

MEMORANDUM OF UNDERSTANDING

THIS AGREEMENT is made and entered into this 1 day of April, 2014, by and between the BOARD OF COUNTY COMMISSIONERS OF LA PLATA COUNTY, COLORADO, 1060 E. 2nd Avenue, Durango, Colorado 81301 and XTO ENERGY INC., 810 Houston Street, Ft. Worth, TX 76102.

DEFINITIONS

Abandonment or abandoned means the permanent abandonment of a well based on the operator's filing with the COGCC.

Applicant means XTO Energy Inc.

Best Management Practices means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices intended to prevent or reduce the pollution of waters of the State of Colorado as described in the regulations of the Colorado Department of Public Health and Environment, as amended from time to time.

BLM means the Bureau of Land Management.

COGCC means the Colorado Oil and Gas Conservation Commission of the State of Colorado.

Conventional gas well means a well producing from a non-coalbed methane formation found in the San Juan Basin, such as the Mesa Verde or Dakota Sandstone formations.

County means the Board of County Commissioners of La Plata County.

Easement means express or implied authorization by a property owner for the use of a designated portion of his property by another, for a specified purpose.

Fruitland Coal Well means a gas well drilled for the purpose of producing gas from the Fruitland coal seams underlying the lands described in the Infill Application.

Gas well means a well having a pressure and volume of natural gas; specifically, producing methane, often in combination with a variety of other substances such as butane, propane and carbon dioxide.

Green completion means a technique whereby gas is recovered for sale or use instead of being vented or flared during initial completion flow back operations as set forth in COGCC Rule 805.b.(3) and Rule 604.c.(2)C.

Heavy equipment means individual truck/trailer combination vehicles with a gross vehicle weight exceeding 5 tons.

Infill Application means the application filed by Applicant with the COGCC in Cause No. 112, Docket No. 1312-AW-81 on or about October 17, 2013 requesting an increase of the of Fruitland Coal Wells in portions of La Plata County, Colorado.

Infill Application Area means the area within La Plata County described in the Infill Application.

Infill County Permit means any permit the county issues pursuant to LPLUC for minor oil and gas facilities and major oil and gas facilities related to the Infill Application.

Infill Wells means those wells contemplated to be drilled by virtue of the Infill Application.

LPLUC means the La Plata County Land Use Code, as amended from time to time.

Low bleed means pneumatic controllers (operated using natural gas) installed on field equipment to replace high bleed devices that vent small amounts of methane continuously.

Major oil and gas facilities shall have the meaning set forth in Section 90-19 of LPLUC.

Minor oil and gas facilities shall have the meaning set forth in Section 90-19 of LPLUC.

Permanent operations mean operations for an Infill Well after initial drilling, completion and interim reclamation and before abandonment.

Reasonable efforts mean diligent and good faith efforts to accomplish a given objective.

Right-of-way means a tract or strip of land, separate and distinct from the underlying property, owned, occupied or intended to be occupied by an oil, gas and/or water pipeline.

Road Maintenance and Improvement Fees means the County road maintenance and improvement fees described in Article 3 below.

Well Pad means the flat graveled portion of the pad area in which permanent operations for the gas well take place.

RECITALS

A. La Plata County is a political subdivision of the State of Colorado authorized to act through its Board of Commissioners.

B. Applicant is a gas producing operator which has filed the Infill Application with the COGCC requesting an increase in the density of Fruitland Coal

Wells in parts of La Plata County, Colorado. The Infill Application requests authority for up to four (4) Fruitland Coal Wells within each of the two drilling and spacing units which are the subject of the Infill Application Area.

C. The parties to this Agreement have differing legal positions regarding the degree and extent of the County's authority to regulate certain aspects of oil and gas operations. The parties prefer, if possible, to avoid expending their resources in advancing their legal positions. Notwithstanding these differences and in their desire to avoid protracted formal hearings, the County and Applicant are willing to agree to the terms contained herein.

D. The provisions of Chapter 90 of LPLUC require Applicant to obtain a county permit for the construction, installation and operation of oil and gas facilities within the unincorporated areas of the county except with respect to those lands where the County's jurisdiction is preempted by federal or state law, or by Southern Ute Indian Tribal jurisdiction.

E. The County seeks to facilitate the development of oil and gas resources within the above-described areas of the county while mitigating potential impacts from such development.

F. The County has determined that potential impacts attendant to future gas development would be best mitigated for the county as a whole if future Fruitland Coal Wells are drilled on existing well pads where practical and as prescribed in LPLUC despite the fact that, in some instances, the use of existing well pads may further affect certain property owners and neighboring properties.

G. C.R.S. § 43-2-147 allows the County to, and describes the manner in which, the County shall regulate vehicular access to and from any public highway under its jurisdiction and from or to property adjoining a public highway in order to protect the public health, safety and welfare, to maintain smooth traffic flow, to maintain highway right-of-way drainage and to protect the functional level of public highways.

H. The County, as a matter of right, may intervene in the adjudicatory proceedings before the COGCC related to the Infill Application to raise environmental or public health, safety and welfare concerns. In exchange for the agreements contained herein, the County will not protest Applicant's Infill Application, nor, if it intervenes in the adjudicatory proceedings related to the Infill Application, will it advocate any position inconsistent with any term contained in this Agreement.

I. Applicant and the County wish to have certain issues amicably resolved prior to the COGCC's adjudicatory proceedings on the Infill Application and they agree that certain provisions of this Agreement should be included (subject to COGCC approval) in the requested Infill order.

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AGREEMENT

In consideration of the mutual obligations and benefits set forth in this Agreement and for other good and valuable consideration, the receipt of which is acknowledged, Applicant and the County agree as follows:

ARTICLE I APPLICATION

This Agreement shall apply to lands presently within the unincorporated portions of the Infill Application Area within the County with the exception of those lands where the County's jurisdiction is preempted by federal or state law, or by Southern Ute Indian tribal jurisdiction.

ARTICLE II DENSITY AND USE OF EXISTING WELL PADS AND FACILITIES

2.1 *Density.* Applicant agrees that, except as provided in Article 2.2 herein or as may be otherwise permitted in the COGCC order approving Applicant's Infill Application, the density of Well Pads within the Infill Application Area shall not exceed four (4) within any single 640-acre governmental section of real property. Notwithstanding the foregoing, nothing contained in this Article II shall be construed so as to require the closure or abandonment of any existing gas well.

2.2 *Well Location; Exceptions.* The County believes that the potential impacts attendant to future gas development would be best mitigated for the County as a whole if future Fruitland Coal Wells are drilled on existing well pads ("Pad Drilling"). Special exceptions to Article 2.1 may be requested by Applicant in its applications for Infill County Permits. The County will grant special exceptions when the County finds that one or more of the following factors apply in a manner such that use of an existing Well Pad is rendered impractical:

- a. topographic characteristics of the site;
- b. natural resource constraints (*e.g.*, wetlands);
- c. the location of utilities or similar services;
- d. demonstratively insurmountable technical issues related to the development or management of the mineral resource;
- e. other site conditions beyond the control of Applicant; or
- f. demonstrable safety concerns.

2.3 *Use of Existing Infrastructure.* Applicant agrees, except as provided in Article 2.2, to use existing infrastructure, including but not limited to the use of existing roads, pipeline routes and Well Pads within the existing drilling windows in the Infill Application Area. Nothing contained in this Article 2.3 shall preclude Applicant from installing additional or substitute facilities within the existing roads, pipeline routes and Well Pads if reasonably required to produce and operate the Infill Wells. The County

recognizes that some minor reconfiguration of the existing infrastructure or additional easements may be necessary due to the placement of multiple wells on existing Well Pads. At the request of the County, Applicant shall furnish information demonstrating Applicant's requested need for new facilities (roads, pipeline easements, well pads, *etc.*) and new facilities may be required due to:

- a. The lack of existing infrastructure in a COGCC permitted Fruitland drilling window or unit.
- b. Engineering, geologic, safety, surface feature, economic, and/or without limitation any other constraints that make use of existing infrastructure reasonably impractical.
- c. Facility ownership constraints that make the sharing or use of existing facilities reasonably impractical.

2.4 *Setbacks and Pad Drilling.* Section 90-122(b) of LPLUC establishes certain setback requirements. In some instances, existing minor oil and gas facilities which initially met the setback requirements of this section do not currently meet the requirements due to (i) the encroachment of other development into the setback area, (ii) the facility is a nonconforming uses, as defined in this chapter, due to a failure to meet current setback requirements; or (iii) because a waiver previously was obtained. In those instances, where the setback requirements of this paragraph cannot be met, the use of the existing well pad site may be considered for siting of a new well, provided that the placement of the new well's wellhead is not closer to the nearest lot or property line or building structure for human occupancy than the existing well's wellhead.

2.5 *Expansion of Existing Well Pads.* In those instances where an existing Well Pad is used for an Infill Well, Applicant agrees to use reasonable efforts to minimize the expansion of the area of the existing Well Pad. The reasonableness of the expansion under the circumstances shall be demonstrated by Applicant to the County with its Infill County Permit application. Applicant agrees to exercise reasonable efforts to expand existing well pads away from nearby existing impacted residential structures.

ARTICLE III

PRIVATE ROADS AND ROAD MAINTENANCE AND IMPROVEMENT FEES

3.1 *Road Maintenance and Improvement Fees.* County and Applicant have determined that specific land use activities by Applicant within the Infill Application Area may create impacts on County roads and, therefore, mitigation in the form of negotiated road maintenance and improvement fees is proper and necessary. The parties recognize that these fees are not always a reliable or sufficient source of funds and that the County's ability to actually perform such work may be limited or hampered by reasons beyond its control. However, the County agrees to exercise good faith in its efforts to carry out the intent of this Agreement and to perform such work to the extent that monies are available and appropriated. The County shall control the sequencing and

timing of such work and Applicant hereby waives its rights, if any, to insist upon completion of the work or to dictate the manner, sequencing and timing of the same. The County recognizes and acknowledges that the monies collected hereunder must be collected and spent in a manner consistent with the accounting practices set forth in C.R.S. § 29-1-801 *et seq.* and that such monies may only be spent on facilities that are directly and reasonably related to the mitigation of impacts related to the activities described in the Infill Application.

3.2. *Road Maintenance and Improvement Fees Calculation and Payment.* Based upon certain agreed upon assumptions, Applicant and the County have agreed to estimated Road Maintenance and Improvement Fees of \$8,900.00 for each additional minor oil and gas facility approved through the Infill Application. Long term impact on County roads is not expected from wells drilled pursuant to the Infill Application since the same pumper who attends to the existing wells in the units can monitor and service the new wells at the same time. There would be a temporary increase of traffic during drilling and completion activities. For all major facilities, if any, Applicant shall pay fee(s) based upon a traffic study associated with the Class II permit for such major facility and such fee(s) shall be based upon the methodologies used by the parties to derive the fees set forth herein.

Applicant shall pay the County the Road Maintenance and Improvement Fee due and owing for the prescribed activity prior to the County's issuance of the Infill County Permit. If a permit is not issued for the proposed infill well, then the fee will be returned to Applicant.

3.3 *Submission of Information.* The County seeks to efficiently and effectively schedule maintenance and improvement projects on its county roads. The use of such roads by heavy equipment related to construction or production activities in the Infill Application Area could have an effect on such projects. The County seeks and Applicant agrees to provide the County, on a quarterly basis, a forecasted activity plan setting forth the expected location and duration of minor oil and gas facilities and major oil and gas facilities operations within the county for the upcoming quarter as well as the county roads to be accessed and general proposed travel or haul routes. The disclosure of such plans and routes is for informational purposes only and shall not be construed as creating any obligation on the part of Applicant, including, without limitation, to conduct such operations, to limit the location and duration of such operations or to follow such routes. The first submission of such information shall occur within thirty (30) days after the COGCC order approving the Infill Application. The County agrees to reciprocate and provide notice to Applicant of its intended projects and its expected schedule for same.

3.4 *Private Access.* Applicant agrees that in those instances where it accesses Infill Wells in the Infill Application Area through a new route involving a private road or roads, it will use reasonable efforts to negotiate a fair and reasonable road maintenance or road improvement agreement with the private entity or entities that maintain the road for the purpose of paying or making in-kind contributions for its pro rata share of the cost of maintaining or improving the affected road(s). If Applicant fails to reach an agreement in

such circumstances, documentation of its actions shall be provided to the County, and the existence, or lack thereof, of such executed agreement shall be noted in the Infill County Permit application.

3.5 *Use of Equipment.*

Applicant agrees that:

a. it will remove or require the removal of tire chains from its heavy equipment before entering a county road unless safety conditions (i.e. icy and/or snow packed roads) prevent such removal and the use of tire chains does not cause damage to county roads;

b. all new roads associated with the Infill Wells within the Infill Application Area, unless waived by the County, shall have gravel access and Well Pads with a minimum of four inches (4") of either Class 6 or Class 2 Aggregate Base Course over a stabilized base as defined by the Colorado Department of Transportation Standard Specifications for Road and Bridge Construction over a stabilized base, both of which shall be maintained throughout permanent operations of the Well Pad; and

c. If mud and/or debris is tracked onto the county road by Applicant's equipment, Applicant shall remove same and restore the condition of the road as promptly as is reasonable under the circumstances.

d. Road maintenance and improvement fees outlined in Section 3.2 are designed to recoup the incremental county cost associated with road deterioration and safety related to Applicant's use of the county roads as part of the development of the Infill Application Area. Pursuant to CRS §42-4-512, Applicant shall be liable for any damage to a county road(s) caused by Applicant that is in excess of the incremental costs estimated and set forth in Section 3.2.

3.6 *Produced Water Hauling.* Except in emergency situations of which the County shall be provided notice, and except during drilling, completion and well servicing operations, Applicant shall use reasonable efforts to transport by pipe produced water. In those instances where the utilization of a water hauling truck is required, Applicant agrees to strictly comply with the weight restrictions set forth in Chapter 42, Article V of the LPLUC.

ARTICLE IV AIR QUALITY

4.1 *Greenhouse Gas Reduction.* Applicant agrees to utilize reasonable efforts to minimize methane emissions by using "green completion" techniques, and the installation of "low bleed" pneumatic instrumentation, when and where feasible.

4.2 *Emission Control Equipment.* Applicant will comply with existing EPA rules and any current and future regulations validly adopted by an authority with appropriate jurisdiction, including regulations that have or may be adopted by the Southern Ute Indian Tribe.

4.3 *Electrification.* Pursuant to LPCLUC § 90-122(d)(2), Applicant agrees that Infill well(s) with engines or motors (excepting wellhead compressor engines) shall be electrified if located within 1,320 feet of distribution voltage. The electrification requirements contained herein refer to the use of 3 phase power and “distribution voltage” means 12.47 kV 3 phase power. Applicant may provide information demonstrating that such electrification is infeasible. The County shall review this information and may provide a waiver of this requirement if distribution voltage is not currently within 1,320 feet of the proposed Infill well(s). The applicant will contact and provide the surface owner an opportunity, at the surface owner’s cost, to extend distribution voltage to within 1,320 feet of the proposed Infill Well(s). Internal combustion engine powered artificial lift equipment may be used prior to the time that a site facility is electrified. Infill Well(s) which are not electrically operated shall be equipped with quiet design mufflers (also referred to as hospital grade or dual dissipative) or equivalent. Such equipment mufflers shall be properly installed and maintained in proper working order.

4.4 *Compliance with Air Quality Laws and Regulations.* Applicant will comply with existing federal and state laws and regulations applicable to its operations as well as any future laws and regulations validly adopted by an authority with appropriate jurisdiction, including regulations that have been and may be adopted by the Southern Ute Indian Tribe if such jurisdiction exists over the Infill Application Area.

4.5 *Emission Control Equipment.* In accordance with applicable Air Quality laws and regulations set forth in Section 4.4, Applicant agrees to utilize control devices capable of achieving at least 95% control efficiency of volatile organic compounds (VOC) on all condensate, crude oil, and or produced water tanks, and at least 95% control efficiency of volatile organic compounds (VOC) on all glycol dehydrators with a potential to emit of five (5) tons per year or greater. Applicant further agrees to use no bleed or low bleed pneumatic devices in accordance with COGCC Rule 805.b.(2)E. Such control devices may include, but not be limited to flares or other combustion devices, vapor recovery units, no bleed or low bleed pneumatic devices, and other similar emission control equipment that are standard practice to install in the industry.

4.6 *Flaring and Venting.* Applicant agrees to conduct flaring and venting practices in accordance with COGCC Rules 317.1., 805.b.(3)B.v., 805.b.(3)D., and 912. In addition, Applicant agrees to abide by any requirements or restrictions implemented by the County when issuing Stage I or Stage II fire restrictions and that are applicable to Applicant’s operations.

4.7 *Dust Control.* Applicant agrees to suppress dust throughout construction, drilling, completion, and operational activities through best management practices such

as, but not limited to, speed restrictions, regular road maintenance, use of water or magnesium chloride for road spreading, and well equipment automation to reduce truck traffic. These practices shall be applied to well access roads and well locations.

4.8 *Odor Control.* Applicant agrees to operate facilities and equipment in such a manner to reduce odors to the maximum extent that is reasonably and technologically feasible through the use of best management practices.

ARTICLE V WATER

5.1 *Storm Water Management and Spill Prevention Containment and Control.* Even if not required to do so by any applicable regulation or law, Applicant agrees to utilize Best Management Practices for all pad expansions and new pads and for road and pipeline development or improvements.

5.2 *Water Well Monitoring.* At a minimum, Applicant agrees to comply with and perform water well monitoring at the Infill Wells in conformance with COGCC Rule 608.

5.3 *Demonstration of Water Source.* Pursuant to 90-123(e) Applicant agrees to provide documentation to the County demonstrating a legally obtained source of water to be used for the Infill Wells. This documentation shall describe the water source(s) used for construction, drilling, completion, and/or post completion activities of the Infill Wells. For example, if water is obtained from a source within the State of Colorado, a decree from the appropriate Colorado water court would satisfy this requirement.

5.4 *Use of Produced Water.* If Applicant decides to use produced water for any construction, drilling, completion and/or post-completion activities at the Infill Wells, Applicant agrees to submit documentation to the County demonstrating that such produced water has been treated per COGCC requirements under the Hydrogen Sulfide Reporting Policy dated April 13th, 2012, to inhibit the growth of sulfide reducing bacteria.

5.5 *Exploration and Production Waste.* Applicant agrees to dispose of all E&P waste in compliance with all applicable COGCC rules.

ARTICLE VII MITIGATION MEASURES

Applicant agrees to utilize and comply with the mitigation measures set forth in LPLUC Sections 90-122, 123 and 124. Applicant further agrees to utilize the mitigation measures set forth in COGCC Rule 604.c.(2) in Designated Setback Locations in accordance with the terms of such rule, if applicable.

ARTICLE VIII INCLUSION INTO COGCC ORDER

Applicant and the County agree to jointly request that certain conditions, as set forth in attached Exhibit A, be incorporated into the COGCC order approving the Infill Application.

ARTICLE IX SITE SPECIFIC DEVELOPMENT PLAN AND FUTURE REGULATIONS

This Agreement shall not grant or create any common law or statutory vested development rights or exempt Applicant from any applicable County development review regulations or processes. The County reserves the right in the future to enact and apply prospectively oil and gas regulations that are general in nature and are applicable to all similarly situated oil and gas activities subject to land use regulation by the County, even though such regulations may be more or less stringent than the standards applicable to the Infill Wells by virtue of this Agreement.

ARTICLE X PRESERVATION OF RIGHTS

The parties acknowledge, understand and agree that this Agreement shall not operate as a bar, constitute a waiver of any rights of the parties, or in any respect affect the ability of any party to this Agreement to assert its claims concerning the validity of the County's land use jurisdiction. Nothing in this Agreement shall be construed as an admission regarding the existence of proper jurisdictional authority or waiver by either party of any legal right or obligation, nor shall anything be construed as a bar to either party to seek any legal remedy available to it. The parties further acknowledge, understand and agree that this Agreement is specific and limited to the Infill Well Application and does not preclude or limit the County from seeking a different agreement with the Applicant for other oil and/or gas wells or any other operator regarding Fruitland Coal Wells with different terms and conditions.

ARTICLE XI SUMMARY INFORMATION

Once each calendar year, Applicant will provide summary information to the County regarding the status of Applicant's activities within the Infill Application Area, with respect to:

- Section 2.2 – well location exceptions,
- Section 3.2 – road maintenance and improvement fees,
- Section 4.1 – green completion techniques, and,
- Section 4.3 – electrification.

This information will be presented in table format with the following fields:

- County permit number
- Well name
- Date well completed
- Exception location status (i.e. – if the well is an exception location)
- Reason for exception location (if applicable)
- Road impact fee tier and amount paid
- Date electrification implemented
- Target electrification date (if not already electrified)
- Green completion status (i.e. – if green completion practices were used)

In addition to the summary information set forth above, Applicant will provide to the County an overview of its proposed drilling plans in the Infill Application Area for the following calendar year, with the recognition by the County that such plans would be tentative and subject to change and with the County's agreement that such plans would be kept confidential.

ARTICLE XII GENERAL PROVISIONS

The following general provisions shall govern the relationship between the parties with respect to Infill Fruitland Coal Wells within the Infill Application Area.

12.1 *Effective Date and Term.* This Agreement shall be effective upon entry of the COGCC's order approving the Infill Application.

12.2 *Entire Agreement.* Except as otherwise expressly set forth herein, this Agreement embodies the complete agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes and preempts any prior understandings, agreements or representations by or between the parties, written or oral, which may have related to the subject matter hereof in any way.

12.3 *Successors and Assigns.* Except as otherwise provided herein, Applicant shall have the absolute right to transfer or sell any or part of its interest in the Infill Wells; provided, however, that in the event of transfer, Applicant's transferees, sublessees, successors and assigns shall be bound to comply with all terms hereof.

12.4 *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which when taken together shall constitute a single agreement.

12.5 *Amendment.* All covenants, representations and warranties herein and all other obligations, responsibilities and terms hereof shall continue to be fully binding and enforceable on the parties until expressly superseded by written agreement of the parties. No amendment to this Agreement shall be effective unless in writing, signed by all parties who are then subject to this Agreement.

12.6 *Waiver.* No failure on the part of any party hereto to exercise and no delay in exercising any right hereunder shall operate as a waiver of such right. The remedies provided herein are cumulative and not exclusive of any remedies provided by law. No waiver of, or failure to exercise any right hereunder shall operate to prevent future enforcement of such right.

12.7. *Notices.* Notices hereunder may be given by certified mail, return receipt requested, or by facsimile or electronic mail transmission. Notices shall be effective on receipt, provided, however, that confirmation of receipt shall be required in all instances. Notice to the respective parties shall be given to:

To the County at:
Courtney Roseberry
La Plata County Planning Department
1060 E. 2nd Avenue
Durango, CO 81301

With copies to:
Todd Weaver
La Plata County Attorney's Office
1099 Main Ave., Suite 311
Durango, CO 81301

To Applicant at:
XTO Energy Inc.
Land Department
810 Houston Street
Ft. Worth, TX 76102

With copies to:
Thomas P. Dugan
Dugan & Associates, P.C.
900 Main Avenue, Suite A
Durango, CO 81301

or to any other addresses as any party hereto may, from time to time, designate in writing and deliver in a like manner.

12.8 *Headings.* The descriptive headings of the sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

12.9 *Further Acts.* Each of the parties shall promptly and expeditiously execute and deliver any and all documents and perform any and all acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

12.10 *No Partnership; Third Party Beneficiaries.* It is not intended by this Agreement to, and nothing contained in this agreement shall, create any partnership, joint venture or other arrangement between Applicant and the County. No term or provision of this Agreement is intended to or shall be for the benefit of any person, firm, organization or corporation not a party hereto and no other person, firm, organization or corporation shall have any right or cause of action hereunder.

12.11 *Severability.* The provisions of this Agreement are deemed material and nonseverable. If an action is brought that results in any provision of this Agreement being determined or declared by a Court to be illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, the parties shall

negotiate in good faith for an equivalent or substitute provision or other appropriate adjustment to this Agreement. If the parties cannot reach agreement, or if so desired by the parties, then the issues in dispute shall be submitted to a mediator acceptable to both parties for nonbinding mediation. Unless otherwise agreed to by the parties, such mediation shall occur within sixty (60) days of a party's receipt of a notice to mediate from the other party.

12.12 *Governmental Immunity.* Any and all claims related in anyway to this Agreement shall be subject to the limitations of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.*, and the Federal Tort Claims Act, 28 U.S.C. § 1346(b), 2671 *et seq.*, and it is understood that by entering into this Agreement, the County in no way waives its protections, immunities or any other provision of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.*

12.13 *Governing Law.* This Agreement is made and shall be governed by, and construed and enforced in accordance with, the internal laws of the State of Colorado without regard to the conflict of laws principles. Venue for any action related to this Agreement shall be brought in La Plata County, CO.

12.14 *Dispute Resolution.* If any dispute arises between the parties regarding the terms and conditions of this Agreement, or if any complaint is received by the County regarding any noncompliance with the terms of this Agreement, the parties agree to attempt to resolve any such dispute or complaint pursuant to an informal dispute resolution process, following in general the process set forth in LPLUC Sec. 90-127, prior to taking any formal enforcement or legal action. This provision, however, does not act as a waiver of any parties' legal rights or their ability to initiate formal enforcement or legal action regarding the dispute or complaint.

XTO Energy Inc.

By: Edwin S. Ryan, Jr.
Edwin S. Ryan, Jr.
Sr. Vice President – Land Administration

Date: 3/10/2014

BOARD OF COUNTY COMMISSIONERS
LA PLATA COUNTY, COLORADO

Julie Westendorff
Julie Westendorff, Chair

(SEAL)
ATTEST:

Deanne Rignall
Clerk to the Board

EXHIBIT A

PROPOSED CONDITIONS OF APPROVAL

Applicant XTO Energy Inc. (“Applicant”) and Intervenor La Plata County, Colorado (“La Plata County”) respectfully request that an Order issued by the Commission in Cause No. 112, Docket No. 1312-AW-81 be made subject to and conditional upon the following:

1. Compliance with all applicable terms, conditions and provisions of prior Commission Orders in Cause 112.
2. Compliance with the terms and provisions of all of the Commission’s health, safety, welfare and environmental rules and regulations now or hereafter in effect.
3. Compliance with all applicable regulations of the BLM, BIA and the Southern Ute Indian Tribe when conducting operations on lands subject to such agency’s/government’s jurisdiction.
4. Those certain provisions as set forth in Exhibit A of the Memorandum of Understanding between Applicant and La Plata County as follows:

- ***Surface Density***

The density of Well Pads within the Infill Application Area shall not exceed four (4) within any single 640-acre governmental section of real property. Notwithstanding the foregoing, nothing contained in this provision shall be construed so as to require the closure or abandonment of any existing gas well.

- ***Well Location; Exceptions***

The Commission may grant a special exception allowing for a greater density of Fruitland Coal Well Pads (i.e., more than 4 per 640-acre section), at the request of Applicant and after consultation with the Local Governmental Designee, based upon a finding by the Commission that the La Plata County Land Use Code requires a greater density or one or more of the following factors apply in a manner such that use of an existing Well Pad is rendered impractical:

- a. topographic characteristics of the site;
- b. natural resource constraints (e.g., wetlands);
- c. the location of utilities or similar services;
- d. demonstratively insurmountable technical issues related to the development or management of the mineral resource;
- e. other site conditions beyond the control of Applicant; or

f. demonstrable safety concerns.

- ***Produced Water***

If Applicant decides to use produced water for any construction, drilling, completion and/or post-completion activities at the Exploratory Wells, Applicant agrees to submit documentation to the County demonstrating that such produced water has been treated per COGCC requirements under the Hydrogen Sulfide Reporting Policy dated April 13th, 2012, to inhibit the growth of sulfide reducing bacteria.

- ***Flaring and Venting.***

Applicant agrees to conduct flaring and venting practices in accordance with COGCC Rules 317.l., 805.b.(3)B.v., 805.b.(3)D., and 912. In addition, Applicant agrees to abide by any requirements or restrictions implemented by the County when issuing Stage I or Stage II fire restrictions and that are applicable to Applicant's operations.

- ***Mitigation Measures***

Applicant agrees to utilize and comply with the mitigation measures set forth in LPLUC Sections 90-122, 123 and 124. Applicant further agrees to utilize the mitigation measures set forth in COGCC Rule 604.c.(2) in Designated Setback Locations in accordance with the terms of such rule, if applicable.

- ***Water Well Monitoring.***

Applicant agrees to comply with all requirements of COGCC Rule 608.