

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 RESTRICTIONS FOR CONSERVATION ("Declaration") made this 3rd day of November, 2016, by as XTO Energy Inc. ("Grantor"), having an address at 810 Houston Street, Fort Worth, Texas 76102;

WITNESSETH:

WHEREAS, [GRANTOR] is the owner of certain real property located in the Lincoln District, Marion County, West Virginia (hereinafter "the Property"), and the Property is also described in a deed of record in the office of the Clerk of the County Commission, Lincoln District, Marion County, West Virginia at Deed Book 1147, Page 911; 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 Lincoln District, Marion 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;

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- 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

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- 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.

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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 Grantor:

XTO Energy Inc.
810 Houston Street
Fort Worth, Texas 76102

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

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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 Marion County, West Virginia.

Grantor:

By:

Name:

Title:


MICHAEL JOHNSON
VP, APPALACHIA

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COMMONWEALTH OF PENNSYLVANIA
COUNTY OF BUTLER

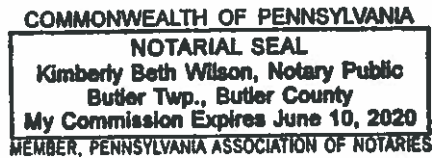
On this, the 3rd day of November 2016, before me, a Notary Public, personally appeared Michael Johnson, who acknowledged himself to be the Vice President of Operations of XTO Energy Inc., a corporation, and that he as such Vice President, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as Vice President.

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

Printed Name: Kimberly Beth Wilson

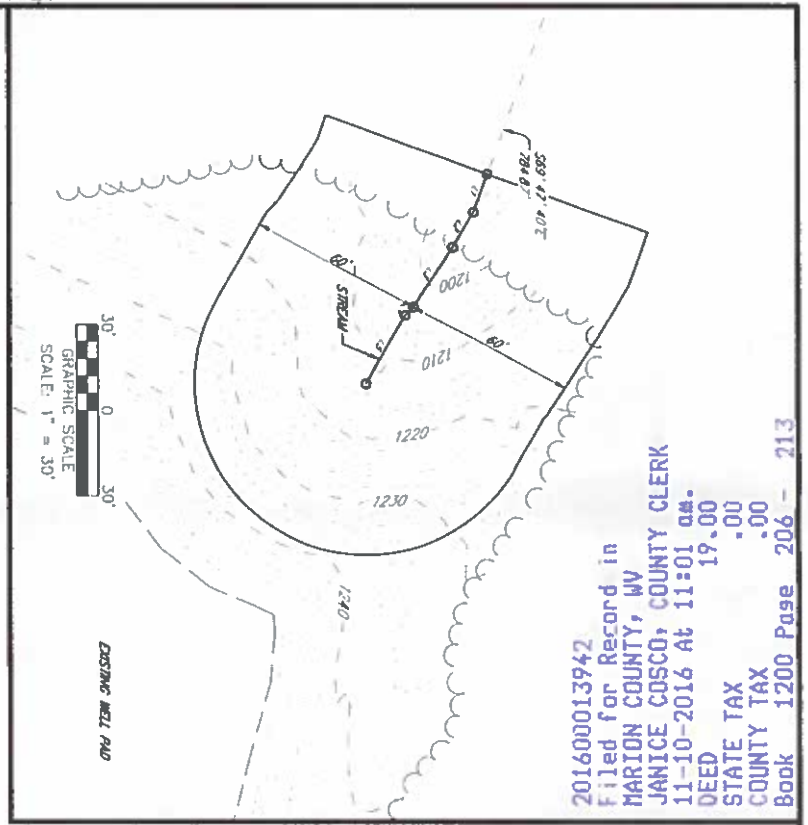
A Notary Public of Butler County

My Commission Expires: June 10, 2020

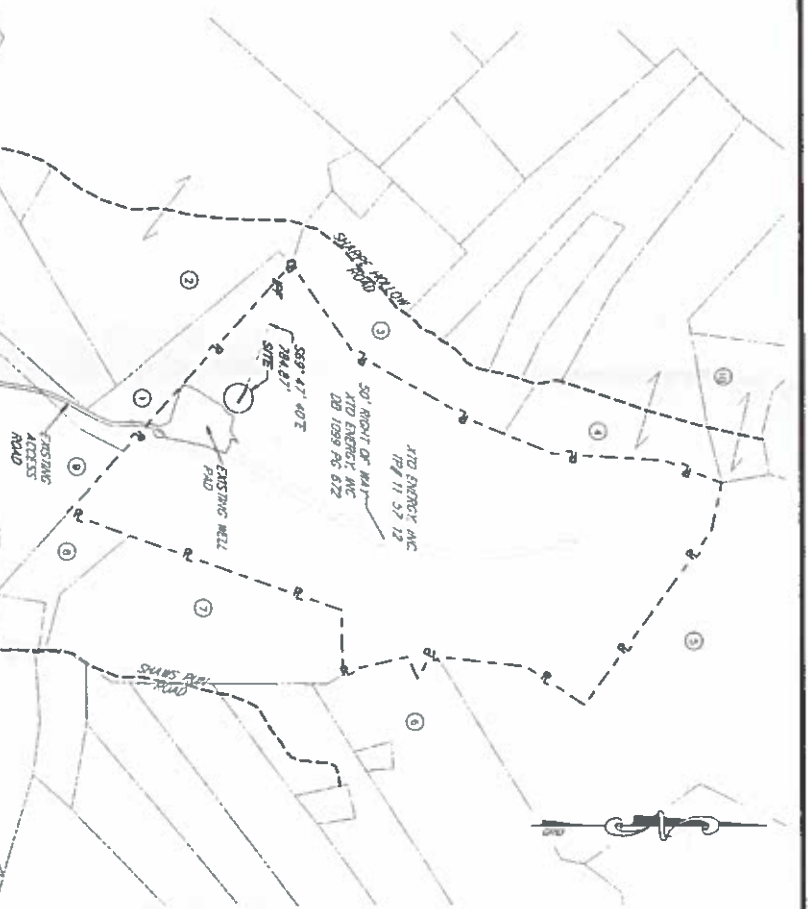


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EXHIBIT A
CONSERVED AREA



201600013942
 Filed for Record in
 MARION COUNTY, WV
 JANICE COSCO, COUNTY CLERK
 11-10-2016 At 11:01 am.
 DEED 19.00
 STATE TAX .00
 COUNTY TAX .00
 Book 1200 Page 206 - 213



GENERAL NOTE:

1. BOUNDARY SHOWN HEREON IS BASED UPON RECORDED DEED DESCRIPTIONS AND TAX PARCEL INFORMATION AND DOES NOT CONSTITUTE A BOUNDARY SURVEY. THE OWNERSHIP OF THE SUBJECT TRACT AND ENCUMBRANCES, SHOWN HEREON, ARE BASED UPON A TITLE REPORT, PREPARED BY REPRESENTATIVES OF XTO ENERGY, INC. NO OTHER RESEARCH WAS PERFORMED BY THE UNDERSIGNED SURVEYOR.

2. ALL BEARINGS AND DISTANCES CONTAINED HEREON ARE GRID BASED ON THE WEST VIRGINIA STATE PLANE COORDINATE SYSTEM, NORTH ZONE. U.S. FEET UNITS.

LEGEND

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

MAP ID	TAX PARCEL #	CONTIGUOUS PROPERTIES	OWNER
1	11-57-02.3		CHRISTOPHER VALENTINI
2	11-59-49		FREDERICK & JOANNE EGDELL
3	11-57-13		JUDY RICHARDS
4	11-59-45		JOANNE SHARPE
5	11-57-14		JAMES & JUDITH WOODS
6	11-53-28		RONALD & ROGER WEEKLY
7	11-57-11		JAMES C. WEEKLY, JR.
8	11-57-11.7		ROGER WEEKLY
9	11-57-02.2		DOUGLAS & LILLIAN FREEMAN
10	11-58-44.1		MATTHEW & TENESA JONES

GRANTED RIGHTS:

- RIGHTS GRANTED TO HARRY L. TATE AND PEARL TATE HIS WIFE DEED BOOK 194 PAGE 439. *CANNOT BE REVOKED FROM RECORDED DESCRIPTION.*
- RIGHTS GRANTED TO THE CHESTERMAN TRUST TRUSTEES AND HEIRS OF WEST VIRGINIA DEED BOOK 88 PAGE 517. *CANNOT BE REVOKED FROM RECORDED DESCRIPTION.*
- RIGHTS GRANTED TO JAMES WEEKLY, JR. DEED BOOK 796 PAGE 913. *CANNOT BE REVOKED FROM RECORDED DESCRIPTION.*
- RIGHTS GRANTED TO JAMES C. WEEKLY, JR. DEED BOOK 920 PAGE 813. *CANNOT BE REVOKED FROM RECORDED DESCRIPTION.*
- RIGHTS GRANTED TO DONALD ALLEN WEEKLY DEED BOOK 934 PAGE 378. *CANNOT BE REVOKED FROM RECORDED DESCRIPTION.*
- RIGHTS GRANTED TO TRIO PETROLEUM CORP. DEED BOOK 988 PAGE 119. *CANNOT BE REVOKED FROM RECORDED DESCRIPTION.*
- RIGHTS GRANTED TO TRIO PETROLEUM CORP. DEED BOOK 968 PAGE 178. *CANNOT BE REVOKED FROM RECORDED DESCRIPTION.*
- RIGHTS GRANTED TO LUNN OPERATING L.L.C. DEED BOOK 897 PAGE 99. *CANNOT BE REVOKED FROM RECORDED DESCRIPTION.*
- RIGHTS GRANTED TO XTO ENERGY INC. DEED BOOK 1099 PAGE 672. *REVOKED FROM RECORDED DESCRIPTION.*

DATE 11/01/2016	PREPARED BY JLB	XTO ENERGY, INC. FENN SITE LINCOLN WEST, MARION COUNTY WEST VIRGINIA DEED RESTRICTIONS EXHIBIT "A"	Consulting Engineers Planners & Surveyors M. J. McTISH & ASSOCIATES 1500 Sycamore Rd, Suite 320 Montoursville, PA 17754 570-368-3040 fax 570-368-3166 © 2016 MJA		NO.	DATE	DESCRIPTION	BY
SHEET 1 OF 1	CHECKED BY BFA				REVISIONS			
PROJECT NO. 51001 04	APPROVED BY JLB							