

MICHAEL CUNNINGHAM, P. A.

MICHAEL CUNNINGHAM
ATTORNEY AT LAW

(505) 398-5182

LAW OFFICE
P. O. BOX 1000
TATUM, NEW MEXICO 88267

September 18, 2007

XTO Energy Inc.
Attn: Chris Spencer
810 Houston Street, Suite 2000
Fort Worth, Texas 76102

XT 68.0

RE: **Masden Selby No. 2R Well**
Township 29 North, Range 11 West, NMPM
Section 28: N2
Containing 320 acres, more or less
San Juan County, New Mexico
Surface to base of Pictured Cliffs Formation only

DRILLING TITLE OPINION

Before the Oil Conservation Division
Case 14118
Hearing May 15, 2008
XTO Energy, Inc.
Exhibit No. 3

Gentlemen:

We have examined:

1. Michael Cunningham drilling title opinion dated February 14, 2001, effective as to the county records to January 3, 2001 at 4:30 P. M., covering the NW.
2. Pan American Petroleum Corporation title opinion dated May 12, 1964, effective as to the county records to April 10, 1964 at 4:30 P. M., covering the W2SWNE, SESWNE.
3. Pan American Petroleum Corporation title opinion dated March 4, 1963, effective as to the county records to January 30, 1963 at 4:30 P. M., covering the E. 5 acres of the NESWNE.
4. Pan American Petroleum Corporation title opinion dated May 29, 1962, effective as to the county records to April 24, 1962 at 4:30 P. M., covering the W2NESWNE.
5. Pan American Petroleum Corporation title opinion dated August 4, 1960, effective as to the county records to July 1, 1960 at 4:30 P. M., covering NENE.

6. Pan American Petroleum Corporation title opinion dated February 24, 1961, effective as to the county records to February 1, 1961 at 4:30 P. M., covering NWNE.
7. Instruments filed or recorded in the office of the Clerk of San Juan County, New Mexico, from the effective dates of the prior title opinions and from inception as to the SENE, to August 20, 2007 at 4:30 P. M. This examination was based upon a review of the tract indices of San Juan Abstract and Title Company, Farmington, New Mexico, and the instruments posted as affecting the subject interests.

Based upon our examination, and subject to the comments, objections, and requirements listed hereinafter, we find title of the oil, gas, and associated liquid hydrocarbons, for drilling purposes only, to be vested as follows:

DIVISION OF INTEREST
Surface to the base of the Pictured Cliffs Formation

- I. **Joseph S. Hartman et al. fee lease**
W2SWNE, SESWNE of Section 28, 29N-11W, containing 30 acres, more or less

Joseph S. Hartman et al. or successors	12.50% RI
XTO Energy Inc.	87.50% WI
- II. **Mamie Mangum et al. fee lease**
E. 5 acres of the NESWNE of Section 28, 29N-11W, containing 5 acres, more or less

Mamie Mangum et al. or successors	12.50% RI
XTO Energy Inc.	87.50% WI
- III. **E. R. Richardson et ux. fee lease**
W2NESWNE of Section 28, 29N-11W, containing 5 acres, more or less

E. R. Richardson et ux. or successors	12.50% RI
XTO Energy Inc.	87.50% WI
- IV. **Josephine Masden et al. fee lease**
NENE of Section 28, 29N-11W, containing 40 acres, more or less

Josephine Masden et al. or successors	12.50% RI
XTO Energy Inc.	87.50% WI

V. Joseph S. Hartman et al. fee lease
NENW, S2NW of Section 28, 29N-11W, containing 120 acres, more or less

Joseph S. Hartman et al. or successors	12.50% RI
XTO Energy Inc.	87.50% WI

VI. Martin Raimondo fee lease
NWNE of Section 28, 29N-11W, containing 40 acres

Martin Raimonda	12.50% RI
Hugh Mitchell et ux.	2.625% ORI
XTO Energy Inc.	84.875% WI

VII. Mrs. John Sategna fee lease
NWNW of Section 28, 29N-11W, containing 40 acres, more or less

Ernest Sategna et al. or successors	12.50% RI
ConocoPhillips Company	87.50% WI

VIII. Joe Mangum et ux. fee lease
SENE of Section 28, 29N-11W, containing 40 acres, more or less

Joe Mangum et ux. or successors	12.50% RI
Aztec Oil & Gas Company or successor	6.25% ORI
CEDB Holdings, LLC	½ of 12.1875% WI
Donda Hunt Morgan	½ of 12.1875% WI
John Joe Wilkinson Estate	½ of 12.1875% WI
Nelda W. Wheelwright Trust	½ of 12.1875% WI
Douglas Kenaston et ux.	56.8750% WI

RECAPITULATION OF GROSS WORKING

PICTURED CLIFFS FORMATION IN THE NE OF SECTION 28, 29N-11W

XTO Energy Inc. (100% of 120/160)	75.00%
CEDB Holdings, LLC (1/2 of 15% of 40/160)	1.875%
125 Lincoln Avenue #223	
Santa Fe, NM 87501	

Donda Hunt Morgan (1/2 of 15% of 40/160) P.O. Box 15634 Washington, DC 20003	1.875%
John Joe Wilkinson Estate (1/2 of 15% of 40/160) Northern Trust Bank, N.A., Personal Representative c/o Charleen M. Wilkinson 14555 E. Hampden #217 Aurora, CO 80014	1.875%
Nelda W. Wilkinson Trust UTA dated 10-30-75 (1/2 of 15% of 40/160) Wells Fargo Bank of Clovis, New Mexico, Trustee c/o Charleen M. Wilkinson 14555 E. Hampden #217 Aurora, CO 80014	1.875%
Douglas Kenaston et ux., if any	<u>17.50%</u>
Total 100.000000%	

FRUITLAND COAL FORMATION IN THE N2 OF SECTION 28, 29N-11W

XTO Energy Inc. (100% of 240/320)	75.00%
ConocoPhillips Company (100% of 40/320)	12.75%
CEDB Holdings, Inc. (1/2 of 15% of 40/320) 125 Lincoln Avenue #223 Santa Fe, NM 87504	0.9375%
Donda Hunt Morgan (1/2 of 15% of 40/320) P.O. Box 15634 Washington, DC 20003	0.9375%
John Joe Wilkinson Estate (1/2 of 15% of 40/320) Northern Trust Bank, N.A., Personal Representative c/o Charleen M. Wilkinson 14555 E. Hampden #217 Aurora, CO 80014	0.9375%
Nelda W. Wilkinson Trust UTA dated 10-30-75 (1/2 of 15% of 40/320) Wells Fargo Bank of Clovis, New Mexico, Trustee c/o Charleen M. Wilkinson 14555 E. Hampden #217 Aurora, CO 80014	0.9375%

Douglas Kenaston et ux., if any (70% of 40/320)

8.75%
Total 100.00000%

CHAIN OF TITLE

N2NE, SWNE, NENW, S2NW
(From date of prior title opinions)

1. Assignment from Amoco Production Company (successor by name change to Pan American Petroleum Corporation) to Cross Timbers Oil Company dated December 1, 1997, recorded in Book 1250, Page 281, covering NWNW, SENW, and SWSW.
2. Merger of Cross Timbers Oil Company into XTO Energy Inc. dated June 1, 2001, recorded in Book 1323, Page 44.

NENW

(From date of prior title opinions)

1. Name Change and Merger of Burlington Resources Oil & Gas Company LP into ConocoPhillips Company.

SENE

1. Oil and Gas Lease from Joe Mangum et ux. (Mamie) to Southern Union Production Company dated August 30, 1946, recorded in Book 89, Page 819, providing for a 1/8 royalty and 5 year primary term. (Amended in Book 454, Page 164 to provide for 320 acre pooling.)
2. Assignment from Southern Union Production Company to Southern Union Gas Company dated January 23, 1950, recorded in Book 145, Page 16.
3. Assignment from Southern Union Gas Company to Aztec Oil & Gas Company dated January 31, 1950, recorded in Book 145, Page 113.
4. Assignment from Aztec Oil & Gas Company to Will R. Mints dated November 3, 1952, recorded in Book 194, Page 14, conveying rights from the surface to the base of the Pictured Cliffs Formation and reserving 1/16 ORI.
5. Assignment from Will R. Mints et ux. to Cash Ramey and J. W. Wilkinson dated February 1, 1953, recorded in Book 202, Page 171, conveying all right, title and interest.
6. Assignment from Cash Ramey et ux. and J. W. Wilkinson et ux. to Douglas Kenaston dated February 25, 1953, recorded in Book 203, Page 102, conveying 70% of their right, title and interest.
7. Notice concerning the Estate of Cash Ramey, dated March 20, 1967, recorded in Book 650, Page 136.

GENERAL COMMENTS

1. We can express no opinion as to the following: rights-of-way, or claims not reflected by the data examined, the existence of which may be determined from a physical examination of the land; possessory rights and discrepancies of survey or location which might be reflected by a physical examination of the property; pending litigation filed outside the county or not reflected by a recorded notice of lis pendens; matters of fact not disclosed of record which may vary from statutorily permitted presumption of fact or statutorily created prima facie evidence of facts; and mechanic's liens, judgment liens and other statutory liens not reflected by the data examined.
2. There is a possibility that the lands included in the subject lease may be burdened by rights-of-way, reservoirs or other physical encroachments not reflected in the data examined. We assume a proper physical inspection of the premises will be made to ascertain whether any of the subject lands are touched or crossed by rights-of-way, reservoirs or other physical encroachments and whether there is any evidence on the premises of mining claims, mining location notices or mining activity affecting the land.
3. The leases that are the subject of this title opinion are well beyond their primary terms. We assume they have been extended by production.
4. All recording references are to San Juan County, New Mexico.
5. Your attention is directed to the fact that this opinion is a result of using the records of San Juan Abstract & Title Company and the records of the San Juan County Clerk. It is possible some of the instruments may have been overlooked or were not properly indexed in the abstractor's indices or county records and thus, this opinion may not cover all instruments recorded in San Juan County affecting the subject lands. Therefore, this title opinion is necessarily limited by the accuracy and completeness of the materials we have examined.
6. For purposes of this title opinion, the tabulation of royalty interests and overriding royalty interests in the Division of Interest section is provided only to show the total amount of such interests which burden the working interests and not the precise ownership of such interests.
7. Many of the instruments reviewed were executed by attorneys-in-fact for certain of the corporate entities. The materials examined did not contain powers-of-attorney for those individuals. Therefore, we have assumed all of those individuals had the proper authority to act on behalf of the corporate entities by way of a corporate resolution and power-of-attorney.

SPECIFIC COMMENTS, OBJECTIONS AND REQUIREMENTS

1. Concerning the SENE, we have credited the successors of Cash Ramey, J. W. Wilkinson, and Douglas Kenaston as owners of the leasehold under the tract. However, there is an assignment that clouds their interest. That is, Will R. Mints came to own 100% of the leasehold from the surface to the base of the Pictured Cliffs Formation. Subsequently, in the records at Book 202, Page 171, Will R. Mints and his spouse conveyed all of their right, title and interest to Cash Ramey and J. W. Wilkinson by an Assignment dated February 1, 1953. (Ramey and Wilkinson subsequently conveyed 70% of their interest to Douglas Kenaston.) Thereafter, the records at Book 203, Page 68 contain an Assignment from Will R. Mints, without spousal joinder, to Petroleum Products Refining and Producing Company dated January 17, 1953. The instrument is curious because it has signature lines for Ramey, Wilkinson, and Kenaston, stated to be partners in Mints and Kenaston, a New Mexico partnership, but those parties did not execute the assignment. It also is stated to be given as security for a certain indebtedness against the tract, and that a release of such lien shall constitute a release of the assignment. Although it may have been intended to convey only income from the tract, the assignment contains granting language that arguably conveys the leasehold.

Therefore, the assignment from Mints to Petroleum Products is objectionable because it was not first in time of recording and it did not have spousal joinder, therefore subject to the "notice" and "spousal joinder" provisions of the New Mexico statutes concerning recording and conveyancing of real property interests. Also, although it seems likely any indebtedness against the property has been satisfied, there is no such evidence of record.

REQUIREMENT: You should make inquiry to the successors of Ramey, Wilkinson, and Kenaston for recordable evidence of the release of the Assignment from Mints to Petroleum Products mentioned above.

2. We have tabulated CEDB Holdings, LLC, and Donda Hunt Morgan as successors to a certain interest formerly owned by Cash Ramey and his wife, Pearl. We have determined such ownership based upon a review of the probate documents concerning the estates of Cash Ramey and Pearl Ramey, filed in the Probate Court of Curry County, New Mexico, Nos. 3283 and 5139, respectively. Those estates provided that testamentary trusts would be established for the benefit Candace Jane Ramey, Vivecca Ramey Hogsett, and Donda Hunt Morgan. The trusts terminated and distribution of the trust property, pursuant to the Wills of Cash and Ramey, were to occur 09-18-1978 as to Candace's trust, 02-15-79 as to Vivecca's trust, and 12-13-79 as to Donda's trust. Although there was no instrument of distribution in the records reviewed, we have recognized the beneficiaries of the testamentary

trusts of Cash Ramey and his spouse, Pearl Ramey as the owners of the certain interests.

Thereafter, there are the following:

1. Notice of Probate concerning the Estate of Candace Jane Ramey, Curry County Probate No. 96-3204, recorded in San Juan County in Book 1235, Page 95, by Gloria Faye Ramey, Personal Representative. (Although we did not review her probate proceeding of the Estate of Candace Jane Ramey, we assume Gloria Ramey succeeded to such interest.)
2. Gift Deed from Gloria Ramey, by her attorney in fact Donda Morgan, to Donda Morgan and/or Vivecca Hogsett, dated effective January 1, 2004, recorded in Book 1395, Page 807, conveying all mineral interests in San Juan County, New Mexico.
3. Mineral Deed from Vivecca A. Hogsett to CEDB Holdings, LLC, dated effective December 1, 2005, recorded in Book 1425, Page 195, conveying all mineral interests in San Juan County, New Mexico.

We direct your attention to the Gift Deed described above from Gloria Ramey, by her attorney in fact Donda Morgan, to Donda Morgan and/or Vivecca Hogsett. The "and/or" language of the assignment creates a question of intent. That is:

- i) Was it intended to convey joint ownership with either party having executory rights to convey the entire interest (being an unusual ownership)?
- ii) Was it intended to create a joint tenancy with right of survivorship?
- iii) Was it intended to convey ½ interest to each party?

If either party could convey the entire interest, the Mineral Deed from Vivecca to CEDB resulted in CEDB being the sole owner of the interest formerly owned by Cash Ramey et ux. If it was intended that Vivecca and Donda each owned ½ of the interest, CEDB and Donda would each own ½ of the interest formerly owned by Cash Ramey et ux., but it is still unclear whether such ownership is a divided interest, or an equal undivided interest. We have assumed that it was the intent that CEDB and Donda are each successors to ½ of the interest formerly owned by Cash Ramey et ux.

REQUIREMENT: Inquire to Gloria Ramey and Donda Hunt Morgan (P.O. Box 15634, Washington, DC 20003), Vivecca Ramey Hogsett (323 Iris, Corona Del Mar, CA 92625), and CEDB Holdings, LLC (125 Lincoln Avenue #223, Santa Fe, NM 87505) as to their ownership of the interest formerly owned Cash Ramey and Pearl Ramey. Because of the ambiguity of the Gift Deed, those parties should execute and record and appropriate Stipulation of Interest and Cross Conveyance

reflecting their intended ownership. If it is other than as we have tabulated it to be, please advise for revision of our Division of Interest section.

3. We have tabulated John Joe Wilkinson Estate and The Nelda W. Wheelwright Trust as owners of the interest formerly owned by J. W. Wilkinson and his spouse, Bina. We have determined such ownership based upon a review of the probate documents concerning the estate of J. W. Wilkinson, filed in the District Court of Curry County, New Mexico, No. 103, opened in 1975. The Will of J. W. Wilkinson provided that his estate would pass to his children, John Joe Wilkinson and Nelda W. Wheelwright. When the estate was finally closed in 1980, Nelda's share was distributed to The Nelda W. Wheelwright Trust UTA dated October 30, 1975. (There is a Quitclaim Deed from Nelda W. Wheelwright to the Trustee of The Nelda W. Wheelwright Trust, dated October 30, 1975, conveying all oil, gas, and mineral interests in New Mexico, recorded in Book 157, Page 717.)

The Nelda W. Wheelwright Trust, recorded in Book 63, Page 182, Curry County, New Mexico, established testamentary trusts for the benefit of Alvin Barley Blagg, Joseph Mason Blagg, Krista Blagg Stagner, and Joel Sandri. The terms of the trusts provided that such trust shares (which are not necessarily equal, but at the discretion of the trustee) would be distributed to each beneficiary 1/3 at age 35, 1/2 of 2/3 at age 40, and the remaining 1/2 of 2/3 at age 45. Although it seems likely distribution of a portion of the trust has occurred, we are not certain as to the status of the distributions.

Within the pleadings of the Estate of J. W. Wilkinson is a Renunciation by Bina Wilkinson as to any interest she may have been to entitled under the Will of J. W. Wilkinson as to his community property interest. We have no information as to the status of the community property interest of Bina Wilkinson, although it seems likely it would be similar to the succession of J. W. Wilkinson's community property interest.

Concerning these parties, there are the following instruments in the records of San Juan County, but the legal descriptions of the interests conveyed do not cover the subject interests:

1. Assignment of Overriding Royalty from the Trustee of the Nelda Wilkinson Wheelwright Trust to John Joe Wilkinson, dated September 28, 1993, recorded in Book 1170, Page 374.
2. Special Warranty Deed from the Co-trustees of the Bina Wilkinson Trust to John Joe Wilkinson, dated November 9, 1993, recorded in Book 1179, Page 974.
3. Special Warranty Deed dated February 25, 2004, recorded in Book 1383, Page 395, from Northern Trust Bank, Personal Representative of the John J.

Wilkinson Estate, to Charleen M. Wilkinson, Special Trustee of Survivor's Trust Created Under the Wilkinson Family Trust Dated January 3, 1996.

These instruments indicate it might be the intent that Charleen M. Wilkinson, Special Trustee of Survivor's Trust Created Under the Wilkinson Family Trust Dated January 3, 1996 be the successor to all of the interest formerly owned by J. W. Wilkinson et ux. (and subsequently owned by the the parties we have tabulated, being John Joe Wilkinson and the Nelda Wilkinson Wheelwright Trust).

REQUIREMENT: Inquire to Charleen M. Wilkinson, Special Trustee of Survivor's Trust Created Under the Wilkinson Family Trust Dated January 3, 1996 as to its possible claim of ownership of the interests we have tabulated as owned by John Joe Wilkinson and the Nelda Wilkinson Wheelwright Trust. If, as we suspect, that trust claims all of the interest, evidence of such succession should be recorded in San Juan County, New Mexico. We reserve possible further requirements in this matter.

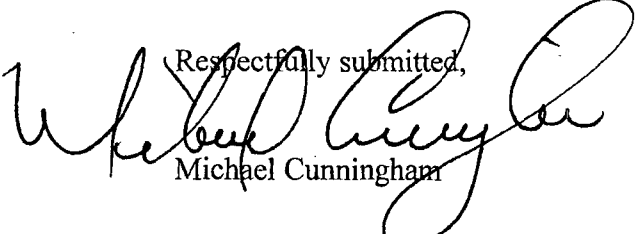
Also, be satisfied the community property interest of Bina Wilkinson has been succeeded to by the same parties and in the same interests as the community property interest of her husband, J. W. Wilkinson.

4. Concerning the interest of John Joe Wilkinson, such interest may be subject to the probate of the Estate of John J. Wilkinson, Curry County, New Mexico, PB 2003-52. We are not certain these are the same parties, but J. W. Wilkinson, the father of John Joe Wilkinson, was a resident of Clovis, New Mexico.

REQUIREMENT: You should review the probate proceeding mentioned above and determine whether the estate of John J. Wilkinson includes the interest we have tabulated as owned by John Joe Wilkinson. (The phone number of the Curry County District Court is 505.762.9148). We reserve possible further requirements in this matter.

5. Concerning the interest of Douglas Kenaston, we have no information as to his address.

REQUIREMENT: None, advisory only.

Respectfully submitted,

Michael Cunningham