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**Natural Resources and  
Environment Section**

July 23, 2015

Ronda Sandquist  
Brownstein Hyatt Farber Schreck  
410 Seventeenth Street  
Denver, CO 80202

RE: Water Quality Control Division's notice of withdrawal from the Agreement to Engage in Facilitated Discussion to XTO Energy Inc.

Dear Ms. Sandquist:

On behalf of the Water Quality Control Division of the Colorado Department of Public Health and Environment ("Division"), this letter serves to notify XTO Energy, Inc. ("XTO") that the Division is withdrawing from the May 8, 2015 Agreement to Engage in Facilitated Discussion ("Agreement").

The Water Quality Control Act, the Administrative Procedure Act and water quality permitting regulations establish a robust administrative process for developing water quality permits. These iterative procedural steps were created to ensure that the Division's development and issuance of discharge permits include opportunities for communication, review by the permittee and public of draft permit documents (including review of all data used by the Division), written input from both the permittee and public, and consideration by the Division of the input received, which may result in changes to the final permit documents. The framework also provides for changes to be made to water quality permits after they are issued through permit modifications. In developing XTO's permits, the Division followed these procedural steps, including publishing a permit modification for public comment on July 17, 2015. Throughout the process the Division and XTO have engaged in extensive communications about the permits in addition to the procedural steps. In addition to the normal process, XTO requested the opportunity for dialogue and input through a facilitated discussion process. The Division agreed to the facilitated discussion process in the Agreement, and has met all of its obligations.

Paragraph 1 of the agreement provides:

The Parties agree to try to resolve issues regarding WET, iron and EC/SAR related to or arising from the Proposed Renewal Permits exclusively within the process set forth in paragraphs 2 through 9 of

*this agreement. If any party to this Agreement seeks to resolve issues regarding WET, iron or EC/SAR related to arising from the Proposed Renewal Permits through any other process or any other forum during the term of this Agreement, the other parties may withdraw from this agreement pursuant to paragraph 10 of this Agreement. (emphasis added)*

On July 20, 2015, XTO filed a lawsuit with the Las Animas District Court (case number 2015CV030068), in which XTO seeks “reversal of the Division’s denial of XTO’s June 12, 2015 request for a stay of the Renewal Permits in their entirety; and a permanent injunction staying the adoption, implementation, and enforcement of the Renewal Permits.” The scope of the lawsuit encompasses the entire renewal permits, including issues associated with WET, iron and EC/SAR.

Through filing this judicial lawsuit XTO has sought to permanently resolve issues related to WET, iron and EC/SAR through a judicial process and forum. A judicial lawsuit is a process and forum external to the facilitated discussion process, as established in paragraphs 2 through 9 of the Agreement. The Agreement does not preclude XTO from, “raising all claims or defenses in any administrative or judicial action initiated after [May 8, 2015],” however, paragraph 1 provides that any party may withdraw from the Agreement if another party seeks to resolve issues related to WET, iron and EC/SAR outside of the facilitated discussion process upon five days notice. Filing the judicial lawsuit is outside of the facilitated discussion process, which constitutes substantial noncompliance with the facilitated discussion process established in paragraphs 2 through 9. Accordingly, pursuant to paragraph 1, the Division is entitled to withdraw from the Agreement.

Pursuant to paragraph 10 of the Agreement, the Division’s withdrawal will be effective on July 30, 2015.

Sincerely,

FOR THE ATTORNEY GENERAL

/s/ Emily Jackson

EMILY E. JACKSON

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