

AGREEMENT TO ENGAGE IN FACILITATED DISCUSSION

This AGREEMENT TO ENGAGE IN FACILITATED DISCUSSION (the "Agreement") is entered into this 8 day May 2015 ("Effective Date"), by and between the WATER QUALITY CONTROL DIVISION ("Division") of the Colorado Department of Public Health and Environment ("CDPHE"), PIONEER NATURAL RESOURCES USA INC. ("Pioneer") and XTO ENERGY, INC. ("XTO") (collectively, "the Parties").

WHEREAS, Pioneer holds discharge permit numbers CO-0047767, CO-0047776, and CO-0048003, and XTO holds discharge permit numbers CO-0048054 and CO-0048062 (collectively, the "Permits"). These Permits authorize and regulate the discharge of water from XTO and Pioneer's coalbed methane wells in the Raton Basin.

WHEREAS, on December 12, 2013, Pioneer and XTO submitted permit modification requests to the Division related to iron and boron.

WHEREAS, on December 16, 2013, Pioneer and XTO submitted permit modification requests to the Division related to whole effluent toxicity ("WET").

WHEREAS, at the Division's request, Pioneer and XTO submitted applications to renew the Permits to the Division on December 26, 2013.

WHEREAS, as relevant to this Agreement, on February 28, 2014, the Division issued permit modifications to both Pioneer's and XTO's Permits that revised the effluent limitations for electrical conductivity and sodium absorption ratio ("EC/SAR"). These modifications became effective on April 1, 2014.

WHEREAS, on July 31, 2014, the Division issued permit modifications to both Pioneer's and XTO's Permits that extended the compliance schedules for iron, boron and WET to July 1, 2015. These modifications became effective September 1, 2014.

WHEREAS, on August 6 and 7, 2014, Pioneer and XTO submitted requests for permit modifications related to EC/SAR effluent limitations in the Permits, including a requested compliance schedule.

WHEREAS, the Permits were administratively extended on January 31, 2014.

WHEREAS, the Division issued draft renewal Permits and Fact Sheets on February 6, 2015 ("Draft Renewal Permits").

WHEREAS, on March 9, 2015, XTO and Pioneer and XTO each filed a Notice of Appeal, Request for Adjudicatory Hearing, and Request for Stay with the Division concerning the Draft Renewal Permits. Specifically, XTO and Pioneer requested a stay of: (1) adoption, implementation, and enforcement of the challenged EC/SAR limitations currently in effect; (2) adoption, implementation, and enforcement of the WET testing approach and iron limitations in the current permit, which become effective July 1, 2015; and (3) adoption, implementation, and enforcement of the provisions of pending draft Permits

related to WET, iron, and EC/SAR, should those provisions become final during the pendency of the administrative appeal.

WHEREAS, on March 19, 2015, the Division issued Orders denying the Notice of Appeal, Request for Adjudicatory Hearing, and Request for Stay to XTO and to Pioneer.

WHEREAS, on April 6, 2015 and April 8, 2015, XTO and Pioneer submitted comments on the Draft Renewal Permits for their facilities.

WHEREAS, on April 20, 2015, Pioneer and XTO each filed a Complaint for judicial review of the Division's denial of the companies' request for stay in the District Court of Las Animas County, Colorado.

WHEREAS, the Division, after considering comments on the Draft Renewal Permits, will issue the proposed renewal Permits ("Proposed Renewal Permits") for Pioneer and XTO.

NOW, the purpose of this Agreement is to develop and engage in an alternative dispute resolution process related to the Proposed Renewal Permits and resolution of issues regarding WET, iron or EC/SAR that are related to or may arise therefrom.

1. 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. For purposes of this Agreement the term Proposed Renewal Permit means a permit that is issued after the close of the public comment period, which is sent to EPA for review, and becomes effective and final thirty (30) days after issuance or on such later date as specified by the Division unless a stay is granted in accordance with the provisions of section 61.7, 5 C.C.R. § 1002-61, and which is not a draft permit.

2. The Parties shall identify and agree to a mutually-agreeable facilitator. By May 22, 2015, each party shall propose in writing three (3) qualified facilitators to lead the discussion. The written proposal must be emailed to all parties at the email addresses identified in the signature blocks of this agreement and to counsel at rsandquist@BHFS.com and emily.jackson@state.co.us. A "qualified" facilitator will preferably have experience on water quality and water supply issues; will preferably have environmental permitting programs and processes experience; and will have experience facilitating disputes. A "qualified" facilitator shall not be an employee of CDPHE, a current Commissioner on the Water Quality Commission, nor shall members of its immediate family be employed by CDPHE or the Office of the Attorney General. A "qualified" facilitator shall not be employed by XTO, Pioneer or Brownstein Hyatt Farber Schreck LLP, nor shall its immediate family be employed by the same. If after the Parties have proposed their three qualified facilitators a mutually-agreeable facilitator has not been selected by all parties, then each party shall submit in writing via email two (2) additional qualified facilitators until a mutually-agreeable facilitator is selected.

3. The Division shall issue the Proposed Renewal Permits for XTO (Permit Nos. CO-0048054 and CO-0048062) and Pioneer (Permit Nos. CO-0047767, CO-0047776, and CO-0048003) by May 29, 2015, unless the performance is prevented or delayed by events that constitute a force majeure. A force majeure is defined for purposes of this Agreement as any event arising from causes which are not reasonably foreseeable, which are beyond the control of the Division, and which cannot be overcome by due diligence.

4. If Pioneer or XTO disagree with the term(s) related to WET, iron or EC/SAR in the Proposed Renewal Permits, Pioneer or XTO agree to request an administrative adjudicatory hearing and request a stay of the particular permit term(s) from the Division pursuant to the Water Quality Control Act, C.R.S. §§ 25-8-501, et seq., and 5 C.C.R. §§ 1002-21 and 1002-61 on or before June 15, 2015. For good cause shown, the Division will issue a stay of the particular permit term(s) related to WET, iron or EC/SAR as identified in Pioneer's or XTO's request for stay within five (5) business days of receiving Pioneer's or XTO's request for stay. If the Division grants a stay of the permit term(s) related to WET, iron or EC/SAR, then the corresponding term that is in effect in the Permits on or before June 30, 2015 will remain in effect during the pendency of the stay. If such stays are not granted prior to July 1, 2015, this Agreement is null and void.

5. If Pioneer or XTO requests a stay under paragraph 4, the Parties agree to begin a non-binding facilitated discussion process no later than thirty (30) days following a request for stay by Pioneer or XTO. The mutually-agreeable facilitator chosen under paragraph 2 of this Agreement shall facilitate the discussion

6. The non-binding facilitated discussion process may include one or a series of facilitated discussions. The Parties agree to proceed with the facilitated discussion process in an expeditious manner. The parties also agree that the Facilitator shall be provided with confidential written statements at least one week prior to the first facilitated discussion. The non-binding facilitated discussion process will conclude no later than September 30, 2015.

7. A stay granted by the Division pursuant to paragraph 4 of this Agreement will remain in full force and effect until one of the following occurs: if the Parties reach agreement on a particular permit term through the facilitated discussion process, the stay of that particular permit term will remain in effect until the final permit(s) is effective; or if the Parties do not reach agreement through the facilitated discussion process, no later than December 31, 2015.

8. On the Effective Date of this Agreement, the Parties will file a joint motion to stay the proceedings currently pending in the District Court for Las Animas County (Civil Case Numbers 2015CV30042 and 2015CV30041). In the motion for stay the Parties shall request that the court stay the judicial review proceedings until the Division issues the Proposed Renewal Permits and, if triggered under paragraph 5 of this Agreement, during the pendency of a facilitated discussion; or until one of the Parties notifies the other and the Court that it is withdrawing from the Agreement.

9. If Pioneer or XTO agrees with the term(s) related to WET, iron or EC/SAR in the Proposed Renewal Permit or in the final renewal permit, Pioneer or XTO will remove the term from the scope of the action before the District Court for Las Animas County by either amending its complaint to or by dismissing the complaint.

10. Upon five (5) business days' notice, a party may withdraw from this Agreement if any other party has not substantially complied with paragraphs 1 through 9 of this Agreement. If any party withdraws from this Agreement, this Agreement is null and void.

11. This Agreement shall be construed fairly as to all Parties and shall not be construed in favor of or against any Party in the event of an ambiguity or other form of dispute as to its interpretation.

MOREOVER, none of the foregoing shall preclude XTO or Pioneer from appealing and requesting a stay pursuant to the Water Quality Control Act, C.R.S. §§ 25-8-501, *et seq.*, and 5 C.C.R. §§ 1002-21 and 1002-61, of terms, limits, or conditions other than WET, iron and EC/SAR in the Proposed Renewal Permits.

MOREOVER, none of the foregoing shall preclude the Parties from raising all claims or defenses in the actions currently pending in the District Court for Las Animas County (Civil Case Numbers 2015CV30042 and 2015CV30041), if the action(s) is not stayed by the court, or if a stay is granted by the court if and when the proceeding is no longer stayed. Nor shall the foregoing preclude the Parties from raising all claims or defenses in any administrative or judicial action initiated after the Effective Date of this Agreement related to or arising from the draft renewal permits, the proposed renewal permits, or the final renewal permits associated with permit numbers CO-0047767, CO-0047776, CO-0048003, CO-0048054 and CO-0048062.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives on the respective dates set forth below.

**Water Quality Control Division
Colorado Department of Public Health
and Environment**

By: 

Name: Patrick J. Pfaltzgraff

Title: CDPHE/WQCD Director

Email: patrick.j.pfaltzgraff@state.co.us

Dated: May 8, 2015

XTO Energy Inc.

By: _____

Name: _____

Title: _____

Email: _____

Dated: _____

Pioneer Natural Resources USA Inc.

By: _____

Name: _____

Title: _____

Email: _____

Dated: _____

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**Water Quality Control Division
Colorado Department of Public Health
and Environment**

By: _____
Name: _____
Title: _____
Email: _____
Dated: _____

XTO Energy Inc.

By: John D. Baker
Name: John D. Baker
Title: VP-Western Operations
Email: john.baker@xtoenergy.com
Dated: May 8, 2015

Pioneer Natural Resources USA Inc.

By: _____
Name: _____
Title: _____
Email: _____
Dated: _____

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**Water Quality Control Division
Colorado Department of Public Health
and Environment**

By: _____
Name: _____
Title: _____
Email: _____
Dated: _____

XTO Energy Inc.

By: _____
Name: _____
Title: _____
Email: _____
Dated: _____

Pioneer Natural Resources USA Inc.

By:  _____ OPW
Name: Thomas D. Sheffield
Title: VP, Western Division
Email: _____
Dated: 5/8/2015