

TAAMS #: 750 5060451323
TRACT(S) #: 750 T 1080
SUIT INVOICE #: XTO-8, 9
SUIT RESOLUTION #: 2013-112
SUIT RESOLUTION DATE(S): June 24, 2013
PROJECT CROSSING TRIBAL TRUST LAND

SURFACE USE AGREEMENT
NO: 750-13-6045

THIS AGREEMENT is made this 24th day of June, 2013, by and between the SOUTHERN UTE INDIAN TRIBE ("Tribe"), whose address is P.O. Box 1500, Ignacio, Colorado 81137, and XTO ENERGY INC. ("Surface User"), whose address is 382 Road 3100, Aztec, New Mexico 87410.

WHEREAS, in connection with the development of the underlying mineral estate which is not owned by the Tribe, the Surface User intends to use the Tribe's surface estate (hereinafter referred to as "the Property") of the following described real property located within the exterior boundaries of the Southern Ute Indian Reservation:

A tract of land containing approximately 1.84 acres, more or less, located in the Southwest Quarter of the Southwest Quarter (SW/4SW/4) of Section 2, Township 32 North, Range 7 West, N.M.P.M., La Plata County, Colorado, and being further described on the attached Exhibit "A".

; and

WHEREAS, the development of the mineral estate underlying the Property will be conducted by the Surface User for the Smith #1H and Smith #2H Wells pursuant to that certain lease described as follows:

Oil & Gas Lease dated October 6, 1948 by Hans Aspaas, as lessor covering the W/2SW/4 of Section 2, T32N, R7W and the E/2SE/4 & the SE/4NE/4 of Section 3, T32N, R7W, La Plata County, Colorado.

(hereinafter referred to as "the Lease").

NOW THEREFORE, in consideration of the terms and conditions of this Agreement, the Tribe and the Surface User agree as follows:

1. Use of the Property. Surface User shall make use of the Property only to the extent reasonably necessary for the construction, operation and maintenance of a natural gas/coalbed methane well and shall use and locate on the Property only those fixtures and equipment which are

reasonably necessary for the production, separation, compression and treating of natural gas, coalbed methane and/or the disposal of water. Surface User shall be the owner of any improvements constructed and fixtures and equipment placed on the Property as a result of operations under this Agreement.

2. Access. It is understood and agreed that Surface User has a right of ingress and egress to and from the Property for any and all purposes reasonably necessary and incident to the use described above. In exercising its right of ingress and egress, Surface User shall comply with the laws and regulations of the Tribe regulating such access including but not limited to securing crossing permits, refraining from carrying firearms, and refraining from possessing alcoholic beverages while on Tribal lands.

3. Surface damage compensation and compensation for grant of permission. Surface User agrees to pay the Tribe surface damage and grant of permission compensation computed as set forth in the Tribal Council Policy regarding surface damage compensation for oil and gas related facilities as initially adopted per Resolution #85-47 on April 30, 1985, and most recently amended on February 11, 2008, to wit:

Computations:

<u>1.84</u> acres class (A) lands X (\$ _____ per acre	
(surface damage compensation) =	\$ _____
<u>1.84</u> acres X \$ _____ per acre	
(grant of permission) =	\$ _____
TOTAL	\$ _____

This payment shall be due and payable upon receipt of invoice and Bureau of Indian Affairs' approval of this Agreement. In the event the above payment is delinquent for a period in excess of 30 days, an additional late charge at the rate of one percent (1%) per month on the overdue amount shall be paid to the Tribe for the period of the delinquency. Interest shall accrue on any delinquent amount, including late charges, at the rate of one percent (1%) per month. Upon request, Surface User will provide proof of payment to the Bureau of Indian Affairs.

4. Due diligence. Surface User shall proceed in a reasonable fashion to construct the natural gas/coalbed methane well pad and those fixtures and equipment which are reasonably necessary for the production, separation, compression and treating of natural gas, coalbed methane and/or the disposal of water on the Property within two years of the date of the Bureau of Indian Affairs approval of this Agreement or else the Tribe may terminate this agreement. If construction does not occur, or is not expected to be completed, within the time period specified in this Agreement, Surface User shall provide the Tribe and the Bureau of Indian Affairs with a written explanation of good cause as to the nature of any delay, the anticipated date of construction of facilities, and evidence of progress toward commencement of construction. The date for completion of construction under this provision may be modified by mutual written agreement of the parties.

5. Conduct of Surface User. Surface User shall conduct its activities under this Agreement as a reasonable prudent operator, in a good and workmanlike manner, with due diligence and dispatch, in accordance with good oilfield practice, without creating a nuisance, without illegal activity, or negligent use or waste of the Property, and in compliance with applicable laws and regulations, and having due regard for prevention of damage to the environment, including damage to vegetation, wildlife and water resources, contamination of soils, and injury to workmen and the public.

6. Term. The term of this Agreement is for a period of time no longer than the period of time Surface User conducts operations under the Lease or ten (10) years from the date of approval of the Agreement by the Bureau of Indian Affairs, whichever is less. This Agreement may be renewed with Tribal Council approval, and with approval by the Bureau of Indian Affairs, upon such terms and conditions and for such period of time as may be mutually agreed upon by the parties.

7. Hold Harmless and indemnification. Surface User shall hold the Tribe and the United States, and their authorized representatives, harmless from any loss, liability, or damages resulting from the Surface User's use or occupation of the Property. Additionally, Surface User shall indemnify the Tribe and United States, and their authorized representatives, against all

liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous material from the leased premises that occurs during the term of this Agreement, regardless of fault, with the exception that the Surface User is not required to indemnify the Tribe for liability or cost arising from the Tribe's gross negligence or willful misconduct. Nothing herein is intended to obligate Surface User to hold harmless or indemnify the United States against legal actions, claims, losses, demands, costs, damages, expenses and liability of any kind, including reasonable attorney fees, which may be brought or made against the United States for breach by the United States of applicable laws and regulations.

8. Insurance. During the term of this Agreement, Surface User shall procure and maintain insurance coverage for general liability in an amount not less than \$1,000,000.00, to cover any and all losses or damages the Tribe or the United States may incur as a result of negligent acts, errors or omissions on the part of Surface User its officers, employees and agents, subcontractors, or anyone directly or indirectly employed by Surface User in connection with this Agreement, and additional property insurance in an amount necessary to protect all insurable permanent improvements on the Property. Such insurance shall identify both the Tribe and the United States as additional insured parties. Certificates of insurance shall be furnished to the Tribe upon request. The Surface User shall provide a 30-day advance written notice to the Tribe and the United States in the event of cancellation, non-renewal or material change of any such policy. In lieu of obtaining commercial policies of insurance described above, Surface User may demonstrate to the Tribe's satisfaction adequate alternative equivalent coverage (e.g., self insurance).

9. Removal of improvements and fixtures and reclamation responsibility. Surface User shall have the right upon expiration, cancellation, or termination of this Agreement and for one hundred eighty (180) days thereafter to remove any and all of its property placed on the Property pursuant to this Agreement. At the conclusion of the one hundred eighty (180) day period, if Surface User has not removed all of its property, then the Tribe shall have the option of either assuming ownership and control of the property or may require that Surface User, at Surface User's

expense, remove its property and restore the surface to as near the original condition as reasonably possible.

10. Notice of cessation of operations. Surface User shall provide the Tribe with no less than forty-five (45) days advance written notice, at the address provided above, of its intent to cease operations on the Property pursuant to the Lease.

11. Binding effect. This Agreement shall extend to and be binding upon the parties hereto, their heirs, executors, administrators, successors and assigns.

12. Assignment. Subject to the approval of the Tribe and the Secretary of the Interior or their authorized representative, either party hereto shall have the right to assign this Agreement in conformity with applicable federal and tribal law. Any such assignment shall not be binding upon the other party until written notice thereof has been given and an original or certified copy of the transfer instrument has been provided.

13. Bonding requirement. Surface User shall, upon written request from the Tribe, furnish a bond to be deposited with and made payable to the Tribe in accordance with 25 CFR §162.434 which shall be subject to cancellation only after surface inspection and approval by the Tribe of Surface User's compliance with abandonment and reclamation responsibilities. Surface User must obtain the consent of the surety for any legal instrument that directly affects Surface User's and its surety's obligations and liabilities.

14. Termination by the Tribe. If Surface User fails to pay the full amount of the surface damage compensation and grant of permission compensation when due, the Tribe, after not less than 30 days' written notice of such default, by certified mail, given to Surface User at Surface User's above-noted address and to any surety or mortgagee, at its option, may terminate all rights of Surface User hereunder. In the event of a default by Surface User, either in payment of surface damage compensation and grant of permission or failure to comply materially with other terms of this Agreement, the Tribe may elect to continue the Agreement in effect and enforce all rights and remedies, including the right to recover the surface damage compensation

and grant of permission payment amount, and/or at any time after reasonable notice given by certified mail to Surface User and any surety or mortgagee and opportunity to cure, terminate Surface Users' rights hereunder and recover from Surface User all damages incurred by reason of the breach of this Agreement, including the cost of any necessary removal of property or equipment from the Property and the cost of any necessary reclamation needed to restore the Property to its condition before this Agreement. The remedies described in this provision apply in addition to, or instead of, the United States' cancellation remedy described below.

15. Cancellation by the United States. This Agreement may be cancelled by the United States in accordance with the procedures set forth in 25 CFR § 162.466 based on Surface User's violation of the conditions of the Agreement and/or violation of the payment provisions of this Agreement.

16. Termination by Surface User. Surface User shall have the right at any time during the term hereof to terminate this Agreement upon notice to the Tribe by certified mail, as well as notice to the United States, and any surety or mortgagee and upon a showing satisfactory to the Secretary of the Interior that full provision has been made for conservation and protection of the Property and the proper abandonment of all wells drilled on the Property; provided however, such termination shall not relieve Surface User of any unpaid payment and other obligations including Surface User's removal and reclamation obligations. Surface User shall provide the Bureau of Indian Affairs, Southern Ute Agency, with a recordable release as evidence of termination pursuant to this provision.

17. Obligations enforceable by United States. The obligations of Surface User and its sureties to the Tribe are also enforceable by the United States, so long as the Property remains in trust or restricted status.

18. Discovery of cultural items. If historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with this Agreement, all activity in the immediate vicinity of the properties,

resources, remains, or items will cease and Surface User will contact the Bureau of Indian Affairs and the Tribe to determine how to proceed and appropriate disposition.

19. Inspection. At any reasonable time during the term of this Agreement and upon reasonable notice to Surface User, the Tribe and the Bureau of Indian Affairs may enter the Property for inspection and to ensure compliance. Additionally, upon request by either the Tribe or the Bureau of Indian Affairs, Surface User shall make appropriate records, reports, or information available for inspection and duplication. Failure by Surface User to cooperate with such a request may, in the Tribe's or the Bureau of Indian Affairs' discretion, be treated as an Agreement violation.

20. Provisions that violate federal law are Agreement violations. The Tribe and the United States may treat any provision of this Agreement that violates federal law as an Agreement violation.

IN WITNESS WHEREOF the parties hereto have caused this instrument to be executed the day and year first hereinabove written.

TRIBE:

SOUTHERN UTE INDIAN TRIBE

By: 

Jimmy R. Newton, Jr., Chairman
Southern Ute Indian Tribal Council

Date: 6/26/15

SURFACE USER:

XTO ENERGY INC.

By: Ethan S. R. T. 19
sent

Date: 6/20/13

APPROVED:

U.S. DEPARTMENT OF INTERIOR
BUREAU OF INDIAN AFFAIRS

By: Jul Wase

Date: July 15, 2013

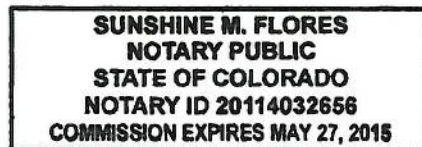
Under the authority delegated to the Assistant Secretary - Indian Affairs by 209 DM 8, 230 DM 1, and to the Southwest Regional Director by 3 IAM 4 (Release No. 12-42) and to the Superintendent by the Southwest Regional Addendum Release No. 9401, as amended, and pursuant to the provisions of the Act of Aug. 9, 1955, 69 Stat. 539 (codified as amended at 25 U.S.C. § 415 (2012)), and Part 162, Title 25, *Code of Federal Regulations*).

STATE OF COLORADO)

COUNTY OF LA PLATA)

Subscribed and sworn to me this 21st day of June, 2013, by Jimmy R. Newton, Jr., Chairman of The Southern Ute Indian Tribal Council.

WITNESS my hand and official seal.



My commission expires:

5/27/2015

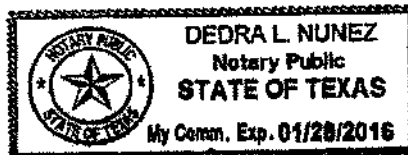
Sunshine M. Flores
Notary Public

STATE OF Texas)

COUNTY OF Tarrant)

The foregoing instrument was acknowledged before me this 20th day of June, 2013, by
Edwina S. Ryan, Sr. V.P. and Admin of XTO ENERGY
INC.

WITNESS my hand and official seal.



My commission expires:

1/28/16

Dedra L. Nunez
Notary Public

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