

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the United States Department of the Interior, Office of Natural Resources Revenue (“ONRR”) (collectively the “United States”) and XTO Energy Inc. (“XTO”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

- A. XTO is a Delaware corporation, engaged in the exploration and production of natural gas.
- B. XTO has produced, and currently produces, natural gas from federal onshore and/or offshore leases and from Indian leases. The federal onshore leases at issue in this Agreement (“Onshore Leases”) are identified by lease number in Exhibit A to this Agreement. The federal offshore leases at issue in this Agreement (“Offshore Leases”) are identified by lease number in Exhibit B to this Agreement. The Indian leases at issue in this Agreement (“Indian Leases”) are identified by lease number in Exhibit C to this Agreement.
- C. The term “Marketable Condition” is used in this Agreement as it is used in 30 CFR Part 1206 Subparts D and E (2014).
- D. The United States contends that it has certain civil and administrative claims against XTO for underpaying and underreporting royalties due to the United States by engaging in the following conduct: (1) for Product Codes 03, 04, 07, 15, and 39, for the Onshore Leases and Indian Leases, XTO knowingly deducted the costs (monetary or volumetric) of placing gas in Marketable Condition from royalties reported

and paid for the production months from January 1, 2009 through August 31, 2017; (2) for Product Codes 03 and 07, for the Offshore Leases, XTO knowingly deducted the costs (monetary or volumetric) of placing gas in Marketable Condition from royalties reported and paid for the production months from January 1, 2009 through July 31, 2011; (3) for Product Codes 03, 04, 07, and 39, for the Onshore Leases, XTO knowingly deducted from the value on which royalties were reported and paid the cost of transporting Carbon Dioxide (“CO₂”), for the production months from January 1, 2009, through June 30, 2016; and (4) for the production months from May 31, 2010 through March 31, 2016, XTO knowingly failed to pay royalties on Product Code 17 from the leases identified in Exhibit D to this Agreement that was processed at the Castle Valley Plant in Utah. The conduct described in this Paragraph is referred to below as the “Covered Conduct.”

E. This Settlement Agreement is neither an admission of liability by XTO nor a concession by the United States that its claims are not well founded. XTO denies the United States’ allegations in Paragraph D.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. XTO shall pay to the United States \$16,000,000 (“Settlement Amount”), by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney’s Office for the District of Colorado no later than 14 days after the Effective Date of this Agreement. In addition to the Settlement Amount, of which

\$10,506,968 million is restitution, XTO will pay interest of \$57,860 (“Interest”) for the period October 1, 2023 to the date upon which payment is due, also by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney’s Office for the District of Colorado no later than 14 days after the Effective Date of this Agreement.

2. Subject to the exceptions in Paragraph 4 (concerning reserved claims) below, and conditioned upon the United States’ receipt of the Settlement Amount and Interest, the United States releases XTO from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; and the common law theories of breach of contract, payment by mistake, unjust enrichment, disgorgement, fraud, and negligent misrepresentation.

3. Subject to the exceptions in Paragraph 4 (concerning reserved claims) below, and conditioned upon the United States’ receipt of the Settlement Amount and Interest, the U.S. Department of the Interior releases XTO from any civil or administrative claim the U.S. Department of the Interior has for the Covered Conduct under the federal and Indian mineral leasing statutes and regulations that govern the reporting, calculation, and payment of royalty on federal and Indian natural gas leases.

This release specifically covers: (1) the orders and decisions underlying the pending administrative appeals docketed as IBLA-2019-0151 (ONRR-16-0077) and IBLA 2020-0186 (ONRR-17-0097); and (2) Issue numbers 2, 3, and 4 of the orders underlying the administrative appeals docketed as ONRR-20-0006-IND and ONRR-20-0043-IND. Upon the United States’ receipt of the Settlement Amount and Interest, XTO

and the U.S. Department of the Interior agree to take appropriate steps to seek remand of IBLA-2019-0151 (ONRR-16-0077) and IBLA 2020-0186 (ONRR-17-0097) to ONRR and, thereafter, the Department of the Interior will vacate the underlying orders and decisions. With respect to the administrative appeals docketed as ONRR-20-0006IND and ONRR-20-0043-IND, the Parties agrees that the execution of this Settlement Agreement shall constitute notice by the Department of the Interior of its vacatur of issue numbers 2, 3, and 4 of the orders underlying each of those administrative appeals and that, accordingly, XTO's appeals of those orders shall be limited to the issues other than issue numbers 2, 3, and 4 in the underlying orders; the Parties acknowledge and agree that the remaining issues raised in the orders underlying each of those administrative appeals shall be handled through the referenced appeals. Finally, upon the United States' receipt of the Settlement Amount and Interest, it is understood and agreed that the Covered Conduct shall be closed to audit by the U.S. Department of the Interior.

4. Notwithstanding the releases given in Paragraphs 2 and 3 of this Agreement, or any other term of this Agreement, the following claims and rights of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability or enforcement right, or any administrative remedy, including the suspension and debarment rights of any federal agency;

- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability of individuals;
- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- h. Any liability for failure to deliver goods or services due;
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

5. XTO and ONRR acknowledge that, as of the Effective Date of this Agreement, XTO has filed prior-period reports in the manner agreed upon by XTO and ONRR prior to execution of this Agreement and that ONRR has accepted the prior-period reports as an accurate and correct implementation of the Agreement.

6. XTO waives and shall not assert any defenses XTO may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

7. XTO fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that XTO has asserted, could have

asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

8. a. **Unallowable Costs Defined:** All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of XTO, and its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) XTO's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payment XTO makes to the United States pursuant to this Agreement,

are unallowable costs for government contracting purposes (hereinafter referred to as "Unallowable Costs").

b. **Future Treatment of Unallowable Costs:** Unallowable Costs will be separately determined and accounted for by XTO, and XTO shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for

Payment: Within 90 days of the Effective Date of this Agreement, XTO shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by XTO or any of its subsidiaries or affiliates from the United States. XTO agrees that the United States, at a minimum, shall be entitled to recoup from XTO any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine XTO's books and records and to disagree with any calculations submitted by XTO or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by XTO, or the effect of any such Unallowable Costs on the amount of such payments.

9. This Agreement is intended to be for the benefit of the Parties only. It is expressly understood and agreed that this Agreement is executed for the sole purpose of settling the claims for the Covered Conduct. No Party shall be deemed to have approved, accepted, or consented to any concept, method, theory, principle, or to any statutory, regulatory, or contractual interpretation underlying, or purportedly underlying, any of the matters agreed to herein or raised in connection with the Covered Conduct, provided that ONRR has approved, accepted, and consented to XTO's re-reporting addressed in Paragraph 5 as an accurate and correct implementation of the Agreement. This Agreement shall have no precedent setting value and shall not be binding on any Party as to any issues, leases, royalty payments, or any time periods, other than those specifically addressed by the Covered Conduct.

10. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

11. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

12. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the District of Colorado. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

13. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

14. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

15. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

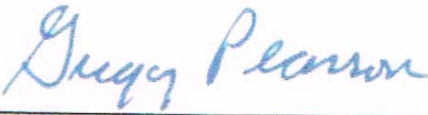
16. This Agreement is binding on XTO's successors, transferees, heirs, and assigns.

17. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

18. This Agreement is effective on the date of signature of the last signatory to the Agreement (“Effective Date of this Agreement”). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 10/31/23

BY: 

Gregory Pearson
Senior Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice
Counsel for the United States

Amanda Rocque
Assistant United States Attorney
United States Attorney’s Office
for the District of Colorado
Counsel for the United States

OFFICE OF NATURAL RESOURCES REVENUE

DATED: _____

BY: _____

Howard M. Cantor, Director
U.S. Department of the Interior
Office of Natural Resources Revenue

18. This Agreement is effective on the date of signature of the last signatory to the Agreement (“Effective Date of this Agreement”). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: _____ BY: _____

Gregory Pearson
Senior Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice
Counsel for the United States

Amanda Rocque
Assistant United States Attorney
United States Attorney’s Office
for the District of Colorado
Counsel for the United States

OFFICE OF NATURAL RESOURCES REVENUE

DATED: _____ BY: **HOWARD CANTOR** Digitally signed by HOWARD CANTOR
Date: 2023.10.30 15:12:43 -06'00'

Howard M. Cantor, Director
U.S. Department of the Interior
Office of Natural Resources Revenue

XTO ENERGY INC.

DATED: October 30, 2023

BY:

DocuSigned by:

Rick Cannon

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Richard E. Cannon
Vice President
XTO Energy Inc.

DATED: October 30, 2023

BY:

DocuSigned by:

Sarah Dicharry

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Sarah Y. Dicharry
Jones Walker LLP
Counsel for XTO Energy Inc.