STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION

IN THE MATTER OF THE HEARING CALLED BY THE OIL CONSERVATION DIVISION FOR THE PURPOSE OF CONSIDERING:

CASE NO. 14331
ORDER NO. R-13156

APPLICATION OF XTO ENERGY, INC. FOR COMPULSORY POOLING AND DOWNHOLE COMMINGLING, SAN JUAN COUNTY, NEW MEXICO.

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for consideration of XTO Energy, Inc's Motion to Quash Subpoena Duces Tecum, at a pre-hearing conference on July 15, 2009, at Santa Fe, New Mexico, before Examiners David K. Brooks and Richard Ezeanyim.

NOW, on this 12th day of August, 2009, the Division Director, having considered the arguments and the recommendations of the Examiners,

FINDS THAT:

(1) Due notice has been given, and the Division has jurisdiction of the subject matter of this case.

(2) This is a compulsory pooling case in which XTO Energy, Inc. ("XTO") seeks establishment of a unit comprising the NE/4 of Section 24, Township 29 North, Range 10 West, NMPM, San Juan County, New Mexico, in the Pictured Cliffs and Chacra formations ("the unit"), said unit to be dedicated to XTO's Martinez Gas Com. D Well No. 1 (API No. 30-045-34063) ["the well"].

(3) The following facts are apparently undisputed:

(a) XTO and S.G. Methane Company ("SG") each own undivided interests in the unit.

(b) The well has been drilled, but has not been completed.

(c) SG has not agreed to participate in the well, and has not paid, nor agreed to pay, any part of the costs thereof.

(4) SG entered an appearance in this case and procured from the Division a subpoena duces tecum ("the subpoena") requiring XTO to produce data in its possession concerning the well, including well logs and daily drilling reports ("well-specific data"). XTO filed a motion to quash the subpoena.

(5) SG contends that the well-specific data is relevant, or at least potentially relevant, to issues that will be considered at the hearing of this case, and is accordingly discoverable. XTO contends that the well-specific data contains privileged trade secrets.

(6) The Division concludes that the well specific data, if not technically "trade secret," constitutes confidential business information of a character that is typically closely guarded in the industry. The Division has recognized the confidential and sensitive nature of this information by adopting Rule 7.16(C), providing that the Division will preserve the confidentiality of well logs for a period of 90 days after completion of a well. Due to the confidential and sensitive character of this information, the production of the well-specific data should not be ordered in the absence of a clearly articulated demonstration of its relevance to an issue that will actually be controverted at the hearing.

(7) SG has not demonstrated how the well-specific data will be relevant to any issue that will, or even may, arise at the hearing. SG has suggested that the data could have a bearing on the amount of the risk penalty to be allowed the operator. This contention is not persuasive because XTO made its decision to incur the risks associated with drilling the well prior to commencement thereof, at a time when it did not have the well-specific data. The fact that XTO chose, as it was legally entitled to do [*see* NMSA 1978 Section 70-2-17.C], to defer applying for compulsory pooling until after drilling the well reduced neither the risk XTO incurred in drilling the well nor the benefit thereby conferred on SG or other non-joining owners.

(8) SG also contends that it is entitled to the well-specific data as a co-owner of the land to which the data relates. XTO contends that SG is not entitled to data as a co-owner unless and until it pays its share of the costs associated with the data's acquisition.

(9) Neither party has cited, and the Division has not found, any decision from any jurisdiction that addresses this specific issue. However, the law of co-tenancy generally provides that a co-tenant may recover its share of *net* proceeds of exploitation of the common property. Accordingly, the Division concludes that a co-tenant does not have a right to compel disclosure of information regarding the jointly owned property acquired by the efforts of another co-tenant, when it has not reimbursed, or offered to reimburse, the other co-tenant for a prorata share of the costs the other co-tenant incurred in acquiring the information.

(10) Accordingly, XTO's Motion to Quash should be granted.

IT IS THEREFORE ORDERED THAT:

(1) The subpoena duces tecum previously issued by the Division is hereby quashed to the extent it orders XTO to deliver the well-specific data to SG.

(2) This order concerns only the issue of discoverability, and does not constitute an advance ruling on any matters that may arise at any hearing of the application on the merits.

(3) Jurisdiction of this case is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

SEAL

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

MARK E. FESMIRE, P.E.
Director