



**Satya Sinha**  
Project Manager  
Superfund &  
Specialty Portfolios

**Chevron Environmental  
Management Company**  
6101 Bollinger Canyon Road  
San Ramon, CA 94583  
Tel 925 790-6432  
Fax 925 790-6772  
satyasinha@chevron.com

February 23, 2011

Via Overnight Express

Stuart M. Aller  
KDHE, Bureau of Environmental Remediation  
1000 SW Jackson Street, Suite 410  
Topeka, KS 66612-1367

BER SCANNED  
MAR 03 2011

RE: Chevron USA, Inc. Property Site, Cherokee County, KS (KDHE Project #  
C3-011-71857, EUCA #08-EUC-0039)

Dear Mr. Aller,

Please find attached a duly signed copy of the Environmental Use Control Agreement bearing the stamp of the Office of Register of Deeds for the above-referenced site. Per our discussions yesterday, a check to cover the funding will be submitted to your office next week via a separate correspondence.

Let me know if you have any questions regarding this submittal.

Sincerely,

Satya Sinha  
Chevron Environmental Management Company

RECEIVED

FEB 24 2011

BUREAU OF  
ENVIRONMENTAL REMEDIATION

Office of Register  
of Deeds Cherokee  
County

Feb 17, 2011 9:11:21 AM

Receipt # 17489

Payee: CHEVRON FEDERAL CREDIT UNION

Returned To:  
JEFF MOSER  
CHEVRON  
6001 BOLLINGER CANYON RD  
SAN RAMON, CA 94583

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Agreement (432-308)	\$44.00
Agreement Filing Fee	\$44.00

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**Amount Due:** \$44.00

**Tender Total:** \$44.00  
Check #0000761927 \$44.00

**CHANGE DUE:** \$0.00

Have a nice day.

DOCUMENT NUMBER: 08-EUC-0039

PROJECT NUMBER: C3-011-71857

PROPERTY CATEGORY: 2

DEED SCANNED

MAR 03 2011

## ENVIRONMENTAL USE CONTROL AGREEMENT

**Chevron U.S.A. Inc.**, a Pennsylvania corporation, registered in Kansas, having a mailing address of P.O. Box 6028, San Ramon, CA 94583, hereinafter referred to as "the Owner", is the owner of real property in the County of Cherokee, Kansas as shown on the map attached hereto as Exhibit A, known as the Chevron U.S.A. Inc. Property, the Jayhawk Mine Site, and/or the Pitzer Mine, hereinafter referred to as "the Property", and more particularly described by the following legal description:

**A tract of land in the Southeast Quarter of the Southeast Quarter of Section 5, Township 34 South, Range 25 East of the Sixth Principal Meridian in Cherokee County, Kansas, being more fully described as follows: Commencing at the Southeast corner of said Section 5; thence South 86°12'47"West along the South line thereof, 65.06 feet to the point of beginning; thence South 86°12'47"West along said South line, 402.38 feet to a point on the Easterly right-of-way line of a railroad; thence North 47°33'01"West along said right-of way line, 1114.09 feet; thence North 89°09'08"East, 1207.16 feet to a point that is 65.0 feet West of the East line of Section 5; thence South 01°16'28"East and parallel with said section line, 743.41 feet to the point of beginning. Subject to a county road right-of-way over and across the south 30.0 feet thereof. Containing 14.02 acres more or less of which 0.29 acres are subject to the county road right-of-way.**

And which shall likewise include any and all parcels contained therein.

WHEREAS the Owner has requested, by application to the Kansas Department of Health and Environment, hereinafter referred to as "KDHE", to restrict, prohibit and/or limit certain uses of the Property in accordance with Kansas Statutes Annotated (K.S.A.) 2009 Supp. 65-1,221 *et seq.*

KDHE has approved the Owner's application to restrict, prohibit, and/or limit certain uses of the Property since residual contamination, which exceeds department standards for unrestricted residential use, remains on the Property.

The conditions at the Property as of the date of KDHE's approval of the application are as follows:

**The Property described above is the location of a former lead and zinc mine that operated during the early 1900's and subsequently left unoccupied since 1920. Results of previous investigations indicate that the concentration of lead detected in soils exceed the Non-Residential Tier 2 soil pathway screening value of 1000 milligrams per kilogram as established in the *Risk-Based Standards for Kansas RSK Manual - 5th***

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*Version*, dated October 2010. Dissolved cadmium, lead and zinc were identified in groundwater at the Property at concentrations exceeding their corresponding federally promulgated primary or secondary maximum contaminant levels. However, elevated concentrations in background samples collected at the Property are indicative of natural mineralization in soils across the Property.

Remedial actions completed for the Property included the construction of a protective cover consisting of an 18-inch layer of fill material above an impacted area approximately 0.4 acres in size. A 6-inch layer of topsoil was then applied and seeded to native vegetation species. Exhibit B depicts the protective cover construction design, grading, and cover boundary area.

KDHE has determined, based on conditions at the Property, the application and other information pertaining to the Property, that environmental use controls are appropriate to ensure future protection of public health and the environment, subject to the conditions herein. Therefore, in accordance with K.S.A. 2009 Supp. 65-1,226 and the rules and regulations promulgated thereunder, the Property is hereby designated by KDHE as a Category 2 property.

The Owner acknowledges that this Agreement runs with the land and is binding on all successors in interest in the Property pursuant to K.S.A. 2009 Supp. 65-1,227(b); and is enforceable by KDHE pursuant to K.S.A. 2009 Supp. 65-1,229, unless and/or until such requirements are mutually terminated in writing by KDHE and Owner or Owner's successor in interest. For purposes of the obligations set forth in this document, "Owner" shall be deemed to include the current Owner and any and all successors in interest.

This Agreement shall be recorded, by the Owner, with the Cherokee County Register of Deeds for the purposes of providing notice of the environmental use controls, protecting public health and the environment, and to prevent interference with the operation, performance, and/or maintenance of any remedial actions on the Property.

#### **RESTRICTIONS, PROHIBITIONS AND LIMITATIONS:**

Due to the environmental conditions described above, it is the desire and intention of the Owner to restrict, prohibit, and/or limit the following uses of the Property:

- A. The Property shall not be used for residential purposes of any type including, but not limited to, a residence or dwelling, including a house, apartment, mobile home, nursing home, or condominium; or public use area, including a school, educational center, day care center, playground or similar structure, unrestricted outdoor recreational area, or park.
- B. The area of the Property containing the protective cover shall not be used for agricultural purposes including, but not limited to, growing dry-land crops or irrigated crops, ranching, operating a feed lot, or any other activities which may disturb the underlying residual

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contamination remaining on the Property; however, the protective cover may be used for haying, limited livestock grazing, or pasturing provided that such use does not cause erosion of the protective cover or disturb the underlying residual contamination remaining on the Property. Any damage to the protective cover caused by such activities will be repaired by the Owner at the Owner's expense.

- C. The Owner shall not allow water wells to be drilled, constructed, or used on the Property for the purposes of domestic, lawn and gardening, or other means, which use involves or may involve human consumption and/or other possible human contact uses. This restriction does not prohibit drilling, construction or use of water wells for the purpose of containing product or contamination, or for contaminated ground water recovery, monitoring, or other remediation activities as approved in writing by KDHE.
- D. The Owner shall not file or petition to initiate zoning of the Property without fifteen (15) days prior notification to KDHE.
- E. The Owner shall allow no operations or uses on the Property that will or likely will penetrate the protective cover or jeopardize the protective cover's functional integrity, including without limitation, excavation, drilling, scraping, or erosion.
- F. Any soils excavated from the Property must be tested following a KDHE-approved scope of work to determine the proper method of disposal. KDHE shall be provided with notification fifteen (15) calendar days prior to any excavation activities.
- G. The Owner shall inform all easement holders, contractors and/or other workers performing any excavation activities on the Property, prior to such activities, of the potential hazards associated with the direct contact and/or transport of any potentially contaminated and/or hazardous soil or other material from the Property. Easement holders, contractors and/or workers shall also be informed by the Owner of any potential hazards associated with releases from contaminated media located on the Property.
- H. The Owner shall preserve, protect and replace, as necessary, all permanent survey markers and benchmarks that are installed on the Property.
- I. The Owner shall consult with KDHE and obtain prior written authorization from KDHE before undertaking any of the following at the Property:
  1. Undertaking any excavation or construction of permanent structures or drainage ditches on the Property;
  2. Changing the surface contour of the Property or performing dirt work thereon;
  3. Altering the vegetation grown on the Property in a manner inconsistent with routine

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management practices;

4. Producing food chain crops on the Property; or
5. Removing any security fencing, signs or devices installed to restrict access to the protective cover and/or Property.

**ACCESS:**

The Owner hereby agrees and conveys to KDHE, its agents, contractors, and employees, access to the Property for the term of this Agreement to enter or come upon the Property to inspect the Property and perform any required action (i.e., monitoring, sampling, etc.) KDHE deems necessary for any one or more of the following purposes:

1. Ensuring that use, occupancy, and activities of and at the Property are consistent with this Agreement;
2. Inspecting protective structures and any other remedial systems to ensure their designed operation, performance and structural integrity;
3. Documenting environmental conditions of and at the Property;
4. Ensuring implementation and enforcement of the requirements, restrictions, prohibitions, and other limitations described in this Agreement; and/or
5. Performing any additional investigations or remediation deemed necessary by KDHE to protect public health and the environment.

**DURATION:**

The Owner hereby agrees that this Agreement extends in perpetuity, unless and/or until removal following approval by KDHE pursuant to K.S.A. 2009 Supp. 65-1,227.

**INSPECTION REQUIREMENTS:**

The Owner shall visually inspect the Property and the protective cover on a semi-annual basis for the first year of this Agreement, and every five (5) years thereafter. The Owner shall notify KDHE at least seven days prior to any inspection.

The Owner shall submit to KDHE, after each inspection, a written report including information on the current uses of the Property, an assessment of the condition of the protective cover, photo documentation and any other information required to verify the Property is being used as indicated herein. The Owner may submit and KDHE shall consider modifications of the frequency of

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inspection and reporting if warranted by technical data. Written approval from KDHE must be obtained for modification of frequency of inspection or reporting requirements throughout the term of this Agreement.

**MAINTENANCE REQUIREMENTS:**

The Owner hereby agrees to provide post-construction maintenance of the protective cover and correct deficiencies as outlined by KDHE to prevent exposure to human health and the environment. Maintenance includes, but is not limited to, inspection, mowing, weed control, and repairs to the protective cover. Repairs may include addition of soil and vegetation planting. Such repairs may be necessary to correct the effects of settlement, subsidence, erosion, or other events including widening of cracks or other openings, which may provide potential exposure to contaminated subsurface soils.

**FUNDING:**

The Owner hereby agrees to submit to KDHE a one-time payment of \$10,000 to compensate KDHE for costs incurred to perform inspections and tracking of the terms and requirements of this Agreement. The Owner acknowledges that the funding requirement for this Agreement is based on the size of the Property, physical properties of residual contamination, frequency of KDHE's anticipated inspections, and anticipated KDHE inspection costs.

**OTHER TERMS AND CONDITIONS:**

The Owner hereby agrees to provide KDHE written notification no less than fifteen (15) calendar days prior to any sale, lease, conveyance or other transfer of the Property. The notice shall include the name and business address (if applicable) of the transferee and the expected date of transfer.

The Owner shall cause any lease, grant, or other transfer of any interest in the Property to include a provision expressly requiring the lessee or transferee to comply with the terms of this Agreement. The failure to include such a provision shall not affect the validity or applicability to the Property of this Agreement.

Within fifteen (15) days of real property conveyance, the Owner hereby agrees to provide KDHE a copy of the recorded deed with legal description and corresponding survey map for which this Agreement applies.

The Owner hereby agrees to provide KDHE written notification no less than fifteen (15) calendar days prior to any land use changes at the Property.

The Owner acknowledges that the requirements in this Agreement may not be extinguished, limited or impaired through adverse possession, abandonment, waiver, lack of enforcement, or other common law principles, pursuant to K.S.A. 2009 Supp. 65-1,227(e).

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This Agreement may be modified by mutual written agreement by the Owner and KDHE. Within thirty (30) calendar days of executing an amendment, modification, or termination of this Agreement, the Owner shall record such amendment, modification, or termination with the Cherokee County Register of Deeds, and within thirty (30) calendar days thereafter, the Owner shall provide a copy of the recorded amendment, modification, or termination to KDHE that bears the seal and/or notarized signature of the Register of Deeds.

**ENFORCEABILITY:**

If the terms of this Agreement are not being implemented by the Owner or contamination at the Property presents a hazard to public health or the environment, KDHE may take such action as authorized by K.S.A. 2009 Supp. 65-1,229, including:

- A. Issue an order directing the Owner to correct any deficiencies and fully implement the terms of this Agreement.
- B. Issue an order retracting this Agreement and any remedial action at the Property and requiring the Owner to implement a remedial action at the Property to attain a cleanup standard that will allow for unrestricted use of the Property.

**EFFECTIVE DATE OF AGREEMENT:**

The Owner shall provide to KDHE a copy of this Agreement bearing the seal or notarization of the Register of Deeds in Cherokee County within ninety (90) days from **certified receipt** of this fully executed Agreement from KDHE.

The Owner shall provide KDHE with funding as determined by KDHE in accordance with K.S.A. 2009 Supp. 65-1,226 within ninety (90) days from **certified receipt** of this fully executed Agreement from KDHE.

Proper recording of all necessary documents and submission of required funding shall be conditions precedent to the effectiveness of this Agreement.

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IN WITNESS WHEREOF, KDHE and the Owner have entered into and executed this Environmental Use Control Agreement through their duly authorized representatives as of this 28th day of October, 2010.

**Kansas Department of Health and Environment**

By: [Signature]  
Roderick L. Bremby, Secretary

**ACKNOWLEDGMENT:**

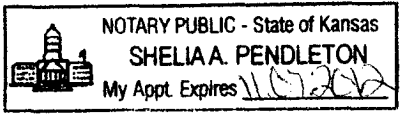
STATE OF KANSAS            )  
  )ss:  
COUNTY OF SHAWNEE    )

BE IT REMEMBERED, on this 28th day of October, 2010, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Roderick L. Bremby, Secretary and authorized representative of KDHE, who is personally known to be such person who executed the above document on behalf of said Agency, and such person duly acknowledges the execution of the same to be his/her act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at my office in Shawnee County, Kansas, the day and year last written above.

[Signature]  
Notary Public in and for said County and State

My Term Expires: 11/07/2012



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NUMBER: 08-EUC-0039	NUMBER: C3-011-71857	CATEGORY: 2

Chevron U.S.A. Inc.

By: J. Moser

Date: 2/7/2011

Print Name: J.A. Moser

Assistant Secretary

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

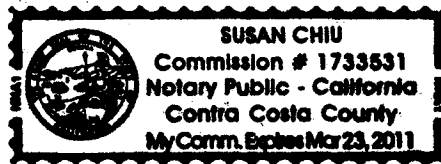
**ACKNOWLEDGMENT:**

STATE OF CALIFORNIA )  
 )ss:  
COUNTY OF CONTRA COSTA

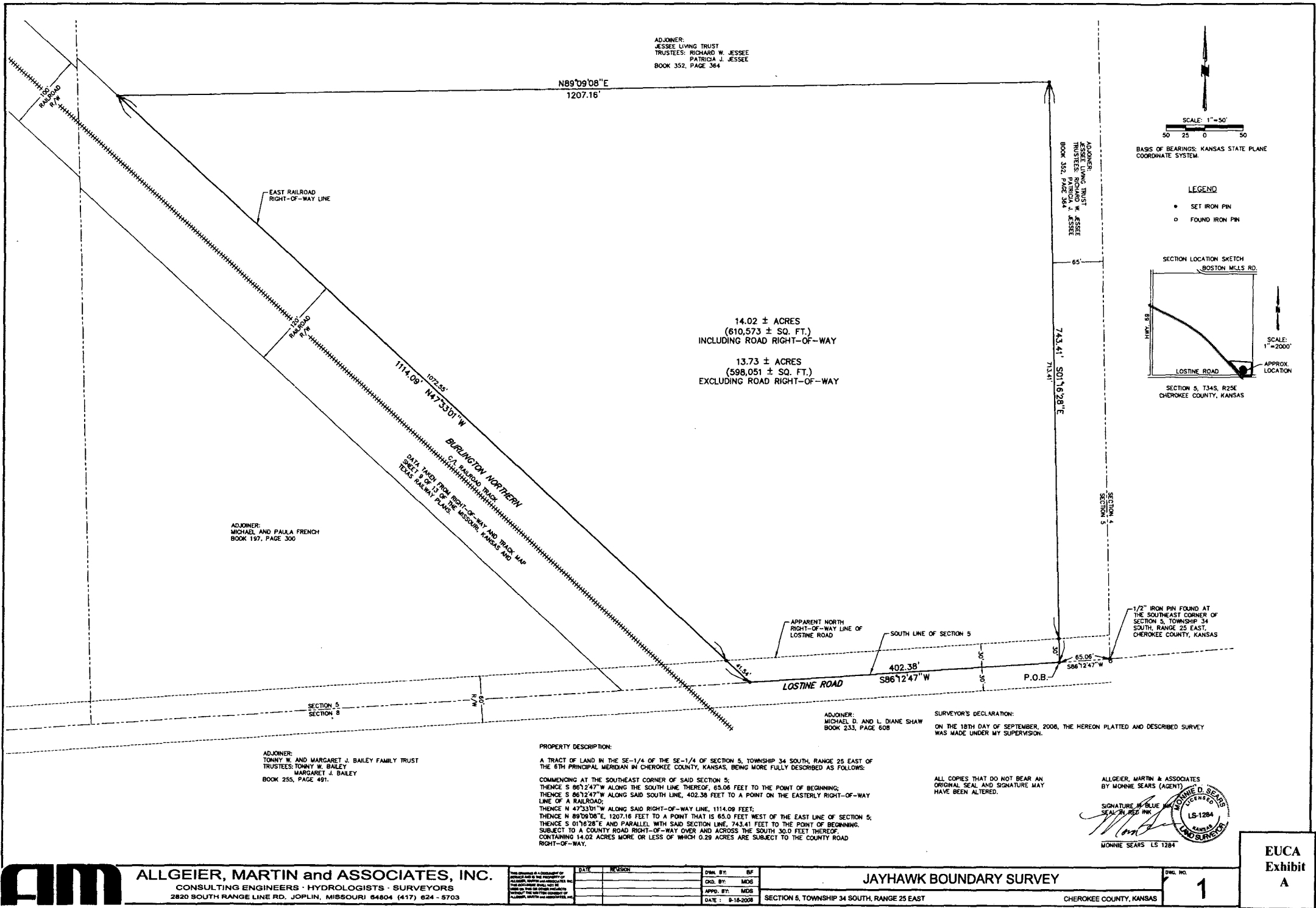
BE IT REMEMBERED, on this 7<sup>th</sup> day of FEBRUARY, 2011, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came J. A. MOSER, authorized representative of Chevron U.S.A. Inc., who is personally known to be such person who executed the above document on behalf of said corporation, and such person duly acknowledges the execution of the same to be his/~~her~~ act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at my office in CONTRA COSTA County, 2/7/2011, the day and year last written above.

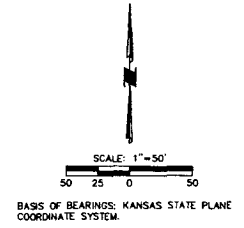
Susan Chiu  
Notary Public in and for said County and State



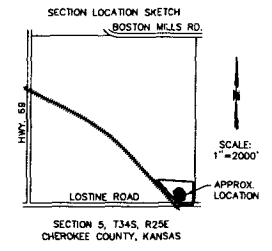
My Term Expires: 3/23/2011



ADJOINER:  
 JESSEE LIVING TRUST  
 TRUSTEES: RICHARD W. JESSEE  
 PATRICIA J. JESSEE  
 BOOK 352, PAGE 364



LEGEND  
 • SET IRON PIN  
 ○ FOUND IRON PIN



14.02 ± ACRES  
 (610,573 ± SQ. FT.)  
 INCLUDING ROAD RIGHT-OF-WAY

13.73 ± ACRES  
 (598,051 ± SQ. FT.)  
 EXCLUDING ROAD RIGHT-OF-WAY

ADJOINER:  
 MICHAEL AND PAULA FRENCH  
 BOOK 197, PAGE 300

ADJOINER:  
 TONNY W. AND MARGARET J. BAILEY FAMILY TRUST  
 TRUSTEES: TONNY W. BAILEY  
 MARGARET J. BAILEY  
 BOOK 255, PAGE 491.

PROPERTY DESCRIPTION:  
 A TRACT OF LAND IN THE SE-1/4 OF THE SE-1/4 OF SECTION 5, TOWNSHIP 34 SOUTH, RANGE 25 EAST OF THE 6TH PRINCIPAL MERIDIAN IN CHEROKEE COUNTY, KANSAS, BEING MORE FULLY DESCRIBED AS FOLLOWS:  
 COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 5;  
 THENCE S 86°24'7\"/>

ADJOINER:  
 MICHAEL D. AND L. DIANE SHAW  
 BOOK 233, PAGE 608

SURVEYOR'S DECLARATION:  
 ON THE 18TH DAY OF SEPTEMBER, 2006, THE HEREON PLATTED AND DESCRIBED SURVEY WAS MADE UNDER MY SUPERVISION.

ALL COPIES THAT DO NOT BEAR AN ORIGINAL SEAL AND SIGNATURE MAY HAVE BEEN ALTERED.

ALLGEIER, MARTIN & ASSOCIATES  
 BY MONNIE SEARS (AGENT)  
 SIGNATURE IN BLUE INK  
 SEAL IN RED INK  
 MONNIE SEARS LS 1284

**AM** ALLGEIER, MARTIN and ASSOCIATES, INC.  
 CONSULTING ENGINEERS - HYDROLOGISTS - SURVEYORS  
 2820 SOUTH RANGE LINE RD., JOPLIN, MISSOURI 64804 (417) 824-5703

DATE	REVISION	DWN. BY:	BF
		CHK. BY:	MDS
		APPD. BY:	MDS
		DATE:	9-18-2008

**JAYHAWK BOUNDARY SURVEY**  
 SECTION 5, TOWNSHIP 34 SOUTH, RANGE 25 EAST  
 CHEROKEE COUNTY, KANSAS

DWL NO. **1**

**EUCA**  
 Exhibit  
 A

Disclaimer  
 Document has been modified from its original size;  
 scale may no longer be accurate.

