

WHEN RECORDED, RETURN TO:

PARSONS BEHLE & LATIMER
201 South Main Street, Suite 1800
Salt Lake City, Utah 84111
Attention: Kerry L. Owens

ENT# 272757 Bk# 550 Pg 649
Date: 21-Dec-2020 03:02 PM
Fee: \$40.00 ACH
Filed By: JK
CINDY PETERSON, RECORDER
BEAVER COUNTY CORPORATION
For: FIRST AMERICAN TITLE INSURANCE COMPA
Recorded Electronically by Simplifile

(Space Above for Recorder's Use Only)

SURFACE WAIVER

THIS SURFACE WAIVER (this "**Surface Waiver**") is made this 31st day of December, 2020 (the "**Effective Date**"), by XTO ENERGY INC., a Delaware corporation, ("**Owner**"), with an address of 22777 Springwoods Village Pkwy, Spring, TX 77389, in favor of MILFORD SOLAR PHASE II, LLC, a Delaware limited liability company ("**Milford Solar**"), with an address of c/o Longroad Development Company, LLC, 330 Congress Street, 6th Floor, Boston, MA 02210, Attn: General Counsel.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner hereby forever waives, relinquishes and releases, on behalf of Owner and its successors and assigns, all rights of ingress and egress and all other rights of every kind and character whatsoever to enter upon or to use the surface of the property more particularly described on Exhibit "A" attached hereto and incorporated by this reference (the "**Subject Property**") or any part thereof, including, without limitation, the right to enter upon the surface of the Subject Property for exploring, developing and/or producing oil, gas and/or other minerals in and under, and that may be produced from, the Subject Property, or any other purpose incident thereto.

Owner further covenants and agrees for itself, and its successors and assigns that Owner: (1) will not drill any well on the surface of any property to 500 feet below the surface of the Subject Property (the "**Well Restriction Covenant**"); (2) will insert the Well Restriction Covenant or incorporate such covenant by reference to this Surface Waiver, in any subsequent deed or other legal instrument by which Owner or its successors and assigns divest themselves of any interest in the minerals on, in or under the Subject Property (the "**Subsequent Transfer Covenant**"); and (3) the Well Restriction Covenant and the Subsequent Transfer Covenant may be enforced through appropriate action, including declaratory and injunctive relief, by Milford Solar or any of its successors and assigns. Nothing herein shall be construed to prevent Owner from exploring for, developing and/or producing the oil, gas and/or other minerals in and under, or that may be produced from the Subject Property by pooling or by directional drilling below 500 feet of the Subject Property from well sites located on other property to the extent that the lawful exercise of such reserved rights does not materially interfere with the construction, operation, or maintenance of the Solar Facility (defined below).

Owner covenants and agrees that any lease, license or agreement with respect to the minerals or mineral rights related to the Subject Property or any portion thereof, shall be expressly made subject to the terms and provisions of this Surface Waiver.

Milford Solar shall notify Owner in writing if the Subject Property or portion thereof is no longer used for the construction, operation and maintenance of one or more utility scale solar power generating facilities (each a “**Solar Facility**”). This Surface Waiver is effective as of the Effective Date and shall remain in effect after the Solar Facility is operational for so long as Milford Solar uses any portion of the Subject Property in connection with the construction, operation and maintenance of a Solar Facility without a cessation exceeding one hundred and twenty (120) consecutive days (excluding periods of construction and repair and events of force majeure), it being understood that such use shall include any restoration and cleanup operations, after which this Surface Waiver shall terminate and be of no further force and effect.

Milford Solar and its successors and assigns may sell, assign and transfer this Surface Waiver in whole or part. The representations, warranties, covenants and agreements contained in this Surface Waiver are covenants running with the land and are intended to and will be binding upon Owner, its assigns, transferees and successors in interest who hereafter acquire any interest in the Subject Property.

Milford Solar may record this Surface Waiver in the records of the County Recorder for Beaver County, State of Utah. This Surface Waiver shall be governed by and construed in accordance with and interpreted under the laws of the State of Utah.

If either party brings or commences any legal action or proceeding to enforce any of the terms of this Surface Waiver (or for damages by reason of an alleged breach of this Surface Waiver), the prevailing party in such action shall be entitled to recover from the non-prevailing party all reasonable attorneys’ fees that may have been incurred, including any and all costs and expenses incurred in enforcing, perfecting and executing such judgment, and including all costs of appeal.

Failure of a party to insist upon strict performance of any provisions of this Surface Waiver shall not be construed as a waiver for future purposes with respect to any such provision or option. No provision of this Surface Waiver shall be waived unless such waiver is in writing and signed by the party alleged to have waived its rights.

This Surface Waiver shall be binding upon and shall inure to the benefit of the respective successors and assigns of the parties hereto.

The undersigned represents and warrants that it has been duly authorized by all necessary corporate, company or trust action, as appropriate, to execute this Surface Waiver for and on behalf of Owner.

[SIGNATURE PAGE FOLLOWS]

Executed to be effective as of the Effective Date.

XTO ENERGY INC., a Delaware corporation,

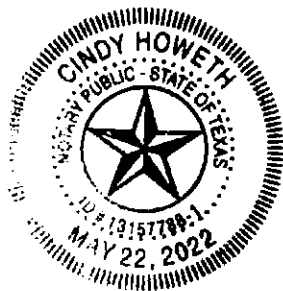
By: Christopher K. Spencer C7B
Print Name: Christopher K. Spencer
Title: Agent & Attorney-in-Fact

STATE OF Texas)
COUNTY OF Harris) : ss.

The foregoing instrument was acknowledged before me this 3 day of December 2020, by Christopher Spencer, as Agent of XTO ENERGY INC., a Delaware corporation

Cindy Howeth
NOTARY PUBLIC
Residing at: 22777 Springwoods Dr. PKwy
Spring TX 77389

My Commission Expires:
5.22.22



**EXHIBIT A
TO
SURFACE WAIVER**

(Legal Description of Property)

The Subject Property is located in Beaver County, Utah, and is more particularly described as follows:

T 26 S R 11 W
Section 24: N2

T 26 S R 10 W
Section 27: SW
Section 34: S2SW