

United States, et al. v. XTO Energy Inc. (N.D. W. Va.)

Appendix C:

Prepared by: XTO Energy Inc.

DEED RESTRICTION

THIS DECLARATION OF DEED RESTRICTION ("Declaration") made this 18th day of January, 2017, by **Eleanor Tholl Barnhart**, individually and as Trustee of the **Eleanor H. Tholl Revocable Trust**, having an address of 50 Matthew Drive, Brunswick, ME 04011, by **Emily Dionne**, having an address of 170 Rosemore Road, Brunswick, ME 04011, by **Cameron Ives**, having an address of 61 Everett Avenue, South Portland, ME 04106, by **Ives-Dionne Coal Properties L.L.C.**, a West Virginia limited liability company, having an address of 170 Rosemore Road, Brunswick, ME 04011 (collectively the "Grantors").

WITNESSETH:

WHEREAS, Grantors are the owners of certain real property located in Elk District, Harrison County, West Virginia (hereinafter "the Property"), and the Property is described in a deed of record in the office of the Clerk of the County Commission, Elk District, Harrison County, West Virginia at Deed Book 1288, Page 295; and

WHEREAS, Grantor, having the authority to do so, intends to record this Declaration in order to restrict subsequent disturbance and/or development of that certain portion of the surface of the Property described on Exhibit A attached hereto (the "Conserved Area") in perpetuity;

WHEREAS, the Conserved Area possesses open space and natural values (collectively, "Conservation Values") of great importance to Grantor, the people of Elk District, Harrison County, West Virginia, and the people of the State of West Virginia, and all current and future generations of mankind; and

WHEREAS, preservation of the Conserved Area is consistent with a central objective of a Consent Decree in the matter of *United States et al. vs. XTO Energy Inc.*, Civil Action No. 1:14CV218 ("XTO CD"), Grantor agrees that USACE, EPA, and WVDEP, and their successor agencies (collectively "Third Parties"), are third-party beneficiaries under this Declaration, except that nothing herein creates a property interest in the Federal Government or the State of West Virginia with regard to the Conserved Area;

NOW THEREFORE, Grantor hereby agrees that the Conserved Area shall be subject in perpetuity to the following conveyances, covenants and restrictions:

1. This Declaration shall be a burden upon and shall run with the Conserved Area, and shall bind Grantor, its successors and assigns, in perpetuity.
2. Grantor shall record this Declaration in the Land Records of the county or counties where the Property is located within sixty (60) days of the effective date of this Declaration. Grantor shall provide XTO Energy, Inc. ("XTO") and Third Parties with proof of recordation and give notice of this Declaration to current record title holders of easements in the Conserved Area within thirty (30) days of recording by the County Clerk.
3. The following activities are prohibited in the Conserved Area, except as necessary for the control of alien invasive or noxious plant or animal species or as necessary to accomplish restoration and/or mitigation described in Paragraph 10:
 - a. Removal, excavation, dredging, or disturbance of the surface;
 - b. Dumping of, storage of, or filling with soil, rock, biological material, trash, ashes, garbage, waste, or other materials;
 - c. Draining, impounding, or impairing the flow or circulation, or reducing the reach of waters, including wetlands; or any other discharge or activity requiring a

- permit under applicable clean water or water pollution control laws and regulations, as amended;
- d. Installation of structures;
 - e. Placement of pavement or other impervious materials;
 - f. Alteration of the existing pattern of vegetation through removal, destruction, or planting of vegetation;
 - g. Except to the extent necessary to return the Conserved Area to a use consistent with its use prior to XTO's initial entry onto the Conserved Area, conversion of, or expansion into, any portion of the Conserved Area for use of agricultural, horticultural, aquacultural, silvicultural, livestock production, or grazing activities. This prohibition also includes conversion from one type of these activities to another (e.g., from agricultural to silvicultural);
 - h. The use of fertilizers, herbicides or pesticides;
 - i. Removal, clearing, pruning, or mowing of live vegetation, including trees, unless Grantor demonstrates that such removal will result in habitat enhancement or to prevent a safety hazard, and Grantor has received written approval of the West Virginia Department of Environmental Protection;
 - j. The use of the Conserved Area to provide required open space for the development or subdivision of another property or to determine any other permissible residential, commercial or agricultural uses of another property; or any legal or de facto division, subdivision or portioning of the Conserved Area;
 - k. Any other use of or activity in the Conserved Area that is inconsistent with the purpose of this Declaration.
4. It is the purpose of the Declaration to assure that the Conserved Area will be maintained as such and to prevent any unauthorized disturbance and/or development to the Conserved Area.
5. Notwithstanding any provisions to the contrary, this Declaration is subject to and subordinate to any existing and duly recorded rights with respect to the Conserved Area. All structures, infrastructure, as well as all pre-existing easements or other duly recorded rights in the Conserved Area identifiable through a title search extending to documents placed of record within twenty (20) years prior to the date of this Declaration, shall be indicated on Exhibit A, which is attached to this instrument and includes a copy of the most recent property deed for the Property and a legal description sufficient to identify the boundaries of the Conserved Area. Grantor certifies that to Grantor's actual knowledge, there are no previously granted easements existing in the Conserved Area that interfere or conflict with the purpose of this Declaration.
6. All mortgages and deeds of trust granted or entered into after the date hereof affecting the Conserved Area will be subordinate to this Declaration.
7. The Conserved Area is subject to the XTO CD. Each deed, title or other instrument conveying an interest in the Conserved Area shall contain a notice stating that the Property is subject to the XTO CD and shall reference the recorded location of the XTO CD and any restrictions applicable to the Property under the XTO CD.
8. XTO and Third Parties shall have the right to:
- a. enter upon the Conserved Area for the purpose of inspecting the Conserved Area to determine compliance with the purposes and terms of this Declaration, or for any other purpose authorized by this Declaration or by the XTO CD. When practicable, such entry shall be upon prior reasonable notice to the property

- owner. This right of entry is in addition to and does not limit any right of entry otherwise granted by Federal or State law;
- b. take any and all action within the Conserved Area necessary to address a situation that poses an immediate risk to health, life, property or the environment; and
 - c. take any and all action within the Conserved Area required by Federal or State law or approved by the Third Parties.
9. Grantor grants to Third Parties a discretionary right to enforce this Declaration. In the event of a breach of this Declaration by Grantor or another party, Third Parties shall notify Grantor of the breach. If Grantor fails to take corrective action within 60 days of such notice, Third Parties may undertake actions to effect such corrective action, including bringing a judicial action against any person(s) or entity(ies) violating or attempting to violate this Declaration: provided, however, that no violation of this Declaration shall result in a forfeiture or reversion of title. In any enforcement action, an enforcing party shall be entitled to a complete restoration for any violation, as well as any other judicial remedy such as civil penalties. The costs of breach, correction and/or restoration, including Third Parties' expenses, court costs, and attorney's fees, shall be paid by Grantor, provided Grantor is determined to be responsible for the breach. Enforcement shall be at the discretion of Third Parties, and no omissions or delay in acting shall constitute a waiver of any enforcement right. These rights are in addition to, and shall not limit, enforcement rights available under other provisions of law or equity, under any applicable permit or certification, or under the XTO CD.
 10. XTO and/or its contractors shall have the right to enter upon the Conserved Area for the purpose of performing any work required by a restoration or mitigation plan approved under the XTO CD, including construction, planting, maintenance, monitoring, long-term management, or any other restoration, enhancement, or mitigation work specified therein, provided such work is conducted in accordance with such approved plan.
 11. Grantor reserves to itself, its successors or assigns, all rights as owners of the Property, including the right to engage in all uses of the Conserved Area not inconsistent with the purpose and terms of this Declaration.
 12. Grantor shall provide XTO and Third Parties written notice of any transfer or change in ownership of, or of the execution of any subsequent easement affecting, any portion of the Conserved Area, including but not limited to the name and address of the new owner at least thirty (30) days prior to the transfer or change in ownership, or execution of such easement.
 13. Grantor agrees that the terms, conditions, restrictions and purposes of this Declaration will be inserted in any subsequent deed, subdivision deed, lease, sub-lease or other legal instrument by which Grantor divests itself of any interest in any portion of the Conserved Area. Notwithstanding the failure of Grantor to include the terms and restrictions of this instrument, it shall run with the land and be binding on all heirs, successors and assigns.
 14. Notwithstanding anything contained herein to the contrary, any modification or termination of this Declaration shall require the prior written approval of Third Parties. Amendments to this Declaration must be in writing, and must be consistent with the conservation purposes of this Declaration. Grantor shall record any modification or termination of this Declaration in the Land Records of the county or counties where the Conserved Area is located within sixty (60) days of executing such a modification or termination. Grantor shall provide XTO and Third Parties with proof of recordation within thirty (30) days of recording by the County Clerk.
 15. For any modification, transfer, conveyance, or assignment accomplished under Paragraph 12, Grantor shall amend this instrument by preparing and submitting:
 - a. A revised plan and metes and bounds description for the area to be preserved under the Declaration (hereinafter the "Modification Documents"); and

- b. An Amended Declaration of Deed Restrictions that reflects the modifications to the original Declaration, the justification for the modification, and that also includes the deed book and page of the title deed for the property or properties subject to the modified Declaration set forth in the Modification Documents.
16. Grantor shall record the documents listed in Paragraph 15, above, in the same manner and place as this original Declaration was recorded.
 17. Miscellaneous.
 - a. The laws of the State of West Virginia shall govern the interpretation and performance of this Declaration.
 - b. If any provision of this Declaration or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Declaration, 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.
 - c. Should there be more than one Grantor, the obligations imposed by this Declaration upon each Grantor shall be joint and several.
 - d. The covenants, terms, conditions and restrictions of this Declaration shall continue as a servitude running in perpetuity with the Conserved Area.
 - e. The captions in this Declaration have been inserted solely for convenience of reference and are not a part of this Declaration and shall have no effect upon construction or interpretation.
 - f. The covenants, terms, conditions, restrictions and purposes imposed with this Declaration shall not only be binding upon Grantor but also upon its agents, personal representatives, executors, assigns and all other successors to it in interest, and shall continue as a servitude running in perpetuity with the Conserved Area.
 18. Any notice, demand, request, consent, approval or communication under this Declaration shall be sent by certified mail, return receipt requested or reliable overnight courier, addressed as follows:

To Grantors:

Eleanor Tholl Barnhart
50 Matthew Drive
Brunswick, ME 04011

Emily Dionne
170 Rosemore Road
Brunswick, ME 04011

Cameron Ives
61 Everett Avenue
South Portland, ME 04106

To XTO:

XTO Energy Inc.
190 Thorn Hill Road
Warrendale, Pennsylvania 15086

To Third Parties:

TO EPA:

Pamela J. Lazos
Senior Assistant Regional Counsel
Office of Regional Counsel
United States Environmental Protection Agency
Region III
MC 3RC20
1650 Arch St.
Philadelphia, PA 19103-2029

Associate Director, Office of Environmental Programs
Environmental Assessment and Innovation Division
United States Environmental Protection Agency
Region III
MC 3EA40
1650 Arch St.
Philadelphia, PA 19103-2029

TO THE CORPS:

Dana M. Adipietro
Assistant District Counsel
U.S. Army Corps of Engineers
Pittsburgh District
1000 Liberty Ave., 22nd Floor
Pittsburgh, PA 15222

Jon Coleman
Chief, Southern Section, Regulatory Branch
U.S. Army Corps of Engineers
Pittsburgh District
1000 Liberty Ave., 22nd Floor
Pittsburgh, PA 15222

TO WVDEP:

Chief Inspector
Environmental Enforcement
West Virginia Department of Environmental Protection
601 57th St.
Charleston, WV 25304

Chief
Office of Oil and Gas
West Virginia Department of Environmental Protection
601 57th St.
Charleston, WV 25304

19. A party may change the address or person to whom notices to it are required to be given by notice given in the manner above provided.

IN WITNESS WHEREOF, Grantor has set its hand and seal on the day and year first above written, and directs that this instrument be recorded in the office of the Harrison County, West Virginia.

Grantors:

By: Eleanor Tholl Barnhart
Eleanor Tholl Barnhart, individually

By: Eleanor Tholl Barnhart as Trustee of the Eleanor H. Tholl Revocable Trust
Eleanor Tholl Barnhart, as Trustee of the Eleanor H. Tholl Revocable Trust

By: Emily Dionne
Emily Dionne, individually

By: Cameron Ives
Cameron Ives, individually

By: Ives-Dionne Coal Properties L.L.C.

Name: Emily Dionne
Title: member manager, Ives-Dionne Coal Properties LLC

XTO Energy Inc.

By: Robert Brian Teller
Name: Robert Brian Teller
Title: Operations Manager XTO

STATE OF MAINE
COUNTY OF CUMBERLAND

Be it remembered that on this 18th day of January 2017, before me, the subscriber, a Notary Public, personally appeared Eleanor Tholl Barnhart, and she thereupon acknowledged that she signed the foregoing instrument individually and that said instrument is the voluntary act of deed of said Eleanor Tholl Barnhart.

Printed Notary Name: Donna Aucoin

A Notary Public of Maine

My Commission Expires: DONNA AUCOIN
NOTARY PUBLIC, STATE OF MAINE
MY COMMISSION EXPIRES SEPT. 28, 2022

STATE OF MAINE
COUNTY OF CUMBERLAND

Be it remembered that on this 18th day of January 2017, before me, the subscriber, a Notary Public, personally appeared Eleanor Tholl Barnhart, and she thereupon acknowledged that she signed the foregoing instrument as Trustee of the Eleanor H. Tholl Revocable Trust and that said instrument is the voluntary act of deed of said Eleanor Tholl Barnhart.

Printed Notary Name: Donna Aucoin

A Notary Public of Maine

My Commission Expires: DONNA AUCOIN
NOTARY PUBLIC, STATE OF MAINE
MY COMMISSION EXPIRES SEPT. 28, 2022

STATE OF MAINE
COUNTY OF Cumberland

Be it remembered that on this 26th day of January 2017, before me, the subscriber, a Notary Public, personally appeared Emily Dionne, and she thereupon acknowledged that she signed the foregoing instrument individually and that said instrument is the voluntary act of deed of said Emily Dionne.

Printed Notary Name: Molly E. Hoare

A Notary Public of Maine

My Commission Expires: August 01, 2020

MOLLY E. HOARE, Notary Public Maine
My Commission Expires August 1, 2020



STATE OF MAINE
COUNTY OF CUMBERLAND

Be it remembered that on this 18th day of January 2017, before me, the subscriber, a Notary Public, personally appeared Cameron Ives, and she thereupon acknowledged that she signed the foregoing instrument individually and that said instrument is the voluntary act of deed of said Cameron Ives.

Printed Notary Name: Donna Aucoin

A Notary Public of Maine

My Commission Expires: DONNA AUCOIN
NOTARY PUBLIC, STATE OF MAINE
MY COMMISSION EXPIRES SEPT. 28, 2022

STATE OF MAINE
COUNTY OF CUMBERLAND

Be it remembered that on this 26th day of January 2017, before me, the subscriber, a Notary Public, personally appeared Emily Dionne, whom acknowledged signing the foregoing instrument as an authorized representative for Ives-Dionne Coal Properties L.L.C., and that said instrument is the voluntary act of deed of said Emily Dionne/Cameron Ives.

Printed Notary Name: Molly E. Hoare

A Notary Public of Maine

My Commission Expires: August 01, 2020

MOLLY E. HOARE, Notary Public Maine
My Commission Expires August 1, 2020

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF BUTLER

On this, the 30th day of January 2017, before me, a Notary Public, personally appeared Robert Brian Teller, who acknowledged himself to be the Operations Manager of XTO Energy Inc., a corporation, and that he as such Operations Manager, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as Operations Manager.

In witness whereof, I hereunto set my hand and official seal.

Printed Notary Name: Kimberly Beth Wilson

A Notary Public of Pennsylvania

My Commission Expires: June 10, 2020

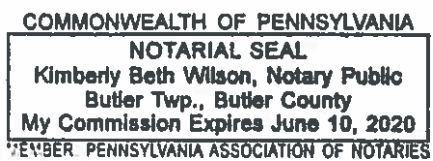
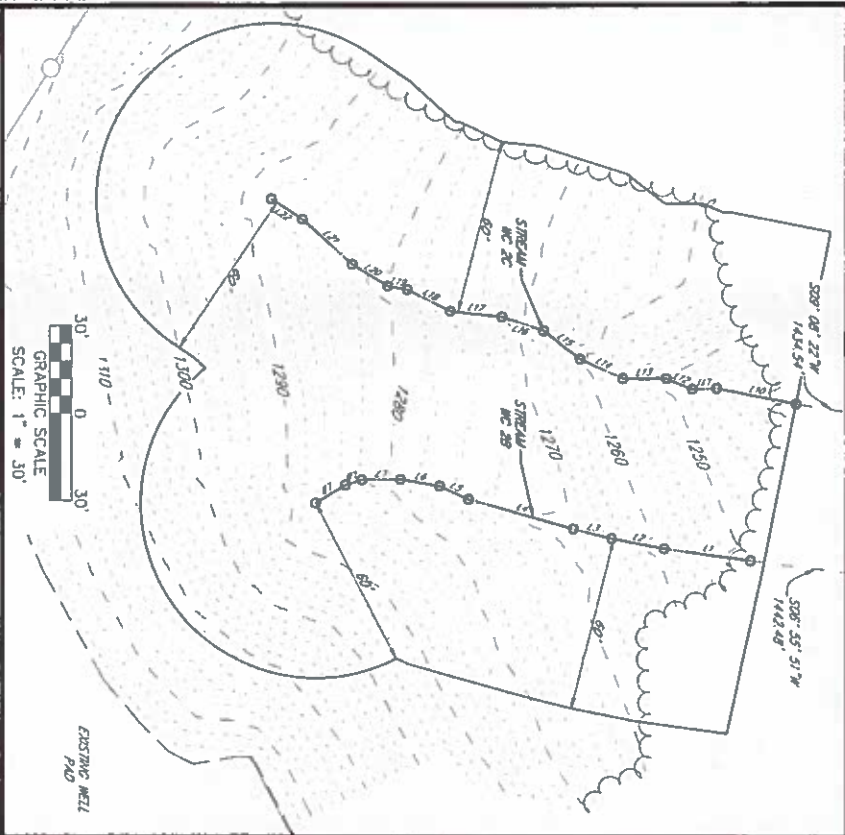


EXHIBIT A
CONSERVED AREA



WATER COURSE 29

WATER COURSE 2C

LINE	BEARING	LENGTH
L1	S7° 53' 22" W	29.80'
L2	S11° 10' 47" W	18.57'
L3	S13° 41' 08" W	13.55'
L4	S15° 47' 39" W	37.25'
L5	S24° 50' 08" W	10.92'
L6	S9° 27' 52" W	13.62'
L7	S0° 35' 32" E	13.25'
L8	S17° 09' 14" E	5.84'
L9	S31° 18' 54" E	11.97'

LINE	BEARING	LENGTH
L10	S11° 21' 08" W	27.61'
L11	S1° 45' 46" E	8.35'
L12	S32° 16' 41" W	9.53'
L13	S0° 08' 59" W	14.94'
L14	S24° 11' 46" W	16.04'
L15	S37° 35' 26" W	15.82'
L16	S18° 01' 17" W	15.03'
L17	S6° 24' 42" W	17.76'
L18	S26° 20' 21" W	16.67'
L19	S10° 20' 37" W	6.73'
L20	S32° 08' 06" W	14.43'
L21	S42° 10' 50" W	22.97'
L22	S33° 53' 37" W	12.87'

LEGEND
 --- CENTER OF WATER COURSE
 --- DEED RESTRICTION BOUNDARY
 --- EASEMENTS AND RIGHTS OF WAY
 --- PROPERTY LINE

GRANTED RIGHTS:

- RIGHTS GRANTED TO MONONGAHELA WEST PENN PUBLIC SERVICE COMPANY DEED BOOK 158, PAGE 158, CANNOT BE REVOLED FROM RECORDS DESCRIBED NOW.
- RIGHTS GRANTED TO MONONGAHELA WEST PENN PUBLIC SERVICE COMPANY DEED BOOK 401, PAGE 160, CANNOT BE REVOLED FROM RECORDS DESCRIBED NOW.
- RIGHTS GRANTED TO MONONGAHELA WEST PENN PUBLIC SERVICE COMPANY DEED BOOK 350, PAGE 347, CANNOT BE REVOLED FROM RECORDS DESCRIBED NOW.
- RIGHTS GRANTED TO HOPE NATURAL GAS COMPANY DEED BOOK 637, PAGE 71, CANNOT BE REVOLED FROM RECORDS DESCRIBED NOW.
- RIGHTS GRANTED TO MONONGAHELA POWER COMPANY DEED BOOK 729, PAGE 91, CANNOT BE REVOLED FROM RECORDS DESCRIBED NOW.
- RIGHTS GRANTED TO CHESAPEAKE AND POTOMAC COMPANY DEED BOOK 788, PAGE 519, CANNOT BE REVOLED FROM RECORDS DESCRIBED NOW.
- RIGHTS GRANTED TO MONONGAHELA POWER COMPANY DEED BOOK 819, PAGE 468, CANNOT BE REVOLED FROM RECORDS DESCRIBED NOW.
- RIGHTS GRANTED TO HARRISON RURAL ELECTRIFICATION ASSOCIATION, INC. DEED BOOK 1281, PAGE 682, CANNOT BE REVOLED FROM RECORDS DESCRIBED NOW.
- RIGHTS GRANTED TO WEST VIRGINIA TRANSPORTATION DIVISION OF HIGHWAYS DEED BOOK 1293, PAGE 898, CANNOT BE REVOLED FROM RECORDS DESCRIBED NOW.



GRAPHIC SCALE
 SCALE 1" = 1000'

CONTIGUOUS PROPERTIES

MAP ID	TAX PARCEL #	OWNER
1	11-470-04.1	ERIC & JENNIFER STEWART
2	11-470-04	ERIC & JENNIFER STEWART
3	11-08-01	A.M. WARD
4	11-449-14	A.M. WARD
5	11-470-03	CYNTHIA LINNER
6	11-470-02	CYNTHIA LINNER
7	11-469-06	A.L. WARD
8	11-469-06.8	RYAN & ANGELA MCCOY
9	11-469-18	DANIEL & ELVA SUTLE
10	11-469-12	HARRY & JOELLEN KEAMER
11	11-449-19	A.M. WARD
12	11-449-14.3	GREGORY PENNY

GENERAL NOTES:
 1. BOUNDARY SHOWN HERE ON IS BASED UPON RECORDED DEED DESCRIPTION AND DOES NOT CONSTITUTE A BOUNDARY SURVEY. SHOWN HEREON ARE BASED UPON TITLE REPORT PREPARED BY REPRESENTATIVES OF XTO ENERGY, INC. NO OTHER RESEARCH WAS PERFORMED BY THE UNDERSIGNED SURVEYOR.
 2. ALL BEARING AND DISTANCES CONTAINED HEREON ARE GRID, BASED ON THE WEST VIRGINIA STATE PLANE COORDINATE SYSTEM, NORTH ZONE, U.S. FEET NAD83.

DATE 11/01/2016	PREPARED BY JLB	XTO ENERGY, INC. WINDOES SITE ELK DISTRICT, HARRISON COUNTY WEST VIRGINIA DEED RESTRICTIONS EXHIBIT "A"	M. J. McTISH & ASSOCIATES 1500 Sycamore Rd. Suite 320 Montoursville, PA 17754 570-368-3040 fax 570-368-3166 copyright 2016		NO.	DATE	DESCRIPTION	BY	
SHEET 1 OF 1	CHECKED BY BPA								
PROJECT NO. 51001-05	APPROVED BY JLB								