

# SURFACE USE AGREEMENT

(Penrose 2-8H and Penrose 3-8H Infill Wells

From Existing Penrose 1R and Penrose 1RX Well Pad)

THIS SURFACE USE AGREEMENT (herein this "SUA") is made and entered into effective 7:00 o'clock A.M. Mountain Time on this 20<sup>th</sup> day of October, 2014 (herein the "Effective Date") by and between David H. Engler and Evelyn M. Engler ("Surface Owner"), whose address is 10340 State Highway 151, Ignacio, Colorado 81137 and XTO Energy Inc., a Delaware corporation ("XTO" or "Operator"), the address of which is 810 Houston Street Fort Worth, TX 76102-6298, Attention: Land Manager - San Juan Basin.

## WITNESSETH:

THAT FOR AND IN CONSIDERATION of the sum of ONE THOUSAND AND NO/100 DOLLARS (\$1000.00) and other good and valuable consideration paid to Surface Owner, the receipt and sufficiency of which is hereby acknowledged and for and, in consideration of the promise by XTO to pay Surface Owner a certain compensation sum of money ("Compensation") the amount of which being set forth in a hereinafter described Letter Agreement ("Letter") and paid upon certain conditions at the time of commencement of construction by XTO in connection with the hereinafter described wells, pipelines, facilities and infrastructure and, in consideration of the covenants contained in this SUA, and other valuable consideration, the receipt and sufficiency of which are also hereby acknowledged, the parties hereto agree as follows:

1. OWNERSHIP: Surface Owner represent that they are vested with title to the surface estate of a tract of land being located in the SW1/4SW1/4 of Section 8, Township 32 North, Range 6 West, N.M.P.M., more particularly described under that certain Warranty Deed filed of record on December 21, 1973, Reception No. 381673 with Office of the Clerk of La Plata County, Colorado (the "Property"). XTO is the owner of a leasehold interest in the mineral estate underlying the Property or lands pooled therewith and is the operator of wells within a certain Colorado Oil and Gas Conservation Commission ("COGCC") approved drilling and spacing unit which includes the Property.
2. NOTICE: Operator intends to drill two (2) gas and/or oil infill wells known as the Penrose 2-8H and Penrose 3-8H (the "Additional Wells") on the reasonably expanded or modified existing well pad (the "Expanded Well pad") associated with the Penrose 1R and Penrose 1RX wells (the "Existing Wells"). The general location for the Additional Wells on the Property is set forth in Exhibit "A-1" and Exhibit "A-2" attached hereto and made a part of this SUA. Operator has given Surface Owner notice as required by law of XTO's planned operations on the Property. XTO and Surface Owner have agreed upon the general location of the Additional Wells and, related facilities, infrastructure and pipelines, on and off the Expanded Well pad.

3. USE OF SURFACE ESTATE: It is mutually acknowledged that in order for XTO to drill, complete and produce the Additional Wells it will be reasonably necessary for Operator to enter upon and use a portion of the surface estate of the Property. The parties under the Letter have reached an agreement as to the Compensation paid to Surface Owner in connection with such entry and use of the Property. Surface Owner hereby confirms in accordance with the underlying oil gas lease(s), that XTO, its agents, contractors, subcontractors, employees, and its successors and assigns, are authorized, to enter upon and use a portion of the Property to conduct oil and gas operations, including, but not limited to, access roads, well locations, pipelines (within the Expanded Well pad), drilling, completing and producing the Additional Wells together with associated production facilities necessary and convenient to operate and produce the Additional Wells. XTO will use the existing access road now on the Property from the existing well pad to CR-329 and make a reasonable expansion or modification thereof to the existing well pad in order to accommodate the Additional Wells and associated facilities. XTO under a separate gas and water pipeline Right Of Way And Easement Agreement with Surface Owner will connect its Additional Wells to a Red Cedar Gathering Company pipeline also on the Property, and connect its Additional Wells to a water pipeline on the existing well pad. The Expanded Well pad Diagram, Access Road Diagram, and Gas and Water Pipeline Survey and Easement descriptions being respectively shown on Exhibit "B", Exhibit "C", Exhibit "D" and Exhibit "E" attached hereto and made a part hereof, and have been agreed upon by Surface Owner and XTO.
4. COMPENSATION: This SUA is subject to the terms of Letter Agreement ("Letter") dated October \_\_\_\_\_, 2014 by and between Surface Owner and XTO the terms of which are fully incorporated herewith and include a payment of Compensation to Surface Owner by XTO which Compensation is inclusive of and constitutes the full and final Compensation to be paid by XTO in connection with access to and from the Expanded Well pad, use of the surface, all damages (except as provided in the last sentence in this section) to the Property, any inconvenience to Surface Owner, associated with the drilling, testing, completion, re-completion, reworking, re-entry, pumping, operation and maintenance of the Additional Wells and the use of its associated production facilities necessary and convenient to operate and produce the Additional Wells. XTO shall pay Surface Owner the full Compensation amount and perform the commitments of XTO as set forth herein upon XTO acquiring any necessary waivers and required permits, but contingent upon final issuance of all required State, Federal and County permits, in connection with the Additional Wells, but in any event, said payment would be made (upon final approval and receipt of permits) prior to the actual commencement of construction activities associated with the Additional Wells, well pad expansion and pipelines, except that XTO shall have the right to conduct surveying and inspection activities on the Property prior to said payment. The Compensation set forth above does not include or cover any potential damage to personal property and/or fixtures that is not normally and reasonably associated with the proposed operations. If extraordinary damage to personal property or fixtures occurs as a result of XTO's actions or operations on the Property, XTO separately shall compensate Surface Owner for all such actual damages sustained by Surface Owner.

5. ROADS: Throughout the term of this SUA, XTO or Operator shall maintain in good repair and condition any existing or new road(s) on the Property that is utilized by Operator. Operator's responsibility for road repair and maintenance costs shall be proportionate to Operator's use (if used by others) and shall be borne 100% by Operator if any road damage is caused solely by Operator. When an access road is no longer used by Operator, the underlying lands will be restored and reseeded by Operator unless Surface Owner notifies Operator within ten (10) days after Operator has advised Surface Owner of plans to restore and reseed the lands underlying the road(s), that Surface Owner desires all or part of the lands to remain as a road.
6. INDEMNITY/RELEASE: Operator hereby indemnifies and holds Surface Owner harmless from and against any and all claims, damages and causes of action arising out of Operator's operations on the Property, unless such claims, damages or causes of action result in whole or in part from Surface Owner's conduct on the Property. Surface Owner hereby indemnifies and holds Operator harmless from and against any and all claims, damages and causes of action asserted against Operator by any surface tenant or occupant of Surface Owner's Property in connection with any damage or disturbance caused by Operator to lands or growing crops asserted by such occupant or surface tenant. Surface Owner may allocate the Compensation made hereunder with any surface tenant or occupant, if applicable, as they shall mutually determine between themselves and Operator shall have no responsibility in connection therewith. The Compensation and other agreements made by Operator and contained herein constitute the full and entire compensation to be paid by Operator to Surface Owner for all damages to and use of the surface of the Property resulting from Operator's reasonable oil and gas activities.
7. DEFAULT: In the event that Operator fails to perform any of the terms, conditions, or covenants contained herein, and such default remains for thirty (30) days after receipt of written notice of such default to Operator, then Operator shall be deemed to have breached this SUA and the Surface Owner shall be entitled to pursue any and all remedies allowed by law.
8. NOTICES: All notices under this SUA by either party shall be sufficiently given and served if sent by United States mail, postage prepaid and addressed to either party at the address as designated below, or to such other place as either party may from time to time designate by notice to the other:

Surface Owner: David H. Engler and Evelyn M. Engler  
10340 State Highway 151  
Ignacio, Colorado 81137

Operator: XTO Energy Inc.  
Attention: Land Manager San Juan Basin  
810 Houston Street  
Fort Worth, TX 76102-6298

9. MISCELLANEOUS: Surface Owner and Operator further agree as follows:

- a. Casing. Operator shall case any and all wells to a depth below any known fresh water aquifer in compliance with the rules and regulations of the COGCC, and any other applicable regulations.
- b. Dust and Weeds. Operator will use reasonable efforts to control or minimize dust in the vicinity of any residence on the Property. Operator shall use reasonable efforts to maintain its well pad(s), access road(s) and pipeline right of way easement corridor(s) in a weed free, clean condition. Weeds shall be sprayed, cut or trimmed as may be necessary to control or prevent weeds, to preserve a reasonably neat appearance and to prevent weeds from seeding on additional property.
- c. Pits. Operator shall reclaim any drilling pits in compliance with applicable COGCC rules and regulations (Rules 902, 904 and 905). Excepting unforeseen circumstances that may require the use of pits, Operator will employ a closed-loop or pit-less drilling system during its operations to drill and complete the Additional Wells.
- d. Noise Abatement. Operator shall comply with COGCC Rule 802 concerning Noise Abatement.
- e. Interim Reclamation. As soon as reasonably practicable after the Additional Wells are drilled, completed, producing and connected to a pipeline gathering system, Operator shall reclaim and reseed disturbed lands lying outside and beyond the area that will be used for ongoing production operations.
- f. Accommodation. Surface Owner agrees that the terms of this SUA reasonably accommodates Surface Owner's use of the Property pursuant to C.R.S. § 34-60-127 and the common law rule of accommodation.
- g. Waiver of Notice and Consultation. In accordance with sections 305.c.(5) and 306.a.(2) of the Rules and Regulations ("Rules") of the Colorado Oil and Gas Conservation Commission ("COGCC"), Surface Owner waives the right to receive the Oil and Gas Location Assessment Notice described in COGCC Rule 305.c.(1) and the Statutory Notice to Surface Owner described in COGCC Rule 305.f., and Surface Owner also waives the right to the Drilling Consultation described in COGCC Rule 306.a. Surface Owner acknowledges receiving from XTO the Informational Brochure for Surface Owners described in COGCC Rule 305.f.(3)(D). Surface Owner acknowledges and agrees that XTO has complied with all notice and consultation requirements of COGCC Rules 305 and 306. Surface Owner in connection with the matters addressed in this SUA also waives the right to receive notices under the Code of La Plata County, Colorado including, but not limited to, Section 90-77 of said Code.
- h. Fencing: To avoid possible injury to Surface Owner or surface tenant livestock, Operator shall provide new fencing, similar in construction now enclosing the existing well pad around the Expanded Well pad.

- i. Spoil Storage: During Operators construction activities to expand or modify the existing well pad in preparation of the Additional Wells and associated production facilities, Operator may stockpile and/or berm excavated spoil and imported fill materials, if required, within the existing well pad and Expanded Well pad and construction/buffer areas as shown on Exhibit "B", and before commencing either interim or final reclamation operations, to disperse as needed, stockpiled spoil and imported materials within the existing and Expanded Well pad.
  - j. Ditches and Drainages: XTO will restore all irrigation ditches to their original location and condition, if disturbed and, re-establish drainages to direct groundwater around the Expanded Well pad. If either ditch repair, if disturbed or re-established drainages fail as direct result of XTO's construction activities, XTO will repair them as soon as reasonably possible after being notified by Surface Owner of such failure.
  - k. Timber: All timber (except Cedar) greater than 4" in diameter cut by XTO during its operations shall be trimmed and cut into lengths ranging between 16 to 18 inches, Cedars trimmed and cut into 8' fence posts and stacked along with cut and trimmed timber at a Surface Owner determined location on the Property. All cut timber less than 4" in diameter will be chipped and spread into the existing and Expanded Well pads.
10. BINDING EFFECT: All of the provisions of this SUA shall inure to the benefit of and shall be binding upon the parties hereto, their respective heirs, representatives, successors or assigns.
11. FURTHER ASSURANCE: Surface Owner agrees to take or do all such further acts and things, and furnish, execute and deliver all such further documentation without additional compensation as may be necessary or appropriate to carry out the purpose of this SUA.
12. ENTIRE AGREEMENT: This SUA contains the entire confirmation or clarification between the parties regarding the subject wells and may not be modified orally or in any manner other than by agreement in writing signed by all parties.
13. NO WAIVER OF RIGHTS: This SUA or even the willingness to consider executing this SUA will not be construed as a waiver of any rights of ingress or egress, access or other reasonable use of the surface that XTO has under any oil and gas lease or other agreement or under any local, state or federal laws, rules or regulations pertaining to the Property. This SUA is intended to avoid any issue or question as to the use of the Property by XTO, but is not a waiver of other contractual or legal rights of XTO. In the event XTO decides, in its sole opinion, that it is necessary, or is required by law, to utilize a location materially different from the agreed upon location for the well pad, access road or pipeline, XTO will notify Surface Owner and attempt to negotiate an appropriate amendment to this SUA. In the event mutual agreement on such an amendment can not be reached, both parties reserve their respective rights under all existing leases, contracts, laws, rules and regulations regarding the ingress or egress, access and other reasonable use of the surface of the Property.

14. TERM: This SUA shall be effective as of the Effective Date and shall continue until the underlying oil and gas lease expires, production from the Additional Wells has permanently ceased and the Additional Wells have been plugged and abandoned. Notwithstanding the previous sentence, XTO shall have a reasonable period of time within which to remove all facilities and fixtures.

IN TESTIMONY WHEREOF, we sign this SUA the 20<sup>th</sup> day of October, 2014, to be effective for all purposes as of the Effective Date.

SURFACE OWNER:

By: David H. Engler  
David H. Engler

By: Evelyn M. Engler  
Evelyn M. Engler

OPERATOR:

XTO Energy Inc., a Delaware corporation

By: Edwin S. Ryan, Jr.  
Name: Edwin S. Ryan, Jr.  
Title: Sr. Vice President – Land

#### ACKNOWLEDGEMENTS

STATE OF COLORADO )  
 ) ss.  
COUNTY OF LA PLATA )

This instrument was acknowledged before me this 20 day of OCTOBER, 2014 by David H. Engler and Evelyn M. Engler, personally known to me.

WITNESS my hand and official seal.

Mike Simone  
Notary Public  
May 11, 2018  
My Commission Expires

(SEAL)



STATE OF TEXAS )  
 ) ss.  
COUNTY OF TARRANT )

This instrument was acknowledged before me on the 17<sup>th</sup> day of December, 2014 by Edwin S. Ryan, Jr., Sr. Vice President – Land of XTO Energy Inc., a Delaware corporation, on behalf of said corporation.

WITNESS my hand and official seal.

Stacy Lynn Whiteley  
Notary Public  
5-14-16  
My Commission Expires

(SEAL)





EXHIBIT "A-1"  
Penrose 2-8H Well  
Surface Location Section Diagram

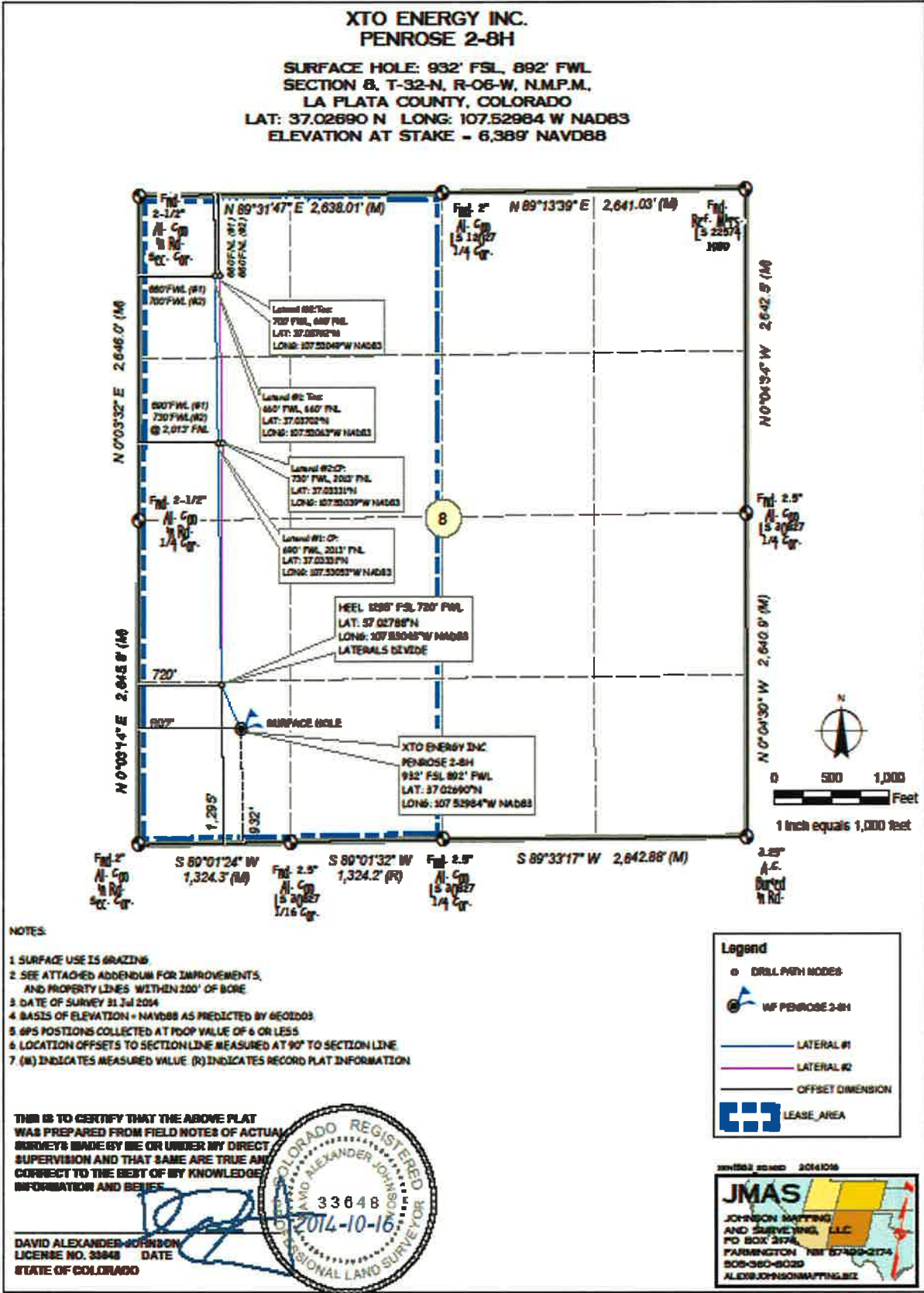


EXHIBIT "A-2"  
Penrose 3-8H Well  
Surface Location Section Diagram

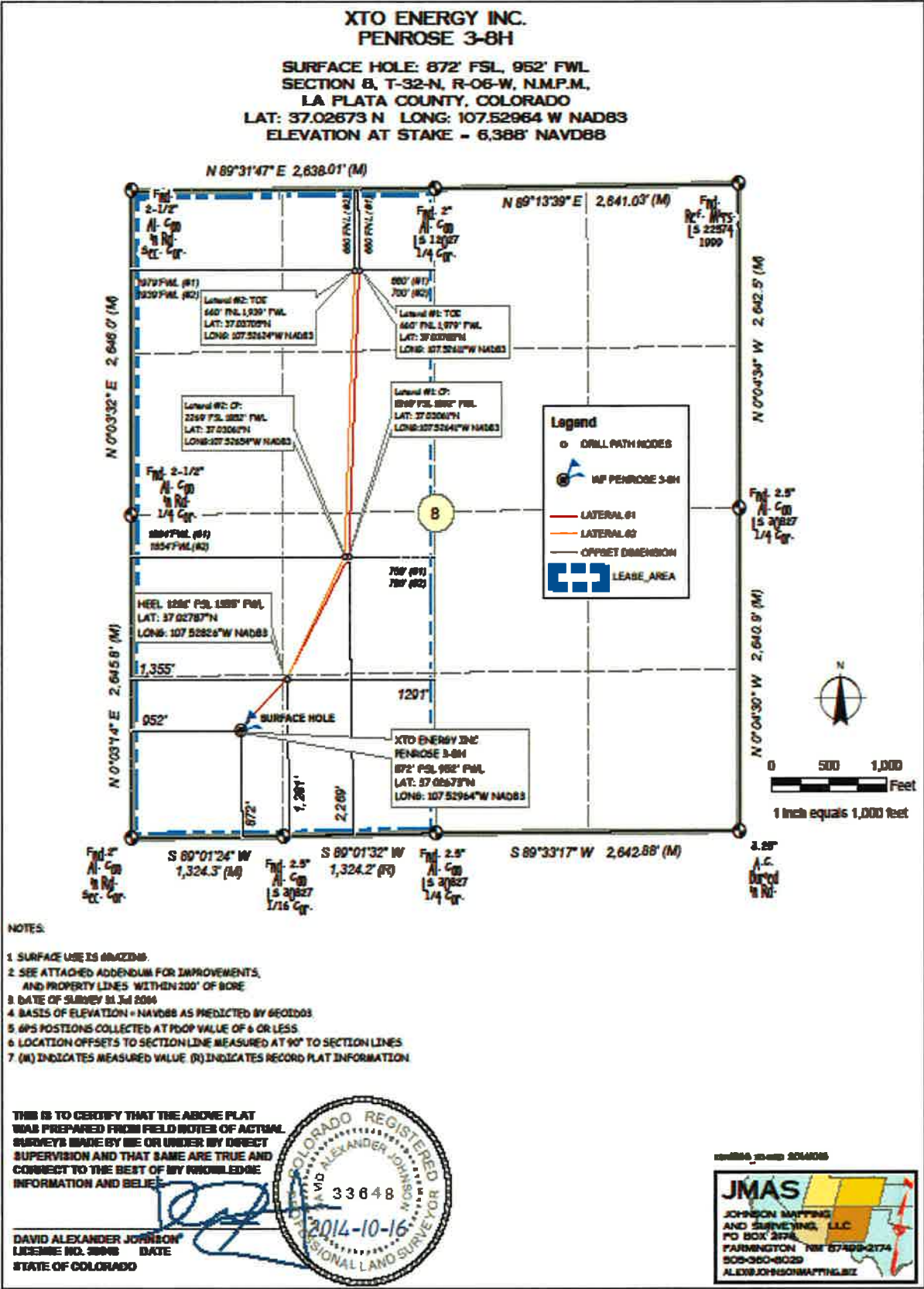




EXHIBIT "B"  
Penrose 2-8H and Penrose 3-8H  
Expanded Well Pad Diagram

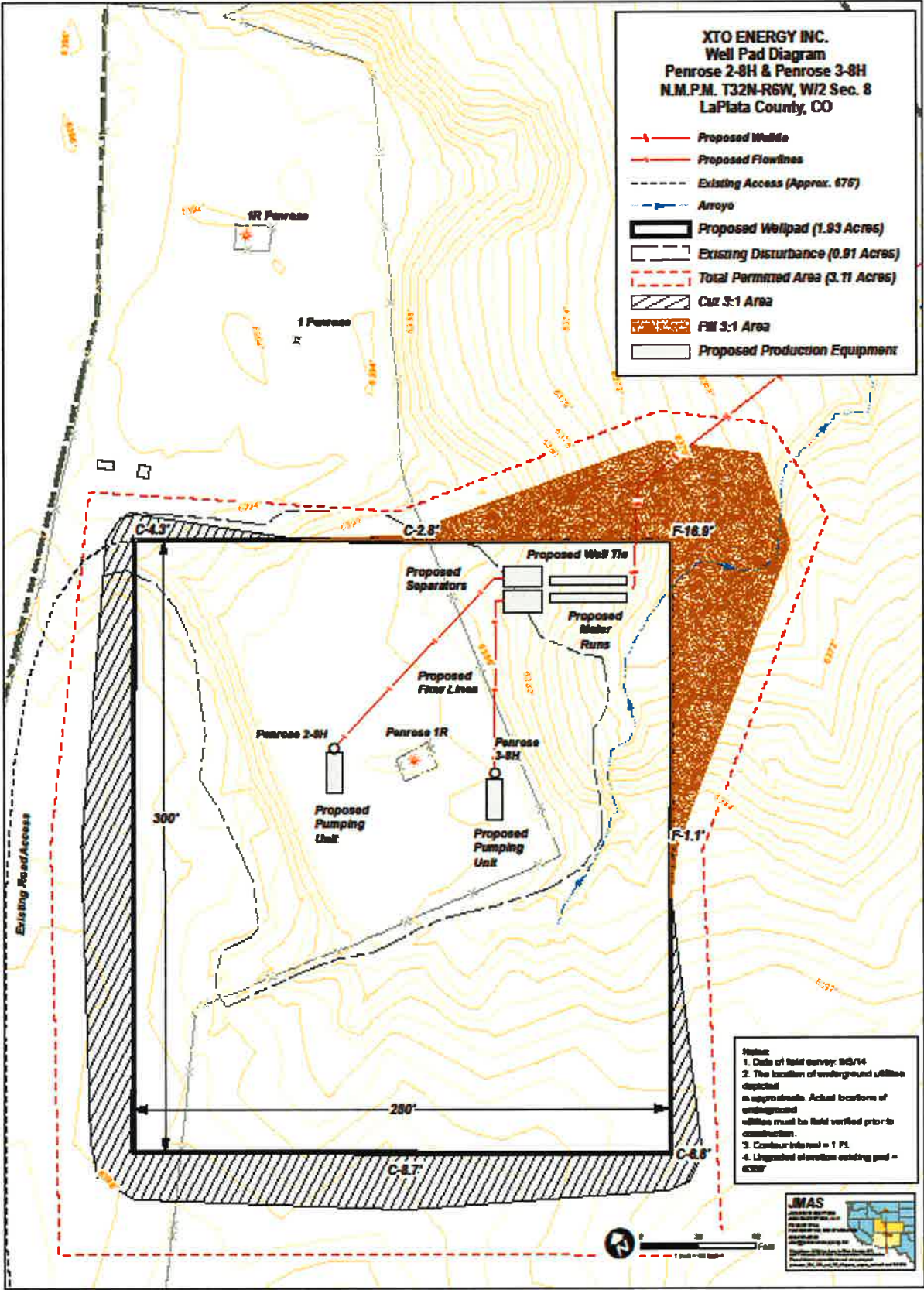
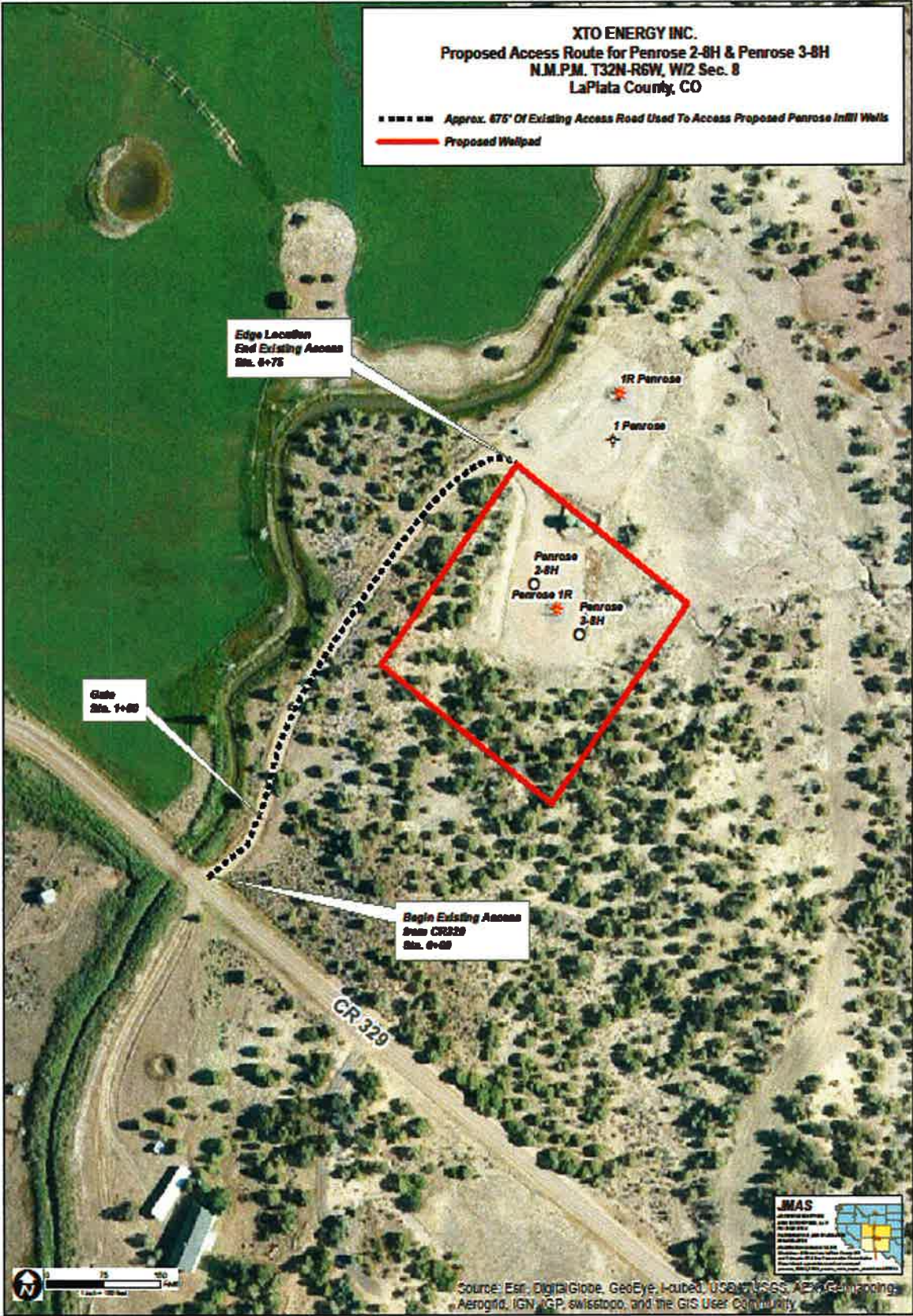


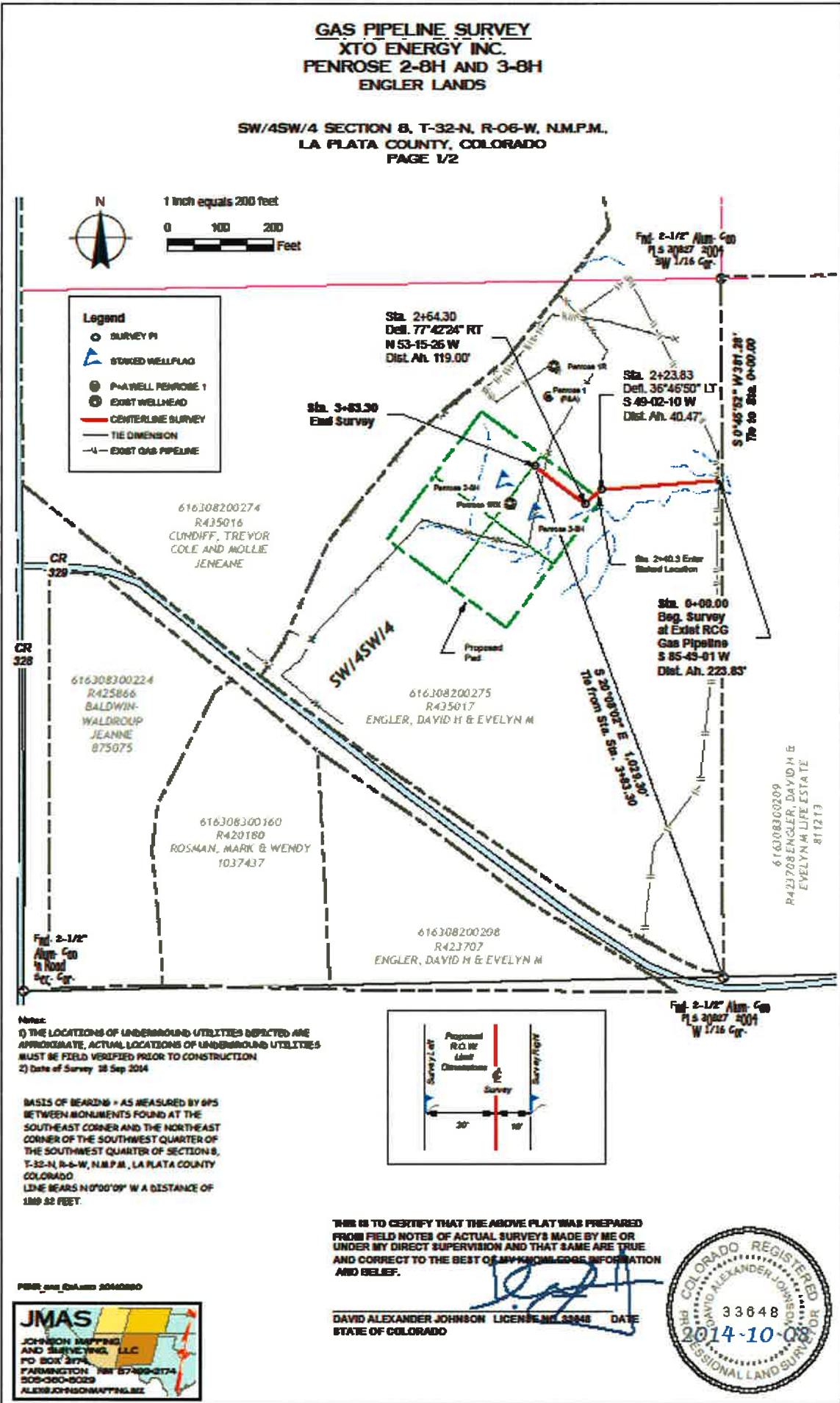


EXHIBIT "C"  
Penrose 2-8H and Penrose 3-8H  
Access Road Diagram





# **EXHIBIT "D"** **Penrose 2-8H and Penrose 3-8H** **Gas Pipeline Right of Way and Easement Survey**



## EXHIBIT "D"

### Penrose 2-8H and Penrose 3-8H Gas Pipeline Right of Way and Easement Description

**GAS PIPELINE SURVEY  
XTO ENERGY INC.  
PENROSE 2-8H AND 3-8H  
ENGLER LANDS**

SW/4SW/4 SECTION 8, T-32-N, R-06-W, N.M.P.M.,  
LA PLATA COUNTY, COLORADO  
PAGE 2/2

#### Centerline Easement Description

An easement, thirty feet (30') in width, lying ten feet (10') to the northerly side and twenty feet (20') to the southerly side of the following described center line located in the Southwest Quarter of the Southwest Quarter of Section 8, Township 32 North, Range 6 West, New Mexico Principal Meridian, La Plata County, State of Colorado, said center line being more particularly described as follows:

BEGINNING at Survey Station 0+00, which bears S 0°45'52" W a distance of 381.28 feet from a 2-1/2" Aluminum Cap found for the Northeast Corner of said Southwest Quarter of the Southwest Quarter of said Section 8,

THENCE S 85°49'01" W	a distance of	223.83	feet to survey Sta. 2+23.83;
THENCE S 49°02'10" W	a distance of	40.47	feet to survey Sta. 2+64.30;
THENCE N 53°15'26" W	a distance of	119.00	feet to survey Sta. 3+83.30;

said point being the POINT OF ENDING for this description, from which a 2-1/2" Aluminum Cap found for the Southeast Corner of said Southwest Quarter of the Southwest Quarter of said Section 8, bears S 20°08'02" E distance of 1,029.30 feet.

CONTAINING: 383.30 feet, 23.23 rods and 0.26 acres +/-

#### SURVEYOR'S STATEMENT

I hereby state that this description was prepared by me or under my direct responsibility, supervision and checking, and that in my professional opinion is true and correct to the best of my knowledge, belief, and information based on the standards of care of Professional Land Surveyors practicing in the State of Colorado.



DAVID ALEXANDER JOHNSON  
Colorado Registration No. 33648

DATE

**BASIS OF BEARINGS:** AS MEASURED BY GPS BETWEEN MONUMENTS FOUND AT THE SOUTHEAST CORNER AND THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 8, T-32-N, R-6-W, N.M.P.M., LA PLATA COUNTY, COLORADO.  
**LINE BEARS N 0°00'09" W A DISTANCE OF 1319.32 FEET.**

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PENROSE Exhibit 20140800









EXHIBIT "E"

Penrose 2-8H and Penrose 3-8H  
Water Pipeline Right of Way and Easement Description

WATER PIPELINE SURVEY  
XTO ENERGY INC.  
PENROSE 2-8H AND 3-8H  
ENGLER LANDS

SW/4SW/4 SECTION 8, T-32-N, R-06-W, N.M.P.M.,  
LA PLATA COUNTY, COLORADO  
PAGE 2/2

Centerline Easement Description

An easement, twenty feet (20') in width, located in the Southwest Quarter of the Southwest Quarter of Section 8, Township 32 North, Range 6 West, New Mexico Principal Meridian, La Plata County, State of Colorado, said center line being more particularly described as follows:

BEGINNING at Survey Station 0+00, which bears S 65°19'59" W a distance of 499.11 feet from a 2-1/2" Aluminum Cap found for the Northeast Corner of said Southwest Quarter of the Southwest Quarter of said Section 8,

THENCE S 29°52'06" E a distance of 146.64 feet to survey Sta. 1+46.64;  
THENCE S 53°18'03" E a distance of 30.00 feet to survey Sta. 1+76.64;

said point being the POINT OF ENDING for this description, from which a 2-1/2" Aluminum Cap found for the Southeast Corner of said Southwest Quarter of the Southwest Quarter of said Section 8, bears S 20°15'36" E distance of 1,029.63 feet.

CONTAINING: 176.64 feet, 10.71 rods and 0.08 acres +/-

SURVEYOR'S STATEMENT

I hereby state that this description was prepared by me or under my direct responsibility, supervision and checking, and that in my professional opinion is true and correct to the best of my knowledge, belief, and information based on the standards of care of Professional Land Surveyors practicing in the State of Colorado.



DAVID ALEXANDER JOHNSON  
Colorado Registration No. 33648

DATE

BASIS OF BEARINGS: AS MEASURED BY GPS BETWEEN MONUMENTS FOUND AT THE SOUTHEAST CORNER AND THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 8, T-32-N, R-6-W, N.M.P.M., LA PLATA COUNTY, COLORADO.  
LINE BEARS N 0°00'09" W A DISTANCE OF 1319.32 FEET.

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SURFACE OWNER RESPONSE  
TO COLORADO DEPARTMENT OF WILDLIFE  
CONDITIONS OF APPROVAL

**C. R.S. 34-60-128(3)(b) provides for surface owner consent of certain permit specific conditions of wildlife habitat protection.**

David H. Engler and Evelyn M. Engler as record title Surface Owner's of a tract of land being located in the SW1/4SW1/4 of Section 8, Township 32 North, Range 6 West, N.M.P.M., more particularly described under that certain Warranty Deed filed of record on December 21, 1973, Reception No. 381673 with Office of the Clerk of La Plata County, Colorado (the "Property") are aware of the following Colorado Department of Wildlife's ("CDOW") recommended Conditions of Approval ("COA") associated with XTO Energy Inc. Application(s) for Permit to Drill the Penrose 2-8H and Penrose 3-8H well(s):

No.

1. All fired vessel and heat transfer stacks, vents, or other openings shall be equipped with screens or other appropriate equipment to prevent entry by wildlife, including migratory birds.

*The above Condition of Approval is currently addressed by existing rule 604.b.(7) and Migratory Bird Policy of the Colorado Oil and Gas Conservation Commission and is not open for discussion by the operator or the surface owner.*

2. Do not place staging, refueling, or chemical storage areas within riparian zones and floodplains.
3. Use wildlife-appropriate fencing at this facility if acceptable to Surface Owner.
4. Use wildlife-appropriate seed mixes at this facility if acceptable to Surface Owner.
5. Gate the access road to this facility and limit public access if acceptable to Surface Owner.

and hereby:

CONSENT to implementation of the following recommended COA's: 1, 2

DO NOT CONSENT to implementation of the following recommended COA's: 3 USE LIVESWELL FENCE  
4 SEED MIX TO BE DETERMINED BY S. DWYER'S.

Propose(s) the attached alternative(s) to the following recommended COA's: \_\_\_\_\_

By: David H. Engler  
David H. Engler

Date: 10/20/2014

By: Evelyn M. Engler  
Evelyn M. Engler

Date: 10/20/2014