

March 12, 2005

Mr. Bill M. Manning  
Manager Lease Administration  
XTO Energy Inc.  
810 Houston Street  
Fort Worth, TX 76102-6298

Re: **San Juan County, New Mexico**  
T29N, R9W, N.M.P.M., Section 19  
SE1/4NW1/4, SW1/4NE1/4, W1/2SE1/4,  
Containing 160 acres, more or less

Dear Mr. Manning:

You have been kind enough to furnish me with copies of the following:

- Oil and Gas Leases dated November 17, 1947, between George W. Kutz, Albert R. Kutz, Henry Snyder, Dan G. Kutz, Dora Gabriel, Lessors, to C. H. Nye, Lessee,
- Mineral Deed dated July 6, 1949, from Henry Snyder, Dora E. Gabriel, Dan G. Kutz, George W. Kutz, and Albert R. Kutz, Grantors, to W. T. Graham, Grantee, conveying an undivided one-half (1/2) interest in all the oil, gas, and other minerals in and under the above-referenced tract,
- Mineral Deed dated June 9, 1950, from W. T. Graham and his wife, Florence L. Graham, Grantors, to J. Lanham Higginbotham, Grantee, conveying an undivided one-fourth (1/4) interest in all the oil, gas, and other minerals in and under the above-referenced tract, and
- Oil and Gas Transfer Order dated June 3, 1980, directing Amoco Production Company to transfer credit for the interest of Glenn Platt Higginbotham in the above-referenced tract, among other properties, in equal shares to her four grandchildren, Linda J. Gelvin, Cynthia H. Scofield, Genie H. Bentley, and J. Lanham Higginbotham III.

The "J. Lanham Higginbotham" named as Grantee in the June 5, 1950, Mineral Deed was my grandfather, J. Lanham Higginbotham, Sr. The "Glenn Platt Higginbotham" named in the June 3, 1980, Transfer Order was my grandmother and the surviving spouse of J. Lanham Higginbotham, Sr.

J. Lanham Higginbotham, Sr., died in 1968. His surviving spouse, Glenn Platt Higginbotham, died in 1978. In his Last Will my grandfather bequeathed his community property one-half interest in all the minerals he owned in equal shares to two testamentary trusts. One trust was created for the benefit of my father, J. Lanham Higginbotham, Jr.

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The second trust was created for the benefit of my first cousin, Linda C. J. Latham (a/k/a Linda J. Gelvin, a/k/a Linda J. Rayes). In 1976 my grandmother, Glenn Platt Higginbotham, made an *inter vivos* transfer of *her* community property one-half interest in all the minerals, which had been acquired by her late husband, in equal shares to her four grandchildren named above. In early 2003 Linda J. Rayes purchased from the testamentary trust of which she was the beneficiary all minerals held by that trust.

As a result of these testamentary and inter vivos transfers, the minerals once held by J. Lanham Higginbotham, Sr., Deceased, and Glenn Platt Higginbotham, Deceased, as their community property are now held as follows:

Linda J. Rayes	3/8th
<u>The J. Lanham Higginbotham, Sr., Testamentary Trust</u> <u>f/b/o J. Lanham Higginbotham, Jr.</u>	<u>1/4th</u>
Cynthia H. Scofield	1/8th
Gene H. Bentley	1/8th
<u>J. Lanham Higginbotham III</u>	<u>1/8th</u>

In the process of preparing our 2004 Form 1040's and the Form 1041 for the trust for which my father serves as Trustee my father, sisters, first cousin, and I have compared the 2004 Form 1099's we have received from XTO Energy.

*Not only do we think XTO is not making royalty payments in the correct percentages for all interests, we also question XTO's deduction of various expenses from royalty payments.*

#### **Decimal Interests**

Attached is a schedule of the fourteen (14) wells in San Juan County, New Mexico, from which XTO makes royalty payments to me. In addition to the Well Names I have also shown the Well Numbers and the Decimal Interest for my **XTO Owner Number, # 0451848**. The royalties you pay for production from these wells to my first cousin, Linda J. Rayes, should be **exactly three times** the amount you pay me. The royalties you pay from these wells to the trust for my father's benefit should be **exactly twice** the amount you pay me. And the royalties you pay from these wells to each of my sisters, Cynthia H. Scofield and Gene H. Bentley, should be **exactly the same** amount you pay me. In some

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cases, however, material differences exist between the amounts you should be paying and the amounts you actually are paying.

For example, the 2004 Form 1099 you furnished to me reports Gross Royalty paid in the amount of \$2,841.83. If this amount is accurate, then the Form 1099 you furnished to the J. Lanham Higginbotham, Sr., Testamentary Trust f/b/o J. Lanham Higginbotham, Jr., (Owner Number 769903) should report Gross Royalty paid to the trust in the amount of \$5,683.66. Instead, your 1099 furnished to the trust reports Gross Royalty of only \$5,376.25. This is \$307.41 less than twice the Gross Royalty shown on my 1099.

*Please examine your payment information for my father's trust and for the members of my family and make any needed corrections. Please issue adjusting payments for any amounts underpaid for 2004 and for prior years.*

#### **Deduction of Costs**

If the provisions of the four Oil and Gas Leases dated November 17, 1947, govern the royalties XTO pays for production from the wells mentioned above, please help us understand what authorizes XTO to deduct any costs from our royalty payments.

Each of the four leases at Section 3 states: "The lessee shall deliver to the credit of the lessor as royalty, **free of cost** [emphasis added], in the pipe line to which lessee may connect its wells the equal one-eighth part of all oil produced and saved from the leased premises...." The language "free of cost" would appear to mean just that: "free of cost". No costs, including costs for processing, transporting, and marketing production should be deducted from the royalty payment.

Each of the four leases at Section 4 states: "The lessee shall monthly pay lessor as royalty on gas marketed from each well where gas only is found, one-eighth (1/8) of the proceeds if sold at the well, or if marketed by lessee off the leased premises, then one-eighth (1/8) of its market value **at the well** [emphasis added]."

These leases do not appear to authorize deducting from our royalty payments your costs incurred for transporting, dehydrating, compressing, processing, treating, or otherwise marketing or rendering the production capable of being marketed. Yet your check stubs detail your deductions for transporting, dehydrating, processing, and taxes on processing production from our royalty payments. These costs are substantial; for my family's interests your 2004 charges for various costs exceed \$4,800. Moreover, XTO and its predecessor, Cross Timbers Exploration, have deducted these costs in 2003 and earlier years.

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*Please direct us to the language in the governing leases or in other authority that authorizes XTO's deduction of any costs, other than taxes, from our royalty payments. If these costs have been deducted in error from our royalty payments for 2004 and earlier years, we ask that you make us whole by paying the costs incorrectly deducted from our royalties.*

If you have any questions concerning anything contained in this letter, please contact me. You may reach me by U.S. mail at the address shown below, by email at [lanham42@charter.net](mailto:lanham42@charter.net), or by fax at (214) 265-8744.

Sincerely yours,

J. Lanham Higginbotham III  
4204 Purdue Ave.  
Dallas, TX 75225-6703

Encl.

cc: J. L. Higginbotham, Jr.  
Linda J. Rayes  
Cynthia H. Scofield  
Gene H. Bentley

**XTO Energy****Well Numbers, Well Names, and Decimal Interest****San Juan County, New Mexico****Owner Name: J. Lanham Higginbotham III****Owner Number: 0451848**

<b>Well Number</b>	<b>Well Name</b>	<b>Decimal Interest</b>
W0068904	Gerk Gas Com B #1F DK	0.000383300
W0068905	Gerk Gas Com B #1F MV	0.000383300
W0068906	Gerk Gas Com B #1G MV	0.000383300
W0068907	Gerk Gas Com B #1G DK	0.000383300
W0070979	Snyder Gas Com #1 MV	0.001145400
W0070980	Snyder Gas Com #1A MV	0.001145400
W0070981	Snyder Gas Com B #1 DK	0.001145400
W0071057	Texas National Gas Com #1 PC	0.000940200
W0071186	Gerk Gas Com #1 MV	0.000383400
W0071187	Gerk Gas Com B #1 DK	0.000383300
W0071188	Gerk Gas Com B #1M DK	0.000383300
W0071189	Gerk Gas Com B #1M MV	0.000383300
W0072428	Snyder Gas Com B #1F DK	0.001145400
W0072429	Snyder Gas Com B #1F MV	0.001145400

May 1, 2005

Ms. Terry Reid  
Division Order Manager  
XTO Energy, Inc.  
810 Houston Street  
Fort Worth, TX 76102-6298

Re: Owner Name: J. Lanham Higginbotham, Jr., Testamentary Trust  
J. L. Higginbotham, Jr., Trustee  
XTO Owner Number: 769903  
XTO Well Names and Numbers: See attached schedule  
County and State: San Juan County, New Mexico

Dear Ms. Reid:

Thank you for your very thorough email dated April 12, 2005. As your Senior Division Order Analyst for New Mexico examines your files to determine the correct fractional interests owned by members of my family in XTO's San Juan County, New Mexico, production, you may find the enclosed documents helpful:

- Conveyance, Assignment, and Transfer by J. D. Hancock,
- Last Will and Testament of J. Lanham Higginbotham, Sr.,
- Conveyance, Assignment, and Transfer by Glenn Platt Higginbotham, and
- Conveyance, Assignment, and Transfer by J. Lanham Higginbotham, Jr.

**Conveyance, Assignment, and Transfer by J. D. Hancock**

By instrument dated June 17, 1968, J. D. Hancock, General Partner, conveyed to my grandfather, J. Lanham Higginbotham, Sr., an undivided 19.845% interest in the minerals held by Hancock Royalties, Ltd. Among the mineral interests conveyed were those in Section 19 of Township 29 North, Range 9 West, San Juan County, New Mexico. It is my understanding that in 1968 this conveyance was recorded in every county and every state in which Hancock Royalties, Ltd., owned minerals. Among the counties in which this instrument was recorded, the Conveyance, Assignment, and Transfer was recorded in the Miscellaneous Real Estate Records of Roosevelt County, Montana, in Vol. 292, beginning at Page 80. A copy of the conveyance is enclosed.

Under Texas law, because my grandfather acquired his mineral interests with community property funds, those mineral interests became the community property of my grandfather and his wife, Glenn Platt Higginbotham.

Ms. Terry Reid  
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**Last Will and Testament of J. Lanham Higginbotham, Sr.**

My grandfather, J. Lanham Higginbotham, Sr., died December 15, 1968. His Last Will and Testament was admitted to probate in the Probate Court of Dallas County, Texas, in 1969. A copy of his Last Will and Testament is enclosed. It is recorded in the Probate Records of Dallas County, Texas, as part of Cause No. 69-81-C/P, in Volume 132, Pages 1303 through 1317.

In Section VIII of his Last Will my grandfather bequeathed his residuary estate, including his community property one-half of all the minerals he owned, to two testamentary trusts in equal shares. He bequeathed one-half of his community property one-half in the minerals to the "J. Lanham Higginbotham, Jr., Testamentary Trust". (He bequeathed the remaining one-half of his community property one-half to the "Linda Carolyn Jones Latham Testamentary Trust".)

In addition to receiving her one-half of all community property assets at my grandfather's death, my grandfather in Section V of his Last Will also bequeathed to my grandmother, Glenn Platt Higginbotham, one-half of his separate property. Consequently, although I believe all minerals held by my grandfather at his death were community property, whether those minerals are characterized as community property or as separate property is moot, as my grandfather bequeathed one-half of his separate property to his surviving spouse, Glenn Platt Higginbotham.

**Conveyance, Assignment, and Transfer by Glenn Platt Higginbotham**

By conveyance dated December 29, 1976, Glenn Platt Higginbotham, the surviving spouse of J. Lanham Higginbotham, Sr., memorialized her November 1, 1976, gift of any and all minerals she owned to her four grandchildren in equal shares. Her four grandchildren are: Cynthia H. Scofield, Genie H. Bentley, J. Lanham Higginbotham III, and Linda J. Latham. (Linda J. Latham is the same person as Linda Carolyn Jones Latham, Linda J. Gelvin, and Linda J. Rayes.) A copy of the 1976 *inter vivos* conveyance is enclosed. Among the counties in which this gift was recorded, the Conveyance, Assignment, and Transfer was recorded in the Oil & Gas Lease Records of Dawson County, Texas, in Vol. 233, Pages 193 through 213.

**Conveyance, Assignment, and Transfer by J. Lanham Higginbotham, Jr., Trustee**

In 2002 Linda J. Rayes (f/k/a Linda Carolyn Jones Latham, Linda C. J. Latham, and Linda J. Gelvin) purchased all the minerals held by the Linda Carolyn Jones Latham Testamentary Trust created under the Will of J. Lanham Higginbotham, Sr. Title to the minerals was transferred by conveyance dated September 12, 2002, and signed by J. Lanham Higginbotham, Jr., Trustee of the Linda Carolyn Jones Testamentary Trust. Thus, in her individual capacity she acquired title to all the minerals that were held in this

Ms. Terry Reid  
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trust for her benefit. A copy of the 2002 conveyance is enclosed. Among the counties in which this document was recorded, the Conveyance, Assignment, and Transfer was recorded in the Oil & Gas Records of Harding County, South Dakota, in Volume 102, Pages 594 through 597.

### **Conclusion**

As a result of these testamentary and *inter vivos* transfers, title to the minerals that were in 1968 held by my grandparents, J. Lanham Higginbotham, Sr., and Glenn Platt Higginbotham, is now held by the four individuals and one trust shown on the enclosed schedule.

As the enclosed schedule demonstrates, each of my two sisters (Cynthia Higginbotham Scofield and Gene Higginbotham Bentley) owns a royalty interest identical to mine in the referenced wells. Because the trust of which my father, J. Lanham Higginbotham, Jr., is the sole beneficiary (the "J. Lanham Higginbotham, Jr., Testamentary Trust") owns an interest in these wells that is twice the interest of each of my two sisters and my own interest, the royalty payments you remit to his trust should be twice as much as those you remit to each of us. They are not.

Please compare the gross royalties received by my father's trust (XTO Owner Number: 769903) with those received by me, J. Lanham Higginbotham III (XTO Owner Number: 0451848). According to the 2004 Form 1099 you recently mailed to me, for my fractional interest XTO paid gross royalties of \$2,841.83. If you have correctly determined my fractional interest in each unit and if you have paid me the proper royalty, then because my father's trust's interest is twice mine, in 2004 you should have paid his trust gross royalties of \$5,683.66. Instead, XTO's 1099 furnished to his trust reports Gross Royalty of only \$5,376.25. This is \$307.41 less than twice the Gross Royalty shown on my 1099.

I trust the enclosed copies of recorded instruments establish the proper fractional interest our father's trust should have in XTO's San Juan County, New Mexico, production and that you will make the needed changes to your royalty payment records. If you have any questions or require any additional information, please feel free to contact me.

Sincerely yours,

J. Lanham Higginbotham III  
Attorney at Law  
4204 Purdue Ave.  
Dallas, TX 75225-6703



Ms. Terry Reid  
May 1, 2005  
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Encl.

cc: J. Lanham Higginbotham, Jr., Trustee  
Linda J. Rayes  
Cynthia H. Scofield  
Gene H. Bentley

June 2, 2005

New Mexico Oil Conservation Division  
1220 S. St. Francis Drive  
Santa Fe, New Mexico 87505

RECEIVED  
JUN - 2 2005  
OIL CONSERVATION  
DIVISION

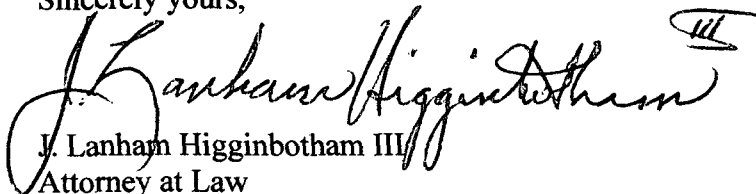
Re: XTO Energy Inc.  
Application to Surface Commingle Gas Production  
Pool Names and Codes: Basin Dakota 71599  
Otero Chacra 82329  
**San Juan County, New Mexico**

Ladies and Gentlemen:

Yesterday, June 1, I received by certified mail XTO Energy's Notice to Working and Royalty Interest Owners of its Application to Surface Commingle Gas Production from the above-referenced pools in San Juan County, New Mexico.

I oppose XTO Energy's application to surface commingle gas production in which I own an interest. The gravities and BTU's of the non-commingled production vary significantly.

Sincerely yours,



J. Lanham Higginbotham III  
Attorney at Law  
4204 Purdue Ave.  
Dallas, TX 75225-6703

cc: Ms. Holly C. Perkins  
Regulatory Compliance Tech  
XTO Energy  
2700 Farmington Ave., K-1  
Farmington, NM 87401

Owner # 451848  
J Lanham Higginbotham III

Prod mths

2004

Prod mths

2004

Owner # 769903  
J Lanham Higginbotham Jr Trust

0310	153.71	0310	0.00	Variance
0311	159.75	0311	319.54	
0312	156.22	0312	312.43	
0401	145.16	0401	290.32	
0402	163.92	0402	327.82	
0403	174.47	0403	348.99	
0404	181.63	0404	363.26	
0405	363.56	0405	727.07	
0406	269.51	0406	538.95	
0407	279.10	0407	558.26	
0408	289.88	0408	579.78	
0409	230.88	0409	461.74	
0410	274.04	0410	548.10	
Total	<u>2841.83</u>		<u>5376.26</u>	

Total reported on 1099 yr 2004

5376.25

2841.83  
sub Variance -153.71  
subtotal 2688.12

subtotal \*2= 5376.24

The reason that J Lanham Higginbotham Jr Trust 2004 1099 is not exactly 2 x the amount of son J Lanham Higginbotham III, is due to the timing of when the OCT 03 production month was paid for each owner.

O# 769903 J Lanham Higginbotham Jr Trust received payments for the Oct 03 production month on check number 2635794 dated 12/19/03. This revenue would have been reported on their 2003 1099.

O# 451848 J Lanham Higginbotham III received payments for the Oct 03 production month on check number 2651894 dated 12/00/04. This revenue was reported on his 2004 1099.



June 20, 2005

Mr. J. Lanham Higginbotham III  
4204 Purdue Avenue  
Dallas, Texas 75225-6625

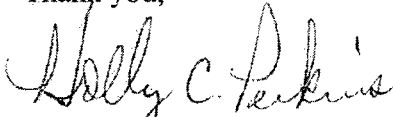
Re: Surface commingle application  
Hare Gas Com D #1, D #1E & J #1

Dear Mr. Higginbotham:

Upon review of our surface commingle application of the above-reference wells, we find that the BTU's and one gravity reported on our table were incorrect. Mr. David Catanach, of the New Mexico Oil Conservation Division, has agreed to accept the corrected information by XTO Energy submitting a revised table and form C107B. The documents sent to the NMOCD and the BLM show our corrected BTU's and gravity (copy enclosed for your review).

XTO Energy Inc. is requesting a written withdrawal of your objection to this surface commingle application. You may write to Mr. David Catanach, New Mexico Oil Conservation Division, 1220 S. St. Francis Drive, Santa Fe, NM 87505. If you have further questions pertaining to this surface application or our revised table and C107B, please feel free to contact Ray Martin at (505) 324-1090.

Thank you,

  
Holly C. Perkins  
Regulatory Compliance Tech

xc: D. Catanach, NMOCD  
J. Lovato, NM BLM  
R. Martin, XTO Energy Inc.  
C. Spence, Land-XTO Energy Inc.

District I  
1625 N. French Drive, Hobbs, NM 88240  
District II  
1301 W. Grand Ave, Artesia, NM 88210  
District III  
1000 Rio Brazos Road, Aztec, NM 87410  
District IV  
1220 S. St Francis Dr, Santa Fe, NM  
87505

State of New Mexico  
Energy, Minerals and Natural Resources Department

REVISED  
Form C-107-B  
Revised June 10, 2003

OIL CONSERVATION DIVISION  
1220 S. St Francis Drive  
Santa Fe, New Mexico 87505

Submit the original  
application to the Santa Fe  
office with one copy to the  
appropriate District Office.

APPLICATION FOR SURFACE COMMINGLING (DIVERSE OWNERSHIP)

OPERATOR NAME: XTO ENERGY INC.

OPERATOR ADDRESS: 2700 FARMINGTON AVE, SUITE K-1

APPLICATION TYPE:

☒ Pool Commingling ☐ Lease Commingling ☐ Pool and Lease Commingling ☐ Off-Lease Storage and Measurement (Only if not Surface Commingled)

LEASE TYPE: ☐ Fee ☐ State ☒ Federal

Is this an Amendment to existing Order? ☐ Yes ☒ No If "Yes", please include the appropriate Order No.

Have the Bureau of Land Management (BLM) and State Land office (SLO) been notified in writing of the proposed commingling

☒ Yes ☐ No

(A) POOL COMMINGLING

Please attach sheets with the following information

(1) Pool Names and Codes	Gravities / BTU of Non-Commingled Production	Calculated Gravities / BTU of Commingled Production		Calculated Value of Commingled Production	Volumes
BASIN DAKOTA 71599	0.740 1257				
BASIN DAKOTA 71599	0.702 1195				
OTERO CHACRA 82329	0.659 1165				

(2) Are any wells producing at top allowables? ☐ Yes ☒ No

(3) Has all interest owners been notified by certified mail of the proposed commingling? ☒ Yes ☐ No

(4) Measurement type: ☒ Metering ☐ Other (Specify)

(5) Will commingling decrease the value of production? ☐ Yes ☒ No If "yes", describe why commingling should be approved

(B) LEASE COMMINGLING

Please attach sheets with the following information

(1) Pool Name and Code.

(2) Is all production from same source of supply? ☐ Yes ☐ No

(3) Has all interest owners been notified by certified mail of the proposed commingling? ☐ Yes ☐ No

(4) Measurement type: ☐ Metering ☐ Other (Specify)

(C) POOL and LEASE COMMINGLING

Please attach sheets with the following information

(1) Complete Sections A and E.

(D) OFF-LEASE STORAGE and MEASUREMENT

Please attached sheets with the following information.

(1) Is all production from same source of supply? ☐ Yes ☐ No

(2) Include proof of notice to all interest owners.

(E) ADDITIONAL INFORMATION (for all application types)

Please attach sheets with the following information

(1) A schematic diagram of facility, including legal location.

(2) A plat with lease boundaries showing all well and facility locations. Include lease numbers if Federal or State lands are involved.

(3) Lease Names, Lease and Well Numbers, and API Numbers.

I hereby certify that the information above is true and complete to the best of my knowledge and belief.

SIGNATURE: Holly C Perkins

TITLE: REGULATORY COMPLIANCE TECH

DATE: 3/2/2005

TYPE OR PRINT NAME HOLLY C. PERKINS

TELEPHONE NO.: (505) 564-6720

E-MAIL ADDRESS: Regulatory@xtoenergy.com

**HARE GAS COM D #1, D #1E & J #1****Surface Commingle RevisedTable**

	Well Name	Hare Gas Com D #1	Hare Gas Com D #1E	Hare Gas Com J #1
	API#	30-045-08303	30-045-23859	30-045-26056
	Sec-T-R	Sec.142, T29N, R11W	Sec.142, T29N, R11W	Sec.142, T29N, R11W
	FNL/FSL	2510' FSL	2110' FNL	2220' FSL
	FEL/FWL	1170' FEL	1560' FEL	1400' FEL
	Agreement #	SW275	SW275	SW275
	Pool	Basin Dakota	Basin Dakota	Otero Chacra
	Permits	N/A	N/A	N/A
	Spacing	320 E/2	320 E/2	160 SE/4
	Gravity	0.74	0.702	0.659
	BTU	1257	1195	1165
	Est Daily Gas Rate	41.43	26.12	6.2
	WI	0.6820849	0.6820849	0.75
	NRI	0.5907754	0.5907754	0.65625
Compressor and other equipment fuel usage will be determined based on manufacturer's specifications				
Pumping unit & separator fuel will be allocated to well if equipment exists				
				6/20/2005

June 27, 2005

RECEIVED

Mr. David Catanach  
New Mexico Oil Conservation Division  
1220 S. St. Francis Drive  
Santa Fe, New Mexico 87505

2005 JUL 11 PM 12 18

Oil Conservation Division  
1220 S. St. Francis Drive  
Santa Fe, NM 87505

Re: XTO Energy Inc.  
Application to Surface Commingle Gas Production  
Pool Names and Codes: Basin Dakota 71599  
Otero Chacra 82329

**San Juan County, New Mexico**

Dear Mr. Catanach:

**I refuse to withdraw my opposition to XTO Energy's application to surface commingle gas production in which I own an interest.**

After I expressed my opposition to the surface commingling of gas produced in San Juan County, New Mexico, XTO reexamined its filing with the Oil Conservation Division and revised that application. Nevertheless, the gravities and BTU's of the non-commingled production still vary. If the gravities and BTU's were identical, presumably an application to surface commingle would have been unnecessary. I do not wish to confuse XTO's revenue accounting further by agreeing to commingling.

For more than three months I have asked XTO to examine whether it is paying royalties according to the correct fractional interest in certain production owned by a testamentary trust of which my father is the primary beneficiary. Although this trust should receive royalty in an amount that is exactly twice the amount I receive and exactly twice the amount each of my sisters receives, in 2004 it did not. The royalty income reported on the 2004 Form 1099 Miscellaneous XTO issued to my father's trust is significantly less than twice the royalty income reported on the 2004 Form 1099 Miscellaneous XTO issued to me.

By letter dated March 12, 2005, my father asked XTO to examine its payment records for his trust's interest in San Juan County, New Mexico, production. He questioned whether the trust was being paid according to the correct ownership percentage. Additionally, because the lease governing this production states production is to be "free of cost", he questioned whether XTO is entitled to deduct from his royalty interest certain expenses, such as the costs of dehydrating, processing, and transporting natural gas from the wellhead. A copy of his letter is enclosed.

XTO never responded to my father's inquiry.

Mr. David Catanach  
June 27, 2005  
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My father is now eighty-four years old, quite deaf, and legally blind. He says that at his age it's not smart to buy green bananas. While he is acutely aware of the passage of time, judging from its failure to answer his letter, XTO is not.


After roughly two months had passed without XTO's responding to my father's inquiry, I wrote XTO on his behalf. I sent my letter dated May 1, 2005, by certified mail and requested a return receipt. On May 10, 2005, XTO signed for my letter. In it I explained as carefully as I could how my father's trust acquired its fractional interest, how my sisters and I acquired our fractional interests, and how those interests compared. With my letter I included copies of the recorded instruments that establish our chain of title. I am enclosing a copy of my letter for your review.

In response to my certified letter XTO sought to explain the discrepancy between the 2004 Form 1099 it issued to my father's trust and the 1099 it issued to me by saying it represents a timing difference between a royalty payment made to my father's trust in December 2003 and a payment made in January 2004 to me for my share of October 2003 production.

Although the timing difference may be the correct explanation of the apparent discrepancy in the 2004 Form 1099's, I have asked XTO's assurance that for each and every well in which I own an interest my father's trust's ownership interest is exactly twice mine. I have also repeated my father's question, concerning XTO's entitlement to deduct certain operating expenses from our royalty payments. To date I am not aware XTO has addressed either request.

I trust the foregoing explains my unwillingness to agree to any surface commingling of gas production.

Sincerely yours,



J. Lanham Higginbotham III  
Attorney at Law  
4204 Purdue Ave.  
Dallas, TX 75225-6703

Encl.