commitment Date, our obligation under this Commitment will end. Also, our obligation under this Commitment will end when the Policy is issued and then our obligation to you will be under the Policy.

Our obligation under this Commitment is limited by the following:

The Provisions in Schedule A.

The Requirements in Schedule B-I.

The Exceptions in Schedule B-II.

The Conditions.

This Commitment is not valid without Schedule A and Sections I and II of Schedule B.



***First American Title Insurance Company  
of Kansas***

BY:

*Craig L. Dunn*

PRESIDENT

ATTEST

*Richard J. Cooper*

SECRETARY



Form No. 1068-2  
ALTA Plain Language Commitment

Commitment No.: **973122**  
Page Number: 4

### SCHEDULE A

#### Commitment Amendment:

1. Commitment Date: April 11, 2008 at 7:30 A.M.
2. Policy or Policies to be issued: Amount
  - (A) **ALTA Owner's Policy** \$250,000.00  
ALTA Owners Policy (10-17-92)  
Proposed Insured:  
Wichita State University
  - (B) **ALTA Loan Policy** \$0.00  
Proposed Insured:  
, its successors and assigns as defined in Paragraph 1(a) of the Conditions and Stipulations of the policy to be issued.
3. Fee Simple interest in the land described in this Commitment is owned, at the Commitment Date, by  
Joan A. Gerber, Trustee of the Joan A. Gerber Living Trust under indenture dated May 1, 2000
4. The land referred to in this Commitment is described as follows:  

**The Southwest Quarter (SW/4) of Section Twenty-three (23), Township Twenty-seven (27) South, Range Six (6) West of the 6th P.M., Kingman County, Kansas, EXCEPTING THEREFROM the West 150 feet of the South 800 feet of said SW/4 Sec. 23-27-6.**

Form No. 1068-2  
ALTA Plain Language Commitment

Commitment No.: 973122  
Page Number: 5

**SCHEDULE B**

**SECTION ONE  
REQUIREMENTS**

The following requirements must be met:

- (A) Pay the agreed amounts for the interest in the land and/or the mortgage to be insured.
- (B) Pay us the premiums, fees and charges for the policy.
- (C) Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured must be signed, delivered and recorded.
- (D) You must tell us in writing the name of anyone not referred to in this Commitment who will get an interest in the land or who will make a loan on the land. We may then make additional requirements or exceptions.
- (E) Furnish for examination an authentic copy of the Trust Agreement dated May 1, 2000 or Declaration of Trust and any Amendments or Revocation thereto made by Joan A. Gerber, settlor, naming Joan A. Gerber, as trustee. We reserve the right to make any additional requirements we may deem necessary.
- (F) Obtain and submit to the Company for recording a Trustees Deed from Trustees of the Joan A. Gerber Living Trust under indenture dated May 1, 2000 to Wichita State University.

NOTE: Said instrument must make reference to the terms and provisions of the Trust Agreement; be made pursuant to the powers conferred by said Agreement; state that the Trust Agreement remains in full force and effect at this time and that the same has not been amended or revoked, and finally, recite the full consideration being received.

**SCHEDULE B****SECTION TWO****EXCEPTIONS**

Any policy we issue will have the following exceptions unless they are taken care of to our satisfaction.

1. Rights or claims of parties in possession not shown by the public records.
2. Encroachments, overlaps, boundary line disputes, shortages in area or other matters which would be disclosed by an accurate survey or inspection of the premises.
3. Easements, or claims of easements, not shown by the public records.
4. Any liens, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
5. Taxes or special assessments which are not shown as existing liens by the public records.
6. Taxes for 2008 and all subsequent years not now due and payable. (2007 taxes in the amount of \$434.82 are paid in full.) A.P.N. 026 230 000 000 4010
7. Bill of Sale dated October 25, 1960, from Kansas Gas and Electric Company to The Sedgwick County Electric Cooperative Association, Inc., recorded in Misc. Book 92, page 190 on November 16, 1960, assigning all interest in primary distribution line, secondary line or service line, located, in, upon or adjacent to SW/4 Sec. 23-27-6, and other lands.
8. Resolution 89-36 recorded in Misc. Book 190 at page 108 by the Board of County Commissioners of Reno County, Kansas including the City of Pretty Prairie, Kansas within the boundaries of Reno-Kingman Joint Fire District No. 1 and redefining the boundaries of such district.
9. Oil and Gas Lease dated May 11, 2004, executed by Joan A. Gerber, Trustee of the Joan A. Gerber Revocable Living Trust dated 5/1/2000, in favor of J. Fred Hambright, Inc., for a primary term of 3 years, as recorded in Oil & Gas Book 13, page 104 on May 26, 2004, covering SW/4 Sec. 23-27-6. (Assigned to Lario Oil & Gas Company as recorded in Oil & Gas Book 14, page 10 on July 19, 2004) (Affidavit executed by Lario Oil & Gas Company extending primary term for additional 2 years, as recorded in Oil & Gas Book 22, page 97 on March 26, 2007)
10. Right of Way and Easement dated July 1, 2004, executed by Joan A. Gerber, Trustee of the Joan A. Gerber Living Trust u/i/d May 1, 2000, in favor of Lumen Energy Corporation, recorded in Oil & Gas Book 15, page 129 on March 16, 2005, for the purpose of a pipeline across the SW/4 Sec. 23-27-6.
11. Above Ground Temporary Easement, dated May 2, 2005, executed by Joan Gerber, as Lessor and West Wichita Gas Gathering, LLC, as Lessee, recorded in Oil & Gas Book 15, page 212 for a temporary pad easement on a 100' x 100' tract situated in SW/4 Sec. 23-27-6.
12. Subject to the road right of way on the South and West portions of herein described real estate.



Form No. 1068-2  
ALTA Plain Language Commitment

Commitment No.: 973122  
Page Number: 7

## CONDITIONS

### 1. DEFINITIONS

(a)"Mortgage" means mortgage, deed of trust or other security instrument.

(b)"Public Records" means title records that give constructive notice of matters affecting the title according to the state law where the land is located.

### 2. LATER DEFECTS

The Exceptions in Schedule B - Section II may be amended to show any defects, liens or encumbrances that appear for the first time in the public records or are created or attached between the Commitment Date and the date on which all of the Requirements (a) and (c) of Schedule B - Section I are met. We shall have no liability to you because of this amendment.

### 3. EXISTING DEFECTS

If any defects, liens or encumbrances existing at Commitment Date are not shown in Schedule B, we may amend Schedule B to show them. If we do amend Schedule B to show these defects, liens or encumbrances, we shall be liable to you according to Paragraph 4 below unless you knew of this information and did not tell us about it in writing.

### 4. LIMITATION OF OUR LIABILITY

Our only obligation is to issue to you the Policy referred to in this Commitment, when you have met its Requirements. If we have any liability to you for any loss you incur because of an error in this Commitment, our liability will be limited to your actual loss caused by your relying on this Commitment when you acted in good faith to:

comply with the Requirements shown in Schedule B - Section I

or

eliminate with our written consent any Exceptions shown in Schedule B - Section II.

We shall not be liable for more than the Policy Amount shown in Schedule A of this Commitment and our liability is subject to the terms of the Policy form to be issued to you.

### 5. CLAIMS MUST BE BASED ON THIS COMMITMENT

Any claim, whether or not based on negligence, which you may have against us concerning the title to the land must be based on this commitment and is subject to its terms.

## **We Are Committed to Safeguarding Customer Information**

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information – particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our parent company, The First American Corporation, we have adopted this Privacy Policy to govern the use and handling of your personal information.

### **Applicability**

This Privacy Policy governs our use of the information which you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its *Fair Information Values*, a copy of which can be found on our website at [www.firstam.com](http://www.firstam.com).

### **Types of Information**

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

### **Use of Information**

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies, and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies, or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

### **Former Customers**

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

### **Confidentiality and Security**

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's *Fair Information Values*. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.