

April 8, 2015

Ronda L. Sandquist
Attorney at Law
303.223.1191 tel
303.223.0991 fax
rsandquist@bhfs.com

VIA HAND DELIVERY

Ms. Janet Kieler
Water Quality Control Division
4300 Cherry Creek Drive South
Denver, CO 80346

**RE: XTO Energy Incorporated Supplemental Comments on Draft Public Notice for
Permit Nos. CO-0048054 and CO-0048062.**

Dear Janet:

On April 6, 2015, the Water Quality Control Division (“Division”) extended the period for commenting on the Draft Renewal Permits for XTO Energy Incorporated (“XTO”) for the discharge of produced water from coalbed methane wells in the Purgatoire Watershed; specifically Discharge Permit Nos. CO-0048054 and CO-0048062 (“Draft Permits”). XTO submitted comments on the Draft Permits on April 6, 2015, prior to receiving notice of the extension. XTO provides additional comments regarding the economic environmental, energy and public health costs and impacts arising from the Draft Permits. As such, XTO supplements and incorporates by reference those comments with this letter.

I. The Division Must Consider All Health Risks Associated with the Limits Imposed in the Draft Permits

The Colorado Water Quality Control Act mandates that water decisions by the Division are reasonable and consider the economic, environmental, energy and public health impacts and costs of those actions. C.R.S. § 25-8-102(5).

Specifically, the Division is directed when issuing permits that require treatment to protect water quality standards (and beyond technology-based requirements), that it “must determine whether or not any or all of the water-quality-standard-based effluent limits are reasonably related to the economic environmental, public health and energy impacts to the public and affected persons.” C.R.S. § 25-8-503(8). The Division erred in its rudimentary, formulaic conclusion that “the water-quality-standard-based effluent limitations of this permit are determined to be reasonably related to the economic, environmental, public health and energy impacts to the public and affected persons.” *See* 48054 Fact Sheet at 68.

410 Seventeenth Street, Suite 2200
Denver, CO 80202-4432
main 303.223.1100

The Division failed to account for the negative public health implications associated with applying more stringent requirements and limits in the Draft Permits; that is, the socio-economic disruption that will occur and the attendant adverse health impacts. The consideration of these health effects is required by the Colorado Water Quality Control Act. C.R.S. § 25-8-102(5) and C.R.S. § 25-8-503(8). A well-recognized relationship exists between unemployment and negative health impacts in the public health and epidemiology literature. Further, there is a positive correlation between unemployment and negative mental and physical health impacts such as mortality, myocardial infarction, stroke, depression, anxiety, health care visits and prescription medication usage. These impacts are not limited to the unemployed. According to the U.S. Department of Health and Human Services (“HHS”), children in poor families are four times as likely to be in fair or poor health as children in families that are not poor. HHS, “Summary Health Statistics for U.S. Adults: National Health Interview Survey, 2012” (Feb. 2014). One study states, “The true costs of unemployment exceed the obvious economic costs and include substantial health consequences as well.” W.T. Gallo, et al., The impact of late career job loss on myocardial infarction and stroke: a 10 year follow up using the health and retirement survey, 63 OCCUP. ENVIRON. MED. 683, 686 (2006). Another study states, “Our results document that unemployment had health-damaging effects in this population severe enough to be considered clinically significant.” Ronald C. Kessler et al., Effects of Unemployment on Health in a Community Survey: Main, Modifying, and Mediating Effects, 44 J. OF SOCIAL ISSUES 69, 81 (1988). See also, Sarah A. Burgard, et al., Perceived Job Insecurity and Work Health in the United States, 69 Social Science and Medicine 777, 784 (2009) (“perceived job insecurity remains a significant predictor of subsequent health.”). Further, “job losers can experience declines in health The consequences of job loss are also felt by workers’ children, who can suffer from the consequences even as adults, and by their families.” Testimony of Till Von Wachter before the Joint Economic Committee of the U.S. Congress, “Long-Term Unemployment: Causes, Consequences and Solutions” (April 29, 2010). The literature on this topic is so pervasive that a recent search of the National Institutes of Health PubMed database includes over 6,400 articles addressing unemployment and health. Socio-economic disruption from the economic impacts to the Las Animas communities will be substantial under the terms of the Draft Permits. The Draft Permits will result in reduced economic contribution as a result of reduced or eliminated CBM water production. Further, these impacts will be particularly acute in a rural communities such as these.

II. Pursuant to Colo. Rev. Stat. § 24-4-104.5(2), the Draft Permits Must be Governed by Criteria and Standards in Effect in 2013

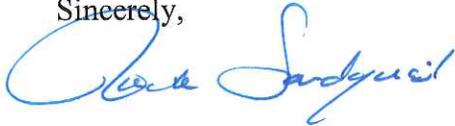
“The rules and any written statements of agency interpretation of the statutes of an agency that are in effect on the date that a person applies for issuance or renewal of a permit govern the application process and any permit eligibility requirement.” Colo. Rev. Stat. § 24-4-104.5(2).

XTO timely submitted its permit renewal applications in 2013. Based thereon, the Division has administratively extended XTO’s current permits indefinitely. Pursuant to Colo. Rev. Stat. § 24-4-104.5(2), the Division must consider XTO’s renewal application under the rules

XTO Energy, Inc.
April 8, 2015
Page 3

in effect on the date the permit renewal applications were filed, i.e., December 2013. XTO is legally entitled to have its permit renewal application processed under the rules and standards in effect in 2013 – prior to the Division’s adoption of Appendix B to the Draft Permits, “Assessing Attainment of Ambient-Based Water Quality Standards in Colorado” (“Appendix B”). Therefore, Appendix B, by way of example, has no bearing on the Division’s consideration of XTO’s renewal application.

Sincerely,



Ronda L. Sandquist

cc: Erin Scott
Lori Mulsoff
XTO Energy Incorporated
Tetra Tech, Inc.
Engineering Analytics

016455\0001\12110120.1