

APPENDIX

FILED

**United States Court of Appeals
Tenth Circuit**

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

March 18, 2020

**Christopher M. Wolpert
Clerk of Court**

ELNA SEFCOVIC, LLC; WHITE RIVER
ROYALTIES, LLC; JUHAN, LP; ROY
ROYALTY, INC., individually and on
behalf of all others similarly situated,

Plaintiffs - Appellees,

v.

TEP ROCKY MOUNTAIN, LLC,

Defendant - Appellee.

No. 19-1120
(D.C. No. 1:17-CV-01990-MEH)
(D. Colorado)

CHARLES DEAN GONZALES;
SUSANNAH GONZALES; TED L.
VAUGHAN; HILDA VAUGHAN,

Objectors - Appellants,

IVO LINDAUER; SIDNEY LINDAUER;
RUTH LINDAUER; DIAMOND
MINERALS,

Intervenors,

and

THE LAW OFFICES OF GEORGE A.
BARTON, PC,

Movant - Appellee.

ORDER AND JUDGMENT*

Before **PHILLIPS, McHUGH**, and **MORITZ**, Circuit Judges.

This appeal challenges the district court’s approval of a class settlement agreement over the objections of four class members. We discern no abuse of discretion and thus affirm the district court’s decision.

I. BACKGROUND

Appellee-Defendant TEP Rocky Mountain LLC (“TEP”) operates wells that produce natural gas in Colorado. These wells are subject to various leases or royalty agreements (“royalty instruments”) under which the owners of such instruments receive a share of profits from the sale of natural gas.

In 2006, a class of plaintiffs filed suit (the “*Lindauer* litigation”) in Colorado state court, alleging that TEP had underpaid royalties on various royalty instruments. In 2008, TEP and the *Lindauer* class entered into a settlement agreement (the “*Lindauer* SA”) purporting to “resolve all class claims relating to past calculation of royalt[ies]” and to “establish certain rules to govern future royalty” payments. App. at 411. The *Lindauer* SA categorized members of the class into thirteen separate categories based on the specific terms of their royalty instruments, and set forth different royalty calculation methods for each category.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Approximately eight years passed, seemingly free of incident. But on July 18, 2017, Elna Sefcovic, LLC, White River Royalties, LLC, Juhan, LP, and Roy Royalty, Inc., individually and on behalf of a subset of royalty owners who were party to the *Lindauer* SA (the “*Sefcovic* class”), initiated this action against TEP in Colorado state court, alleging that TEP had calculated and paid royalties in a manner inconsistent with the *Lindauer* SA and contrary to the underlying royalty agreements. TEP removed the case to federal court on August 17, 2017, and subsequently asserted a counterclaim against the *Sefcovic* class for an offset of ad valorem taxes owing to any repayment of royalties by TEP. The parties engaged in discovery and ultimately reached a proposed class settlement (the “*Sefcovic* SA”).

The *Sefcovic* SA creates four subclasses composed of four of the thirteen categories created by the *Lindauer* SA. These subclasses sort class members according to the rights their royalty instruments grant TEP with respect to deductions from royalty payments. The *Lindauer* categories that comprise the *Sefcovic* subclasses are categories two, three, five, and eleven. Category two agreements allow “deduction of transporting gas ‘from the mouth of the well to the point of sale,’ or ‘customary transportation costs,’ or ‘all transportation charges.’” App. at 983. Category three agreements allow “deduction of third party transportation costs from the mouth of the well to the point of sale.” *Id.* Category five agreements “[c]alculate[] royalty payments based on, for example, ‘market value at the well,’ ‘proceeds at the well,’ ‘market value,’ or ‘proceeds.’” *Id.* And category eleven agreements “[c]alculate[] royalty payments based on ‘gross proceeds.’” *Id.*

The *Sefcovic* subclasses, in turn, are composed as follows. Subclass 1 comprises owners of category two and category three agreements. Subclass 2 comprises owners of category five agreements. Subclass 3 comprises owners of category eleven agreements. And Subclass 4 comprises owners with agreements that were categorized as either five or eleven at the time of the *Lindauer* SA, but were not “currently . . . identified by TEP as exclusively [category five] or [category eleven]” agreements. The following table illustrates the relationship between the *Sefcovic* subclasses and the *Lindauer* categories.

<i>Sefcovic</i> Subclass 1	<i>Lindauer</i> Category two: instruments allowing “deduction of transporting gas ‘from the mouth of the well to the point of sale,’ or ‘customary transportation costs,’ or ‘all transportation costs.’” App. at 983. <i>Lindauer</i> Category three: instruments allowing deductions “of third party transportation costs from the mouth of the well to the point of sale.” App. at 983.
<i>Sefcovic</i> Subclass 2	<i>Lindauer</i> Category five: instruments that “[c]alculate[] royalty payments based on, for example, ‘market value at the well,’ ‘proceeds at the well,’ ‘market value,’ or ‘proceeds.’” App. at 983.
<i>Sefcovic</i> Subclass 3	<i>Lindauer</i> Category eleven: instruments that “[c]alculate[] royalty payments based on ‘gross proceeds.’” App. at 983.
<i>Sefcovic</i> Subclass 4	Instruments that were categorized as either <i>Lindauer</i> category five or eleven at the time of the <i>Lindauer</i> SA, but were not “currently . . . identified by TEP as exclusively [category five] or [category eleven]” agreements. App. at 292.

The *Sefcovic* SA allocates settlement payments by subclass: Subclass 1 receives \$454,845; Subclass 2 receives \$5,787,732; Subclass 3 receives \$1,157,145; and Subclass 4 receives \$2,625,587. The settlement payment for Subclass 1 is “the equivalent of (a) 50% of all processing costs deducted from their payments since July 2016, and (b) over 40% of all fuel costs deducted from their payments since July 2011.” App. at 1190.

On August 16, 2018, the district court¹ issued an order preliminarily approving the settlement and permitting notice to be mailed to the *Sefcovic* class members. On November 6, 2018, appellants Charles Gonzales, Susannah Gonzales, Ted Vaughn, and Hilda Vaughn (collectively, the “Objectors”) filed various objections to approval of the proposed *Sefcovic* SA, including that the proposed settlement sacrificed the interests of certain class members, that the notice to class members was insufficient, and that the settlement’s release of claims was overly broad.

The Objectors each own royalty instruments falling in category two of the *Lindauer* SA and are therefore members of Subclass 1, as defined by the *Sefcovic* SA. The *Lindauer* SA treated category two royalty instruments differently than other categories. Although the *Lindauer* SA provided compensation to category two and category three owners for disputed past deductions, it did not clarify which deductions would be permitted prospectively under category two and category three

¹ The *Sefcovic* class and TEP consented to the Magistrate Judge presiding over this matter. We therefore refer to the Magistrate Judge’s orders as those of the district court.

leases. Instead, the *Lindauer* SA left the issue unresolved, declaring that “nothing herein prohibits [TEP]² from taking any Deductions it claims it is entitled to take under the terms of [category two and category three (*i.e.*, Subclass 1)] Royalty Instruments, and nothing herein prohibits any Settlement Class Member from challenging such deductions.” App. at 424. The *Sefcovic* SA resolves this dispute in TEP’s favor, declaring that TEP is entitled to deduct from Subclass 1 members “a proportionate share of those members’ gathering and fuel costs.” App. at 1473.

On February 20, 2019, the court held a final fairness hearing on the proposed *Sefcovic* settlement.³ The court heard extensive testimony from class members, potential class members who opted out of the settlement, accounting experts, and Objectors’ counsel. Relevant here, the court also heard testimony from Susan Jerman, the owner of Subclass 1 representative White River Royalties, LLC. Ms. Jerman, who has worked in the oil and gas industry for forty years, testified that the deduction allowance provision in her category two agreement was weak as compared to the instruments in other subclasses, and thus, she believed the *Sefcovic* SA was “a fair

² The *Lindauer* SA refers to “Williams,” TEP’s predecessor. In 2015, TEP acquired a controlling interest in Williams, which had at times operated under the name WPX. Following the parties’ lead, we refer to WPX when discussing events that occurred before TEP’s acquisition of that entity.

³ In the months between preliminary approval of the settlement agreement and the final fairness hearing, the class representatives of the *Lindauer* class intervened in this litigation to seek dismissal of the action for lack of subject matter jurisdiction. The district court ultimately rejected that attempt, which decision forms the basis of a separate appeal (Case No. 19-1121) heard by the same panel and resolved by a separate Opinion issued concurrently with this Order and Judgment.

settlement.” App. at 1597. Having “read and considered all submissions in connection” with the *Sefcovic* SA, the district court approved the settlement and incorporated its terms into the court’s final order. App. at 1461.

This timely appeal followed.

II. DISCUSSION

Objectors assert on appeal that (1) the settlement is not fair; (2) Subclass 1 representatives did not adequately represent the rights of absent Subclass 1 members; (3) notice of the class settlement was inadequate; and (4) the settlement agreement’s release of claims is too broad.⁴ We analyze each matter in turn and conclude that (1) the district court did not exceed its discretion in deeming the settlement fair;

⁴ Objectors also seek reversal on grounds that the district court failed to conduct a “rigorous analysis” of their objections before approving the *Sefcovic* SA. But as Objectors conceded at oral argument, the “rigorous analysis” requirement refers to a district court’s obligation when asked to certify a class under Rule 23(a). See *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350–51 (2011) (explaining that “certification is proper only if ‘the trial court is satisfied, after a rigorous analysis, that the prerequisites of Rule 23(a) have been satisfied’” (quoting *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 161 (1982))). Setting aside their inapposite reference to the “rigorous analysis” requirement, we understand Objectors to argue that the district court (1) failed to ask sufficiently probing questions of witnesses at the fairness hearing, and (2) failed to adequately address their objections in its order approving the settlement. But our review of the lengthy fairness hearing transcript reveals the district court was fully engaged and understood its role in protecting the interests of absent class members. And we see no deficiency in the district court’s order approving the settlement. See *Weinman v. Fid. Capital Appreciation Fund (In re Integra Realty Res., Inc.)*, 354 F.3d 1246, 1268 (10th Cir. 2004) (rejecting a similar challenge to an order approving a settlement by explaining that the district court need do no more than provide “some basis for distinguishing [on appellate review] between well-reasoned conclusions arrived at after a comprehensive consideration of all relevant factors, and mere boilerplate approval phrased in appropriate language but unsupported by evaluation of the facts or analysis of the law” (quoting *Newman v. Stein*, 464 F.2d 689, 692 (2d Cir. 1972))).

(2) Objectors did not preserve their challenge to the adequacy of Subclass 1 representatives; (3) notice of the proposed settlement was adequate; and (4) the released claims share a factual predicate with the claims asserted in the complaint.

A. The Fairness of the Settlement Agreement

The district court may approve a proposed settlement “only after a hearing and only on finding that it is fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). We review the district court’s decision to approve a class settlement for an abuse of discretion. *Tennille v. W. Union Co.*, 785 F.3d 422, 434 (10th Cir. 2015). Thus, “we will not disturb the determination absent a distinct showing it was based on a clearly erroneous finding of fact or an erroneous conclusion of law or manifests a clear error of judgment.” *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1187 (10th Cir. 2002) (quotation marks omitted).

Like the district court, our review focuses on whether “(1) the settlement was fairly and honestly negotiated, (2) serious legal and factual questions placed the litigation’s outcome in doubt, (3) the immediate recovery was more valuable than the mere possibility of a more favorable outcome after further litigation, and (4) [the parties] believed the settlement was fair and reasonable.” *Tennille*, 785 F.3d at 434 (alteration in original) (quotation marks omitted); see *Weinman v. Fid. Capital Appreciation Fund (In re Integra Realty Res., Inc.)*, 354 F.3d 1246, 1266 (10th Cir. 2004).

Objectors do not structure their arguments to correspond to the controlling *Tennille* factors; instead they advance general attacks on the fairness of the

settlement agreement. Thus, we review the district court’s analysis within the context of the *Tennille* factors, addressing Objectors’ arguments alongside the factor to which they best correspond.

1. The Settlement was Fairly and Honestly Negotiated

As to the first factor, the district court found, and Objectors do not directly dispute, that the settlement agreement was “the product of good faith arm’s length negotiations between the Parties who are represented by very experienced and capable counsel.” App. at 1461. Some of Objectors’ other fairness arguments, as well as their attack on the breadth of the settlement’s release, might rest on an implication that the settlement was not fairly negotiated. But Objectors make no specific assertion on appeal that the settlement was not reached through a fair and honest negotiation process. We therefore see no error in the district court’s conclusion that it was.

2. Serious Legal and Factual Questions Placed the Litigation’s Outcome in Doubt

With respect to the second *Tennille* factor, we easily conclude that serious legal and factual questions placed in doubt the outcome of litigation about the deductions TEP could take from royalty payments made to Subclass 1. The crux of the dispute between Objectors and Appellees over the value of Subclass 1 royalties relates to the interpretation of the language permitting TEP to deduct the costs of “transporting gas ‘from the mouth of the well to the point of sale.’” App. at 983. Objectors contend that the presence of “transporting” or “transportation” in these

instruments narrows the much broader clause that follows—“from the mouth of the well to the point of sale”—thereby excluding the deduction of any costs for gathering or fuel. Appellees, by contrast, assert that both gathering and fuel costs are encompassed in the process of transporting gas “from the mouth of the well to the point of sale.” App. at 983. The evidence adduced at the fairness hearing adequately established a substantial risk that, if litigated, Objectors’ gathering limitation argument would be rejected on its merits. For example, Subclass 1 representative Ms. Jerman confirmed that she was not “aware of any means by which gas would get from . . . the mouth of the well to a processing plant other than through a gathering system.” App. at 1582.

Thus, setting aside the time, expense, and delayed recovery attendant to more litigation, Subclass 1 members faced a legitimate risk of recovering none of the fuel repayments they enjoy under the *Sefcovic* SA. And even if they secured those repayments, the victory could have been meaningless if it was combined with an adverse ruling on TEP’s counterclaim seeking an offset of ad valorem tax liability allegedly triggered by such repayments. By agreement of the parties, TEP’s counterclaim was dismissed by the district court’s order approving the *Sefcovic* SA.

3. The Immediate Recovery was More Valuable Than the Mere Possibility of a More Favorable Outcome After Further Litigation

Relevant to this *Tennille* factor, Objectors claim there can be no worse position for Subclass 1 members than the one they occupy by virtue of the *Sefcovic* SA. This is so, Objectors insist, for two reasons. First, Objectors claim the agreement resolves

the purportedly uncertain meaning of “from the mouth of the well to the point of sale” against them. Second, they contend the *Sefcovic* SA permits TEP to recoup charges that were not incurred during the relevant period and that completely offset the settlement money allocated to Subclass 1.

Objectors’ first argument appears based, primarily, on the fact that the *Lindauer* SA had secured for category two and category three owners (Subclass 1 members in this litigation) repayment of some deductions TEP will be permitted to deduct prospectively under the *Sefcovic* SA. They suggest that because a dispute about the meaning of those royalty instruments yielded remuneration in the *Lindauer* SA, the contractual language must have more settlement value than the *Sefcovic* SA achieves for Subclass 1 members. But Objectors overstate the effect of the *Lindauer* SA. There, the parties were unable to resolve the meaning of the deduction provisions in category two and category three royalty instruments and left the issue unresolved. The *Lindauer* SA did include a lump sum payment to category 2 and category 3 owners, which counsel for Objectors claims was intended as recoupment of the disputed deductions. But TEP disagrees about the purpose of the lump sum payment and argues that after the *Lindauer* SA, WPX continued to deduct the disputed costs.

To be sure, WPX paid a lump sum to end the *Lindauer* litigation. But in doing so, it never conceded that such deductions were impermissible. WPX then transferred whatever rights it had in the royalty instruments to TEP, and TEP interpreted the provisions in the Subclass 1 royalty instruments as allowing for the deductions for fuel and gathering costs from the mouth of the well to the point of sale. Given the

language of the royalty instruments held by Subclass 1 members, TEP had a strong argument it was permitted to do so, and the *Lindauer* settlement payment does not diminish the strength of that argument.

It is also true that under the *Sefcovic* SA, Objectors received immediate compensation in exchange for their release of claims. This compensation took the form of repayment of “the equivalent of (a) 50% of all processing costs deducted from their payments since July 2016, and (b) over 40% of all fuel costs deducted from their payments since July 2011.” App. at 1190. Had the case proceeded to trial, there is no guarantee Subclass 1 members would have been entitled to any repayment of processing or fuel costs. Because the outcome of this litigation was, at best, uncertain, and because Subclass 1 members obtained immediate recovery of a portion of past deductions, the district court did not abuse its discretion in determining that “the immediate recovery was more valuable than the mere possibility of a more favorable outcome after further litigation.” *Tennille*, 785 F.3d at 434.

As to Objectors’ second argument—that the *Sefcovic* SA’s recoupment provision completely offsets the settlement money—the record before the district court is sparse, presumably because this argument was not the focus of the proceedings below. The expert testimony offered to quantify the potential recoupment liability of Subclass 1 members is terse and undeveloped. But as we now explain, TEP’s accounting expert, Alan Simpson, provided an explanation for his conclusion that can be understood and verified. In turn, Objector’s expert, Mary Ellen Denomy, provided an opinion untethered to any rational analysis. Under these

circumstances, we cannot conclude the district court abused its discretion in rejecting Objectors' argument that ¶ 9.b rendered the *Sefcovic* SA fundamentally unfair.

Under ¶ 9.b of the *Sefcovic* SA, TEP is permitted "to recoup any overpayments made to Class members prior to the Effective Date as a result of not deducting allowable post-production costs." App. at 314. Objectors did not assert any complaint about ¶ 9.b in their initial objections or in their brief submitted in advance of the fairness hearing. Instead, they focused their written materials on the unfairness of the method for prospectively calculating royalties for Subclass 1 members under ¶ 9.a.

To the extent either party elicited testimony about the impact of ¶ 9.b at the fairness hearing, it was limited. On direct examination, TEP's counsel asked his accounting expert, Alan Simpson, about the gathering and fuel deductions for Subclass 1 owners. Mr. Simpson explained that "[d]uring the WPX era, there were deductions to the subclass 1 owners for both gathering transportation and for fuel." App. at 1621. The district court interjected at that point, asking Mr. Simpson to clarify what he meant by "gathering transportation." App. at 1621. In response, Mr. Simpson explained that he considers "there to be three legs of transportation in the natural gas industry." App. at 1622. He describes the first leg to be "gathering transportation," which includes moving the "gas from the mouth of the well typically to the inlet of the gas plant but sometimes to the inlet of another pipeline." App. at 1622. And he further indicated that his testimony was concerned with the costs incurred during that first leg.

Considering that first leg of gathering transportation, Mr. Simpson testified he had reviewed the paid history data and royalty payment statements for Subclass 1 members from July 2011 through June of 2016. The paid history data, as Mr. Simpson explained, contains more detail about the costs incurred by WPX after the gas leaves the well, or “post-production,” than the royalty payment statements. By comparing these two sets of documents, Mr. Simpson determined which costs incurred by WPX had been deducted from royalty payments and which had not. That is, he identified post-production costs recorded in the paid history data but not also listed as deductions on the royalty payment statements.

Specifically, Mr. Simpson identified three categories of post-production costs recorded in the paid history data: FUEL, BGTHRI, and MKRGT3. According to Mr. Simpson, these categories reflected costs incurred for fuel (FUEL) and gathering (BGTHRI) and (MKRGT3). He then reviewed the payment history for each of the Objectors and determined that these gathering and fuel deductions had already been subtracted by WPX from the Objectors’ royalty payments.

Class counsel then asked Mr. Simpson to focus on the settlement as it relates to Subclass 1 owners generally. First, Mr. Simpson explained that the settlement included a reimbursement of 38% of the fuel costs deducted from royalty payments prior to July 2016. Next, counsel asked Mr. Simpson to address the impact of ¶ 9.b on Subclass 1 members. Again, Mr. Simpson compared the payment history data with the royalty payment data to determine whether there were outstanding post-production costs that had not previously been deducted from royalty payments and

might, therefore, be recouped under ¶ 9.b. He concluded: “For certain individuals, maybe for certain wells and certain time periods, there were categories of expenses that [Mr. Simpson] believed were not deducted by TEP” App. at 1628. Mr. Simpson identified those undeducted costs as what TEP may recoup from future royalty payments under ¶ 9.b. TEP’s counsel then asked Mr. Simpson to estimate those costs:

Q: Have you had the opportunity in preparing for today’s hearing to evaluate any data that would identify for you how much TEP would be recouping for the time period covered by the settlement for all owners in connection with these NGL transportation and fractionation costs?

A: I have seen the results of an analysis of that, yes.

Q: How much is it?

A: It amounted to \$275,000 or thereabouts.

Q: And is that specific to one subclass or is that for all owners, all 608 owners in the Sefcovic settlement class?

A: That was across all categories of leases in the Sefcovic case.

Q: Now, with respect to just subclass 1, do you know how much of that total \$275,000 is associated with potential recoupment of overpayments to subclass 1 owners?

A: What I saw was less than a thousand dollars related to subclass 1.

App. at 1629.

Thus, Mr. Simpson testified to a recoupment calculation based on post-production costs reflected on the paid history data records that had not already been deducted from royalty payment statements. Those calculations resulted in a total of \$275,000 of post-production costs for all classes during the relevant time period that

had not been deducted from royalty payments. And, of that \$275,000, Mr. Simpson testified that less than \$1,000 was attributed to Subclass 1 owners.⁵

Mr. Simpson's testimony explains exactly how he calculated the potential liability to Subclass 1 members under ¶ 9.b, and why he used that method. His calculations were also supported by WPX's contemporaneous records documenting post-production costs incurred and the costs deducted from royalty payments. And Objectors did not challenge these calculations, Mr. Simpson's methodology, or elicit any contrary information on cross examination.

At oral argument on appeal, Objectors' counsel pointed us to a portion of the direct examination of their expert, Ms. Denomy, as evidence that the recoupment rights under ¶ 9.b render the *Sefcovic* SA fundamentally unfair. Based on review of that testimony, it is not surprising the district court was unconvinced. Although Ms. Denomy did opine that Subclass 1 members could be liable for \$4 million in recoupment obligations, the explanation of that opinion is lacking.

During the fairness hearing, Ms. Denomy agreed with Mr. Simpson that not all gathering costs⁶ had been deducted from the royalty payments during the period

⁵ As explained, Mr. Simpson concluded that none of those unpaid amounts was attributed to any of the Objectors.

⁶ The record does not reflect what costs Ms. Denomy included as "gathering costs," but there is nothing to suggest she disagreed with Mr. Simpson's identification of the post-production gathering costs identified as BGTHRI, and MKRGT3 in WXP's paid history records. And because the discussion was related to ¶ 9.b of the *Sefcovic* SA, it is also fair to assume she was focused on post-production costs. See *Sefcovic* SA, at ¶ 9.b (allowing recoupment of "any overpayments made to

covered by ¶ 9.b: “because there were two gathering fees listed in June of 2016 and only one of those two [was] deducted . . . the potential for them to collect that second gathering fee is there.” App. at 1640–41. But rather than consulting the paid history data records to determine whether, in fact, there were any costs incurred by WPX for post-production costs but not deducted, Ms. Denomy compared the amount WPX deducted for gathering fees and fuel in June 2016 to the amount TEP deducted for such fees when it took over. She then concluded, without explanation, that the difference between the 21 cents deducted by WPX and the 59 cents deducted by TEP “reflect[s] the difference between accounting for both of those gathering [costs].” App. at 1641. Finally, Objectors’ counsel asked “how much could they take since this new amount is authorized under this proposed settlement going back from class 2 and class 3?” App. at 1642. Ms. Denomy responded, “[a]bout \$4 million.” *Id.*

But there is no evidence in the record explaining the increase from 21 cents to 59 cents, and certainly no evidence tying that difference to post-production costs that might be recouped under ¶ 9.b. Nor is there any explanation why WPX would have incurred \$3.725 million in post-production costs that it did not include in its paid history data—the \$4 million claimed by Ms. Denomy, less the \$275,000 calculated by Mr. Simpson from those records. But even if the thirty-eight cent difference was somehow relevant to post-production costs, Ms. Denomy failed to explain how she

Class members prior to the Effective Date as a result of not deducting allowable post-production costs”) App. at 314.

expanded that difference to a total recoupment liability for Subclass 1 members of \$4 million.⁷

The district court received conflicting testimony about an issue that was not then central to the proceeding. Mr. Simpson explained his methodology such that his calculations could be understood, verified, and replicated. In contrast, Objectors offered a theory of Subclass 1 liability under ¶ 9.b based on speculation and containing gaps in analysis that make it impossible to assess the accuracy of the calculation. Given this meager record, Objectors have failed to meet their burden to establish the factual basis for their objection to ¶ 9.b. As a result, we cannot conclude the district court abused its discretion by approving a settlement agreement containing the recoupment provision. *See Miller v. Woodmoor Corp.*, 619 F.2d 65, 67 (10th Cir. 1980) (“The parties to the settlement supported their conclusions to the satisfaction of the court and the objectors had every opportunity to show that the settlement was unfair to them and their class. This is enough.”).

4. The Parties Believed the Settlement was Fair and Reasonable

Finally, the fourth *Tennille* factor asks whether the parties “believed the settlement was fair and reasonable.” *Tennille*, 785 F.3d at 434. As the district court

⁷ TEP has affirmatively represented to both the district court and this court that the recoupment it is entitled to under ¶9.b totals about \$1,000 for all of Subclass 1. And at the fairness hearing, Mr. Simpson testified that there are no post-production costs that have not been deducted from the Objectors’ royalty payments. In the event TEP seeks instead to recoup a greater sum from Subclass 1 members, nothing in the *Sefcovic* SA precludes those members from bringing a legal action to challenge that conduct, which would be highly suspect due to TEP counsel’s representations to the district court.

observed, Subclass 1 members were “aware of . . . uncertainties” in their royalty agreements under the *Lindauer* SA and “believe[d] this [*Sefcovic*] Settlement Agreement [was] in their best interests.” App. at 1460. Indeed, Appellees assert, and Objectors do not dispute, that of 607 class members, only the four Objectors in this case challenged the reasonableness of the *Sefcovic* SA. See *Fager v. CenturyLink Commc’ns, LLC*, 854 F.3d 1167, 1175 (10th Cir. 2016) (finding no clear error in district court’s conclusion that settlement was fair in part because “only a few class members opted out” and only one filed an objection); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 118 (2d Cir. 2005) (“If only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement.” (quotation marks omitted)).

In summary, the district court did not abuse its discretion in finding that the *Sefcovic* SA is fair.

B. Adequacy of Class Representation

Objectors next assert a variety of arguments in support of their contention that Subclass 1 representatives did not adequately represent the interests of absent Subclass 1 members. Because Objectors failed to raise this issue in the district court despite ample opportunity to do so, we will not consider it on appeal.

Parties may not preserve a challenge “by presenting the issue to the district court in a vague and ambiguous manner.” *U.S. Aviation Underwriters, Inc. v. Pilatus Bus. Aircraft, Ltd.*, 582 F.3d 1131, 1142 (10th Cir. 2009) (internal quotation marks omitted). Rather, to preserve an issue for appeal, a party must “alert[] the district

court to the issue and seek[] a ruling.” *Id.* (quotation marks omitted). A fleeting reference will not suffice. *Id.*; see *Tele-Comm’s, Inc. v. Comm’r*, 104 F.3d 1229, 1233–34 (10th Cir. 1997) (holding a single paragraph containing a “fleeting contention” deprived the court below “of the opportunity to analyze and rule on th[e] issue now raised in detail for the first time on appeal”).

Objectors say they raised the issue before the district court with the following paragraph in their “Hearing Brief Regarding Objections to Approval of Proposed Class Settlement”:

The structure of this proposed settlement creates an illusory common fund (to be recouped by defendant from ¶9.a. deductions and without adequate disclosure to absent class members in the Notice), together with the unconscionably overbroad release of extremely valuable uncompensated class claims. This structure is highly suggestive of collusion, and/or inadequate representation. Strict scrutiny by this Court is required to vigilantly guard the interests of absent class members and to insure the “identical factual predicate” standard is complied with.

App. at 1391. This paragraph, appearing in a section challenging the scope of the settlement agreement’s release of claims, is the extent of Objectors’ argument on inadequate representation in the district court.

Nonetheless, Objectors claim they preserved this argument because (1) they “elicited testimony supporting the allegation of inadequate representation at the Fairness Hearing itself,” *Aplt. Reply Br.* at 15, and (2) the district court ruled on the adequacy of class representation. This argument is unavailing. The parties must *raise* an issue to preserve it for appeal. See *U.S. Aviation*, 582 F.3d at 1147 (holding issue

preserved when “[t]he parties argued, and the district court definitively ruled on, the precise objection raised on appeal”).

Objectors may not use the district court’s one-sentence finding that class representatives were adequate to assert arguments on appeal that were never presented to the district court. Nor can they rely on a fleeting reference to “and/or inadequate representation” in a portion of a brief challenging the scope of the settlement’s release of claims. Nothing in the Objectors’ written submissions or argument would have put the district court on notice that it was being presented with substantive arguments challenging the adequacy of representation. Objectors arguments are therefore waived.

C. Adequacy of the Settlement Notice

Objectors next argue they received insufficient notice of the *Sefcovic* SA. Under Fed. R. Civ. P. 23(e)(1)(B), a district court approving a proposed class action settlement “must direct notice in a reasonable manner to all class members who would be bound by the proposal.”

Notice in this context has two aspects: constitutional due process and the requirements of Fed. R. Civ. P. 23. *See Tennille*, 785 F.3d at 436. “We review de novo questions of notice that implicate due process,” and then “[w]ithin the bounds of due process, . . . the form that such notice is to take is left to the discretion of the district court.” *Id.* (alterations in original) (quotation marks omitted).

The notice explained, in relevant part, as follows:

Plaintiffs have alleged that, at various times since July 1, 2011, TEP deducted or adjusted from royalties certain charges for costs that should not have been deducted. Specifically, Plaintiffs have asserted that TEP should not have deducted from Gas royalties certain costs that were not permissible to deduct under the terms of a class action settlement agreement approved by a Colorado state district court in a lawsuit captioned *Ivo Lindauer v. Williams Production RMT Co.*, Case No. 2006-CV-0317 (Garfield County District Court) (the “*Lindauer Settlement*”). These deductions are referred to in this Notice as “Disputed Deductions.”

...

Upon final Court approval, all members of the TEP Settlement Class who choose not to timely exclude themselves from the TEP Settlement Class (*i.e.*, who do not “opt out” of the TEP Settlement Class) will receive the monetary benefits of the TEP Settlement and will be bound by the resulting Order in the Lawsuit, barring them from bringing any claim against TEP related to royalty calculations that are covered by the TEP Settlement Agreement (“Settled Claims”). If a member of the TEP Settlement Class does not opt out, that member will receive payment of a portion of the Settlement Fund as described above, and may not thereafter bring Claims.

App. at 888–90.

The notice explained the calculation of future royalties to class members, that recipients could opt out of the *Sefcovic SA*, and that remaining in the class would result in class members receiving their share of the settlement fund and “[r]eleas[ing] all Settled Claims” against TEP. App. at 890. The notice also gave contact information for class counsel and provided information about how to access the full *Sefcovic SA* online. App. at 892.

Objectors do not appear to challenge the notice’s compliance with Rule 23, but they do make a variety of objections to the notice’s specificity. They argue the notice should have mentioned “[t]he gathering and fuel deduction claims,” the possibility that TEP might recoup past deductions in future royalty payments, and the value or

amount of various deductions under the *Sefcovic* SA. Aplt. Br. at 36–37. Objectors also assert the notice failed to elaborate on the breadth of claims class members would release by not opting out. *Id.* at 37.

But Objectors point to no authority requiring class notice to reach that level of specificity. The notice here described the general nature of the claims, as well as the method TEP would use to calculate future royalty payments. The notice thus “adequately apprised putative class members of the nature of the claims at issue.” *Tennille*, 785 F.3d at 437; *see also Gooch v. Life Inv’rs Ins. Co. of Am.*, 672 F.3d 402, 423 (6th Cir. 2012) (“All that the notice must do is ‘fairly apprise . . . prospective members of the class of the terms of the proposed settlement’ so that class members may come to their own conclusions about whether the settlement serves their interests.” (alteration in original) (quoting *Grunin v. Int’l House of Pancakes*, 513 F.2d 114, 122 (8th Cir. 1975))). The notice also accurately explained that the decision to not opt out would result in the release of “any claim against TEP related to royalty calculations that are covered by the TEP Settlement Agreement.” App. at 890. Finally, the notice “informed putative class members how to obtain more information about the settlement, directing them to [a] website, where they could get a copy of the Settlement Agreement.” *Tennille*, 785 F.3d at 437. If any class member desired more detail, the notice “inform[ed] class members of several ways they could obtain additional information about the claims that they would be releasing if they joined the settlement.” *Id.* Because the notice satisfied the

requirements of Rule 23 and the constitutional demands of due process, we reject Objectors' contention that the class settlement notice was deficient.

D. The Breadth of Released Claims

Finally, Objectors argue the *Sefcovic* SA contains an overly broad release. The *Sefcovic* SA release provides that the class members

release TEP and its predecessors . . . from any and all liabilities, rights, claims, demands, obligations, damages (including claims for or award of costs and/or expenses, court costs and attorneys' fees), losses, causes of action in law or in equity arising from the calculation and/or payment of royalties and/or overriding royalties to Plaintiffs and the Class on the sale of natural gas, natural gas liquids, and associated hydrocarbons prior to the Effective Date.

App. at 1472.

Under the identical factual predicate rule, "a court may permit the release of a claim based on the identical factual predicate as that underlying the claims in the settled class action." *TBK Partners, Ltd. v. W. Union Corp.*, 675 F.2d 456, 460 (2d Cir. 1982); *see Fager*, 854 F.3d at 1175. Under this principle, "class action releases may include claims not presented and even those which could not have been presented as long as the released conduct arises out of the 'identical factual predicate' as the settled conduct." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 107 (2d Cir. 2005) (quoting *TBK Partners, Ltd.*, 675 F.2d at 460.) "[A] court may release not only those claims alleged in the complaint and before the court, but also claims which 'could have been alleged by reason of or in connection with any matter or fact set forth or referred to in' the complaint." *In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 221 (5th Cir. 1981) (quoting *Patterson v. Stovall*, 528

F.2d 108, 110 n.2 (7th Cir. 1976), *overruled on other grounds by Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1998)).

Objectors contend the “factual predicate” at issue in this lawsuit concerns only the following: (1) allegations that TEP breached the terms of Subclass 1 leases by deducting costs in excess of reasonable transportation costs, and (2) allegations that TEP breached the *Lindauer* SA by deducting costs in excess of “the express limitations in Section 4 of the *Lindauer* [SA].”⁸ Aplt. Br. at 30–31. Because the *Sefcovic* SA releases all future claims “arising from the calculation and/or payment of royalties and/or overriding royalties to Plaintiffs and the Class on the sale of natural gas, natural gas liquids, and associated hydrocarbons,” Objectors contend that it contravenes the identical factual predicate rule. We disagree.

“[I]nherent in the nature of a class-action settlement is the release of the claims of every class member (except those who opt out).” *Fager*, 854 F.3d at 1176. And “[i]f Defendants are going to pay anything to the class members, they would insist on a release . . . that would protect them against repeated litigation over the same subject matter.” *Id.* at 1173.

“When considering the permissibility of a release, the overlap between elements of *claims* is not dispositive.” *Wal-Mart Stores, Inc.*, 396 F.3d at 108. Instead, we focus on the factual predicate of the settled claims. *See id.* (“Class

⁸ Section 4 of the *Lindauer* SA relates to the calculation of future royalty payments.

actions may release claims, even if not pled, when such claims arise out of the same factual predicate as settled class claims.”).

The factual predicate of this action, as stated in the Second Amended Complaint, is that “TEP has underpaid royalties owed to [Plaintiffs] under numerous leases and overriding royalty agreements which are subject to certain future royalty payment provisions which are set forth in the [*Lindauer SA*].” App. at 1158–59. The complaint broadly alleged that TEP had breached the Subclass I royalty agreements, the Subclass II royalty agreements, the Subclass III royalty agreements, and the Subclass IV royalty agreements.

Objectors’ position, that the settled claims must be “limited to three types of cost deductions – improper gathering, fuel[,] and excess processing cost deductions from residue gas royalty [sic],” Aplt. Br. at 32, “takes an overly narrow view of the factual predicate of [plaintiffs’] claims.” *In re Literary Works in Elec. Databases Copyright Litig.*, 654 F.3d 242, 248 (2d Cir. 2011). Although certain claims in the *Sefcovic* complaint focused on erroneous deductions, “including, *but not limited to*, gathering, fuel, and processing,” App. at 1176 (emphasis added), the complaint made specific reference to various other alleged errors in TEP’s calculation and payment of royalty obligations:

- “failing to pay royalties based upon first commercial market prices for residue gas,” App. at 1174
- “failing to pay royalties based upon first commercial market prices for marketable natural gas liquid products,” App. at 1174

- “failing to properly account for the correct value of the natural gas liquid components” as required by the *Lindauer* SA, App. at 1175
- “failing to properly account for the selling price of . . . residue gas” as required by the *Lindauer* SA, App. at 1176

In short, the *Sefcovic* complaint alleged an array of errors in the calculation and payment of royalties to the *Sefcovic* class based on the sale of natural gas and similar products, and this is precisely what the release purports to cover. See App. at 1472 (releasing TEP from liability “arising from the calculation and/or payment of royalties and/or overriding royalties to Plaintiffs and the Class on the sale of natural gas, natural gas liquids, and associated hydrocarbons prior to the Effective Date”).

Objectors recite a “vast universe” of claims they believe would be covered by the subject release.⁹ It is doubtful that all such claims would be encompassed within the release, but to the extent they are, we conclude they share a factual predicate with the matters alleged in the complaint. We therefore see no error in the district court’s approval of this release.

III. CONCLUSION

For the reasons articulated, the district court did not abuse its discretion in approving the *Sefcovic* SA. Judgment is **AFFIRMED**.

Entered for the Court

Carolyn B. McHugh
Circuit Judge

⁹ We note that if the *Sefcovic* SA release is overly broad, so too is the release in the *Lindauer* SA, which was negotiated by Objectors’ counsel and which elicited no challenge from the Objectors.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 17-cv-01990-MEH

ELNA SEFCOVIC, LLC, WHITE RIVER
ROYALTIES, LLC, JUHAN, LP and ROY
ROYALTY, INC., individually and on behalf of
all others similarly situated,
Plaintiffs,

v.

TEP ROCKY MOUNTAIN, LLC,

Defendant.

**ORDER ON CLASS COUNSEL’S MOTION FOR ATTORNEYS’ FEES,
LITIGATION EXPENSES, AND INCENTIVE AWARD PAYMENTS
TO THE CLASS REPRESENTATIVES**

This matter comes before the Court on Class Counsel’s motion for an award of attorneys’ fees, litigation expenses, and incentive payments to three Class Representatives, filed on October 30, 2018. ECF No. 93. The Court has considered Class Counsel’s motion, the memorandum in support thereof, the exhibits and declarations submitted in support of the motion, the arguments presented by Class Counsel at the final approval hearing before the Court on February 20, 2019, and all other statements in the record relating to the requested attorneys’ fees, litigation expenses, and the requested Class Representative incentive awards. The Court further notes that Defendant TEP Rocky Mountain, LLC (“TEP”) has taken no position with regard to this motion. The motion is **granted** as follows.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having considered the foregoing, the Court finds and concludes as follows:

1. Pursuant to the Settlement Agreement between the Plaintiffs and TEP, TEP has agreed to resolve the Class members' claims for royalty underpayments on TEP's natural gas production through May 31, 2018 for the amount of \$10,025,308. After taking into account the opt-out credit to which TEP is entitled because of the election of certain Class members to exclude themselves from the Settlement Class, the Net Settlement Fund, before subtraction of litigation expenses, is \$7,991,505.33.

2. In addition to the Net Settlement Fund payment, TEP will implement a future royalty calculation method for its calculation and payment of royalties on natural gas produced and sold on and after June 1, 2018 to the members of Subclass I and Subclass IV.

3. Class Counsel request reimbursement of \$104,915.95 for litigation expenses. This includes \$95,615.95 for litigation expenses that Class Counsel incurred through October 30, 2018, as well as \$9,300.00 in additional litigation expenses that Class Counsel expect to incur in the further handling of this class litigation and class settlement administration.

4. The Court finds that the litigation expenses for which Class Counsel seek reimbursement has been reasonably incurred by Class Counsel in the prosecution of this litigation, and that the estimated future expenses will be reasonably incurred in the further handling of this litigation by Class Counsel. The Court therefore approves Class Counsel's request for reimbursement of litigation expenses in the amount of \$104,915.95.

5. Class Counsel seek attorneys' fees of \$2,627,600.00, which equal 33.33 percent of the \$7,883,589.38 Net Class Settlement amount, after subtracting: (1) the requested litigation expenses of \$104,915.95; and (2) the \$3,000.00 escrow agent expense associated with administering the Class Settlement Fund.

6. The Class Settlement Agreement creates a “common fund” for payments to the Settlement Class members. Under Tenth Circuit case law, attorneys’ fees in common fund cases are generally awarded based on a reasonable percentage of the fund created. *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 454 (10th Cir. 1988); *Gottlieb v. Barry*, 43 F.3d 474, 482-83 (10th Cir. 1994). In *Brown*, the Tenth Circuit held that determining an attorneys’ fee award based on a percentage of a common fund is warranted, particularly where the common fund has been created as a result of class counsel’s efforts. 838 F.2d at 454.

7. In determining whether Class Counsel’s request for an award of attorneys’ fees equal to one-third of the Net Settlement Fund, minus expenses, is warranted, the Tenth Circuit directs that the twelve factors identified in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974), should be considered in a common fund case. *Id.* An evaluation of the most pertinent *Johnson* factors confirms that Class Counsel’s request for an award of attorneys’ fees is reasonable, and should be approved.

8. In *Brown*, the Tenth Circuit recognized that the *Johnson* factor to be given the greatest weight is the monetary result achieved for the benefit of the class, which is often considered to be “decisive.” *Brown*, 838 F.2d at 456. Here, the monetary results Class Counsel have recovered for the benefit of the Class in this case are very good compared to the amount in dispute, which supports Class Counsel’s fee request.

9. Two other *Johnson* factors to consider are the “customary fee” and the fees awarded in similar class action cases. *Brown*, 838 F.2d at 454-55. In numerous other class action royalty underpayment cases, in which this Court or Colorado state courts have awarded attorneys’ fees to class counsel from a settlement fund, the fees awarded generally have been for one-third of the class settlement fund, or sometimes a higher percentage of the settlement fund. (See Exhibits 2-7 attached to Class Counsel’s memorandum in support of their motion for attorneys’ fees). Thus, Class Counsel’s requested³ attorneys’ fees in this case are clearly in

accordance with the customary attorneys' fee awards to class counsel in similar Colorado royalty underpayment class action cases.

10. Another *Johnson* factor is the time and labor involved. Class Counsel's time value lodestar in this case, through October 30, 2018, is in the amount of \$1,815,980.00. In addition, Class Counsel estimate that Class Counsel will incur \$98,750.00 in additional hourly rate lodestar through the completion of this litigation. Thus, Class Counsel's total hourly rate lodestar for this class action litigation is estimated to be approximately \$1,919,105.00. Class Counsel's attorneys' fee request of \$2,627,600.00 therefore represents a "multiplier" of approximately 1.37 times Class Counsel's \$1,919,105.00 lodestar amount. This 1.37 multiplier is comparable to the lodestar multipliers which have been consistently awarded by judges in the District of Colorado. *See Davis v. Crilly*, 292 F. Supp. 3d 1167, 1174 (D. Colo. 2018); *Shaulis v. Falcon Subsidiary, LLC*, 2018 WL 4620388, at *2 (D. Colo. Sept. 26, 2018). Thus, the time and labor devoted by Class Counsel fully supports Class Counsel's requested attorneys' fee award.

11. An additional factor supporting Class Counsel's requested attorneys' fee award is that Class Counsel have represented each of the Class Representatives on a contingent fee basis, under which Class Counsel's contingent fee is one-third of the net recovery obtained, after subtraction of the client's share of litigation expenses. The fact that Class Counsel represented the Class Representatives on a contingent fee basis meant that Class Counsel were at risk for both their time investment and their investment of substantial amounts in litigation expenses. The significant litigation risks faced by Class Counsel at the outset of this case further supports Class Counsel's fee request. *See Lucas v. Kmart Corp.*, 2006 WL 2729260, at * 6 (D. Colo. July 27, 2006).

12. Based on the foregoing, the Court finds that an analysis of the relevant *Johnson* factors confirms that an award of attorneys' fees to Class Counsel in the amount of \$2,627,600 is warranted.

13. Class Counsel are also requesting approval of incentive awards totaling \$15,000.00 for three Class Representatives, as follows: \$5,000 to Elna Sefcovic, LLC; \$5,000 to Juhan, LP; and \$5,000 to Roy Royalty, Inc. Each Class Representative has been actively involved in working with Class Counsel during this litigation process by providing documents and information to Class Counsel and in consulting with Class Counsel regarding various aspects of this litigation. The purpose of incentive awards is to encourage people with significant claims to pursue actions on behalf of others similarly situated. *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 535 (E.D. Mich. 2003). Numerous courts have recognized that incentive awards are an efficient and productive way of encouraging members of a class to become class representatives, and rewarding individual efforts taken on behalf of a class. *See Hadix v. Johnson*, 323 F.3d 895, 897 (6th Cir. 2003); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000).

14. Consistent with the foregoing, this Court finds that the request for incentive awards to the Class Representatives, in the total amount of \$15,000.00, is reasonable and consistent with incentive awards in other class action litigation. *See, Cook v. Niedert*, 142 F.2d 1004, 1016 (7th Cir. 1998) (approving incentive award of \$25,000 for named plaintiff whose settlement was valued at \$13 million dollars).

THEREFORE, IT IS HEREBY ORDERED THAT:

1. Class Counsel are awarded the sum of \$104,915.95 in reimbursement for litigation expenses which they have incurred and which they reasonably expect to incur through the conclusion of this litigation.

2. Class Counsel are awarded attorneys' fees in the requested amount of \$2,627,600.00.

3. Incentive awards to three Class Representatives are hereby approved in the total amount of \$15,000.00 to be paid as follows: \$5,000 to Elna Sefcovic, LLC; \$5,000 to Juhan, LP; and \$5,000 to Roy Royalty, Inc.

4. The attorneys' fees and litigation expenses awarded to Class Counsel should be paid from the Class Settlement Escrow account.

SO ORDERED.

DATED: March 15, 2019.

s/Michael E. Hegarty
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
United States Magistrate Judge Michael E. Hegarty

Civil Action No. 17-cv-01990-MEH

ELNA SEFCOVIC, LLC,
WHITE RIVER ROYALTIES, LLC,
JUHAN, LP, and
ROY ROYALTY, INC., individually and on behalf of all others individually situated,

Plaintiffs,

v.

TEP ROCKY MOUNTAIN LLC,

Defendant.

**ORDER APPROVING CLASS SETTLEMENT
AND FINAL JUDGMENT**

The parties have filed a “Joint Motion for Final Approval of Class Settlement.” ECF No. 92. After extensive briefing and a full fairness hearing on the merits of the proposed settlement, the Court enters its findings and conclusions as follows:

- A. On July 18, 2017, Plaintiffs Elna Sefcovic, LLC and Juhan, LP filed a Class Action Complaint against TEP Rocky Mountain, LLC (TEP), TRDC LLC, and G2X Resources LLC (“the *Sefcovic* Case”) in the District Court for the City and County of Denver, Colorado, alleging generally that TEP underpaid royalties to Plaintiffs and similarly situated royalty and overriding royalty owners over a six-year period. These underpayments were alleged to be in breach of the Plaintiffs’ royalty instruments and the terms of a class action settlement agreement reached in 2008 in *Lindauer v. Williams*

Production RMT Co., 2006-CV-317 (Garfield County, Colorado District Court) (“the *Lindauer* Settlement Agreement”). TEP denies that it underpaid royalties.

- B. On August 17, 2017, TEP removed the *Sefcovic* Case to this Court. Plaintiffs voluntarily dismissed TRDC LLC and G2X Resources LLC on September 26, 2017. TEP filed its Answer and Counterclaim on September 28, 2017. Plaintiffs filed their First Amended Class Action Complaint and Demand for Jury Trial on February 22, 2018, to which TEP filed its Answer and Counterclaim on March 8, 2018. Plaintiffs filed their Second Amended Class Action Complaint and Demand for Jury Trial on January 29, 2019 (adding White River Royalties, LLC as a named Plaintiff), to which TEP filed its Answer and Counterclaim on February 11, 2019.
- C. On August 13, 2018, the Parties filed their Joint Motion for Order (1) Preliminarily Approving Class Settlement, (2) Provisionally Certifying Opt-Out Settlement Class, (3) Approving Notice to Class Members, (4) Establishing Opt Out and Objection Procedures, and (5) Setting a Final Hearing Date to Consider Final Approval of the Class Settlement, Attorneys’ Fees, Expenses, and Incentive Awards (ECF No. 56). In the proposed settlement (“the Settlement Agreement”), TEP agreed to pay over \$10 million to resolve the class’ royalty underpayment claims on TEP’s production and sale of natural gas (and natural gas liquids) since July 2011, extending to TEP’s royalty payments prior to June 1, 2018. In addition, TEP also agreed to a method of calculating royalties paid on or after June 1, 2018 to certain owners under particular royalty instruments.
- D. On August 16, 2018, this Court granted the Plaintiffs’ and Defendant’s (“the Parties”) joint motion to provisionally certify, for settlement purposes, the proposed Class and its four Subclasses (“the Settlement Class”) under Fed. R. Civ. P. 23(a) and (b)(3) (“the

Preliminary Order”). ECF No. 61. In the Preliminary Order, the Court found that each of the requirements for certification of a Rule 23(b)(3) Class has been satisfied in this case. The Court further found preliminarily that, among other things, the Settlement Agreement was fair, reasonable and adequate. The Order directed that notice of the proposed Settlement Agreement be mailed to the Settlement Class. The Court also set a final fairness hearing date. Thereafter, TEP paid \$10,025,308.00 into an escrow account maintained by Bank of Oklahoma Financial (“the Settlement Amount”), representing the total settlement funds identified in Paragraph 2 of the Settlement Agreement.

- E. A Notice informing the certified Class of the certification of this case as a class action and of the proposed Settlement Agreement was mailed to approximately 643 members of the Class on August 21, 2018. The Notice informed the members of the Class of their right to exclude themselves from the Settlement Class. Thirty-six individuals and entities elected to exclude themselves from the Settlement Class. The excluded entities and individuals (“the Settlement Class Excluded Individuals and Entities”) are not part of the Settlement Class on whose behalf the proposed Class Settlement has been negotiated.
- F. On October 30, 2018, the Parties filed their Joint Motion for Final Approval of Class Settlement seeking approval of a settlement of certain claims existing between the Settlement Class and TEP (“the Released Claims”). The extent of the Released Claims is discussed in the Settlement Agreement and, more specifically, in Paragraph 6 of the Settlement Agreement (limiting releases to calculation of royalties paid by TEP prior to June 1, 2018).
- G. The Settlement Class is defined as follows:

All persons and entities to whom TEP has paid royalties and/or overriding royalties, and deducted post-production costs from those royalties and/or overriding royalties, including

owners whose royalties currently are held in suspense, since July 1, 2011, on natural gas production from any well subject to the oil and gas lease agreements which the settling parties in the Lindauer Settlement identified as Category 2, Category 3, Category 5, and Category 11 instruments.

The proposed Settlement Agreement divides the Settlement Class into four Subclasses, as follows:

Subclass 1: Elna Sefcovic, LLC, White River Royalties, LLC, and all persons and entities to whom TEP has paid royalties, and deducted post-production costs from those royalties, including owners whose royalties currently are held in suspense, since July 1, 2011, on natural gas production from any well subject to the oil and gas lease agreements which the settling parties in the Lindauer Settlement identified as either Category 2 or Category 3 royalty instruments.

Subclass 2: Juhan, LP, and all persons and entities to whom TEP has paid royalties and/or overriding royalties, and deducted post production costs from those royalties and/or overriding royalties, including owners whose royalties currently are held in suspense, since July 1, 2011, on natural gas production from any well subject to the oil and gas lease agreements which the settling parties in the Lindauer Settlement identified as Category 5 instruments, and that currently are identified by TEP as Category 5 instruments.

Subclass 3: Roy Royalty, Inc., Juhan, LP, and all persons and entities to whom TEP has paid royalties and/or overriding royalties, and deducted post-production costs from those royalties and/or overriding royalties, including owners whose royalties currently are held in suspense, since July 1, 2011, on natural gas production from any well subject to the oil and gas lease agreements which the settling parties in the Lindauer Settlement identified as Category 11 instruments, and that currently are identified by TEP as Category 11 instruments.

Subclass 4: Juhan, LP, and all persons and entities to whom TEP has paid royalties and/or overriding royalties, and deducted post production costs from those royalties and/or overriding royalties, including owners whose royalties currently are held in suspense, since July 1, 2011, on natural gas production from any well subject to the oil and gas lease agreements which the settling parties in the Lindauer Settlement identified as Category 5 or 11 instruments, but that currently are not identified by TEP as exclusively Category 5 or Category 11 instruments.

- H. Attached as Exhibit A to the joint motion for preliminary approval of the settlement (ECF No. 56) is the Settlement Agreement describing the Released Claims that are being settled and setting forth the terms of the Parties' Settlement Agreement. The Settlement

Agreement is attached hereto as Exhibit 1 and its terms, including the definitions, are incorporated into this Order Approving Final Settlement as if fully set forth herein.

- I. In accordance with the Court's Preliminary Order, Plaintiffs caused to be mailed to potential members of the Settlement Class a notice ("the Settlement Notice") in the form approved by the Court in the Preliminary Order. The Court finds that the Settlement Notice provided to potential members of the Settlement Class constituted the best and most practicable notice under the circumstances and included individual notice to all members of the Settlement Class who could be identified by reasonable effort, thereby complying fully with due process and Rule 23 of the Federal Rules of Civil Procedure.
- J. On February 20, 2019, the Court held a hearing on the proposed Settlement Agreement, at which time all interested persons were given an opportunity to be heard. The Court entertained extensive argument, both in briefs and in several hearings including the fairness hearing, from attorneys representing both non-Class members (individuals or entities who were class members in the decade-old *Lindauer* settlement in state court) and attorneys for individuals and entities who voluntarily excluded themselves from this Settlement Class. The Court also received testimony from accounting experts. The principal argument advanced by the settlement objectors is the uncertainty of future obligations by the Settlement Class to incur deductions from their royalty payments based on post-production costs. However, based on the evidence presented to me, those uncertainties have always been present even since the decade-old *Lindauer* settlement that preceded this case; the royalty holders are aware of those uncertainties and still believe this Settlement Agreement is in their best interests; and this Settlement Agreement does not preclude future legal

action based on alleged wrongful conduct of TEP in calculating future royalty payments. Therefore, this argument is not a basis to reject an otherwise fair and just settlement.

K. The Court has read and considered all submissions in connection with the Settlement Agreement. Having done so, the Court has determined that approval of the Settlement Agreement (1) will bestow a substantial economic benefit on the Settlement Class, (2) will result in substantial savings in time and money to the litigants and the Court; (3) will further the interests of justice; (4) is the product of good faith arm's length negotiations between the Parties who are represented by very experienced and capable counsel; (5) was negotiated in a case involving serious questions of law and fact, including TEP's argument that it was entitled to an offset of ad valorem taxes from the Settlement Class members, which placed the ultimate outcome of the litigation in doubt; (6) will further the Settlement Class members' interest in immediate recovery as opposed to waiting for the outcome of protracted litigation; and (7) has been considered by the Settlement Class members, who overwhelmingly believe it is in their best interests to enter into the Settlement Agreement.

NOW, THEREFORE, GOOD CAUSE APPEARING, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Joint Motion for Final Approval of Class Settlement, ECF No. 92, is **granted**.
2. The Settlement Agreement, including the terms defined therein, is incorporated herein. The Court has jurisdiction over the subject matter of this litigation and all parties to this litigation, including all members of the Settlement Class.
3. The certified Settlement Class and Subclasses are defined for purposes of the Agreement and this Order Approving Final Settlement as set forth in Paragraphs D, E, and G above. There are questions of law and fact common to the Settlement Class and Subclasses. The claims of the Plaintiff class representatives are typical of the claims of

the Settlement Class and Subclasses. The Plaintiff class representatives will fairly and adequately protect the interests of the Settlement Class and Subclasses. The prerequisites to maintain this action as a class action set forth in Fed. R. Civ. P. 23(a) are met.

4. The questions of law and fact common to all members of the Settlement Class and Subclasses predominate over questions, if any, affecting only individual members, and a class action is superior to any other available method for the fair and efficient adjudication of the controversy. The requirements of Fed. R. Civ. P. 23(b)(3) are met. Accordingly, the Settlement Class and Subclasses identified above are certified pursuant to Fed. R. Civ. P. 23(b)(3).
5. Plaintiffs Elna Sefcovic, LLC, White River Royalties, LLC, Juhan LP, and Roy Royalty, Inc, are designated as the Class Representatives. George A. Barton and Stacy A. Burrows of the Law Offices of George A. Barton, P.C. are designated as Class Counsel.
6. This Settlement Agreement was made in good faith and its terms are fair, reasonable and adequate as to the Settlement Class and Subclasses. Therefore, the Settlement Agreement is approved in all respects, and shall be binding upon, and inure to the benefit of, all members of the Settlement Class and Subclasses.
7. The Settlement Class Excluded Individuals and Entities are not bound by either the Agreement or Order Approving Final Settlement and may pursue their own individual remedies, if any, as to any of the Released Claims.
8. Mutual Releases, Covenants and Warranties.

Release by TEP. Upon the occurrence of the Approval Event and the release and distribution of the Settlement Funds from the Escrow Account pursuant to Paragraphs 2 and 5 of the Settlement Agreement, TEP, for itself and its agents, officers, directors, partners, partnerships, parents, shareholders, employees, consultants, subsidiaries, affiliates, insurers, successors and assigns, fully and forever releases and discharges the Settlement Class, and each of them, from any and all Released Claims, except for rights and obligations created by this Settlement Agreement. It is understood and agreed that this Release extends to, but is not limited to, the counterclaim asserted by TEP.

Release by Settlement Class Members. Upon the occurrence of the Approval Event and the release of the Settlement Funds from the Escrow Account pursuant to Paragraphs 2 and 5 of the Settlement Agreement, the Settlement Class and Subclasses, and each of them, for themselves and their respective heirs, agents, officers, directors, shareholders, employees, consultants, joint venturers, partners, members, legal representatives, successors and assigns, fully and forever release and discharge TEP from any and all Released Claims, except for the rights and obligations created by this Settlement Agreement.

9. No Release of Non-Parties. Nothing herein shall operate or be construed to release any claims the Parties may have against any person or entity who is not a party hereto.
10. This action and any and all claims, actions or causes of action alleged by Plaintiffs, individually and on behalf of the Settlement Class members against TEP, and any and all counterclaims, actions or causes of action alleged by TEP against the Settlement Class members, are dismissed with prejudice.

11. Neither this Order Approving Final Settlement, the Settlement Agreement, nor any document referred to herein nor any action taken pursuant to -- or to carry out -- the Settlement Agreement may be used as an admission by or against TEP of any fact, claim, assertion, matter, contention, fault, culpability, obligation, wrongdoing or liability whatsoever. The Settlement Agreement and its exhibits may be filed in any subsequent action against or by Settlement Class members or TEP to support a defense of res judicata, collateral estoppel, release, or other theory of claim preclusion, issue preclusion or similar defense.
12. Allocation of the Settlement Amount shall proceed as stated in the Settlement Agreement. Specifically, payments shall be made pursuant to the Final Distribution Schedule, which represents the Settlement Class members' proportionate share of the Settlement Amount defined in Paragraph 2 of the Settlement Agreement, less the amounts awarded for attorneys' fees and expenses, as well as incentive award payments, made by separate order. The Court approves the Final Distribution Schedule and the manner in which the Final Distribution Schedule was prepared. Class Counsel shall distribute payments to the Class members consistent with the Final Distribution Schedule, as provided in Paragraph 5 of the Settlement Agreement.
13. The Court has, by separate order, granted Class Counsel's Motion for an Award of Attorneys' Fees, Expenses, and an Incentive Award Payment to Class Representatives (ECF No. 93). The amount of attorneys' fees and expenses awarded to Class Counsel shall be distributed to Class Counsel from the Escrow Account pursuant to the terms of the Escrow Agreement. If this Order Approving Final Settlement is reversed on appeal, Class Counsel shall be jointly obligated to refund to TEP the amount of

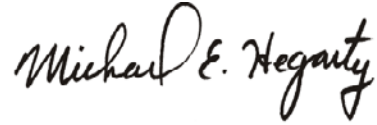
attorneys' fees and expenses paid, with statutory interest, within 15 days of the date of such reversal. If the amount of attorneys' fees or expenses is reduced on appeal, Class Counsel and their law firms shall be jointly obligated to refund to the Escrow Account the difference between the amount paid to them pursuant to this Paragraph 12 and the amount ultimately awarded, with statutory interest, within 30 days of the date of the order or decision reducing the amount of fees or expenses awarded. TEP shall have no liability to the Settlement Class and Subclasses, the Settlement Class members, or Class Counsel to pay any funds in addition to the Settlement Funds paid.

14. The Court reserves jurisdiction over this matter, the Parties, and all counsel herein, without affecting the finality of this Order Approving Final Settlement, including over (a) implementing, administering and enforcing this Settlement and any award or distribution from the Settlement Funds; (b) disposition of the Settlement Funds; and (c) other matters related or ancillary to the foregoing.
15. Nothing set forth in this Order Approving Final Settlement shall be construed to modify or limit the terms of the Agreement, but rather, the Agreement and this Order Approving Final Settlement are to be construed together as one Settlement between the Parties.
16. The Settlement and this Order Approving Final Settlement shall have no res judicata, collateral estoppel, or other preclusive effect as to any claims other than the Released Claims.

SO ORDERED.

DATED this 15th day of March, 2019, in Denver, Colorado.

BY THE COURT:

A handwritten signature in black ink, reading "Michael E. Hegarty". The signature is written in a cursive style with a large, looped initial "M".

Michael E. Hegarty
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
United States Magistrate Judge Michael E. Hegarty

Civil Action No. 17-cv-01990-MEH

ELNA SEFCOVIC, LLC,
WHITE RIVER ROYALTIES, LLC,
JUHAN, LP, and
ROY ROYALTY, INC., individually and on behalf of all others individually situated,

Plaintiffs,

v.

TEP ROCKY MOUNTAIN LLC,

Defendant.

ORDER ON PENDING MOTIONS

In light of the Order Approving Final Settlement, the Renewed Motion to Intervene [filed February 4, 2019; ECF No. 118] is **denied as moot**.

In addition, the Court finds that, pursuant to 28 U.S.C. § 636(c), the “Objection to the Magistrate’s ‘Order’ Striking Election of Non-Consent and Objections to the Magistrate’s ‘Order’ Reversing Order Dismissing Case” filed by the putative intervenors [ECF No. 119] is improperly filed in this case and, thus, is **stricken**. On August 13, 2018, the Plaintiffs and Defendant filed a “Joint Notice of Unanimous Consent to the Jurisdiction of Magistrate Judge, and Joint Motion for Entry of an Order of Reference under 28 U.S.C. § 636(c)(1)” (ECF No. 57) and Chief Judge Marcia S. Krieger issued the Order of Reference the same day (ECF No. 58). Since that time, the case has proceeded pursuant to 28 U.S.C. § 636(c). This Court’s order striking the putative intervenors’ Magistrate Judge Consent Election form (ECF No. 117) was proper, given that the putative

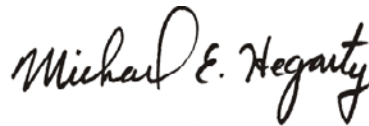
intervenors were not “parties” in this case, eligible to elect whether to consent to the jurisdiction of a magistrate judge. *See* 28 U.S.C. § 636(c)(1) (“Upon the consent of the *parties*, a full-time United States Magistrate Judge ... may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case”) (emphasis added). To the extent that a party has any “objection” to an order of a Magistrate Judge serving under § 636(c), the party may “appeal directly to the appropriate United States court of appeals from the judgment of the magistrate judge in the same manner as an appeal from any other judgment of a district court.” 28 U.S.C. § 636(c)(3).

Accordingly, the putative intervenors’ “[Motion] for Hearing on their Objection to the Magistrate’s ‘Order’ Striking Election of Non-Consent, and Objections to the Magistrate’s ‘Order’ Reversing Order Dismissing Case [filed February 7, 2019; ECF No. 120] and the Joint Motion to Strike Improper Objection to Court’s Orders [filed February 7, 2019; ECF No. 121] are **denied as moot**.

SO ORDERED.

DATED this 15th day of March, 2019, in Denver, Colorado.

BY THE COURT:

A handwritten signature in black ink that reads "Michael E. Hegarty". The signature is written in a cursive, flowing style.

Michael E. Hegarty
United States Magistrate Judge

FILED

**United States Court of Appeals
Tenth Circuit**

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

May 15, 2020

**Christopher M. Wolpert
Clerk of Court**

ELNA SEFCOVIC, LLC, et al.,

Plaintiffs - Appellees,

v.

TEP ROCKY MOUNTAIN, LLC,

Defendant - Appellee.

No. 19-1120
(D.C. No. 1:17-CV-01990-MEH)
(D. Colo.)

CHARLES DEAN GONZALES, et al.,

Objectors - Appellants,

TED L. VAUGHAN, et al.,

Objectors,

IVO LINDAUER, et al.,

Intervenors,

and

THE LAW OFFICES OF GEORGE A.
BARTON, PC,

Movant - Appellee.

ORDER

Before **PHILLIPS**, **McHUGH**, and **MORITZ**, Circuit Judges.

Appellants' petition for rehearing is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, that petition is also denied.

Entered for the Court

A handwritten signature in black ink, appearing to read 'C. Wolpert', with a long horizontal stroke extending to the right.

CHRISTOPHER M. WOLPERT, Clerk

DISTRICT COURT, GARFIELD COUNTY, COLORADO 109 8 th Street, Glenwood Springs, CO 81601 Telephone: (970) 945-5075	DATE FILED: October 17, 2008 CASE NUMBER: 2006CV317 ☐ COURT USE ONLY ☐
Plaintiffs: IVO LINDAUER, SIDNEY and RUTH LINDAUER, and DIAMOND MINERALS, LLC, on behalf of themselves and all others similarly situated, v. Defendant: WILLIAMS PRODUCTION RMT COMPANY	Case Number: 2006cv317 Div.: Ctrm.:
SETTLEMENT AGREEMENT	

This Agreement is made between Plaintiffs Ivo Lindauer, Sidney and Ruth Lindauer, and Diamond Minerals, LLC, on behalf of themselves and all others similarly situated, and Defendant Williams Production RMT Company, effective June 1, 2008.

RECITALS

WHEREAS, on September 20, 2006, Plaintiffs filed suit in Colorado State District Court for Garfield County, Colorado ("Court"), Case No. 2006CV317, alleging that Defendant has underpaid royalty and overriding royalty interest owners on gas production in Garfield County, Colorado, and has not made refunds of excess ad valorem tax withholding for certain years.

WHEREAS, Plaintiffs seek to bring this suit as a class action on behalf of all other royalty and overriding royalty owners who are similarly situated.

WHEREAS, Defendant denies the allegations that it has underpaid royalty and overriding royalty and maintains that it was in the process of determining the ad valorem tax refunds when the lawsuit was filed.

WHEREAS, the parties recognize that they will expend substantial resources in continuing this litigation and agree that settlement of most of the claims raised is in their respective interests.

WHEREAS, the parties have been able to agree to settlement of all but two distinct and severable claims in this litigation, and as to those two claims, have agreed on the manner in which those claims should be resolved by the Court.

WHEREAS, subject to the two Reserved Claims described below, the parties desire by this Agreement to (1) resolve all class claims relating to past calculation of royalty and overriding royalty, (2) establish certain rules to govern future royalty and overriding royalty payments so as to avoid or minimize disputes over royalty payments in the future, and (3) resolve all claims relating to past withholding for ad valorem tax payments, and establish a procedure for refunds of any such excess withholding in the future.

WHEREAS, after substantial discovery relating to the claims and defenses (including information obtained in two prior cases that were tried in the Garfield County district court involving other royalty owners), the parties participated in a mediation conducted by former Colorado Supreme Court Justice William D. Neighbors on April 3, 2007, and thereafter continued to exchange documents, voluminous accounting data, and other relevant information before reaching this Agreement.

NOW, THEREFORE, IT IS HEREBY AGREED by the Settling Parties that, subject to final approval by the Court and the entry of Judgment as to the Settled Claims, the class claims of the Settlement Class Members other than the two Reserved Claims described below be settled and dismissed with prejudice, subject to the following terms and conditions:

SECTION 1

1. DEFINITIONS

As used in the Settlement Agreement and the Exhibits hereto, the following terms have the meanings specified below.

1.1 “Action” means the class action identified in the caption of this Settlement Agreement.

1.2 “Administrative Expenses” means the reasonable expenses incurred in providing notice to the Plaintiff Class, including costs of printing, publishing and mailing the Notice, as well as expenses incurred by Class Counsel in locating members of Plaintiff Class and performing the activities referred to in paragraph 8.10.

1.3 “Class Counsel” means Nathan A. Keever of Dufford, Waldeck, Milburn & Krohn, L.L.P.; G.R. Miller of Miller, Agro & Robbins, LLC; and Thomas D. Kitch, Gregory J. Stucky, and David G. Seely of Fleeson, Gooing, Coulson & Kitch, LLC.

1.4 “Class Representatives” means Ivo Lindauer, Sidney and Ruth Lindauer, and Diamond Minerals, LLC.

1.5 “Class Wells” means the wells located on or with production allocated to the oil and gas leases listed on Exhibit A.

1.6 “Deduction” means any monetary or volumetric deduction taken by Williams when calculating and paying royalty or overriding royalty to any member of the Plaintiff Class since September 2000 for costs attributed to operations between the initial point(s) of measurement of gas produced from the Class Wells to the point of access into a Mainline

Transmission Pipeline.

1.7 “Distribution Check” means a check payable to a Settlement Class Member in the net amount owed to such Settlement Class Member pursuant to this Agreement.

1.8 “Distribution Date” means the date on which the Distribution Check is sent to each Settlement Class Member.

1.9 “Effective Date” means the date on which the Court’s Judgment for the Settled Claims becomes Final and Unappealable as set forth in paragraph 1.12.

1.10 “Fairness Hearing” means the hearing to be held before the Court at which an order in a form substantially similar to Exhibit F hereto shall be presented for approval.

1.11 “Final Distribution Schedule” means a schedule that shows the net amount due each Settlement Class Member under Section 3 of this Settlement Agreement, after prorata reduction for any award of attorney’s fees and expenses and Administrative Expenses.

1.12 “Final and Unappealable Judgment” means the following: If no appeal from the Judgment has been filed, the Judgment becomes “Final and Unappealable” upon the expiration of the time under Colorado Appellate Rule 4(a) for filing a notice of appeal from the Judgment. If a timely appeal from the Judgment is filed and either the Judgment is affirmed or the appeal is dismissed, the Judgment becomes “Final and Unappealable” upon the earlier of (i) the filing of no petition for writ of certiorari after such affirmance or dismissal within the time for filing such a petition, or (ii) expiration of the time for rehearing of the denial or dismissal of such a petition after such affirmance or dismissal, or (iii) expiration of the time for seeking rehearing of the Supreme Court’s affirmance of such affirmance or dismissal.

1.13 “Judgment” means the order in a form substantially similar to Exhibit F hereto.

1.14 “Leasehold Estates” means those leasehold interests that Williams has owned or operated in Garfield County, Colorado, at any time during the period from September 2000 through May 2008. Those leases are listed under the categories set forth on Exhibit A.

1.15 “Mainline Transmission Pipeline” means the transmission pipelines indicated below, and transmission pipelines located downstream of those pipelines. The parties agree that the following pipelines in the Piceance Basin qualify as Mainline Transmission Pipelines: CIG, NWPL, Questar, TransColorado, Wyoming Interstate Gas, PSCO as specified below (including the interests in that pipeline owned by Public Service Company and Rocky Mountain Natural Gas), and Rockies Express. The parties also agree that gathering pipeline systems in the Piceance Basin, such as Williams’ Grand Valley Gathering System and the gathering system operated by Canyon Gas Resources and/or Energy Transfers, do not qualify as a Mainline Transmission Pipeline. The parties further agree that to the extent the PSCO pipeline is connected directly to Williams’ wells and operates like the Grand Valley Gathering System, then that portion of the PSCO pipeline does not qualify as a Mainline Transmission Pipeline. (The portion of the PSCO pipeline into which the Grand Valley Gathering System delivers gas does qualify as a Mainline Transmission Pipeline.) With respect to pipeline systems not identified in this paragraph (or not yet constructed), the parties agree that a pipeline that collects gas directly from many wells and then delivers the gas to a common collection point in the field or brings gas to a Plant is not a Mainline Transmission Pipeline; however, a pipeline that transports the gas beyond common collection points in the field towards end use or downstream markets for the gas without processing or treatment of the gas after entry into that pipeline (and after any compression required to bring the gas to the equivalent levels of pressure maintained on the above listed

transmission pipelines) is a Mainline Transmission Pipeline, regardless of whether the pipeline is regulated by the Federal Energy Regulatory Commission.

1.16 “Natural Gas Liquids” or “NGLs” means liquid hydrocarbons recovered or obtained by or on behalf of Williams from the gas after the gas is measured at or near the well. It includes liquid hydrocarbons recovered from the Grand Valley Gathering System and the Plants.

1.17 “Net Settlement Fund” means the Settlement Amount less all amounts approved by the Court for payment of (i) attorneys’ fees and expenses to Class Counsel, and (ii) Administrative Expenses.

1.18 “Notice” means the notice as approved by the Court at the Preliminary Approval Hearing pursuant to C.R.C.P. 23 (c)(2). A proposed Notice is attached as Exhibit B.

1.19 “Opt-Out Claimant” means a member of the Plaintiff Class who submits a timely and valid request for exclusion in accordance with the Preliminary Order, and who does not revoke that request for exclusion in writing at least seven (7) days before the Fairness Hearing.

1.20 “Plaintiff Class” means all royalty owners, including overriding royalty interest owners, who have been entitled to receive royalty payments under oil and gas leases located in Garfield County, Colorado, owned in whole or in part, or operated by, Williams at any time during the period from September 20, 2000, through May 31, 2008. Excluded from the “Plaintiff Class” are the following:

- (a) The United States of America insofar as its mineral interests are managed by the Minerals Management Service;
- (b) Indian Tribes and their allottees;

(c) Parties to prior settlement agreements with Williams relating to payment of royalty (Puckett Land Company);

(d) Royalty owners in oil and gas leases that provide a specific formula for payment of royalty tied to an index price, but only to the extent they receive royalty under such leases (the oil and gas lease dated July 20, 2005 between Mary Anne Bosely, *et al.* as “Lessor” and Williams as “Lessee,” and the oil and gas lease dated May 9, 2006, between Jonathon H. Wellendorf and Diana L. Wellendorf as “Lessor” and Williams as “Lessee”);

(e) Parties who have previously litigated royalty payment issues with Williams, for the time period covered by the judgments entered in those cases (Joan L. Savage and William F. Clough);

(f) the Meriam Zela Grynberg Trust, the Rachel Susan Grynberg Trust, and the Stephen Mark Grynberg Trust, which are plaintiffs asserting royalty payment claims in *Grynberg v. Williams*, Civil Action No. 02-CV-5167, pending in the Denver District Court;

(g) EnCana Oil & Gas (USA) Inc., ExxonMobil, and Chevron USA (but these royalty owners will be given an opportunity to opt in to the Plaintiff Class);

(h) Williams Production RMT Company and Barrett Resources Corporation and any of their affiliates; and

(i) The legal representatives, heirs, successors, or assigns of any excluded party.

1.21 “Plants” means Williams’ existing and future plants in the Piceance Basin which treat or process gas from the Class Wells.

1.22 “Preliminary Approval Hearing” means the hearing to be held before the Court at which an Order in a form substantially similar to Exhibit E hereto shall be presented for approval.

1.23 “Preliminary Distribution Schedule” means a schedule created by Williams that shows the amount due each member of Plaintiff Class under Section 3 of this Agreement, without (i) deletion of Opt-Out Claimants, and (ii) prorata reduction for any award of attorney’s fees and expenses and Administration Expenses. The Preliminary Distribution Schedule shall also identify the category of the Royalty Instrument(s) associated with each class member as well as the name and most current identification number assigned to each such member by Williams in the normal course of business.

1.24 “Preliminary Order” means the order in a form substantially similar to Exhibit E hereto.

1.25 “Released Parties” means Williams and all other working interest owners in the Class Wells for whom Williams has paid royalty or overriding royalty and for whom Williams makes Settlement Payments to members of Plaintiff Class, as well as the past and present employees, officers, directors, representatives, agents, attorneys, parents, affiliates, subsidiaries, stockholders, predecessors, successors and assigns of Williams and all such working interest owners.

1.26 “Reserved Claims” means the two claims not resolved by this Settlement Agreement and reserved for resolution by the Court, as more particularly described in Section 7 of this Agreement.

1.27 “Royalty Instruments” means all oil and gas leases creating royalty interests and all other contracts or instruments creating overriding royalty interests, covering lands in Garfield

County, Colorado, under which Williams is or has been a lessee during the period from September, 2000 through May 31, 2008, and in which a Settlement Class Member owns or has previously owned an interest.

1.28 “Royalty Instrument Categorization” means the categorization of Royalty Instruments set forth in Exhibit A.

1.29 “Settled Claims” means any and all claims, demands, rights, liabilities, and causes of action of every nature and description whatsoever, known or unknown, suspected or unsuspected, asserted or unasserted, that might have been asserted prior hereto or in the future, directly, representatively, derivatively, or otherwise by the members of the Plaintiff Class based on any facts, circumstances, transactions, events, occurrences, statements, acts, omissions, failures to act, conflicts of interest, tortious acts, intentional acts, negligent acts, grossly negligent acts, acts of unjust enrichment, breaches of express provisions, breaches of implied covenants or any other duties arising under the leases or overriding royalty instruments, or breach of other statutory or common law duties which occurred at any time, which were or could have been properly alleged under Colorado Rule of Civil Procedure 23 by the Class Representatives on behalf of the Plaintiff Class arising from payment of royalty or overriding royalty by Williams, or the withholding of ad valorem taxes, except for the two Reserved Claims.

1.30 “Settlement Amount” means the total amount of Settlement Payments, prior to any reduction for amounts awarded by the Court for Class Counsel’s attorneys’ fees, litigation costs, expenses, and Administrative Expenses.

1.31 “Settlement Class Members” means all members of the Plaintiff Class except Opt-Out Claimants.

1.32 “Settlement Payments” means those payments described in Section 3 of this Settlement Agreement.

1.33 “Settling Parties” means Class Representatives and Williams.

1.34 “Statutory Interest” means the rate of 8%, compounded annually, pursuant to C.R.S. § 5-12-102.

1.35 “Transition Date” means the last day of Williams’ accounting month in which the Court executes Exhibit E.

1.36 “Weighted Average Sales Price” or “WASP” means all proceeds Williams and any affiliate receives for the applicable production month from third parties in arms-length transactions for all products, including residue gas, unprocessed gas, and NGL’s, allocated to each applicable grouping of Class Wells whose production Williams has appropriately assigned to an accounting sales pool, divided by the total volume related to each such sales pool (on an Mmbtu basis in the case of residue gas and unprocessed gas, and gallons or barrels in the case of NGLs). There is or will be a separate WASP for residue gas, unprocessed gas, and NGLs. With respect to any products that Williams has used or stored, Williams will calculate and pay royalty based on the WASP received in the month of production for the same types of products, less applicable deductions permitted under Section 4.

1.37 “Williams” means Williams Production RMT Company, together with its affiliated persons and entities, and includes Barrett Resources Corporation, which merged into Williams in 2001.

SECTION 2

2. PAST AND PRESENT ROYALTY PAYMENT METHODOLOGIES

Subject to any mistakes or miscalculations that Williams has made in its accounting (which Williams will be correcting under Section 3 of this Agreement), Williams makes the following representations of fact:

2.1 From September 2000 until merging with Williams in August 2001, Barrett Resources calculated royalties by starting with an arm's-length sales price and then deducting all expenses incurred between the wellhead and the point of sale, including but not limited to Deductions, which included a fee for utilizing its wholly-owned Grand Valley Gathering System (GVGS). During this period, the GVGS fee was \$0.22 per mcf plus a 2.5% fuel charge.

2.2 Effective with September 2001 production, Williams stopped taking Deductions. For production from September 2001 through December 2005, Williams paid royalties by calculating a Weighted Average Sales Price (or "WASP") for the residue gas and unprocessed gas. Williams applied the WASP to the volumes of gas measured at each wellhead and only deducted third-party fees which it actually incurred to move the gas on one or more Mainline Transmission Pipelines to the point of sale or consumption.

2.3 From January 2006 production until the Effective Date, Williams has included NGLs when calculating royalties on gas that is processed. Williams allocates NGLs back to the wells based on gas analyses performed for each well, so that each well producing processed gas shares proportionately in the NGL recovery. Williams then calculates the residue gas volume for each well based on the total volume of gas measured at the wellhead less the Mmbtu's removed as NGLs. Williams calculates royalty on the residue gas by applying the WASP for residue gas and

deducting only transportation costs incurred to move the gas on Mainline Transmission Pipelines. Williams calculates royalty on the NGLs based on the applicable WASP for NGLs, less any transportation costs incurred beyond the Plants.

2.4 From January 2006 production to the Effective Date, Williams has not deducted processing costs, including any volumetric reductions for Plant fuel, which it has incurred to extract NGLs; before this lawsuit was filed, however, it had been engaged in the planning necessary for it to begin deducting such costs from its royalty payments.

SECTION 3

3. SETTLEMENT PAYMENTS FOR PAST PRODUCTION

3.1 With respect to all Royalty Instruments except those in categories 1, 2, 3 and 13 on Exhibit A, Williams will pay Settlement Class Members for all Deductions taken in calculating royalty from the September 2000 accounting month to the Transition Date. Williams will compute and pay Statutory Interest on the principal amount of each Deduction, from the date upon which it was taken until the Transition Date. After the Transition Date, Williams will compute and pay interest at the rate of 4% simple interest until the Distribution Date.

3.2 With respect to all Royalty Instruments for the September 2000 accounting month through the December 2005 production month, Williams will pay Settlement Class Members 75% of the additional value of NGLs recovered downstream of the initial measurement point at or near each Class Well, for each such well, as compared to the original payment of royalty on those Mmbtus based on a residue gas price. Williams will compute and pay royalty on the additional value of the NGLs as follows. Step 1: For each month of the period covered by this paragraph 3.2, Williams will first calculate the Mmbtus of wellhead production that were recovered and sold

as NGLs. Step 2: Williams will then compare the proceeds received from the sale of NGLs for that month with the value used to pay royalty on the Mmbtus recovered as NGLs (*i.e.*, the Mmbtus recovered as NGLs times the residue gas price). Step 3: Williams will multiply the difference between NGL value and residue gas value computed in Step 2 by 75%. Step 4: Williams will then divide the resulting number in Step 3 by total wellhead Mmbtus for that month (thus obtaining the value per wellhead Mmbtu for calculation of additional royalty). Step 5: Williams will multiply the resulting numbers in Step 4 by the wellhead Mmbtus for that month for each well. Step 6: Finally, for each well, Williams will multiply the answer from Step 5 times a Settlement Class Member's royalty percentage interest in wellhead Mmbtus for that month (which will yield the principal amount of additional royalty to be paid each month). In making calculations of additional royalty under this paragraph, Williams will not subtract any costs incurred at the Plants. In addition, for any months in which the original royalty value of the Mmbtus recovered and sold as NGLs is higher than the value calculated under this paragraph, Williams will not make any negative adjustments or otherwise reduce the total amount of additional royalty to be paid under this paragraph. Williams will pay Statutory Interest on the principal amount calculated each month under this paragraph from the date such amount would have been due until the Transition Date. After the Transition Date, interest will accrue at the rate of 4% simple interest until the Distribution Date.

3.3 With respect to all Royalty Instruments, Williams will reimburse all Settlement Class Members any amounts withheld from royalty payments for ad valorem taxes for the years 2000, 2001, and 2004, in excess of the taxes actually paid by Williams on behalf of each such royalty owner, together with Statutory Interest, beginning the month after the tax payment was due and continuing through the date of disbursement. (During the pendency of this litigation,

Williams has repeatedly expressed its intent to repay any excess ad valorem withholdings to its royalty owners, whether or not a settlement agreement was reached or approved and whether or not a particular royalty owner was covered by such agreement.)

3.4 With respect to all Royalty Instruments, Williams will also correct any errors discovered in the accounting for the period from the September 2000 accounting month to the Transition Date, including its prior use of index pricing to establish royalty value, to the extent those errors have not previously been corrected. Williams will pay Statutory Interest on any amounts found to be due, calculated from the date of the error until the Transition Date. After the Transition Date, interest will accrue at the rate of 4% simple interest until the Distribution Date.

3.5 With respect to any Royalty Instruments in category 12 on Exhibit A, Williams will refund any deductions (including transportation on Mainline Transmission Pipelines) taken in calculating royalty for the period from the September 2000 accounting month to the Transition Date. Williams will pay Statutory Interest on any amounts found to be due, calculated from the date the deduction was taken until the Transition Date. After the Transition Date, interest will accrue at the rate of 4% simple interest until the Distribution Date.

3.6 The amounts calculated above will be proportionately reduced by an amount awarded by the Court for Class Counsel's attorneys' fees, litigation costs, and Administrative Expenses.

3.7 The provisions in paragraph 3.1 relating to category 2 and 3 leases are not intended to represent an agreement by Class Representatives that Deductions are allowed by those leases. It appears that the Deductions in question were taken before any leases in those categories were issued by any member of the Plaintiff Class and therefore resolution of whether category 2 and 3 leases allow Deductions is not necessary for determination of settlement payments for past

production.

SECTION 4

4. FUTURE ROYALTY PAYMENTS

With respect to monthly royalty payments made after the Effective Date, Williams agrees to pay Settlement Class Members in the following manner:

4.1 With respect to all Royalty Instruments except those in categories 1, 2, 3, 12 and 13 on Exhibit A, Williams will not take any Deductions (except for processing deductions allowed by paragraph 4.4), regardless of (a) whether the costs relate to activities on or off the Leasehold Estates (except when the applicable Royalty Instrument expressly provides that no royalty is due on fuel consumed by Williams for lease operations on the Leasehold Estate), (b) what entity provides such services or how it is paid, and (c) where or how title to the gas is transferred.

4.2 With respect to Royalty Instruments in categories 2 and 3 on Exhibit A, nothing herein prohibits Williams from taking any Deductions it claims it is entitled to take under the terms of such Royalty Instruments, and nothing herein prohibits any Settlement Class Member from challenging such deductions.

4.3 With respect to Royalty Instruments in category 12 on Exhibit A, Williams will not take any deductions (including third party transportation) in calculating royalty, except to the extent it fractionates NGLs into component products, in which case paragraph 4.6 will apply.

4.4 With respect to all Royalty Instruments, Williams will account for the value of NGLs extracted from the gas (using the methodology described in paragraph 2.3). With respect

to all Royalty Instruments except those in categories 8, 9, 11, 12 and 13 on Exhibit A, in accounting for the value of NGLs extracted from the gas, Williams shall be permitted to deduct 50% of the amount allowed as a processing deduction under the regulations of the Mineral Management Service (the processing deduction will be limited to those costs incurred within a processing plant and will not exceed 1/3 of the value of the NGLs, since the MMS limit on processing costs is 2/3 of the value of the NGLs), but under no circumstances shall Williams be entitled to take any other Deduction when making such calculation. If Williams transports NGLs to sales points beyond the tailgate of a Plant, Williams can deduct such transportation costs when calculating royalties thereon. If Williams fractionates NGLs and sells the component products, royalty on the fractionated products will be determined by paragraph 4.6.

With respect to Royalty Instruments in categories 8, 9, and 11 on Exhibit A, the Plaintiff Class reserves the right to argue that such Royalty Instruments prohibit any or all deductions described in the first paragraph of this Section 4.4 when litigating the Reserved Claim described in paragraph 7.2.

With respect to Royalty Instruments in category 13 on Exhibit A, Williams will be permitted to deduct the same processing costs as allowed under federal leases.

Nothing herein precludes any royalty owner(s) from contending in any subsequent litigation that, when creating a second marketable product in the form of NGLs or subsequent fractionated products, Williams has failed to enhance (or increase proportionally) the total royalties received by such royalty owner(s).

4.5 Subject to the Reserved Claims, under all Royalty Instruments except those in categories 8, 9, 11 and 12 on Exhibit A, Williams shall be entitled to deduct a proportionate amount of any costs it actually incurs to transport gas in a Mainline Transmission Pipeline to

downstream sales points, including demand or reservation charges, commodity charges, and fuel charges; provided, however, that no such credit shall be permitted unless the Settlement Class Members also received the benefit of the price actually paid for such gas at such location.

Williams will not, however, deduct unused demand or reservation charges in calculating royalty, but shall be permitted to contend that such charges should be considered in determining whether Williams has “enhanced” the value of the gas, as described in Section 7.

4.6 If Williams transports NGLs to Conway or Bushton, Kansas, or other locations and Williams then fractionates such NGLs and sells the fractionated components, Williams will pay royalty on the fractionated components (ethane, propane, normal butane, iso-butane and natural gasoline) attributable to a well in which a Settlement Class Member has an interest, based on the published Mt. Belvieu, Texas “non-TET” monthly average Oil Price Information Service (“OPIS”) prices in effect for the then current production month, less transportation tariffs and fractionation fees (and the cost of extracting NGLs as allowed under paragraph 4.4). If the Mt. Belvieu, Texas “non-TET” OPIS prices cease to be published, Williams will pay royalty on fractionated products using a replacement price as published in OPIS. Upon request, Williams will provide the applicable OPIS prices to any Settlement Class Member

4.7 As provided by Colorado law, Williams will withhold from royalty payments amounts to cover the royalty or overriding royalty owner’s estimated share of severance, ad valorem, and conservation taxes. Williams will withhold for ad valorem taxes based on the latest tax rate from Garfield County multiplied by 87.5%. Each quarter, Williams will review the withholding rate to determine if it is still an accurate estimate and make adjustments accordingly. With respect to withholding for ad valorem taxes, Williams will reimburse royalty owners for any excess withholding within 90 days after receiving the bill for ad valorem taxes from Garfield

County. If Williams does not make the refunds by that date, it will pay Statutory Interest until the refunds are made.

4.8 Williams and the Settlement Class Members shall be bound prospectively by the royalty methodology set forth in this Section 4 of this Settlement Agreement.

SECTION 5

5. REPRESENTATIONS CONCERNING ROYALTY PAYMENTS

5.1 Taking into account the Settlement Payments in Section 4 to Settlement Class Members, Williams represents that, for the period beginning with the September 2000 accounting month:

(a) it has properly accounted for all volumes of gas extracted, sold or used from the Class Wells on the basis of Mmbtu's measured at the wellhead, and will do so in the future, on the basis on Mmbtus at the initial measurement point at or near each Class Well;

(b) except for those Royalty Instruments in categories 1, 2, 3 and 13 on Exhibit A and except for the processing deduction described in paragraph 4.4, Williams has not taken and will not take any Deductions;

(c) Williams has used and will use in the future the Weighted Average Sales Price to calculate royalty payments, except as provided in paragraph 4.6 relating to future sales of fractionated products.

5.2 Settlement Class Members are entitled to rely on the representations in this Section, as well as the description of past and future royalty methodologies in Sections 2 and 4.

The Court has continuing jurisdiction to enforce this paragraph.

SECTION 6

6. RETROACTIVE ADJUSTMENTS

6.1 Except with respect to the Reserved Claims, this Agreement is intended to settle all class claims (the Settled Claims) for the period ending with the Transition Date, and Williams shall not make any retroactive debit adjustments with respect to the Settled Claims for production to the Transition Date.

6.2 Williams may make appropriate retroactive adjustments in the ordinary course of business related to matters other than the Settled Claims, subject to the right of the affected royalty owner(s) to object thereto.

SECTION 7

7. CLAIMS NOT RESOLVED BY THIS SETTLEMENT AGREEMENT

7.1 This Settlement Agreement resolves all claims for all Royalty Instruments held by the Plaintiff Class, except one distinct claim that relates only to Royalty Instruments in categories 8, 9 and 11 on Exhibit A, and one distinct claim that relates to Royalty Instruments in categories 5, 6 and 7 on Exhibit A. These two unresolved claims are referred to as the Reserved Claims.

7.2 The first Reserved Claim is whether Williams is entitled to deduct a pro-share of any expenses incurred beyond the tailgates of the Plants when calculating royalties under the Royalty Instruments in categories 8, 9 and 11 on Exhibit A. The Plaintiff Class contends that these instruments expressly prohibit the deduction of such expenses, and Williams contends that those royalty instruments are subject to the same rules as silent leases under *Rogers v. Westerman*

Farm Co., 29 P.3d 887 (Colo. 2001). (The Plaintiff Class also specifically reserves the right to argue that the Royalty Instruments in Categories 8, 9 and 11 on Exhibit A prohibit Williams from deducting any processing costs when paying royalties on NGLs.) If the Plaintiff Class does not prevail on this Reserved Claim, these Royalty Instruments will be subject to the outcome of the second Reserved Claim.

7.3 The second Reserved Claim is whether Williams can establish that it has “enhanced” or proportionately increased the value of (and royalties paid on) gas produced prior to the Transition Date under Royalty Instruments in categories 5, 6 and 7 on Exhibit A by transporting that gas on a Mainline Transmission Pipeline to the points of sale (and deducting a pro-rata share of those transportation costs in calculating royalty).

When this claim is being adjudicated, the Plaintiff Class stipulates that it will claim that (1) the gas is marketable and has reached the commercial marketplace when it arrives at one or more locations used by the publication Inside FERC to establish the CIG-Rocky Mountain, the Northwest Pipeline-Rocky Mountain, and the Questar Pipeline-Rocky Mountain Index Prices; (2) the volume weighted average of these three Indexes is the best available evidence for determining whether Williams has met the test for determining if it has enhanced the royalties paid to the Plaintiff Class by incurring expenses to transport the gas to points of sale beyond these locations; and (3) for gas not entering one of those three pipelines (such as gas being transported on the TransColorado or PSCO pipelines), they will not claim that Williams must transport the gas to sales locations in New Mexico or Wyoming in order to render the gas marketable (and at a commercial marketplace) under Colorado law.

While this claim is being adjudicated, Williams stipulates that it will claim that (1) the gas is first marketable and at the location of the commercial marketplace when it reaches one of the

outlets of the Plants or the entry to a Mainline Transmission Pipeline, and (2) that the value to be used to determine whether the “enhancement” test has been met are the prices received for the gas at those locations.

The second Reserved Claim will include two principal sub-issues: the location of the first commercial marketplace (for purposes of determining enhancement, not whether the gas is marketable under *Rogers v. Westerman Farm*); and the period used to determine whether enhancement has been achieved.

7.4 Nothing contained in this section shall bar or otherwise prejudice Williams’ right to contend that an “enhancement” test does not exist under Colorado law or that the test is different from the one that the Plaintiff Class contends exists. In addition, notwithstanding Williams’ agreement in paragraph 4.5 to pay royalty in the future without deducting unused demand or reservation charges on Mainline Transmission Pipelines, Williams will be permitted to contend that such unused demand or reservation charges should be considered by the Court when determining whether Williams has satisfied any enhancement test that may apply.

7.5 In litigation of the Reserved Claims, evidence relating to the Settled Claims will be inadmissible and the Plaintiff Class will not seek to introduce evidence, testimony or argument relating to those claims.

7.6 The Reserved Claims are strictly limited to claims for breach of contract and are confined to the time period from and after the September 2000 accounting month. The Plaintiff Class will release all other claims, including claims for moratory interest on the Reserved Claims. Williams agrees that, if the Plaintiff Class obtains judgment on one or both of the Reserved Claims for damages commencing with the September 2000 accounting month, it will pay

Statutory Interest on the amount awarded.

7.7 The Reserved Claims will be tried to or otherwise resolved by the Court, without a jury.

7.8 Except as set forth in this Section 7, nothing contained in this Settlement Agreement shall alter whatever obligation Williams may have under the “enhancement” test. Nothing contained herein precludes any member of the Plaintiff Class from contending that Williams has failed to meet the “enhancement test” with reference to gas produced after the Transition Date.

7.9 Williams agrees to support certification of the plaintiff class(es) under C.R.C.P. 23 with respect to the Reserved Claims.

SECTION 8

8. IMPLEMENTATION OF THE SETTLEMENT AGREEMENT AND DISTRIBUTION OF THE SETTLEMENT FUND

8.1 Within forty-five (45) days of the execution of this Agreement, Williams will supplement accounting information previously provided to Class Counsel to show the paid history royalty accounting information for the Plaintiff Class from and after the September 2000 accounting month. Class Counsel may use that information only for purposes of this litigation and shall otherwise preserve the confidentiality of any such information designated as confidential.

8.2 As soon as practicable after this Settlement Agreement has been executed, counsel for the parties shall jointly submit to the Court the Motion substantially in the form as Exhibit C.

8.3 At the Preliminary Approval Hearing, the Settling Parties shall jointly urge the

Court to enter an Order substantially similar in form to Exhibit D.

8.4 At least forty-five (45) days before the Fairness Hearing, Williams will provide Class Counsel with a copy of the Preliminary Distribution Schedule for review and shall file it with the Court. Within fifteen (15) days after the Fairness Hearing, Williams will provide Class Counsel and the Court with a copy of the Final Distribution Schedule.

8.5 At the Fairness Hearing, counsel for the parties shall jointly move the Court for entry of the Judgment substantially in the form attached as Exhibit E. Williams will also present the Preliminary Distribution Schedule for the Court's approval.

8.6 Within fifteen (15) days from the Effective Date, Williams shall (1) distribute the Net Settlement Fund, in accordance with the Final Distribution Schedule in the form as approved by the Court at the Fairness Hearing, by mailing the Distribution Checks to Settlement Class Members at the most current addresses then reasonably available, with each Distribution Check accompanied by a transmittal letter in the form attached as Exhibit G; and (2) shall pay to Class Counsel the attorneys' fees and costs and Administrative Expenses assessed by the Court.

8.7 Within ten (10) business days after the Distribution Date, Williams will file an affidavit certifying that the checks were sent to the Settlement Class Members in the amounts set forth on the Final Distribution Schedule.

8.8 One hundred (100) days after the Distribution Date, Williams will file an accounting of the Distribution Checks, showing (1) the Distribution Checks that have been cashed; (2) the Distribution Checks that have been returned to Williams; (3) the Distribution Checks that have not been returned but remain uncashed; and (4) all available information relating to the Distribution Checks described in (2) and (3).

8.9 Thereafter, the Court shall enter any further orders it deems proper in connection with the disposition of such remaining portion of the Net Settlement Fund, including, but not limited to, directing Class Counsel to take reasonable steps to distribute such remaining portion of the Net Settlement Fund to the proper Settlement Class Members or their successors or assigns.

8.10 Any portion of the Net Settlement Fund that remains after reasonable efforts have been exhausted to distribute the Net Settlement Fund to Settlement Class Members or their successors or assigns shall become the property of Williams.

8.11 If any Settlement Class Member receives a Distribution Check to which such Settlement Class Member is not entitled, that Settlement Class Member shall refund the amount of such Distribution Check to the Net Settlement Fund.

8.12 No Settlement Class Member shall have any claim against the Settling Parties or their respective counsel based on distributions made in accordance with the Final Distribution Schedule approved by the Court at the Fairness Hearing.

SECTION 9

9. UNDERTAKINGS OF THE SETTLING PARTIES

9.1 The Settling Parties agree to deal in good faith in implementing this Settlement Agreement and agree to cooperate and exercise their best efforts to the extent necessary to effectuate and implement all of its terms and conditions, as quickly as possible, by taking all actions contemplated by this Settlement Agreement, including its Exhibits.

9.2 The Class Representatives agree to participate as Settlement Class Members and agree to not request exclusion.

9.3 The Settling Parties agree to affirmatively present their support for final judicial approval of this Settlement Agreement.

9.4 The Settling Parties agree not to encourage in any way any member of the Plaintiff Class to become an Opt-Out Claimant or discourage any member of Plaintiff Class or any party with the right to opt in from participating in this settlement as a Settlement Class Member.

9.5 The Settling Parties agree to waive any right to appeal or collaterally attack the Judgment entered pursuant to this Settlement Agreement.

9.6 In proceedings before the Court and before any appellate courts, if necessary, the Settling Parties agree affirmatively to present support for certification of a Plaintiff Class (including, as appropriate, subclasses) and for final judicial approval of this Settlement Agreement.

SECTION 10

10. ATTORNEYS' FEES AND EXPENSES

10.1 Class Counsel shall apply to the Court for (i) reimbursement of their reasonable litigation expenses; (ii) reimbursement of Administrative Expenses; and (iii) an award of attorneys' fees of 25% of the Settlement Amount after reduction of (i) and (ii) above. Such award and reimbursements shall be paid out of the Settlement Amount as provided herein.

10.2 Williams will take no position regarding the award of fees and reimbursement of expenses.

10.3 This Settlement Agreement is not contingent upon the Court's approval of Class Counsel's application for attorneys' fees and expenses.

SECTION 11

11. TAXES

Class Representatives and Settlement Class Members shall be responsible for filing any tax returns and for paying any taxes that may be due on their proportionate share of the Net Settlement Fund. Williams shall have no liability or responsibility for paying any taxes with respect to amounts paid under this Settlement Agreement.

SECTION 12

12. EXCESSIVE OPT-OUT CLAIMANTS

If greater than twenty percent (20%) of the members of the Plaintiff Class request to exclude themselves pursuant to the Notice, Williams shall have the right to terminate the Settlement Agreement, in which event the provisions of Section 14 of this Settlement Agreement shall govern.

SECTION 13

13. CONDITIONS OF SETTLEMENT

13.1 This Agreement shall be effective only on the condition that all of the following events occur:

- (a) The Court enters the Preliminary Order, substantially in the form of Exhibit E;
- (b) The Court enters the Judgment, substantially in the form of Exhibit F, and
- (c) There is an Effective Date.

13.2 Upon the occurrence of all of the events referenced in Section 13.1 above, all Settlement Class Members shall be deemed to have: (a) dismissed the Action against Williams with prejudice as to the Settled Claims, and (b) acknowledged full and complete satisfaction of, and fully, finally and forever settled, released and discharged the Settled Claims against Released Parties.

SECTION 14

14. NON-OCCURRENCE OF CONDITIONS OF SETTLEMENT

14.1 In the event that the conditions of settlement, as provided in Section 13.1 above, are not satisfied:

- (a) This Settlement Agreement shall terminate;
- (b) Any Judgment entered pursuant to this Settlement Agreement shall be vacated;
- (c) The litigation commenced by Plaintiffs' Complaint shall proceed as if this Settlement Agreement had never been executed;
- (d) The certification of the Settlement Class (whether conditional or final) shall be vacated and the Action shall proceed as though the Settlement Class had never been certified; and
- (e) This Settlement Agreement may not be used in this Action or otherwise for any purpose, including whether the case should properly be certified as a class action pursuant to C.R.C.P. 23.

SECTION 15

15. NO ADMISSION OF LIABILITY

The settlement embodied in this Settlement Agreement is made to compromise and settle the Action without further litigation. It is not, and it should not be interpreted as, an admission of any liability or wrongdoing by Williams, nor should it be construed as an admission of any strength or weakness in the claims against Williams. Williams denies any wrongdoing or liability.

SECTION 16

16. MISCELLANEOUS

16.1 Each of the Settling Parties has relied upon its own counsel's advice in entering into this Settlement Agreement and not upon the advice of any other party's counsel.

16.2 The Settling Parties and their counsel have mutually contributed to the preparation of this Settlement Agreement and the Exhibits thereto. Consequently, no provision of this Agreement or the Exhibits shall be construed against any party because that party or its counsel drafted the provision.

16.3 All of the Exhibits to this Settlement Agreement are material and integral parts hereof, and they are fully incorporated herein by reference. The Exhibits to this Settlement Agreement are as follows:

Exhibit A – List of Class Royalty Instruments and Categorization Thereof;

Exhibit B – Notice of Class Action and Proposed Settlement;

Exhibit C – Joint Motion 1) to Enter an Order Certifying a Plaintiff Class, Preliminarily Approving Settlement Agreement, Approving Form of Notice, and Scheduling Fairness Hearing, and 2) to Establish a Hearing Date for the Joint Motion;

Exhibit D – Order Establishing Hearing Date;

Exhibit E – Order Certifying a Plaintiff Class, Preliminarily Approving Settlement Agreement, Approving Form of Notice, and Scheduling Fairness Hearing;

Exhibit F – Judgment; and,

Exhibit G – Transmittal Notice to Accompany Distribution Checks.

16.4 The placement of any particular lease in the lease categories on Exhibit A, or the treatment of such categories in this Settlement Agreement, shall not be used as a basis for advancing any position with respect to the resolution of the Reserved Claim described in paragraph 7.2; provided, however, that in the proceedings on the Reserved Claim, the parties can make arguments about different lease language in the categories on Exhibit A.

16.5 If Williams voluntarily makes any payment to EnCana Oil & Gas (USA) Inc., ExxonMobil, or Chevron U.S.A. in connection with Deductions from the September 2000 accounting month to the Transition Date, such payment will not exceed any payment those companies would have received under this Agreement.

16.6 Overriding royalty instruments will be initially treated as falling within category 5 on Exhibit A, except for overriding royalty instruments placed in a different category on the attached Exhibit A. Category 5 includes leases and other royalty instruments that are silent on allocation of costs under *Rogers v. Westerman Farm Co.*, 29 P.3d 887 (Colo. 2001). However, the Notice of Class Action and Proposed Settlement (attached as Exhibit B) will give Plaintiff

Class members who believe their overriding royalty instrument expressly addresses cost deductions the opportunity to provide a copy of their instrument to Class Counsel for review and determination as to the appropriate category under Exhibit A. If the Settling Parties cannot agree on the appropriate category for an overriding royalty (including any new categories that may be necessary), they will submit the issue to the Court for determination.

16.7 This Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of the Settling Parties or their successors in interest.

16.8 This Settlement Agreement may be executed in multiple counterparts.

16.9 This Settlement Agreement and the Exhibits hereto constitute the entire agreement among the Settling Parties.

16.10 The provisions of this Settlement Agreement shall, where possible, be interpreted in a manner to sustain their legality and enforceability.

16.11 A waiver by one party to this Agreement of the breach of any provision shall not constitute a waiver of any other prior or subsequent breach of the same or any other provision.

16.12 This Settlement Agreement (including the Exhibits hereto) and all documents relating hereto shall be construed and interpreted under the laws of the State of Colorado.

16.13 This Settlement Agreement and the Exhibits thereto shall be binding upon and inure to the benefit of, successors and assigns of the parties, including Settlement Class Members.

The Settling Parties hereby approve this Settlement Agreement on the dates indicated below.

PLAINTIFFS AND CLASS
REPRESENTATIVES

Date: 10/8/08

By: Ivo E. Lindauer
Ivo Lindauer

Date: 10/10/08

By: Sidney Lindauer
Sidney Lindauer

Date: 10-10-08

By: Ruth Lindauer
Ruth Lindauer

Date: 10/10/08

By: William R. Lindauer
Diamond Minerals, LLC

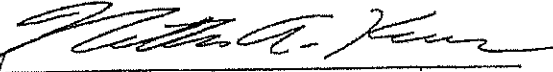
WILLIAMS PRODUCTION RMT
COMPANY

Date: 10/7/08

By: Jeff Hill

APPROVED:

DUFFORD, WALDECK, MILBURN & KROHN, LLP

By 
Nathan A. Keever

G.R. MILLER, P.C.
FLEESON, GOOING, COULSON & KITCH, LLC
Thomas D. Kitch
Gregory J. Stucky
David G. Seely

CLASS COUNSEL

HOLLAND & HART LLP

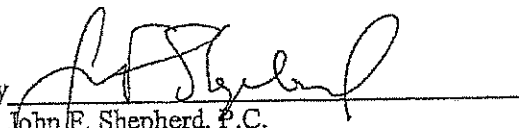
By 
John F. Shepherd, P.C.
ATTORNEYS FOR DEFENDANT

Exhibit A

Categorization of Royalty Instruments

Category	Explanation
1	Specifically allows deduction of compressing, dehydrating, treating, gathering and transportation
2	Specifically allows deduction of transporting gas "from the mouth of the well to the point of sale," or "customary transportation costs," or "all transportation charges"
3	Specifically allows deduction of third party transportation costs from the mouth of the well to the point of sale
4	Specifically allows deduction of transportation costs on interstate pipelines
5	Calculates royalty payments based on, for example, "market value at the well," "proceeds at the well," "market value," or "proceeds" (or without explanation)
6	Calculates royalty payments based on "net proceeds"
7	Calculates royalty payments based on "gross proceeds at the well"
8	Royalty is based on the market value of the gas at the well "free of all costs of developing and operating the Leased Premises and free of all costs of production"
9	Royalty paid in kind, "free of all costs"
10	Specifically addresses processing costs
11	Calculates royalty payments based on "gross proceeds"
12	Specifically bars deduction of gathering, compression, or transportation costs
13	Agreement provides for payment of royalty based on the same valuation of production as federal leases

Summary

Category Number	Number of Leases/Overrides	Percentage
	907	100.00%
1	174	19.18%
2	283	31.20%
3	22	2.43%
4	14	1.54%
5	184	20.29%
6	2	0.22%
7	0	0.00%
8	14	1.54%
9	13	1.43%
10	1	0.11%
11	194	21.39%
12	5	0.55%
13	1	0.11%
	907	100.00%

	A	B	C	D	E
1	Lease No.	Cat.	Date	Original Lessor	Royalty Clause
2	163	1	4/24/1992	Thurston, Floyd A.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
3	224	1	12/2/1993	Barrett Resources Corp.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
4	627	1	5/19/1989	Robert C. Schenck, Sr., as Attorney for James Felix Atkinson and Dorothy Yolonda Atkinson	"The lessee shall pay lessor, as royalty, on gas . . . produced from the leased premises and sold or used off the premises . . . the market value at the well of _____ of the gas sold or used, provided that on gas sold the royalty shall be _____ of the amount realized from such sale. . . . In the event Lessee compresses, treats, purifies, or dehydrates such gas (whether on or off the leased premises) or transports gas off the leased premises, Lessee in computing royalty hereunder may deduct from such price a reasonable charge for each of such functions performed."
5	687	1	10/26/1990	Board of County Commissioners, Garfield County	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
6	723	1	2/18/1991	Dallas F. Dudley, as Special Receiver in Liquidation for The Great Global Assurance Company	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ % of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ % the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
7	788	1	5/5/1994	Victor Charles and Margaret Sue Charles	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
8	791	1	4/28/1994	Betty M. Cornell	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
9	806	1	7/19/1994	Board of County Commissioners, Garfield County	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
10	875	1	1/31/1994	Evelyn G. McKay	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."

	A	B	C	D	E
1	Lease No.	Cat.	Date	Original Lessor	Royalty Clause
11	876	1	3/15/1994	HMC Ltd.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
12	2636	1	1/24/1996	Ernest E. Swigert and Elsie Swigert	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
13	2648	1	9/25/1995	Alberta Payton, as Personal Representative for the Estate of Dorothy Payton	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
14	2654	1	7/18/1994	Hayden Rader	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
15	2655	1	7/29/1994	Town of Parachute	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
16	2657	1	9/9/1994	Robert R. Boruch and Arlene D. Boruch	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
17	2686	1	9/11/1995	Katherine E. Ziegler	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
18	2919	1	7/15/1988	John E. Dunn and Marjorie O. Dunn	"_____% on gas including casinghead gas and other gaseous hydrocarbons produced from said land, and sold for or used in the manufacture or processing for gasoline or other products, plus _____% of the value of all products recovered therefrom by such manufacturing or processing, plus _____% of the market value at the plant, of all residue gas produced therefrom, less _____% the reasonable direct cost of gathering, treating and processing such gas, except depreciation or amortization cost on plants, treating facilities and pipelines; . . . on gas produced from said land, and sold or used off the premises for the purposes other than set forth . . . _____% of the amount realized from such sale but not less than the market value thereof at the well"
19	3084	1	4/24/1996	Robert E. Leborgne and Sharon L. Leborgne	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."

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1	Lease No.	Cat.	Date	Original Lessor	Royalty Clause
20	3090	1	4/24/1996	Verner Donn Mead and Elma M. Mead	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
21	3091	1	6/17/1996	Allen R. Koeneker	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
22	3414	1	9/5/1996	Dorothy Lois George, as Personal Representative of the Estate of Barbara B. Robinson	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
23	3613	1	7/1/1996	Board of County Commissioners, Garfield County	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
24	3830	1	9/3/1996	Samuel B. Potter and Teresa A. Potter	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
25	4236	1	10/3/1996	Town of Parachute	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
26	6144	1	3/12/1997	John Wix	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
27	6163	1	3/12/1997	Rex. E. Gates	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
28	6170	1	3/12/1997	Kathryn B. Ross and Troy G. Ross	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."

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29	6172	1	3/12/1997	Marshall Quiat	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
30	6173	1	3/12/1997	Gerald M. Friedman and JoAnne Friedman	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
31	6178	1	3/12/1997	William E. Bakke and Julia A. Bakke	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
32	6186	1	3/12/1997	Woodard B. Gates	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
33	6191	1	3/12/1997	Yale B. Pokress and Kathleen J. Pokress	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
34	6194	1	3/12/1997	Jack D. Stockton and Emma F. Stockton	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
35	6196	1	3/12/1997	Alan H. Bucholtz	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
36	6197	1	3/12/1997	DWG & Co.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
37	6201	1	3/12/1997	Carole Q. Leight	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."

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38	6202	1	3/12/1997	E. James Judd	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
39	6203	1	3/12/1997	E. Lee Garlett and Rosealice Garlett	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
40	6204	1	3/12/1997	Sheldon Steinhauser	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
41	6205	1	3/12/1997	McLeod Hittson	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
42	6206	1	3/12/1997	Harry A. Dutton, Jr.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
43	6207	1	3/12/1997	L.W. Searle and Violet H. Searle	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
44	6208	1	3/12/1997	W. Lee Sims	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
45	6209	1	6/3/1997	North Star Foundation	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
46	6210	1	3/12/1997	Wells Fargo Bank, Gerald M. Quiat and Florence Goodman, as Co-Trustees of the Evelyn Q. Garlett Trust	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."

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47	6211	1	3/12/1997	Ralph Raymond and Jean Raymond Revocable Living Trust	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
48	6254	1	8/11/1997	Board of County Commissioners, Garfield County	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
49	6258	1	8/21/1997	Marian G. Clem	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
50	7356	1	3/12/1997	Gerald M. Quiat and Roberta N. Quiat	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
51	9794	1	10/22/1997	Archipelago, Inc.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
52	9795	1	10/20/1997	Mary Ann Bosely	Under original lease, lessor to bear cost of compressing, dehydrating and otherwise treating gas to render it marketable or usable and cost of gathering and transporting such gas from the mouth of the well to the point of sale or use. [Lease was amended effective July 1, 2005; amendment listed under category 4.]
53	102484	1	5/4/1998	Leora D. Black	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
54	102903	1	6/23/1998	Gary Lee Mahaffey and Lyle Leon Mahaffey	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
55	104219	1	8/7/1998	Craig L. Hayward and Cristy A. Koeneke	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."

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56	104736	1	8/23/1999	Hollis Cameron and Daniel Cameron, Jr.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
57	105333	1	7/13/1999	Wayne E. Wells	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
58	105382	1	12/29/1999	Joe Ann Nichols	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
59	105411	1	4/1/2000	PAL, Inc.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
60	105412	1	3/31/2000	James F. Reynolds	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
61	105808	1	6/7/2000	Cochran, Loretta	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
62	105810	1	6/7/2000	Cochran, Patricia	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
63	105811	1	6/5/2000	Urquhart, William and Urquhart, Nancy	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
64	105812	1	6/5/2000	Urquhart, Archie and Urquhart, Anna Marie	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
65	105979	1	12/13/1999	John W. Savage, Jr., Roy E. Savage, Marshall T. Savage, Daniel W. Savage, Grace A. Savage and Sally M. Brands	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."

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1	Lease No.	Cat.	Date	Original Lessor	Royalty Clause
66	105980	1	12/13/1999	JRMD, LLC	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
67	105982	1	12/13/1999	John W. Savage, Jr.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
68	106066	1	6/5/2000	Frank, Charles	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
69	106067	1	6/5/2000	Baca, Carolyn	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
70	106555	1	9/29/2000	Brunken, Lawrence	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
71	106646	1	8/29/2000	Andrew J. Harris and Shirley J. Harris	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
72	106653	1	11/21/2000	Edna M. Dalton	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
73	108060	1	2/18/2002	Board of County Commissioners, Garfield County	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
74	108226	1	8/29/2000	Warren H. Buxton, Charles K. Buxton and Edith E. Sarver	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
75	108229	1	8/31/2000	Larry M. Palmer	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."

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76	108231	1	1/11/2001	Akins, Margaret	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
77	108240	1	1/11/2001	Farris, Helen	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
78	108243	1	11/10/2000	Hendricks, Jean	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
79	108244	1	11/10/2000	Hendricks, William	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
80	108247	1	3/19/2001	Phyllis S. Joslin, as Personal Representative of the Estate of Neil S. Mincer	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
81	108248	1	10/27/2000	Jolley, Donald	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
82	108250	1	12/12/2001	Stark, Kerwin and Stark, Kay	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
83	108251	1	4/18/2001	Myrtle Scarrow	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
84	108255	1	3/9/2001	Armstrong, Harvey and Armstrong, Susan	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
85	108256	1	2/15/2001	Armstrong, Otto	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
86	108258	1	2/20/2001	Galyean, Ronald	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
87	108259	1	2/20/2001	Galyean, Howard	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."

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88	108260	1	2/20/2001	Richardson, Beverly Jean and Richardson, Charles	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
89	108261	1	2/20/2001	O'Brien, Laura and O'Brien, Lenard	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
90	108262	1	2/20/2001	Galyean, Floyd and Galyean, Beverly	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
91	108274	1	1/23/2001	Gates, Rex	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
92	108275	1	3/1/2001	Merlin J. Wagner and Pamella Lynn Wagner	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
93	108276	1	12/12/2000	Verner Donn Mead and Elma M. Mead	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
94	108288	1	5/9/2001	Mary Lee Bruckner	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
95	108290	1	4/24/2001	Vella J. Moore	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
96	108352	1	8/30/2001	Jacobs, Timothy and Jacobs, Karla	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
97	108366	1	8/23/2001	James P. Lyons and Ilse Lyons	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
98	108367	1	8/10/2001	Lyons, Martin and Lyons, Heidi	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."

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99	108368	1	8/23/2001	James P. Lyons and Ilse Lyons	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
100	108369	1	11/19/2001	Locklear, Dannie	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
101	108371	1	10/18/2001	Rosemary H. Belden	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
102	108378	1	10/8/2001	Johnson, Allen	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
103	108379	1	10/8/2001	Johnson, Anne as Attorney-in-fact for Thomas Johnson	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
104	108380	1	10/8/2001	Johnson, W. Pyke, Jr.	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
105	108381	1	10/8/2001	Davidson, Elizabeth	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
106	108382	1	10/23/2001	Radel, Loren	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
107	108394	1	12/8/2001	Lough, Ted and Lough, Marie	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
108	109477	1	6/19/2002	Mary Bosely	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
109	109478	1	5/14/2002	Burke, Vicki	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
110	109614	1	1/2/2002	Roley, Stephen Eugene	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."

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111	109615	1	1/2/2002	Roley, John Ramsey	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
112	109617	1	1/2/2002	Carvey, Andrea Sue	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
113	109626	1	12/27/2001	Irwin, Mark and Irwin, Maureen	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
114	109647	1	5/13/2002	Akins, Ruth E. Trust	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
115	109648	1	5/13/2002	Akins, Patrick	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
116	109697	1	5/5/2002	Ralph D. Long and Barbara W. Long	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
117	109698	1	5/5/2002	Mary Lou Thornton	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
118	109699	1	5/5/2002	Richard H. Hoag and Eleanor Hoag	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
119	109702	1	5/27/2002	Waters, Betty	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
120	109703	1	5/27/2002	Hudson, Virginia	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
121	109704	1	5/27/2002	Findlay, Rose	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
122	109705	1	5/27/2002	Millsap, Mary	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."

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123	109717	1	5/14/2002	Dyer, Joyce	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
124	109721	1	5/14/2002	Esparsen, Brenda	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
125	109766	1	5/14/2002	Satterfield, Rhodora	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
126	109775	1	5/14/2002	Sulzer, Dean	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
127	109857	1	4/30/2002	Leborgne, Robert and Leborgne, Sharon	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
128	110246	1	6/27/2002	Kingman, Owen and Kingman, Diane	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
129	110651	1	11/5/2004	Union Pacific Railroad Company	"The royalties payable under this Lease shall be free and clear of costs or deductions for exploration, drilling, development, and production, including, but not limited to, costs of marketing, dehydration, storage, compression, separation by mechanical means and stabilization of the hydrocarbons. If Lessee treats and/or processes its gas in a natural gas plant (either on or off the Premises) Lessee shall be entitled to deduct from the value of the products recovered by the treating and/or processing of the gas . . . the actual costs incurred by Lessee for such treating and/or processing, which costs shall include gathering or transportation costs required to transport the gas to the plant."
130	110683	1	6/3/2004	Chevron U.S.A. Inc.	All royalties paid on natural gas sold off the Leased Premises shall be paid after deducting from such royalty Lessor's proportionate share of all post-production costs (i.e., all costs incurred after natural gas has been brought to the wellhead, including, but not limited to, treating, dehydration, compression, processing, gathering, interstate or intrastate transportation charges or costs and all associated fuel costs) and ad valorem, severance, conservation and any other production taxes.
131	110717	1	9/3/1996	Thomas H. Odgers and Mary K. Odgers	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
132	110791	1	4/17/2006	Samson, David Michael and Samson, Janet Susan	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
133	111135	1	7/8/2005	Union Pacific Railroad Company	"The royalties payable under this Lease shall be free and clear of costs or deductions for exploration, drilling, development, and production, including, but not limited to, costs of marketing, dehydration, storage, compression, separation by mechanical means and stabilization of the hydrocarbons. If Lessee treats and/or processes its gas in a natural gas plant (either on or off the Premises) Lessee shall be entitled to deduct from the value of the products recovered by the treating and/or processing of the gas . . . the actual costs incurred by Lessee for such treating and/or processing, which costs shall include gathering or transportation costs required to transport the gas to the plant."
134	111614	1	10/27/2005	McNeil, Frank and McNeil, Yoneko	"(1) when sold by Lessee, _____% of the net proceeds derived from such sale or (2) when used by Lessee off said land... the market value, at the mouth of the well, of _____% of such gas... Lessor's interest... to bear _____% of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____% of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."

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135	111626	1	4/11/2006	Moss, Bradley and Moss, Winette	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
136	111688	1	7/19/2005	Dekam, Eric and Dekam, Jeniffer	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
137	111691	1	8/10/2006	Anderson, Mary	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
138	111704	1	8/23/2006	Monument Holdings, LLC	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
139	111705	1	8/23/2006	Rocky Mountain C-Stores	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
140	111706	1	8/23/2006	Uecker, Leroy and Uecker, Marsha	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
141	111707	1	8/21/2006	Valunas, Gregory	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
142	111708	1	8/18/2006	Harvey, Constance	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
143	111709	1	8/19/2006	Roberts, Mildred	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
144	111710	1	8/19/2006	Roberts, Mildred	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
145	111711	1	8/19/2006	Roberts, Elmer and Roberts, Mildred	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
146	111728	1	8/29/2006	Arvil Anderson	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."

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147	111729	1	8/29/2006	Ed Baker and Sally Baker	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
148	111732	1	4/23/2004	Ronald Tipping; Maria Tipping; William Patterson	"To pay Lessor on gas and casinghead gas produced from the Leased Premises (1) when sold by Lessee, _____% of the net proceeds realized by Lessee from such sale or (2) when used by Lessee off the Leased Premises or in the manufacture of gasoline or other products, the market value, at the wellhead, of _____% of such gas and casinghead gas, Lessor's interest, in either case, to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____% of the cost of gathering and transporting such gas and casinghead gas from the wellhead to the point of sale or use. In no event shall the total costs of gathering, treating, compressing, dehydrating and transportation exceed 10% of the net proceeds derived from such sale of the gas produced of \$.035 per MCF, whichever is the lesser amount." [Williams will continue to comply with this last sentence.]
149	111737	1	8/29/2006	Brenda Yater	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
150	112073	1	1/11/2006	Exxon Mobil Corporation	On gas, including casinghead gas or other gaseous substances and liquid constituents of said gas, produced from and sold (on or off the Leased Premises) or used off the Leased Premises, or for the extraction of gasoline or other other products therefrom, _____ of the Wellhead Value of the gas so produced, sole or utilized. For Gas sold, Wellhead Value shall be the amount realized from such sale less Lessor's proportionate part of all costs incurred between the wellhead and the point of sale, including, but not limited to, the cost of compressing, treating, processing, dehydrating, gathering and transporting the Gas. For Gas used off the Premises, Wellhead Value shall be determined by taking the weighted average price of gas sold by Lessee closest to the point at which the Gas is used, subtracting all apportioned costs incurred between the wellhead and the point of sale, including, but not limited to compressing, treating, processing, dehydrating gathering and transporting such gas.
151	112250	1	10/13/2006	Norman Gibbs and Kathryn Gibbs	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
152	112383	1	8/27/2007	Robert J. Ackerman and or Shirley J. Ackerman	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
153	113318	1	8/22/2007	Alvin L. Hoffman and Sherrie Jo Hoffman	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
154	113319	1	8/30/2007	Thomas R. Ruggard and Mandy Ruggard	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."

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155	113320	1	8/22/2007	Leslie D. McKinley & Cindy M. McKinley	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
156	113321	1	8/28/2007	Jeremy L. Sanderson and Chandra Sanderson	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
157	113322	1	8/24/2007	Roy McClung	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
158	113323	1	8/22/2007	Shilo Dean Holbrook and Faith A. Holbrook	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
159	113324	1	8/24/2007	Plus Five, LLC	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
160	113325	1	8/22/2007	John E. Yadloski, Jr. and Carolyn P. Yadloski	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
161	113326	1	8/22/2007	Grand Valley Park Assoc., Ivo Lindauer, President and Denise Chiaretta, Secretary	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
162	113333	1	9/5/2007	Gary Wellman Vallad and Cynthia Darlene Vallad	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
163	113337	1	9/17/2007	Steven R. Brubacher and Cynthia V. Brubacher and Roy G. Brubacher	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and _____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."

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164	113338	1	9/17/2007	Steven R. Brubacher and Cynthia V. Brubacher	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and ____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
165	113339	1	9/17/2007	Steven R. Brubacher and Cynthia V. Brubacher and Roy G. Brubacher	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and ____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
166	113340	1	9/11/2007	David G. Rousseau and Elke E. Rousseau	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and ____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
167	113341	1	9/17/2007	Steven A. Spencer and Vicky K. Spencer	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and ____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
168	113342	1	9/19/2007	Ann L. Burdick	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and ____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
169	113343	1	9/17/2007	Naomi K. Spink	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and ____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
170	113357	1	10/23/2007	Jeffery Dartt	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and ____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
171	113358	1	10/23/2007	Lonnie H. Stanley and Debbie S. Stanley	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and ____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
172	113365	1	11/6/2007	Richard M. Culbertson and Linda M. Culbertson	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of compressing, dehydrating and otherwise treating such gas or casinghead gas to render it marketable or usable and ____ of the cost of gathering and transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."

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173	113394	1	12/20/2007	Faith Baptist Church of Parachute	"(1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off such land... the market value, at the mouth of the well, of _____ of such gas... lessor's interest... to bear _____ of the cost of compressing, dehydrating and otherwise treating such gas... to render it marketable or usable and _____ of the cost of gathering and transporting such gas... from the mouth of the well to the point of sale or use."
174	113400	1	7/15/2005	Gill, Frank Wright and Gill, Christiane	"_____ of the gross proceeds received from the sale of such produced substances where the same is sold at the mouth of the well or, if not sold at the mouth of the well, then _____ of the market value thereof at the mouth of the well, but in no event more than _____ of the actual gross amount received by Lessee for the sale thereof.... it is expressly agreed that Lessee shall have the right to deduct ... the royalty share of the costs, if any, of compression for delivery, transportation and gather to the point of delivery to the purchase of such production."
175		1	12/1/1966	Southern Union Production (override)	Net profits as defined in Exhibit B to Assignment of Operating Rights, Rulison Field, Garfield County, CO. (WILLIAMS 12554)
176	181	2	9/9/1988	Mobil Oil Corp.	"From each well producing oil only, or oil and gas, and unless Mobil requests otherwise, Barrett shall deliver to Mobil as royalty, free and clear of all costs and expenses, at the wells or to the credit of Mobil in the pipeline to which the wells may be connected, _____ of all oil, casinghead gas and other liquid hydrocarbons produced and saved from the Property. Mobil may, however, request and Barrett shall pay Mobil within sixty days after the end of each calendar year in which oil, casinghead gas, and other liquid hydrocarbons are sold, royalty of _____ of all proceeds (the amount realized from such sale after deducting production taxes and customary transportation costs) received from the sale . . . From each well producing gas only, and within sixty days after the end of each calendar month in which gas is sold, Barrett shall pay Mobil as royalty on gas sold in that month _____ of all proceeds (the amount realized from such sale after deducting production taxes and customary transportation costs) received from the sale of such gas, . . ."
177	550	2	6/27/1988	Mobil Oil Corp.	"The Lessee shall monthly pay Lessor as royalty on gas sold from each well where gas only is produced, _____ of the proceeds (the amount realized from such sale after deducting production taxes and customary transportation costs) if sold at the well, or, if sold off the Leased Premises."
178	578	2	3/20/1989	Getty Oil Company	"... Lessee shall pay Lessor as royalty... _____ of all proceeds (the amount realized from such sale after deducting production taxes and customary transportation costs) received from the sale of such gas, or of the fair market value at the well of such gas used off the Leased Premises."
179	109507	2	7/22/2002	Patten, Lewis B.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____% of such gas and casinghead gas, lessor's interest, in either case, to bear _____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
180	109519	2	9/27/2002	George, Dorothy Lois	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
181	109520	2	9/27/2002	Robinson, Ralph Albert	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
182	109521	2	9/27/2002	Robinson, Marion Alfred	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
183	109522	2	9/27/2002	Hutchings, Shirley	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
184	109523	2	9/27/2002	Simms, Richard E.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
185	109524	2	9/27/2002	Jewell, Geraldine M.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."

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186	109525	2	9/27/2002	Elmore, Sarah O.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
187	109526	2	9/27/2002	Simms, Earl L.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
188	109527	2	9/27/2002	Clark, Kelly A.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
189	109528	2	9/27/2002	Aldrich, Benjamin	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
190	109529	2	9/27/2002	Adams, Regina L.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
191	109530	2	9/27/2002	Aldrich, Rexanne J.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
192	109531	2	9/27/2002	Miller, Debbie Lynn	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
193	109532	2	9/27/2002	Robinson, Steve Douglas	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
194	109533	2	9/27/2002	Robinson, Bert James	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
195	109534	2	9/27/2002	Robinson, Dale Wayne	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
196	109535	2	9/27/2002	Ramsey, Judy Jean	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
197	109536	2	9/27/2002	Williams, Marilyn M.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
198	109537	2	9/27/2002	Allan, Betty J., fkn Reed, Betty Jane	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."

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199	109538	2	9/27/2002	Robinson, Buffy J.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
200	109539	2	12/10/2002	Knox, Larry D.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
201	109540	2	12/10/2002	Knox, Larry D.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
202	109541	2	11/22/2002	Prather, Robert D. and Prather, Mary A.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
203	109542	2	11/22/2002	Koehler, Donna J.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
204	109543	2	11/22/2002	Prather, Richard L. and Prather, Connie M.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
205	109544	2	11/22/2002	Gibson, Nancy R. and Gibson, Steven D.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
206	109545	2	11/22/2002	Prather, William Lyle and Prather, Margaret A.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
207	109546	2	11/22/2002	Prather, Ned H. and Prather, Dollie L.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
208	109547	2	11/22/2002	Prather, William T. and Prather, Andrea C.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
209	109548	2	11/22/2002	Latham, Leonard C. and Latham, Cathy A.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
210	109549	2	11/22/2002	Latham, LeRoy B. and Latham, Darlene	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
211	109550	2	11/25/2002	Prather, William C. and Prather, Mabel J.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."

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212	109551	2	11/22/2002	Prather, Thomas R. and Prather, Deborah Z.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
213	109552	2	11/22/2002	Duffy, Kenneth N. and Duffy, Pauline E.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
214	109556	2	11/22/2002	Duffy, Kenneth N. and Duffy, Pauline E.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
215	109561	2	1/20/2003	Hayward, Craig L. and Koenke, Cristy A.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
216	109562	2	1/20/2003	Hayward, Craig L. and Koenke, Cristy A.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
217	109568	2	1/28/2003	Orona, Howard and Orona, Sarah D.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
218	109569	2	11/22/2002	Oliver, Kathleen S.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
219	109583	2	9/27/2002	Maynard, Margaret G.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
220	109714	2	7/17/2002	Duffy, Pauline E.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
221	109733	2	7/22/2002	Henry, Frances A.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear fifteen (15%) percent of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
222	109752	2	7/22/2002	Henry, Frances A., Conservator, Estate of Clifford Lewis Patten	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear fifteen (15%) percent of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
223	109754	2	7/17/2002	Phillips, Albert, Jr., and Phillips, Ruth A.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
224	109760	2	7/11/2002	Robinson, Raymond and Robinson, Arleta	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."

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225	109829	2	1/30/2003	Knox, Dean M.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
226	109830	2	9/27/2002	Robinson, Lee H.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
227	109831	2	1/10/2003	Cooper, Pamela Morris	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
228	109855	2	6/23/2003	Dangling Rope Contractors	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
229	109856	2	6/13/2003	Johnson, Jacee Renee	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
230	109861	2	9/29/2002	Cameron, Fred Rex and Cameron, Renee D.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
231	109865	2	9/23/2003	clough, William F.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
232	109886	2	12/1/2003	Plaunty, Helen M.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
233	109887	2	12/1/2003	Smith, Anita M.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
234	109888	2	12/1/2003	Stone, William G.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
235	109889	2	12/1/2003	Davies, Geneva R.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
236	109890	2	12/1/2003	Cameron, Dan F., sr. and Cameron, Hollis L.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
237	109891	2	12/1/2003	Patricia Jean Cochran	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."

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238	109892	2	12/1/2003	Cochran, Loretta	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
239	109893	2	1/21/2004	Murphy, Wilbert Lloyd	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
240	109894	2	1/21/2004	Murphy, Merrill O.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
241	109895	2	1/21/2004	Murphy, George C.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
242	109899	2	1/21/2004	Murphy, William L. and Murphy, Barbara Ann	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
243	109901	2	12/23/2003	Potter, Samuel B. and Potter, Teresa Ann	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
244	109902	2	1/19/2004	Potter, Samuel B. and Potter, Teresa Ann	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
245	109903	2	3/29/2004	Baca, Carolyn M.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
246	109904	2	3/29/2004	Soupiset, Karen	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
247	109905	2	3/29/2004	Frank, Charles E.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
248	109906	2	4/20/2004	Gosney, Irene	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
249	109907	2	4/20/2004	Samson, David Michael and Samson, Janet Susanne	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
250	109908	2	4/20/2004	Soupiset, Karen	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."

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251	109909	2	5/20/2004	Jolley, Donald C.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
252	109910	2	5/18/2004	Jolley, Donald C.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
253	109911	2	5/26/2004	Tefft, Linda D.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
254	109912	2	5/26/2004	Larry M. Palmer	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
255	109913	2	5/26/2004	Tibbetts, Peggy L.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
256	109914	2	5/26/2004	Jerald B. Palmer	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
257	109918	2	7/29/2004	Gosney, Irene	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
258	109919	2	7/2/2004	Carl D. and Kathryn M. Tucker LLC	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
259	109920	2	5/26/2004	Palmer, Joyce M.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
260	109921	2	6/22/2004	Eileen Wade Walton, as Administrator of the Estate of Edith Claire Wade	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
261	110200	2	10/15/2002	Grand Valley Ranch Company	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
262	110204	2	2/14/2003	Johnson, Jacee Renee	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
263	110208	2	2/4/2003	Bumguardner, Harold and Bumguardner, Kay	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."

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264	110209	2	11/22/2002	Latham, Ewin R.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
265	110210	2	11/22/2002	Prather, David C.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
266	110239	2	4/21/2004	Mead, Miralee Bingham	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
267	110676	2	1/10/2005	Hoffman, Barbara	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
268	110677	2	1/4/2005	Johnson, Margo and Johnson, Russell	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
269	110678	2	1/3/2005	Mahaffey, Vera	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
270	110679	2	1/3/2005	Frederick, Maureen, formerly Mahaffey, Maureen	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
271	110680	2	12/20/2004	Mahaffey, Averyl	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
272	110681	2	12/15/2004	Clough, W.F.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
273	110699	2	7/9/2004	Jayme Lynn Rau	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
274	110700	2	7/9/2004	Edie Chaney	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
275	110705	2	9/16/2004	Urquhart, William	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
276	110706	2	9/16/2004	Urquhart, Archie and Urquhart, Anna Marie	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."

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1	Lease No.	Cat.	Date	Original Lessor	Royalty Clause
277	110713	2	8/18/2004	Cochran, Patricia Jean	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
278	110716	2	4/21/2004	Runyan, John J. and Runyan, Virginia	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
279	110718	2	6/24/2005	Moore, Douglas E.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
280	110719	2	2/2/2005	North Pacific Union Conference Assn. of Seventh Day Adventists, Trustees for Everett F. Coleman and Corrine B. ColemanTrust	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
281	110720	2	7/20/2004	Sperry, Helen A.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
282	110721	2	8/26/2005	Gates, Alexander L.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
283	110725	2	12/20/2004	Mahaffey, Philip R.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
284	110760	2	12/20/2004	Mahaffey, Donna J.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
285	110761	2	1/3/2005	Beckner, Margaret Mahaffey	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
286	110762	2	9/1/2005	Voice of Prophecy	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
287	110764	2	6/24/2005	DVC, LLC	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
288	110765	2	6/24/2005	Moore, Dee Anna	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
289	110766	2	6/24/2005	Herwick, Vickie L.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."

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1	Lease No.	Cat.	Date	Original Lessor	Royalty Clause
290	110767	2	6/24/2005	Moore, David S.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
291	110768	2	6/24/2005	Moore, Donald R.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
292	110772	2	8/20/2005	Phillips, John B.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
293	111132	2	1/3/2005	Mahaffey, Merrill D.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
294	111133	2	12/20/2004	Mahaffey, Linda C.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
295	111134	2	1/25/2005	Piepho, Edra L.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
296	111136	2	7/12/2004	Cochran, Loretta Carter	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
297	111141	2	8/3/2004	Adrian, Jennie R.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
298	111142	2	11/2/2004	Moore, Tommy E.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
299	111143	2	9/15/2004	Barry R. Cochran	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
300	111144	2	9/15/2004	Bill Davis, Attorney-in-Fact for Carol A. Williams	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
301	111419	2	9/16/2004	Urquhart, William D.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
302	111420	2	9/16/2004	Urquhart, Archie R. and Urquhart, Anna Maria	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."

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303	111421	2	9/23/2004	Baca, Carolyn M.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
304	111422	2	1/27/2005	Anvil Point Properties	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
305	111423	2	1/27/2005	Anvil Point Properties	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
306	111424	2	7/9/2004	St. John, Lawrence and St. John, Eva Belle	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
307	111425	2	7/13/2004	Breshears, Paul E. and Breshears, Glendene	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
308	111426	2	4/28/2005	Frank, Charles E.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
309	111444	2	6/24/2005	Palmer, Bonnie J.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
310	111640	2	6/3/2006	Geneva R. Davies (f.k.a. Neva McClintock)	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
311	111641	2	11/29/2005	Bruckner, Mary Lee	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
312	111642	2	11/22/2005	Shear, Inc.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
313	111643	2	11/28/2005	Fall River Resources, Inc.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
314	111644	2	11/28/2005	Hannifin, Frances A.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
315	111645	2	11/18/2005	FFF, Inc.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."

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316	111646	2	11/28/2005	Chatfield Co.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
317	111647	2	11/17/2005	Black River Royalties, LLC	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
318	111648	2	11/21/2005	White River Royalties, LLC	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
319	111649	2	11/22/2005	Eckels, Christopher R.F.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
320	111650	2	11/1/2005	Eckels, Christopher R.F.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
321	111680	2	12/23/2005	Gates, Rex E.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
322	111681	2	10/14/2005	Alexander L. Gates	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
323	111682	2	11/1/2005	Gates, Sterling J.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
324	111683	2	1/23/2006	Hoffpauir, Robert R. Jr., and Hoffpauir, Teresa A.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
325	111685	2	6/5/2006	Kuipers, Richard A. and Kuipers, Donna M.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
326	111713	2	2/20/2006	Leslie Ann Beckstead	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
327	111715	2	2/20/2006	Barbara J. Hoffman	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
328	111716	2	2/20/2006	Margo L. Johnson	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."

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329	111717	2	2/20/2006	Andy Mahaffey	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
330	111718	2	2/20/2006	Dan Mahaffey	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
331	111719	2	2/20/2006	Don Mahaffey	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
332	111720	2	2/20/2006	Donna Joyce Mahaffey	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
333	111722	2	2/20/2006	Linda C. Mahaffey	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
334	111725	2	2/20/2006	Philip R. Mahaffey	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
335	111726	2	2/20/2006	Will Mahaffey	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
336	111727	2	2/20/2006	Edra L. Piepho	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
337	111731	2	8/25/2006	Atlantic Richfield Company	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
338	111735	2	3/24/2006	Murray, Calvin D.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
339	111736	2	4/25/2006	Pizano, Efrain P. and Pizano, Rosalba	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
340	111781	2	7/13/2006	Morrisania Community Assoc.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
341	111810	2	1/31/2007	Roley, Julie Ann	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."

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342	111816	2	5/9/2007	Rickstrew, Dale E.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
343	112200	2	6/7/2006	Eddy, David M.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
344	112201	2	8/7/2006	Black Magic #2	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
345	112202	2	1/23/2006	Scott H. Zeigler	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
346	112274	2	3/17/2006	Brown-Rifle Ranch Co.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
347	112277	2	6/5/2006	Debra Ellen Smith	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
348	112278	2	6/15/2006	David Lynn Baughman	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
349	112279	2	7/19/2006	Nicholl L. Clarke	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
350	112280	2	6/26/2006	Victoria Clarke	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
351	112281	2	6/26/2006	Mary Jo Rose Clarke	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
352	112282	2	6/9/2006	Elsie Kesselring	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
353	112283	2	5/31/2006	Fawn Vancil	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
354	112284	2	5/16/2006	Phyllis Jo Burns Jorgenson	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."

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355	112285	2	5/9/2006	David H. Wayne	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
356	112286	2	5/9/2006	Marie Erlandson	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
357	112287	2	6/6/2006	Detta Baughman	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
358	112288	2	6/12/2006	Leslie Lawer	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
359	112289	2	6/12/2006	Robert Lawer	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
360	112290	2	6/13/2006	Fred E. Lawer	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
361	112292	2	7/27/2006	Darlia Graver	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
362	112293	2	6/8/2006	Ronald Alfred Baughman	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
363	112294	2	6/13/2006	Donald Trimmer	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
364	112295	2	5/12/2006	Michael Sullivan	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
365	112296	2	5/11/2006	Lydia Carol Sexton	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
366	112297	2	5/9/2006	Linda Lyons	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
367	112298	2	6/25/2006	John William Trimmer	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."

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368	112299	2	8/4/2006	Arletta M. Fortik	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
369	112306	2	7/4/2007	Frank Wright Gill and Christiane A. Gill	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
370	112307	2	6/26/2007	Brenton Bert Gonzales and Connie M. Gonzales	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
371	112308	2	9/11/2006	Alexander L. Gates	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
372	112308	2	6/26/2007	Rodney D. McDaniel and Alice McDaniel	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
373	112309	2	9/11/2006	Rex E. Gates	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
374	112310	2	9/18/2006	Sterling J. Gates	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
375	112320	2	10/17/2006	Paul S. Jones	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
376	112321	2	10/17/2006	Paul S. Jones, Trustee of Doris E. Jones Kile Trust	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
377	112323	2	12/18/2006	Ryan Swanson	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
378	112324	2	11/4/2006	Darlene Fleming	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
379	112328	2	12/31/2006	Mary Lou McCain	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
380	112329	2	1/10/2007	Colleen Conver	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."

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381	112356	2	1/19/2007	LeBrogne Land Co., LLC	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
382	112357	2	12/5/2006	Rocky Mountain Mortgage Works, LLC	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
383	112358	2	12/13/2006	John W. Shepardson	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
384	112359	2	1/15/2007	Joe A. Simms and Linda G. Simms	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
385	112360	2	1/19/2007	Suzanne M. Robinson	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
386	112369	2	3/1/2007	David E. and Holly E. Bernat	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
387	112371	2	2/19/2007	C.W. Byerrum	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
388	112372	2	3/19/2007	Daniel R. Cook and Reba D. Cook	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
389	112373	2	3/6/2007	Bernard B. Herwick and Kimberly A. Herwick	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
390	112374	2	3/22/2007	Gary R. Haptonstall and Sharon I. Haptonstall	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
391	112375	2	2/19/2007	Robert L. Arnett and Helen R. Arnett	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
392	112376	2	3/8/2007	David Wayne Anderson and Barbara J. Anderson	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
393	112377	2	3/8/2007	Wilber H. Massey	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."

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394	112378	2	3/8/2007	Dawn Ree-Archuleta and Frank Keith Archuleta	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
395	112379	2	3/5/2007	Mark M. McIntyre and Sheila M. McIntyre	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
396	112380	2	2/2/2007	Public Service Co. of Colorado	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
397	112386	2	3/6/2007	Gerald K. Hollenbaugh, Jr. and Marilyn J. Hollenbaugh	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
398	112388	2	3/19/2007	Mervil J. Mullenax and Jean S. Mullenax	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
399	112389	2	3/5/2007	John A. Van Teylingen and Patti R. Van Teylingen	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
400	112390	2	3/5/2007	Ron K. Thurston and Susan J. Thurston	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
401	112392	2	5/17/2007	Robert and Hallie Holl 1989 Living Trust	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
402	112393	2	5/24/2007	Jacee Renee Johnson	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
403	112394	2	5/24/2007	Jacee Renee Johnson	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
404	112395	2	5/24/2007	Jacee Renee Johnson	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
405	112396	2	5/24/2007	Philip B. Vaughan and Denise A. Vaughan	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
406	112397	2	5/16/2007	Estate of Walter B. Lemon, Jr.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."

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407	112398	2	5/24/2007	Estate of Walter B. Lemon, Jr.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
408	113305	2	6/11/2007	Michael S. Cain and Debra Cain	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
409	113327	2	7/25/2007	Kay M. James and Michael R. James	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
410	113334	2	7/23/2007	Spencer D. Marcus	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
411	113335	2	7/16/2007	Robbin Gallegos and Claudia Michelle Gallegos	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
412	113336	2	6/26/2007	Charles Dean Gonzales and Susannah Gonzales	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
413	113348	2	8/1/2007	Bonnie J. Palmer	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
414	113350	2	8/1/2007	Dee Anna Moore	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
415	113351	2	8/1/2007	Vickie L. Herwick	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
416	113359	2	9/14/2007	Porter E. Cooley	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
417	113360	2	9/11/2007	Christopher D. Beasley and Amy Lou Beasley	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
418	113361	2	7/30/2007	Alexander L. Gates	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
419	113362	2	11/15/2007	Stuart D. Jensen and Keri B. Jensen	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."

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420	113366	2	8/1/2007	Douglas E. Moore	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
421	113367	2	9/11/2007	Donald R. Moore and Linda L. Moore	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
422	113371	2	9/26/2007	Woodard B. Gates, life estate	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
423	113372	2	9/13/2007	Rodney Vern Miller and Carolyn Sue Miller	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
424	113373	2	9/24/2007	Helen Kungel	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
425	113374	2	9/24/2007	Dallas Kungel	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
426	113377	2	8/31/2007	Sterling J. Gates	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
427	113378	2	10/30/2007	Ted L. Vaughan and Hilda M. Vaughan	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
428	113379	2	8/28/2007	The Seventh-Day Adventist Association of Colorado	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
429	113385	2	10/11/2007	The Upper Columbia Conference Seventh-Day Adventists, Trustee for Luella D. Preston Revocable Trust	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas, lessor's interest, in either case, to bear ____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
430	113388	2	9/24/2007	Hagemann, Steven W.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
431	113389	2	10/1/2007	Miles B. Goldsborough Trust, Goldsborough, Neal L. and Burton, Rhonda F., Co-Trustees	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
432	113392	2	12/11/2007	Culver, Damond B. and Culver, Verna	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."

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433	113396	2	11/9/2007	Miller, Rodney Vern and Miller, Carolyn Sue	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
434	113397	2	12/18/2007	Boyd, Nathan J. and Boyd, John	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
435	113403	2	7/15/2002	Sefcovic, Elna Gay	"On leased minerals from said land and sold or produced from said land and used off the leased premises or in the manufacture of gasoline or other products, Lessee shall pay to Lessor a sum equal ____% of the net proceeds received from from the sale of produced substances where the same is sold at the mouth of the well or, if not sold at the mouth of the well, then ____% of the market value thereof at the mouth of the well, but in no event more than ____% of the actual amount received by Lessee for the sale thereof. Without limiting the foregoing, it is expressly agreed that the Lessee shall have the right to deduct from Lessor's royalty on any gas produced hereunder the royalty share of the costs, if any, of transportation to the point of delivery to the purchase of such production and all applicable production, severance, and other taxes."
436	113406	2	1/30/2008	Forster, Saul Logan	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
437	113423	2	4/30/2008	White Lotus Royalties, LLC	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
438	113429	2	4/21/2008	Arnold, Richard P. and Arnold, Sheila P.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
439	113486	2	1/31/2008	Morrow, Willis	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
440	113487	2	3/10/2008	Staufer, Hermann	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
441	113488	2	3/13/2008	Palmer, Michael Henry	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
442	113493	2	3/26/2008	Legg, James A.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
443	113494	2	5/1/2008	Evelyn G. McKay Estate	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
444	113495	2	2/27/2008	Aldrich, Reginald; Aldrich, Rexanne; Clark, Kelly Anne; Adams, Regina L.; Aldrich, Benjamin J.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."

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1	Lease No.	Cat.	Date	Original Lessor	Royalty Clause
445	113496	2	3/10/2008	Hughes, Clement; Hughes, Charlotte; Hughes, Roxan	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
446	113497	2	4/1/2008	First McKinley LLC	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
447	113498	2	4/23/2008	Cox, John K.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
448	113501	2	5/1/2008	Evelyn G. McKay Estate	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
449	113502	2	2/27/2008	Moher, Thomas F.; Moher, Renee	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
450	113503	2	3/17/2008	Walker, Harley E.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
451	113504	2	2/18/2008	Cervený, Michael	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
452	113505	2	3/4/2008	Yellico, Jim; Yellico, Myka	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
453	113506	2	2/26/2008	Bruhn, Dawana L.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
454	113507	2	5/9/2008	Sostenes, Crescencio	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
455	113508	2	4/23/2008	Baker, Fred	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
456	113530	2	7/30/2008 (eff. 5/01/06)	Bell, Alice T.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas, lessor's interest, in either case, to bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use."
457		2	1/12/2004	Shear, Inc. (override)	"The overriding royalty interest... shall be free and clear of all the cost of exploring, drilling, producing, separating, and treating, but shall bear its proportionate part of all transportation charges and all production, severance, or other similar taxes."
458		2	10/7/1998	Shear, Inc. (override)	"The overriding royalty interest... shall be free and clear of all the cost of exploring, drilling, producing, separating, and treating, but shall bear its proportionate part of all transportation charges and all production, severance, or other similar taxes."

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459	110682	3	1/3/2005	Shear, Charles A., Trustee, Mahaffey Brothers Trust	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use, to the extent such transport is provided by a third-party."
460	110750	3	10/21/2005	Barbara J. Hoffman	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use, to the extent such transport is provided by a third-party."
461	110751	3	11/15/2005	Merrill Dean Mahaffey	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use, to the extent such transport is provided by a third-party."
462	110752	3	10/10/2005	Averyl I. Mahaffey	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use, to the extent such transport is provided by a third-party."
463	110753	3	10/10/2005	Maureen Mahaffey Frederick	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use, to the extent such transport is provided by a third-party."
464	110754	3	10/21/2005	Linda C. Mahaffey	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use, to the extent such transport is provided by a third-party."
465	110755	3	10/10/2005	Donna Joyce Mahaffey	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use, to the extent such transport is provided by a third-party."
466	110756	3	9/15/2005	Charles A. Shear, as Trustee of the Mahaffey Brothers Trust	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use, to the extent such transport is provided by a third-party."
467	110757	3	10/10/2005	Margaret Mahaffey Beckner	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use, to the extent such transport is provided by a third-party."
468	110758	3	11/7/2005	Mahaffey Minerals, LLC	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use, to the extent such transport is provided by a third-party."
469	110759	3	10/21/2005	Philip R. Mahaffey	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use, to the extent such transport is provided by a third-party."

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1	Lease No.	Cat.	Date	Original Lessor	Royalty Clause
470	110763	3	10/21/2005	Edra L. Piepho	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use, to the extent such transport is provided by a third-party."
471	111418	3	7/11/2005	Michael J. Mosby and Betty Jo Mosby	"all royalties accruing under the Lease shall be free and clear of all of the costs and expenses of producing, gathering, storing, separating, treating, dehydrating, compressing, processing, marketing and/or otherwise making the . . . gas . . . ready for sale or use, and no deduction shall be made for any such costs and expenses in computing payment to be made to Lessor. Notwithstanding anything to the contrary contained herein, Lessors' interest shall bear _____ of the cost of transporting such gas from the mouth of the well to the point of sale or use if such transportation, or any part thereof, is provided by a third party"
472	111631	3	11/21/2005	Johnson, Margo L.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use, to the extent such transport is provided by a third-party."
473	111712	3	4/1/2006	Margaret Mahaffey Beckner	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use, to the extent, and only to the extent, such transport is provided by a third party pipeline."
474	111714	3	4/1/2006	Maureen Mahaffey Frederick	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use, to the extent, and only to the extent, such transport is provided by a third party pipeline."
475	111724	3	4/1/2006	Merrill Dean Mahaffey	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas, lessor's interest, in either case, to bear _____ of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use, to the extent, and only to the extent, such transport is provided by a third party pipeline."
476	112275	3	3/28/2006	Hoag, Tarita Ann	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ % of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ % of such gas and casinghead gas. Lessor's interest, in either case, shall be free and clear of its proportionate part of the cost of transporting such gas and casinghead gas through a pipeline owned by Lessee; however lessor shall bear _____ % of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use to the extent that such transport, if any, is conducted by a third party transport company."
477	112300	3	12/21/2006	Tarita Ann Hoag	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ % of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ % of such gas and casinghead gas. Lessor's interest, in either case, shall be free and clear of its proportionate part of the cost of transporting such gas and casinghead gas through a pipeline owned by Lessee; however lessor shall bear _____ % of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use to the extent that such transport, if any, is conducted by a third party transport company."
478	112301	3	10/3/2006	Mary Lou Thornton	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ % of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ % of such gas and casinghead gas. Lessor's interest, in either case, shall be free and clear of its proportionate part of the cost of transporting such gas and casinghead gas through a pipeline owned by Lessee; however lessor shall bear _____ % of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use to the extent that such transport, if any, is conducted by a third party transport company."
479	112302	3	10/3/2006	Richard H. Hoag and Eleanor Hoag	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ % of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ % of such gas and casinghead gas. Lessor's interest, in either case, shall be free and clear of its proportionate part of the cost of transporting such gas and casinghead gas through a pipeline owned by Lessee; however lessor shall bear _____ % of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use to the extent that such transport, if any, is conducted by a third party transport company."

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480	112303	3	10/3/2006	Ralph D. Long and Barbara W. Long	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____% of such gas and casinghead gas. Lessor's interest, in either case, shall be free and clear of its proportionate part of the cost of transporting such gas and casinghead gas through a pipeline owned by Lessee; however lessor shall bear ____% of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale or use to the extent that such transport, if any, is conducted by a third party transport company."
481	9795	4	7/1/2005	Mary Ann Bosely	Amendment to lease allows no deduction for compressing, dehydrating, treating, or gathering, but allows deduction for transportation costs in interstate pipeline.
482	105774	4	5/2/2000	Woodward, Aaron C.	"No charges shall be made against Lessor's interest for costs associated with the gathering of gas, however, lessor agrees to bear its proportionate share of costs associated with moving the gas through interstate pipelines to the ultimate point of sale."
483	110694	4	9/13/2004	Flasche, Paul Arther	"To pay Lessor royalty on gas and casinghead gas produced from said based upon the gross proceeds minus transportation costs received from the first arms length sale thereof, whether such sale occurs on or off the leased premises, provided that no deduction from gross proceeds shall be made for gathering, processing, dehydration, compression to the end market pipeline."
484	110695	4	9/13/2004	Flasche, Donald James	"To pay Lessor royalty on gas and casinghead gas produced from said based upon the gross proceeds minus transportation costs received from the first arms length sale thereof, whether such sale occurs on or off the leased premises, provided that no deduction from gross proceeds shall be made for gathering, processing, dehydration, compression to the end market pipeline."
485	110696	4	9/13/2004	Flasche, Forrest Norman	"To pay Lessor royalty on gas and casinghead gas produced from said based upon the gross proceeds minus transportation costs received from the first arms length sale thereof, whether such sale occurs on or off the leased premises, provided that no deduction from gross proceeds shall be made for gathering, processing, dehydration, compression to the end market pipeline."
486	110697	4	9/13/2004	Flasche, Jack Ross	"To pay Lessor royalty on gas and casinghead gas produced from said based upon the gross proceeds minus transportation costs received from the first arms length sale thereof, whether such sale occurs on or off the leased premises, provided that no deduction from gross proceeds shall be made for gathering, processing, dehydration, compression to the end market pipeline."
487	110698	4	9/13/2004	Martinez, Joyce Ella	"To pay Lessor royalty on gas and casinghead gas produced from said based upon the gross proceeds minus transportation costs received from the first arms length sale thereof, whether such sale occurs on or off the leased premises, provided that no deduction from gross proceeds shall be made for gathering, processing, dehydration, compression to the end market pipeline."
488	111684	4	2/1/2006	Larson, James M.	"Lessee shall be responsible for paying ____% of any costs incurred to dehydrate, separate, save, treat, stabilize, process, compress, gather, store, market or condition for market, any natural gas produced from the Leased Premises or lands pooled therewith. Lessor, however, shall bear its proportionate share of any third-party cost of transporting gas from the point it enters the interstate pipeline to the ultimate point of sale[.]"
489	111721	4	2/24/2006	Gary Lee Mahaffey	"Lessee shall be responsible for paying ____% of any costs incurred to dehydrate, separate, save, treat, stabilize, process, compress, gather, store, market or condition for market, any natural gas produced from the Leased Premises or lands pooled therewith. Lessor, however, shall bear its proportionate share of any third-party cost of transporting gas from the point it enters the interstate pipeline to the ultimate point of sale[.]"
490	111723	4	2/24/2006	Lyle Leon Mahaffey	"Lessee shall be responsible for paying ____% of any costs incurred to dehydrate, separate, save, treat, stabilize, process, compress, gather, store, market or condition for market, any natural gas produced from the Leased Premises or lands pooled therewith. Lessor, however, shall bear its proportionate share of any third-party cost of transporting gas from the point it enters the interstate pipeline to the ultimate point of sale[.]"
491	112316	4	9/8/2006	Joan Wright, Janet Smallwood and Joseph Casteel	"... Lessee ... agrees to pay Lessor for gas ... produced and sold, or used off the Leased Premises, or used in the manufacture of products or power, ____% of the net proceeds received by Lessee from the sale of the ... gas or product produced. Lessee shall be responsible for paying ____% of any costs incurred to dehydrate, separate, save, treat, stabilize, process, compress, gather, store, market or condition for market, any natural gas produced.... Lessor, however, shall bear its proportionate share of any third-party cost of transporting gas from the point it enters the interstate pipeline to the ultimate point of sale, and shall also bear its proportionate share of ... taxes required by law to be deducted by Lessee."
492	112336	4	2/26/2007	Samuel B. and Teresa A. Potter	"... Lessee ... agrees to pay Lessor for gas ... produced and sold, or used off the Leased Premises, or used in the manufacture of products or power, ____% of the amount determined as follows: ... b. for gas, including residue gas obtained after processing, the Weighted Average Sales Price (WASP) or Dedicated Price ... received by Lessee from the sale of the gas produced, less transportation and fuel charges incurred by Lessee once the gas enters an interstate pipeline...."

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1	Lease No.	Cat.	Date	Original Lessor	Royalty Clause
493	112387	4	7/12/2007	SK Holdings LLC and Steven Keinath	"... Lessee ... agrees to ... pay Lessor for gas ... produced and sold, or used off the Leased Premises, or used in the manufacture of products or power, _____% in Tract I and _____% in Tract II of the amount determined as follows: ... b. for gas, including residue gas obtained after processing, the Weighted Average Sales Price (WASP) or Dedicated Price ... received by Lessee from the sale of the gas produced, less transportation and fuel charges incurred by Lessee once the gas enters an interstate pipeline...."
494	113352	4	10/3/2007	Specialty Restaurants Corp.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____% of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____% of such gas and casinghead gas, lessor's interest, in either case, to bear _____% of the cost of transporting such gas and casinghead gas once the gas enters the interstate pipeline."
495	161	5	4/24/1992	Nobles, Ruth	"on gas marketed from each well where gas only is found ... if marketed by lessee off the leased premises, then _____ of its market value at the well"
496	162	5	9/1/1992	Youberg, David	"on gas marketed from each well where gas only is found ... if marketed by lessee off the leased premises, then _____ of its market value at the well"
497	228	5	5/1/1994	Colorado Department of Transportation	"market price at the well for the gas sold, used off the premises, or in the manufacture of products therefrom"
498	231	5	5/1/1989	Exxon Corporation	"_____ of the proceeds received by lessee at the well for all gas ... produced from the leased premises and sold by lessee; if such gas is used by lessee off the leased premises ... _____ of the prevailing market price at the well"
499	238	5	5/5/1953	Dean, Howard	"proceeds from the Sale of the gas, as such for gas from wells where gas only is found"
500	239	5	6/5/1953	Mead, Norman H. Mead, Mary Jane	"proceeds from the Sale of the gas, as such for gas from wells where gas only is found"
501	240	5	6/5/1953	Mead, Emma B.	"proceeds from the Sale of the gas, as such for gas from wells where gas only is found"
502	243	5	4/29/1953	Hahnewald, Dora	"proceeds from the Sale of the gas, as such for gas from wells where gas only is found"
503	248	5	12/3/1952	Ammerman, Mary Ammerman, Louie Dalrymple, James P.; Dalrymple, Edith G.	"proceeds from the sale of the gas, as such, for gas from wells where gas only is found"
504	249	5	11/19/1952	Langstaff, W.L. Langstaff, Annie	"proceeds from the sale of the gas, as such for gas from wells where gas only is found"
505	250	5	11/12/1952	Eaton, Bert Eaton, Mollie	"proceeds from the sale of the gas, as such for gas from wells where gas only is found"
506	252	5	5/18/1955	Farris, Leslie	"proceeds from the Sale of the gas, as such for gas from wells where gas only is found"
507	253	5	9/20/1955	Luxen, R.P. Luxen, May	"on gas ... produced from said land and sold or used off the premises ... the market value at the well of _____ of the gas so sold or used"
508	255	5	10/17/1955	Juhan, Joe T.	"proceeds from the sale of gas as such for gas from wells where gas only is found"
509	256	5	10/6/1965	Power, Elizabeth	"on gas ... produced from said land and sold or used off the premises ... the market value at the well of _____ of the gas so sold or used"
510	257	5	10/5/1965	Oldsen, Gerold L. Oldsen, Helen D.	"on gas ... produced from said land and sold or used off the premises ... the market value at the well of _____ of the gas so sold or used"
511	258	5	1/15/1958	Juhan, Joe T.	"proceeds from the sale of gas as such for gas from wells where gas only is found"
512	259	5	11/22/1971	Clough, William F. Clough, Leon William and Clough, Iva H.	Illegible, so classified along with other leases of the same form number.
513	261	5	12/22/1971	Eshe, Annie	"on gas marketed from each well where gas only is found, _____ of the proceeds if sold at the well, or if marketed by lessee off the leased premises, then _____ of its market value at the well."
514	262	5	8/6/1973	Mahaffey, Forest C. Mahaffey, Eva M.	"on gas marketed from each well where gas only is found ... if marketed by lessee off the leased premises, then _____ of its market value at the well"
515	264	5	8/6/1973	Mahaffey, Garriss E. Mahaffey, Irene P.	"on gas marketed from each well where gas only is found ... if marketed by lessee off the leased premises, then _____ of its market value at the well"
516	267	5	8/6/1973	Mahaffey, Minnie Mahaffey, Edwin John Mahaffey, Donna Joyce	"on gas marketed from each well where gas only is found ... if marketed by lessee off the leased premises, then _____ of its market value at the well"
517	268	5	8/6/1973	First National Bank Mahaffey, Fred	"on gas marketed from each well where gas only is found ... if marketed by lessee off the leased premises, then _____ of its market value at the well"
518	269	5	8/22/1973	Smith, Dema E.	"on gas marketed from each well where gas only is found ... if marketed by lessee off the leased premises, then _____ of its market value at the well"
519	270	5	8/6/1973	Mahaffey, Vera; Frederick, Maureen Mahaffey, Gilbert, Margaret Mahaffey; Mahaffey, Merrill D.	"on gas marketed from each well where gas only is found ... if marketed by lessee off the leased premises, then _____ of its market value at the well"

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1	Lease No.	Cat.	Date	Original Lessor	Royalty Clause
520	275	5	10/10/1978	Winch, DeWaine Winch, Elaine	"from each well where gas only is found . . . the market value at the well of such gas used off the premises"
521	276	5	9/13/1978	First National Bank of Grand Junction; Mahaffey, Orville V.	"from each well where gas only is found . . . the market value at the well of such gas used off the premises"
522	277	5	12/29/1978	Heath, Marilyn L. Heath, Richard L.	"from each well where gas only is found . . . the market value at the well of such gas used off the premises"
523	278	5	12/29/1978	Vassar, Jack K. Vassar, Patsy J.	"from each well where gas only is found . . . the market value at the well of such gas used off the premises"
524	279	5	6/4/1979	Shehorn, Oscar E. and Shehorn, Emilie L.	"from each well where gas only is found . . . the market value at the well of such gas used off the premises"
525	281	5	8/20/1979	Knight, Grant A. Harriett P. Knight	"proceeds if sold at the well or if marketed by lessee off the leased premises, then ____ of its market value at the well."
526	282	5	9/5/1979	Exxon Corp.	"if such gas is used by lessee off the leased premises . . . to pay to lessor ____ of the prevailing market price at the well for the gas so used"
527	283	5	9/13/1979	Brasher, Charles R. Brasher, May	"if not sold at the mouth of the well, then ____ of the market value thereof at the mouth of the well, but in no event more than of the actual amount received by lessee for the sale thereof"
528	284	5	11/23/1979	First National Bank of Grand Junction; Mahaffey, Alice Louise	"from each well where gas only is found . . . the market value at the well of such gas used off the premises"
529	285	5	1/15/1980	Nelson, Reuben W. Nelson, Leila May	"on gas marketed from each well where gas only is found . . . if marketed by lessee off the leased premises, then ____ of its market value at the well"
530	287	5	7/24/1980	Brutsche, Kenneth O. Brutsche, June L.	"from each well where gas only is found . . . the market value at the well of such gas used off the premises"
531	288	5	7/28/1980	Siegfried, Patricia Ann Siegfried, Robert D.	"from each well where gas only is found . . . the market value at the well of such gas used off the premises"
532	296	5	8/11/1980	Mitchell, Orley T. Mitchell, Thea D.	"from each well where gas only is found . . . the market value at the well of such gas used off the premises"
533	299	5	7/28/1980	Finnegan, Winifred R.	"from each well where gas only is found . . . the market value at the well of such gas used off the premises"
534	301	5	11/5/1980	Ross, Kathryn B. Ross, Troy G.	"from each well where gas only is found . . . the market value at the well of such gas used off the premises"
535	302	5	11/5/1980	Bakke, William E. Bakke, Julia A.	"from each well where gas only is found . . . the market value at the well of such gas used off the premises"
536	304	5	1/13/1981	Smith, James H.	"from each well where gas only is found . . . the market value at the well of such gas used off the premises"
537	306	5	12/10/1980	Hayward, Craig L. Koeke, Cristy A.	"from each well where gas only is found . . . the market value at the well of such gas used off the premises"
538	307	5	12/18/1980	Lehow, Vera	"from each well where gas only is found . . . the market value at the well of such gas used off the premises"
539	308	5	12/18/1980	Ellis, Ruth J.	"from each well where gas only is found . . . the market value at the well of such gas used off the premises"
540	311	5	1/17/1981	Hay, Robert E. Hay, Norma J.	"from each well where gas only is found . . . the market value at the well of such gas used off the premises"
541	313	5	2/9/1981	Hunter, Barbara Jean Juhan	"from each well where gas only is found . . . the market value at the well of such gas used off the premises"
542	314	5	2/9/1981	Juhan, Joseph Paul	"from each well where gas only is found . . . the market value at the well of such gas used off the premises"
543	315	5	2/9/1981	Juhan, Edward Nelson	"from each well where gas only is found . . . the market value at the well of such gas used off the premises"
544	316	5	1/17/1981	Root, L. Jay	"from each well where gas only is found . . . the market value at the well of such gas used off the premises"
545	337	5	8/12/1981	Eshe, Annie	"from each well where gas only is found . . . the market value at the well of such gas used off the premises"
546	349	5	5/5/1982	Dere, Flora	"from each well where gas only is found . . . the market value at the well of such gas used off the premises"
547	351	5	7/20/1982	First National Bank in Grand Junction	"from each well where gas only is found . . . the market value at the well of such gas used off the premises"
548	352	5	7/20/1982	First National Bank in Grand Junction	"from each well where gas only is found . . . the market value at the well of such gas used off the premises"
549	353	5	Unclear -- probably sometime in 1982	Denver & Rio Grande Western Railroad	"for gas . . . produced and sold or used off the premises . . . the market value at the well of its proportionate part of . . . the gas so sold or used"
550	355	5	6/5/1984	Rey, Ernest H. Rey, Betty J.	"on gas marketed from each well where gas only is found . . . if marketed by lessee off the leased premises, then ____ of its market value at the well"
551	359	5	12/1/1984	Tosco Corporation	"from each well where gas only is found . . . the market value at the well of such gas used off the premises"
552	360	5	12/17/1984	Forshee, Edward Forshee, Marie	"on gas marketed from each well where gas only is found . . . if marketed by lessee off the leased premises, then ____ of its market value at the well"
553	361	5	12/17/1984	Hoaglund, Edward J. Hoaglund, Ida L.	"on gas marketed from each well where gas only is found . . . if marketed by lessee off the leased premises, then ____ of its market value at the well"

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554	362	5	1/23/1985	Pfost, Leonard Pfost, Hugh Pfost, Jennie E.	"on gas marketed from each well where gas only is found . . . if marketed by lessee off the leased premises, then ____ of its market value at the well"
555	363	5	2/12/1985	Potter, Betty Ross	"on gas marketed from each well where gas only is found . . . if marketed by lessee off the leased premises, then ____ of its market value at the well"
556	364	5	11/16/1984	Denver & Rio Grande Western Railroad	"for gas . . . produced and sold or used off the premises . . . the market value at the well of its proportionate part of . . . the gas so sold or used"
557	366	5	4/11/1985	Grand Valley Ranch Company	"on gas marketed from each well where gas only is found . . . if marketed by lessee off the leased premises, then ____ of its market value at the well"
558	367	5	4/26/1985	Thornton, Mary Lou Thornton, Louie S.	"on gas marketed from each well where gas only is found . . . if marketed by lessee off the leased premises, then ____ of its market value at the well"
559	368	5	4/26/1985	Hoag, Harry W.	"on gas marketed from each well where gas only is found . . . if marketed by lessee off the leased premises, then ____ of its market value at the well"
560	369	5	4/26/1985	Hoag, Richard H. Hoag, Eleanor	"on gas marketed from each well where gas only is found . . . if marketed by lessee off the leased premises, then ____ of its market value at the well"
561	370	5	5/10/1985	Savage, Joan L.; Savage, John W.; Savage, Jr., John W.; Savage, Roy E.; Savage, Marshall T.; Savage, Daniel W.	"from each well where gas only is found . . . the market value at the well of such gas used off the premises"
562	371	5	5/20/1985	Savage, Grace	"from each well where gas only is found . . . the market value at the well of such gas used off the premises"
563	372	5	4/26/1985	Barks, Daniel J. Sandelin, Alberta	"on gas marketed from each well where gas only is found . . . if marketed by lessee off the leased premises, then ____ of its market value at the well"
564	373	5	4/26/1985	Long, Ralph D. Long, Barbara W.	"on gas marketed from each well where gas only is found . . . if marketed by lessee off the leased premises, then ____ of its market value at the well"
565	375	5	6/26/1985	Forster, Louise	"from each well where gas only is found . . . the market value at the well of such gas used off the premises"
566	376	5	6/26/1985	Forster, Saul Logan	"from each well where gas only is found . . . the market value at the well of such gas used off the premises"
567	386	5	6/21/1985	State Dept. of Highways	"To pay Lessor for gas of whatsoever nature or kind produced and sold, or used off the premises, or used in the manufacture of any products therefrom, ____, at the market price at the well for the gas sold, used off the premises, or in the manufacture of products therefrom."
568	390	5	12/10/1980	Gillum, Albert	"from each well where gas only is found . . . the market value at the well of such gas used off the premises"
569	401	5	1/6/1986	Henry, Gaylord J. Henry, Phyllis L.	"on gas marketed from each well where gas only is found . . . if marketed by lessee off the leased premises, then ____ of its market value at the well"
570	402	5	11/15/1985	Frontella, Gilbert Frontella, Linda G.	"on gas marketed from each well where gas only is found . . . if marketed by lessee off the leased premises, then ____ of its market value at the well"
571	404	5	10/22/1985	Exxon Corporation	"for all gas . . . produced from the leased premises . . . if such gas is used by lessee off the leased premises . . . to pay to lessor ____ of the prevailing market price at the well for the gas so used"
572	407	5	3/11/1985	Exxon Corporation	"for all gas . . . produced from the leased premises . . . if such gas is used by lessee off the leased premises . . . to pay to lessor ____ of the prevailing market price at the well for the gas so used"
573	419	5	9/22/1986	Brown, Keith L. Brown, Carol L.	"on gas marketed from each well where gas only is found . . . if marketed by lessee off the leased premises, then ____ % of its market value at the well"
574	422	5	7/17/1986	McQuiston, Theodore R.; McQuiston, Nita C.	"for gas of whatsoever nature or kind produced and sold, or used off the premises, or used in the manufacture of any products therefrom, ____, at the market price at the well for the gas sold, used off the premises, or in the manufacture of products therefrom"
575	429	5	10/29/1986	Juhan, Edward Nelson	"on gas marketed from each well where gas only is found . . . if marketed by lessee off the leased premises, then ____ of its market value at the well"
576	430	5	10/29/1986	Juhan, Joseph P.	"on gas marketed from each well where gas only is found . . . if marketed by lessee off the leased premises, then ____ of its market value at the well"
577	431	5	10/29/1986	Scibienski, Barbara Jean; Hunter, Barbara Jean Juhan	"on gas marketed from each well where gas only is found . . . if marketed by lessee off the leased premises, then ____ of its market value at the well"
578	441	5	1/5/1987	Bernklau, Carl H. Bernklau, Nora Ruth Alexander	"from each well where gas only is found . . . the market value at the well of such gas used off the premises"
579	442	5	6/26/1986	Exxon Corporation	"for all gas . . . produced from the leased premises . . . if such gas is used by lessee off the leased premises . . . to pay to lessor ____ of the prevailing market price at the well for the gas so used"

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580	456	5	1/20/1987	Hicks, Constance Ruth; Hicks, Sr., Gerald S.	"from each well where gas only is found . . . the market value at the well of such gas used off the premises"
581	484	5	9/12/1986	Exxon Corporation	"for all gas . . . produced from the leased premises . . . if such gas is used by lessee off the leased premises . . . to pay to lessor of the prevailing market price at the well for the gas so used"
582	517	5	6/25/1987	Chevron Shale Oil Co.	"on gas . . . produced from said land and sold or used off the premises . . . the market value at the well of ____ of the gas so sold or used"
583	518	5	6/25/1987	Chevron Shale Oil Co.	"on gas . . . produced from said land and sold or used off the premises . . . the market value at the well of ____ of the gas so sold or used"
584	523	5	9/15/1987	Atlantic Richfield Company	"The Lessee shall monthly pay Lessor as royalty on gas marketed from each well where gas only is found . . . if marketed by Lessee off the leased premises, then ____ of its market value at the well."
585	533	5	10/9/1987	N.P. Dodge Co.	"on gas marketed from each well where gas only is found . . . if marketed by lessee off the leased premises, then ____ of its market value at the well"
586	537	5	1/28/1988	Huntley, Laura	"on gas marketed from each well where gas only is found . . . if marketed by lessee off the leased premises, then ____ of its market value at the well"
587	541	5	1/28/1988	Ferguson, Clara	"on gas marketed from each well where gas only is found . . . if marketed by lessee off the leased premises, then ____ of its market value at the well"
588	551	5	8/9/1988	Farris, Helen	"for all gas . . . produced from the leased premises . . . if such gas is used by lessee off the leased premises . . . to pay to lessor of the prevailing market price at the well for the gas so used"
589	589	5	12/8/1988	Exxon Corporation	"for all gas . . . produced from the leased premises . . . if such gas is used by lessee off the leased premises . . . to pay to lessor of the prevailing market price at the well for the gas so used"
590	591	5	7/18/1989	Central Bank Grand Junction; Mahaffey, Orville V.	"on gas marketed from each well where gas only is found . . . if marketed by lessee off the leased premises, then ____ of its market value at the well"
591	604	5	11/2/1989	Ridenour, Ralph A.	"on gas marketed from each well where gas only is found . . . if marketed by lessee off the leased premises, then ____ of its market value at the well"
592	607	5	1/22/1980	Mays, James C.; Mays, Charlotte Loudene	"on gas marketed from each well where gas only is found . . . if marketed by lessee off the leased premises, then ____ of its market value at the well"
593	629	5	10/17/1989	James L. McBroom and Edna M. McBroom	"on gas marketed from each well where gas only is found . . . if marketed by lessee off the leased premises, then ____ of its market value at the well"
594	635	5	2/26/1990	Exxon Corporation	"for all gas . . . produced from the leased premises . . . if such gas is used by lessee off the leased premises . . . to pay to lessor of the prevailing market price at the well for the gas so used"
595	638	5	4/20/1990	Charles D. McMurrey, Charlie H. Read, Charles W. Snider and Thomas H. Brown, as Co-Executors of the Estate of Claud B. Hamill	"on gas marketed from each well where gas only is found . . . if marketed by lessee off the leased premises, then ____ of its market value at the well"
596	639	5	4/1/1990	Walter B. Lemon, Jr., and Roberta Ann Lemon	"on gas marketed from each well where gas only is found . . . if marketed by lessee off the leased premises, then ____ of its market value at the well"
597	652	5	6/26/1986	Exxon Corporation	"for all gas . . . produced from the leased premises . . . if such gas is used by lessee off the leased premises . . . to pay to lessor of the prevailing market price at the well for the gas so used"
598	656	5	10/27/1989	Exxon Corporation	"for all gas . . . produced from the leased premises . . . if such gas is used by lessee off the leased premises . . . to pay to lessor of the prevailing market price at the well for the gas so used"
599	658	5	6/14/1985	Martha Curfman Stojanovich and John Stojanovich	"on gas marketed from each well where gas only is found . . . if marketed by lessee off the leased premises, then ____ of its market value at the well"
600	660	5	6/14/1985	E. Louise Curfman	"on gas marketed from each well where gas only is found . . . if marketed by lessee off the leased premises, then ____ of its market value at the well"
601	664	5	5/21/1990	State Dept. of Highways, Division of Highways, State of Colorado	"To pay lessor for gas of whatsoever nature or kind produced and sold, or used off the premises, or used in the manufacture of any products therefrom, _____, at the market price at the well for the gas sold, used off the premises, or in the manufacture of products therefrom."
602	714	5	4/24/1990	Exxon Corporation	"for all gas . . . produced from the leased premises . . . if such gas is used by lessee off the leased premises . . . to pay to lessor of the prevailing market price at the well for the gas so used"
603	715	5	6/21/1990	Exxon Corporation	"for all gas . . . produced from the leased premises . . . if such gas is used by lessee off the leased premises . . . to pay to lessor of the prevailing market price at the well for the gas so used"
604	733	5	1/21/1991	Exxon Corporation	"for all gas . . . produced from the leased premises . . . if such gas is used by lessee off the leased premises . . . to pay to lessor of the prevailing market price at the well for the gas so used"
605	734	5	1/21/1991	Exxon Corporation	"for all gas . . . produced from the leased premises . . . if such gas is used by lessee off the leased premises . . . to pay to lessor of the prevailing market price at the well for the gas so used"

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1	Lease No.	Cat.	Date	Original Lessor	Royalty Clause
606	736	5	8/26/1991	Exxon Corporation	"for all gas . . . produced from the leased premises . . . if such gas is used by lessee off the leased premises . . . to pay to lessor of the prevailing market price at the well for the gas so used"
607	737	5	11/11/1990	Exxon Corporation	"for all gas . . . produced from the leased premises . . . if such gas is used by lessee off the leased premises . . . to pay to lessor of the prevailing market price at the well for the gas so used"
608	738	5	9/21/1990	Exxon Corporation	"for all gas . . . produced from the leased premises . . . if such gas is used by lessee off the leased premises . . . to pay to lessor of the prevailing market price at the well for the gas so used"
609	739	5	9/12/1986	Exxon Corporation	"for all gas . . . produced from the leased premises . . . if such gas is used by lessee off the leased premises . . . to pay to lessor of the prevailing market price at the well for the gas so used"
610	741	5	5/8/1990	Exxon Corporation	"for all gas . . . produced from the leased premises . . . if such gas is used by lessee off the leased premises . . . to pay to lessor of the prevailing market price at the well for the gas so used"
611	750	5	4/24/1992	Ruth Nobles	"on gas marketed from each well where gas only is found . . . if marketed by lessee off the leased premises, then ____ of its market value at the well"
612	751	5	12/3/1952	W.B. Reeves and Leanora Reeves	"The lessee shall pay lessor, as royalty, ____ of the proceeds from the sale of the gas, as such, for gas from wells where gas only is found"
613	752	5	9/1/1992	David Youberg	"on gas marketed from each well where gas only is found . . . if marketed by lessee off the leased premises, then ____ of its market value at the well"
614	753	5	5/11/1992	Exxon Corporation	"for all gas . . . produced from the leased premises . . . if such gas is used by lessee off the leased premises . . . to pay to lessor of the prevailing market price at the well for the gas so used"
615	761	5	6/1/1990	Exxon Corporation	"for all gas . . . produced from the leased premises . . . if such gas is used by lessee off the leased premises . . . to pay to lessor of the prevailing market price at the well for the gas so used"
616	771	5	12/20/1989	Exxon Corporation	"for all gas . . . produced from the leased premises . . . if such gas is used by lessee off the leased premises . . . to pay to lessor of the prevailing market price at the well for the gas so used"
617	784	5	5/11/1990	Exxon Corporation	"for all gas . . . produced from the leased premises . . . if such gas is used by lessee off the leased premises . . . to pay to lessor of the prevailing market price at the well for the gas so used"
618	808	5	10/17/1994	Denver & Rio Grande Western Railroad	"for gas . . . produced and sold or used off the premises . . . the market value at the well of its proportionate part of . . . the gas so sold or used"
619	816	5	1/20/1989	Latham, Opal	"____ of the proceeds if sold at the well, or if marketed by lessee of the leased premises, then ____ of its market value at the well."
620	818	5	6/28/1977	W.F. Clough (a.k.a. William F. Clough) and Iva H. Clough	"on gas marketed from each well where gas only is found . . . if marketed by lessee off the leased premises, then ____ of its market value at the well"
621	819	5	4/17/1978	William F. Clough and Iva H. Clough	"from each well where gas only is found . . . the market value at the well of such gas used off the premises"
622	820	5	6/1/1978	George A. McNary, Sr., as Attorney-in-Fact for Elizabeth McNary, Myrtle May Black, Fern Smith, Mary Louise Venard, Jess McNary, Charles McNary and Ella Mae Randler	"from each well where gas only is found . . . the market value at the well of such gas used off the premises"
623	821	5	11/29/1978	Agnes D. Carlton	"from each well where gas only is found . . . the market value at the well of such gas used off the premises"
624	822	5	11/29/1978	Virginia Kathleen Armentrout and Ross Armentrout	"from each well where gas only is found . . . the market value at the well of such gas used off the premises"
625	823	5	2/6/1979	Exxon Corporation	"for all gas . . . produced from the leased premises . . . if such gas is used by lessee off the leased premises . . . to pay to lessor of the prevailing market price at the well for the gas so used"
626	824	5	10/24/1978	Arnold L. Mackley and Elsie D. Mackley	"from each well where gas only is found . . . the market value at the well of such gas used off the premises"
627	825	5	9/5/1979	Exxon Corporation	"for all gas . . . produced from the leased premises . . . if such gas is used by lessee off the leased premises . . . to pay to lessor of the prevailing market price at the well for the gas so used"
628	827	5	1/17/1980	Exxon Corporation	"for all gas . . . produced from the leased premises . . . if such gas is used by lessee off the leased premises . . . to pay to lessor of the prevailing market price at the well for the gas so used"
629	828	5	8/21/1980	Exxon Corporation	"for all gas . . . produced from the leased premises . . . if such gas is used by lessee off the leased premises . . . to pay to lessor of the prevailing market price at the well for the gas so used"
630	829	5	12/30/1980	Exxon Corporation	"for all gas . . . produced from the leased premises . . . if such gas is used by lessee off the leased premises . . . to pay to lessor of the prevailing market price at the well for the gas so used"
631	830	5	7/12/1982	Margaret Shane, as Trustee	"from each well where gas only is found . . . the market value at the well of such gas used off the premises"
632	833	5	10/2/1985	First National Bank in Grand Junction, as Conservator of the Estate of Freda Mahaffey	"from each well where gas only is found . . . the market value at the well of such gas used off the premises"

	A	B	C	D	E
1	Lease No.	Cat.	Date	Original Lessor	Royalty Clause
633	834	5	4/24/1990	Exxon Corporation	"for all gas . . . produced from the leased premises . . . if such gas is used by lessee off the leased premises . . . to pay to lessor of the prevailing market price at the well for the gas so used"
634	842	5	10/15/1989	Denver & Rio Grande Western Railroad	"for gas . . . produced and sold or used off the premises . . . the market value at the well of its proportionate part of . . . the gas so sold or used"
635	843	5	4/13/1990	Exxon Corporation	"for all gas . . . produced from the leased premises . . . if such gas is used by lessee off the leased premises . . . to pay to lessor of the prevailing market price at the well for the gas so used"
636	844	5	3/11/1990	Exxon Corporation	"for all gas . . . produced from the leased premises . . . if such gas is used by lessee off the leased premises . . . to pay to lessor of the prevailing market price at the well for the gas so used"
637	848	5	6/21/1990	Exxon Corporation	"for all gas . . . produced from the leased premises . . . if such gas is used by lessee off the leased premises . . . to pay to lessor of the prevailing market price at the well for the gas so used"
638	850	5	12/6/1990	Exxon Corporation	"for all gas . . . produced from the leased premises . . . if such gas is used by lessee off the leased premises . . . to pay to lessor of the prevailing market price at the well for the gas so used"
639	873	5	11/30/1993	Exxon Corporation	"for all gas . . . produced from the leased premises . . . if such gas is used by Lessee off the leased premises . . . to pay to Lessor of the prevailing market price at the well for the gas so used"
640	2905	5	10/1/1973	W.F. Clough (a.k.a. William F. Clough) and Iva H. Clough	"on gas marketed from each well where gas only is found . . . if marketed by lessee off the leased premises, then ____ of its market value at the well"
641	3875	5	10/24/1979	First National Bank of Grand Junction, as Trustee Under the Will of Orville V. Mahaffey	"from each well where gas only is found . . . the market value at the well of such gas used off the premises"
642	3876	5	1/19/1982	Exxon Corporation	"for all gas . . . produced from the leased premises . . . if such gas is used by lessee off the leased premises . . . to pay to lessor ____ of the prevailing market price at the well for the gas so used"
643	4387	5	5/1/1990	Exxon Corporation	"for all gas . . . produced from the leased premises . . . if such gas is used by lessee off the leased premises . . . to pay to lessor ____ of the prevailing market price at the well for the gas so used"
644	4392	5	1/22/1957	Federal Farm Mortgage Corporation	"The lessee shall pay lessor as royalty ____ of the proceeds from the sale of gas as such at the mouth of the well where gas only is found"
645	4730	5	2/1/1978	Ross E. Golding and Lou Ella Golding	"from each well where gas only is found . . . the market value at the well of such gas used off the premises"
646	4804	5	5/5/1980	George E. Lechmere	Type is largely illegible, but appears to base royalty on proceeds from sale of gas, as such, for wells where gas only is found; no deduction for costs appears to be mentioned
647	4807	5	8/29/1973	James F. Atkinson and Dorothy Y. Atkinson	"on gas marketed from each well where gas only is found . . . if marketed by lessee off the leased premises, then ____ of its market value at the well"
648	4961	5	11/28/1979	Exxon Corporation	"for all gas . . . produced from the leased premises . . . if such gas is used by lessee off the leased premises . . . to pay to lessor ____ of the prevailing market price at the well for the gas so used"
649	5931	5	8/22/1961	Dema E. Smith	"The lessee shall pay lessor as royalty ____ of the proceeds from the sale of gas as such at the mouth of the well where gas only is found"
650	5932	5	11/13/1961	Ernest Peterson	"The lessee shall pay lessor, as royalty, ____ of the proceeds from the sale of the gas, as such, for gas from wells where gas only is found"
651	6107	5	9/5/1962	Sayre, Boots	"____ of the proceeds from the sale of the gas..."
652	6108	5	11/1/1961	Juhan, Joe T.	"____ of the proceeds from the sale of the gas..."
653	6192	5	11/4/1996	Joan L. Savage	"on gas marketed from each well where gas only is found . . . if marketed by lessee off the leased premises, then ____ of its market value at the well"
654	6305	5	7/1/2002	Colorado Department of Transportation	"market price at the well for the gas sold, used off the premises, or in the manufacture of products therefrom"
655	6452	5	2/1/1978	James Langstaff, Alberta Langstaff, Lester E. Langstaff, and Setsuko Langstaff	"from each well where gas only is found . . . the market value at the well of such gas used off the premises"
656	6790	5	4/4/1979	Madeline M. Parkhurst Miles	"on gas marketed from each well where gas only is found . . . if marketed by lessee off the leased premises, then ____ of its market value at the well"
657	100742	5	8/1/1997	Exxon Corporation	"On gas . . . produced from the Leased Premises and sold or used off the Leased Premises . . . the market value at the well of . . . the gas so sold or used, provided that on gas so sold by Lessee in an arms-length transaction to a non-affiliated purchaser the market value shall not exceed the amount received by Lessee for such gas computed at the mouth of the well[.]"
658	106151	5	8/20/1979	John Bendetti	"on gas marketed from each well where gas only is found . . . if marketed by lessee off the leased premises, then ____ of its market value at the well"
659	109923	5	6/3/2004	Chevron U.S.A. Inc.	"on gas . . . produced from said land and sold or used off the premises, the market value at the well of . . . the gas so sold or used"
660	111678	5	5/1/1990	Exxon Corporation	"for all gas . . . produced from the leased premises . . . if such gas is used by lessee off the leased premises . . . to pay to lessor ____ of the prevailing market price at the well for the gas so used"

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1	Lease No.	Cat.	Date	Original Lessor	Royalty Clause
661	111687	5	1/20/1953	Albert and Mona Gardner	"The lessee shall pay lessor, as royalty, _____ of the proceeds from the sale of gas, as such at the mouth of the well where gas only is found"
662	111733	5	5/7/1980	Salvation Army	"2nd. The lessee shall pay lessor, as royalty, _____ % of the proceeds from the sale of the gas, as such, for gas from wells where gas only is found and where not sold shall pay Fifty (\$50.00) Dollars per annum as royalty from each such well.... 3rd. To pay lessor for gas produced from any oil well and used off of the premises or for the manufacture of casinghead gasoline, _____ % of the market price at the well for the gas so used...."
663	111738	5	5/19/2006	Colorado Department of Transportation	"To pay lessor for gas of whatsoever nature or kind produced and sold, or used off the premises, or used in the manufacture of any products there from, _____, at the market price at the well for the gas sold, used off the premises, or in the manufacture of products there from."
664	112312	5	8/28/1987	Jean Bernice Johnson, Donald Alvis Hulse, Myra L. Hulse, Nikkola M. Hulse	"The lessee shall... pay lessor as royalty on gas marketed from each well where gas only is found, _____ of the proceeds if sold at the well, or if marketed by lessee off the leased premises, then _____ of its market value at the well."
665	112322	5	10/26/2006	Colorado Department of Transportation	"To pay lessor for gas of whatsoever nature or kind produced and sold, or used off the premises, or used in the manufacture of any products there from, _____, at the market price at the well for the gas sold, used off the premises, or in the manufacture of products there from."
666	112334	5	2/14/2007	Colorado Department of Transportation	"To pay lessor for gas of whatsoever nature or kind produced and sold, or used off the premises, or used in the manufacture of any products there from, _____, at the market price at the well for the gas sold, used off the premises, or in the manufacture of products there from."
667	112337	5	2/13/2007	Colorado Department of Transportation	"To pay lessor for gas of whatsoever nature or kind produced and sold, or used off the premises, or used in the manufacture of any products there from, _____, at the market price at the well for the gas sold, used off the premises, or in the manufacture of products there from."
668	113313	5	8/1/2007	Colorado Department of Transportation	"To pay lessor for gas of whatsoever nature or kind produced and sold, or used off the premises, or used in the manufacture of any products there from, _____, at the market price at the well for the gas sold, used off the premises, or in the manufacture of products there from."
669	113345	5	6/26/1986	Exxon Corporation	"To pay lessor _____ of the proceeds received by lessee at the well for all gas ... produced from the leased premises and sold by lessee; if such gas is used by lessee off the leased premises or used by lessee for the manufacture of casinghead gasoline or other products, to pay to lessor _____ of the prevailing market price at the well for the gas so used."
670	113395	5	8/1/2007	Wells, Marion J.	"... Lessee covenants and agrees to account for and pay Lessor for gas and Oil of whatsoever nature or kind (with all of its constituents) produced and sold, or used off the Leased Premises, or used in the manufacture of products of power, _____ % of the amount for gas, oil, or any other product, of the proceeds obtained by Lessee."
671	113401	5	1/7/2005	Scott, Eugene R. and Scott, Evelyn R., Trustess, Scott Family Trust	"On leased minerals produced from said land and sold or produced from said land and used off the leased premises or in the manufacture of gasoline or other products, Lessee shall pay to Lessor a sum equal to _____ % of the gross proceeds received from the sale of such produced substances where the same is sold at the mouth of the well or, if not sold at the mouth of the well, then _____ % of the market value thereof at the mouth of the well, but in no event more than _____ % of the actual gross amount received by Lessee for the sale thereof."
672	113402	5	4/21/2005	Scott, Eugene R. and Scott, Evelyn R., Trustess, Scott Family Trust	"On leased minerals produced from said land and sold or produced from said land and used off the leased premises or in the manufacture of gasoline or other products, Lessee shall pay to Lessor a sum equal to _____ % of the gross proceeds received from the sale of such produced substances where the same is sold at the mouth of the well or, if not sold at the mouth of the well, then _____ % of the market value thereof at the mouth of the well, but in no event more than _____ % of the actual gross amount received by Lessee for the sale thereof."
673		5	12/6/1976	Capuano, John (override)	Silent (WILLIAMS 12544)
674		5	10/26/1977	Chorney Oil Co. (override)	Silent (WILLIAMS 12600)
675		5	2/9/1979	Hartley, Esdras (override)	Silent (WILLIAMS 12598)
676		5	5/25/1979	Smith, Marguerite (override)	Silent (WILLIAMS 12592)
677		5	5/29/1979	Lalli, Joseph (override)	Silent (WILLIAMS 12586)
678		5	5/31/1990	Stip of Overriding Royalty Interest: Barrett Resources; Barry Snyder; Stephen Evans; Ted Amsbaugh; Christina Snyder; Laurence Watts; Vicki Wambolt; Jeanne Anderson; Aeon Energy; A.W. Fleming Co.; Caraway Production Properties.	Silent (WILLIAMS 12614)
679	644	6	5/17/1990	Donald G. Davis	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of _____ of such gas and casinghead gas."

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1	Lease No.	Cat.	Date	Original Lessor	Royalty Clause
680	6198	6	3/12/1997	Shaun A. Gates	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, ____ of the net proceeds derived from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of ____ of such gas and casinghead gas."
681	105989	8	4/17/2000	Exxon Mobil Corporation	"On gas . . . produced from and sold (on or off the Leased Premises) or used off the Leased Premises . . . the market value at the well of . . . the gas so produced, sold or utilized, free of all costs of developing and operating the Leased Premises and free of all costs of production."
682	108351	8	11/9/2001	ExxonMobil Corporation	"On gas . . . produced from and sold (on or off the Leased Premises) or used off the Leased Premises . . . the market value at the well of . . . the gas so produced, sold or utilized, free of all costs of developing and operating the Leased Premises and free of all costs of production."
683	108389	8	2/1/2002	ExxonMobil Oil Corporation	"On gas . . . produced from and sold (on or off the Leased Premises) or used off the Leased Premises . . . the market value at the well of . . . the gas so produced, sold or utilized, free of all costs of developing and operating the Leased Premises and free of all costs of production."
684	109922	8	8/10/2004	Exxon Mobil Corporation	"On gas . . . produced from and sold (on or off the Leased Premises) or used off the Leased Premises . . . the market value at the well of . . . the gas so produced, sold or utilized, free of all costs of developing and operating the Leased Premises and free of all costs of production."
685	110650	8	11/2/2004	Exxon Mobil Corporation	"On gas . . . produced from and sold (on or off the Leased Premises) or used off the Leased Premises . . . the market value at the well of . . . the gas so produced, sold or utilized, free of all costs of developing and operating the Leased Premises and free of all costs of production."
686	111074	8	7/1/2005	Exxon Mobil Corporation	"On gas . . . produced from and sold (on or off the Leased Premises) or used off the Leased Premises . . . the market value at the well of . . . the gas so produced, sold or utilized, free of all costs of developing and operating the Leased Premises and free of all costs of production."
687	111627	8	3/22/2006	Exxon Mobil Corporation	"On gas . . . produced from and sold (on or off the Leased Premises) or used off the Leased Premises . . . the market value at the well of . . . the gas so produced, sold or utilized, free of all costs of developing and operating the Leased Premises and free of all costs of production."
688	111730	8	8/8/2006	Exxon Mobil Corporation	"On gas . . . produced from and sold (on or off the Leased Premises) or used off the Leased Premises . . . the market value at the well of . . . the gas so produced, sold or utilized, free of all costs of developing and operating the Leased Premises and free of all costs of production."
689	112304	8	10/19/2006	Exxon Mobil Corporation	"On gas . . . produced from and sold (on or off the Leased Premises) or used off the Leased Premises . . . the market value at the well of . . . the gas so produced, sold or utilized, free of all costs of developing and operating the Leased Premises and free of all costs of production."
690	112305	8	10/30/2006	Exxon Mobil Corporation	"On gas . . . produced from and sold (on or off the Leased Premises) or used off the Leased Premises . . . the market value at the well of . . . the gas so produced, sold or utilized, free of all costs of developing and operating the Leased Premises and free of all costs of production."
691	112306	8	10/18/2006	Exxon Mobil Corporation	"On gas . . . produced from and sold (on or off the Leased Premises) or used off the Leased Premises . . . the market value at the well of . . . the gas so produced, sold or utilized, free of all costs of developing and operating the Leased Premises and free of all costs of production."
692	112307	8	10/18/2006	Exxon Mobil Corporation	"On gas . . . produced from and sold (on or off the Leased Premises) or used off the Leased Premises . . . the market value at the well of . . . the gas so produced, sold or utilized, free of all costs of developing and operating the Leased Premises and free of all costs of production."
693	112339	8	3/9/2007	Exxon Mobil Corporation	"On gas . . . produced from and sold (on or off the Leased Premises) or used off the Leased Premises . . . the market value at the well of . . . the gas so produced, sold or utilized, free of all costs of developing and operating the Leased Premises and free of all costs of production."
694	113344	8	9/1/2007	Exxon Mobil Corporation	"On gas . . . produced from and sold (on or off the Leased Premises) or used off the Leased Premises . . . the market value at the well of . . . the gas so produced, sold or utilized, free of all costs of developing and operating the Leased Premises and free of all costs of production."
695	121	9	11/30/1995	Union Oil Co.	"Lessee shall deliver free of all costs . . . to lessor . . . as royalty ____% of all . . . gas . . . which may be attributable to the leased premises, whether recovered directly from wells on the leased premises, from field or other type separators, or from a plant or plants, whether or not located on the leased premises."
696	354	9	6/2/1983	Atlantic Richfield Company	"Lessee shall deliver free of all costs . . . to lessor . . . as royalty ____% of all . . . gas . . . which may be attributable to the leased premises, whether recovered directly from wells on the leased premises, from field or other type separators, or from a plant or plants, whether or not located on the leased premises."
697	357	9	9/12/1984	Mobil Oil Corporation	"Lessee shall deliver free of all costs, expenses and taxes, including ad valorem taxes attributable to conventional oil and gas production and excepting gross production taxes, to Lessor . . . as royalty, ____% of all . . . gas . . . which may be attributable to the leased premises, whether recovered directly from wells on the leased premises, from field or other type separators, or from a plant or plants, whether or not located on the leased premises."

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1	Lease No.	Cat.	Date	Original Lessor	Royalty Clause
698	374	9	5/1/1985	Mobil Oil Corporation	"Lessee shall deliver free of all costs, expenses and taxes, including ad valorem taxes attributable to conventional oil and gas production and excepting gross production taxes, to Lessor . . . as royalty, _____% of all . . . gas . . . which may be produced and saved from the leased premises, whether recovered directly from wells on the leased premises, from field or other type separators, or from a plant or plants, whether or not located on the leased premises."
699	403	9	11/4/1985	Atlantic Richfield Company	"Lessee shall deliver free of all costs, expenses and taxes . . . to Lessor . . . as royalty until recovery of drilling and completion costs of any well drilled on the lease premises . . . _____% of all . . . gas . . . which may be attributable to the lease premises whether recovered directly from wells on the lease premises, from field or other type separators, or from a plant or plants, whether or not located on the lease premises. . . ."
700	405	9	2/18/1986	Mobil Oil Corporation	"Lessee shall deliver free of all costs, expenses and taxes, including ad valorem taxes attributable to conventional oil and gas production and excepting gross production taxes, to Lessor . . . as royalty, _____% of all . . . gas . . . which may be attributable to the leased premises, whether recovered directly from wells on the leased premises, from field or other type separators, or from a plant or plants, whether or not located on the leased premises."
701	411	9	4/18/1986	Mobil Oil Corporation	"Lessee shall deliver free of all costs, expenses and taxes, including ad valorem taxes attributable to conventional oil and gas production and excepting gross production taxes, to Lessor . . . as royalty, _____% of all . . . gas . . . which may be attributable to the leased premises, whether recovered directly from wells on the leased premises, from field or other type separators, or from a plant or plants, whether or not located on the leased premises."
702	626	9	11/27/1989	Union Oil Co.	"Lessee shall deliver free of all costs, expenses and taxes, including ad valorem taxes and excepting gross production taxes, to Lessor . . . as royalty _____ of all . . . gas . . . which may be attributable to the leased premises, whether recovered directly from wells on the leased premises, from field or other type separators, or from a plant or plants, whether or not located on the leased premises."
703	633	9	2/1/1990	Union Oil Co.	"Lessee shall deliver free of all costs, expenses and taxes, including ad valorem taxes and excepting gross production taxes, to Lessor . . . as royalty _____ of all . . . gas . . . which may be attributable to the leased premises, whether recovered directly from wells on the leased premises, from field or other type separators, or from a plant or plants, whether or not located on the leased premises."
704	634	9	2/1/1990	Union Oil Co.	"Lessee shall deliver free of all costs, expenses and taxes, including ad valorem taxes and excepting gross production taxes, to Lessor . . . as royalty _____ of all . . . gas . . . which may be attributable to the leased premises, whether recovered directly from wells on the leased premises, from field or other type separators, or from a plant or plants, whether or not located on the leased premises."
705	670	9	8/16/1990	Union Oil Co.	"Lessee shall deliver free of all costs, expenses and taxes, including ad valorem taxes and excepting gross production taxes, to Lessor . . . as royalty _____ of all . . . gas . . . which may be attributable to the leased premises, whether recovered directly from wells on the leased premises, from field or other type separators, or from a plant or plants, whether or not located on the leased premises."
706	841	9	12/19/1989	Union Oil Co.	"Lessee shall deliver free of all costs . . . to Lessor . . . as royalty _____ of all . . . gas . . . which may be attributable to the leased premises, whether recovered directly from wells on the leased premises, from field or other type separators, or from a plant or plants, whether or not located on the leased premises."
707	870	9	5/15/1993	Union Oil Co.	"Lessee shall deliver free of all costs . . . to Lessor . . . as royalty _____ of all . . . gas . . . which may be attributable to the leased premises, whether recovered directly from wells on the leased premises, from field or other type separators, or from a plant or plants, whether or not located on the leased premises."
708	356	10	7/2/1984	Federal Land Bank of Wichita	"When the gas . . . is taken to an extraction plant . . . Lessee shall also deliver to credit of Lessor . . . less the reasonable cost of extraction, provided, however, such costs shall not exceed _____% of the market value of the products so extracted."
709	289	11	7/24/1980	Smith, Ruth Ann David R. Smith	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
710	290	11	7/24/1980	Kiper, Mearl E.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
711	291	11	8/26/1980	Libby, Edward Libby, Lorene	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
712	294	11	8/23/1980	Simpson, Margaret Davis Simpson, Ralph H.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
713	297	11	8/26/1980	Edwards, Evelyn O.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
714	300	11	8/22/1980	Searcy, Robert D. Searcy, Viola M.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
715	303	11	9/14/1980	Leatherman, Oluff G. Leatherman, Linda K.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"

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1	Lease No.	Cat.	Date	Original Lessor	Royalty Clause
716	305	11	10/20/1980	Leona Libby, Administrator of the Estate of Willard F. Libby, Deceased	"_____ of the gross proceeds each year, payable quarterly, for the gas from each well where gas only is found, while the same is being used off the premises, and if used in the manufacture of gasoline a royalty of _____, payable monthly at the prevailing rate for gas."
717	309	11	12/24/1980	First National Bank of Grand Junction; Mahaffey, Orville V.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
718	310	11	12/24/1980	First National Bank in Grand Junction; Mahaffey, Alice Louise	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
719	312	11	8/12/1980	Sayre, Pearl G.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
720	341	11	12/15/1981	Gardner, Miki S.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
721	342	11	12/15/1981	Sayre, Charles M.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
722	343	11	12/15/1981	Sayre, Vicki	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
723	344	11	12/15/1981	Hartman, Jennifer Sayre	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
724	346	11	8/1/1981	Roy Royalty, Inc.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
725	347	11	3/23/1982	Allen, William C.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
726	348	11	5/7/1982	Ellis, Ruth	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
727	350	11	7/20/1982	First National Bank in Grand Junction; Mahaffey, Orville V.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
728	358	11	11/7/1984	Lindauer, Ivo E.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
729	377	11	6/14/1985	Lindauer, Sidney R.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
730	378	11	6/14/1985	First National Bank of Grand Junction; Mahaffey, Orville V.; Mahaffey, Louise	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
731	379	11	7/12/1985	First National Bank of Grand Junction; Mahaffey, Freda	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
732	380	11	8/7/1985	Clara Ferguson, as Representative of the Estate of Annie H. Eshe	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
733	381	11	8/8/1985	Pogline, James A.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
734	383	11	7/29/1985	Pogline, Nancy	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
735	384	11	8/6/1985	McCormack, Bernice L.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
736	385	11	1/3/1990	Artz, Marvin;	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
737	387	11	8/28/1985	Van De Water, Elaine Reavis	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
738	388	11	1/3/1990	Vanbeber, Della Hittle	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
739	389	11	9/24/1985	Shoemaker, Betty	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
740	391	11	10/22/1985	Mahaffey, Donna Joyce	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
741	392	11	10/22/1985	Gillum, Frank R.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
				Gillum, Joe E.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
				Schaeffer, Theodore E.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
				Schaeffer, Jera R.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
				Phillips, Elliot A.;	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
				Phillips, Nancy D.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"

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742	393	11	1/3/1990	Chernow, Alice E.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
743	394	11	9/23/1985	Rice, John H. Rice, Melinda M.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
744	395	11	8/28/1985	Mahaffey, Garris E.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
745	396	11	8/28/1985	Mahaffey, Edwin John	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
746	397	11	8/28/1985	Mahaffey, Forrest	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
747	398	11	11/19/1985	Libby, Leslie R. Libby, Leslie R. Libby, Jewell P.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
748	399	11	12/27/1985	McDonald, Nola L. McDonald, Morris	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
749	400	11	1/3/1986	Gerst, Martin E. Gerst, Leeanna	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
750	410	11	6/1/1986	Union Oil Co.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
751	412	11	7/1/1986	Van Pelt, John E.; Van Pelt, Maryellen Williams	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
752	414	11	7/1/1986	Van Pelt, Richard H.; Van Pelt, Bobbie	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
753	415	11	7/28/1986	Bachman, Fritz Bachman, Maria L.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
754	416	11	6/10/1986	Miner, Robert W. Margolius, Beulah	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
755	417	11	9/6/1986	Ferguson, Clara	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
756	418	11	9/6/1986	Huntley, Laura	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
757	420	11	4/9/1982	Lucchesi, Scott Robert; Lucchesi, Marianne	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
758	421	11	9/25/1986	Cloninger, Ronald B. Cloninger, Elaine E.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
759	423	11	9/11/1986	Carson, Carole	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
760	424	11	9/11/1986	Davenport, Birnie	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
761	425	11	9/11/1986	Botefuhr, Lou Davenport	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
762	426	11	10/16/1986	Union Oil Co.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
763	427	11	11/3/1986	Wilmer B. Eames	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
764	428	11	11/3/1986	Alicia Eames Clagett and O.T. Clagett	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
765	432	11	11/25/1986	Herbert, John F.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
766	433	11	11/25/1986	Akins, James D.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
767	434	11	11/25/1986	Akins, James D. Akins, Ruth E.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
768	435	11	11/25/1986	Akins, James D.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"

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769	436	11	9/11/1986	Davenport, G.E.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
770	437	11	9/11/1986	Davenport, G.E.; Vestal, Patricia L.; Davenport, Elizabeth G.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
771	438	11	9/11/1986	Davenport, Donald	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
772	439	11	9/11/1986	Hallam, Divona Alda	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
773	440	11	11/25/1986	Franklin, Virginia Amy	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
774	443	11	9/5/1986	Gonzales, Helen	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
775	444	11	12/4/1986	Conley, George	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
776	445	11	12/4/1986	McRorey, W. Eli McRorey, Bernadene	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
777	446	11	12/4/1986	Quinn, Lavina Dorothy	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
778	447	11	12/4/1986	Laubach, Johnnie	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
779	448	11	12/1/1986	Russo, Pearl Elnora	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
780	449	11	12/1/1986	Squires, Walter Squires, Audrey	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
781	450	11	12/22/1986	Dorrell, Donald C. Dorrell, Jo Ann	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
782	451	11	12/3/1986	Downen, Leonard L. Brown, Catherine Helen	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
783	452	11	12/5/1986	McCormick, Glen E. McCormick, Beverly E.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
784	453	11	12/1/1986	Field, Paul Field, Dorothy	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
785	454	11	11/26/1986	Downing, John S. Downing, Neva J.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
786	455	11	12/2/1986	Dorrell, Donald C. Dorrell, Jo Ann	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
787	458	11	11/25/1986	Chapman, Gordon Gillespie, Don	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
788	459	11	2/18/1987	Davidson, Robert	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
789	460	11	1/22/1987	Campbell, Bessie E.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
790	461	11	11/12/1986	Smith, Diane H.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
791	462	11	12/28/1986	Leight, Carole Quiat	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
792	463	11	12/28/1986	Waldbaum, H.I.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
793	464	11	12/28/1986	Stockton, Jack D.; Stockton, Emma F.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
794	465	11	12/28/1986	Hittson, McLeod	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
795	466	11	12/28/1986	Searle, L.W.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"

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796	467	11	12/28/1986	Judd, E. James	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
797	468	11	12/28/1986	Reynolds, James F.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
798	469	11	12/28/1986	Garlett, D.W.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
799	470	11	12/28/1986	Quiat, Gerald M.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
800	471	11	12/28/1986	Quiat, Roberta N.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
801	472	11	12/28/1986	Quiat, Marshall	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
802	473	11	12/28/1986	Garlett, E. Lee	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
803	474	11	12/28/1986	Bucholtz, Alan H.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
804	475	11	12/28/1986	Williams, Ralph	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
805	476	11	12/28/1986	Williams, Ralph	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
806	477	11	2/3/1987	Levin, Hazel Ann	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
807	478	11	2/3/1987	Moore, Henry	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
808	479	11	1/12/1987	Knaus, Dallas H.; Knaus, Betty U.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
809	480	11	1/23/1987	Clark, David E.; Clark, Angela A.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
810	481	11	1/23/1987	Threlkeld, Pauline	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
811	483	11	1/22/1987	Stanton, Francis J.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
812	485	11	1/23/1987	Hartnitt, Bruce D.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
813	486	11	2/26/1987	Schumann, John H.; Schumann, Cecelia S.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
814	487	11	12/4/1986	Huibsch, Edmund M.; Huibsch, Rose M.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
815	488	11	1/23/1987	Murphy, Elvin R. Murphy, Priscilla	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
816	489	11	2/27/1987	Miner, Robert W.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
817	490	11	3/4/1987	Allen, Elizabeth J.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
818	491	11	3/27/1987	Bruckner, Maude L.; Bumgardner, Clarence A.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
819	492	11	2/6/1987	Sherwood, Mae	"_____ of the gross proceeds each year, payable quarterly, for the gas from each well where gas only is found, while the same is being used off the premises, and if used in the manufacture of gasoline a royalty of _____, payable monthly at the prevailing market rate for gas."
820	493	11	2/20/1987	First Interstate Bank of Denver; Garlett, David W.; Quiat, Gerald M.; Garlett, Evelyn Q.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
821	494	11	3/3/1987	Paulis, Robert M.; Paulis, Susan	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"

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822	495	11	6/23/1987	Hurlburt, Harold	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
823	496	11	6/23/1987	Hurlburt, Ed	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
824	497	11	6/23/1987	Wilson, Minnie	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
825	498	11	6/23/1987	Rockne, Recia Belle	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
826	499	11	6/23/1987	Looney, Daisy B.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
827	500	11	6/23/1987	Trimmer, Morris	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
828	501	11	7/9/1987	Haug, Mae	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
829	502	11	7/9/1987	Burnside, Mitchell R.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
830	503	11	7/9/1987	Crawford, Helen	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
831	504	11	7/9/1987	Burnside, Robert W.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
832	505	11	7/27/1987	Trimmer, Victor	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
833	506	11	7/31/1987	Baum, Golda R.; Baum, Paul B.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
834	508	11	8/20/1987	Rector, Juanita	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
835	509	11	8/20/1987	Baughman, John	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
836	510	11	7/9/1987	Burnside, William F.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
837	511	11	7/24/1987	Miller, Robert H.; Miller, Lloyd B.; Miller, Bonita D.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
838	512	11	8/20/1987	Mead, Betty L.; Mead, Loren F.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
839	513	11	8/14/1987	Lezer, Grace H.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
840	514	11	9/3/1982	Ling, Alfred C.; Ling, Sue A.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
841	515	11	8/20/1987	Baughman, George	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
842	516	11	9/9/1987	Urich, Patricia G.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
843	519	11	9/21/1987	Clark, Charlie	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
844	520	11	9/21/1987	Bertucci, Elsie	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
845	521	11	7/9/1987	Wayne, John	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
846	522	11	9/21/1987	O'Hara, Joann	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
847	524	11	10/12/1987	Luellen, Maudie	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
848	525	11	12/4/1987	Burns, Phyllis Jo	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"

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849	526	11	12/4/1987	Bumgardner, Eileen Rose; Bumgardner, P. Gene	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
850	530	11	12/4/1987	Blakeslee, Ruth E.; Blakeslee, Kenneth	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
851	531	11	12/4/1987	Arnold, Eleanor L.; Arnold, Mike	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
852	534	11	4/8/1987	Wells Fargo Bank; Eaton, Benjamin H.; Eaton, Rea L.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
853	535	11	12/4/1987	Bruckner, Betty M.; Bruckner, Eyer	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
854	538	11	4/7/1988	Ogden, Roberta E.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
855	539	11	4/15/1988	Von Dette, Jr., Fred	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
856	540	11	4/15/1988	Griffin, Mary Jane	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
857	542	11	4/15/1988	Von Dette, Robert	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
858	571	11	3/10/1989	Hunter, Barbara J.; Hunter, Barbara Juhan	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
859	572	11	9/28/1988	Akins, James D.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
860	573	11	10/17/1988	Chalfin, Kathryn P.; Juhan, Joseph Paul	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
861	574	11	8/31/1988	Juhan, Edward Nelson	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
862	579	11	4/10/1989	White, Katherine M.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
863	582	11	4/14/1989	Schumann, William B.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
864	617	11	10/24/1989	Gates, Shaun A.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
865	620	11	10/24/1989	Rex E. Gates	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
866	622	11	10/24/1989	Woodard B. Gates	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
867	630	11	1/3/1990	Sheldon Steinhauser	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
868	632	11	9/3/1985	Charles W. Clark and Viola L. Clark	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
869	643	11	6/5/1990	W.F. Clough	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
870	651	11	5/21/1990	Vicki Grumley	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
871	657	11	5/24/1990	George H. Curfman, Jr., and Hope Griswold Curfman	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
872	659	11	5/24/1990	Jane Curfman Gwyn and James Gwyn	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
873	689	11	9/18/1990	Cindy Lou Vondette, as Trustee of the Cindy Lou Vondette Trust	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
874	705	11	6/8/1990	Charlotte A. Squires	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
875	706	11	5/23/1990	Beth I. Squires	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"

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876	707	11	5/23/1990	Margaret Ann Plummer	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
877	708	11	5/23/1990	Myra Garnett	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
878	709	11	5/23/1990	Van R. Squires	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
879	710	11	10/5/1990	Glee Larsen	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
880	711	11	10/5/1990	Ella Morgan	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
881	712	11	10/5/1990	Deaun Johnson	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
882	713	11	10/5/1990	Lavon Dahl	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
883	719	11	5/23/1990	William Harry Squires	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
884	720	11	10/5/1990	Fred Henrie	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
885	721	11	3/22/1991	Kay White	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
886	724	11	5/23/1990	Wirt V. Squires, Jr.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
887	725	11	4/15/1991	Board of County Commissioners, Garfield County	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
888	726	11	8/15/1990	Board of County Commissioners, Garfield County	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
889	727	11	5/23/1990	Sara Jane Davis	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
890	745	11	4/24/1991	David E. Clarke	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
891	760	11	4/12/1993	Board of County Commissioners, Garfield County	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
892	807	11	7/29/1994	Denver Conservative Baptist Seminary, Inc.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
893	832	11	8/28/1985	Vera Mahaffey, Margaret Mahaffey Beckner, Maureen Mahaffey Frederick and Merrill D. Mahaffey	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
894	4853	11	10/15/1983	David Youberg and Kathryn M. Youberg	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
895	6293	11	6/15/1997	Paul D. McNew and Mavis D. McNew	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
896	6297	11	6/5/1997	Paul D. McNew and Mavis D. McNew	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
897	6300	11	5/29/1997	Ethel I. Hibbard and Helen Claypool Edwards	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
898	6793	11	8/20/1990	Board of County Commissioners, Garfield County	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
899	9823	11	7/15/1997	U.S. Lab, Inc.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
900	9826	11	7/15/1997	U.S. Lab, Inc.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"
901	9827	11	7/15/1997	U.S. Lab, Inc.	"gross proceeds each year . . . for the gas from each well where gas only is found, while the same is being used off the premises"

	A	B	C	D	E
1	Lease No.	Cat.	Date	Original Lessor	Royalty Clause
902	112272	11	9/1/2006	Savage, Joan L.; Savage, John W.; Savage, Jr., John W.; Savage, Roy E.; Savage, Marshall T.; Savage, Daniel W.	"To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, _____% of the gross proceeds derived from such production."
903	9985	12	12/5/1997	Colorado National Bank, as Trustee of the Ann F. Dickerson Irrev. T/A Family Trust	"there shall be no deductions from the value of Lessor's royalty by reason of any required processing, cost of dehydration, compression, transportation, or other matter to market such gas"
904	102963	12	4/27/1998	NationsBank of Texas, as Agent for The First Church of Christ, Scientist Agency #1221900	"Lessor shall not bear, directly or indirectly, any production or post-production cost or expenses, including without limitation, cost or expenses for storing, separating, dehydrating, transporting, compressing, treating, gathering, or otherwise rendering marketable or marketing the Products[.]"
905	111628	12	4/1/2006	Chevron U.S.A. Inc.	"(b) on gas . . . produced from said land and sold, _____% of the amount realized from the sale thereof and any products produced or extracted therefrom to the first purchaser that is not affiliated with or related to Lessee; (c) on gas . . . produced from said land and used off said land or land pooled therewith, _____% of the market value of the gas at the location where the gas would first be marketable if sold. Royalties to Lessor shall be computed and paid without deduction for costs of development, production, treatment, separation, dehydration, gathering, compression, transportation, manufacturing, processing, marketing, or any other costs of whatsoever nature except Lessor's share of taxes on production."
906	113404	12	4/14/2002	Ertl, Theo, Trustee for Jann Ertl Trust	"On leased minerals produced from said land and sold or produced from said land and used off the leased premises or in the manufacture of gasoline or other products, Lessee shall pay to Lessor a sum equal to _____ of the net proceeds received from the sale of such produced substances where the same is sold at the mouth of the well or, if not sold at the mouth of the well, then _____ of the market value thereof at the mouth of the well, but in no event more than _____ of the actual amount received by Lessee for the sale thereof. Without limiting the foregoing, it is expressly agreed that Lessee Shall Not have the right to deduct from Lessor's royalty on any gas produced hereunder the royalty share of the costs, if any, of compression for delivery, transportation and gathering to the point of delivery to the purchaser of such production, except for all applicable production, severance, and other taxes."
907	113424	12	8/23/2007	The Ranch at Parachute, LLC	"... Lessee covenants and agrees to account for and pay Lessor for gas and oil of whatsoever nature or kind (with all of its constituents) produced and sold, or used off the Leased Premises, or used in the manufacture of products or power, _____ of the actual amount received by Lessee from the sale of the oil and gas or product produced, without deductions except severance taxes, ad valorem taxes, and any other tax required by law to be deducted by Lessee."
908	N/A	13	6/12/1975	GMW (override)	"Said overriding royalty shall be paid or delivered to ASSIGNOR free and clear of all development, operating and other costs, except all severance and other taxes... The overriding royalty herein reserved shall be payable at the same time, in the same manner and based on the same valuation of production as royalties paid on federal leases in the vicinity having comparable dates of initial production."

DISTRICT COURT, GARFIELD COUNTY, COLORADO 109 8 th Street, Glenwood Springs, CO 81601 Telephone: (970) 945-5075	FILED Document DATE FILED: March 20, 2009 5:45 PM CO Garfield County District Court 9th JD CASE NUMBER: 2006CV317 Filing Date: Mar 20 2009 3:45PM MDT Filing ID: 24319012 Review Clerk: N/A
Plaintiffs: IVO LINDAUER, SIDNEY and RUTH LINDAUER, and DIAMOND MINERALS, LLC, on behalf of themselves and all others similarly situated, v. Defendant: WILLIAMS PRODUCTION RMT COMPANY	
▲ COURT USE ONLY ▲ Case Number: 2006cv317 Div.: Ctrm.:	

JUDGMENT

On this 20th day of March, 2009, this case comes on for hearing to consider: (1) certification of a plaintiff class pursuant to C.R.C.P. 23; (2) approval of the Settlement Agreement dated effective June 1, 2008; (3) approval of the Distribution Schedule; and (4) approval of the amount of attorneys' fees and expenses. Plaintiffs and Plaintiff Class appear by and through Nathan A. Keever of Dufford, Waldeck, Milburn & Krohn, LLP, Grand Junction, Colorado, G.R. Miller of G.R. Miller, P.C., Durango, Colorado, and Thomas D. Kitch, Gregory J. Stucky and David G. Seely of Fleeson, Gooing, Coulson & Kitch, L.L.C., Wichita, Kansas. Defendant appears by and through John F. Shepherd of Holland & Hart LLP, Denver, Colorado.

A. CERTIFICATION OF PLAINTIFF CLASS

The parties requested the Court's consideration, pursuant to C.R.C.P. 23, of the creation of a Plaintiff Class, described as follows:

All royalty owners, including overriding royalty interest owners, who have been entitled to receive royalty payments under oil and gas leases located in Garfield County, Colorado, owned in whole or in part, or operated by, Williams

Production RMT Company (including its predecessor, Barrett Resources Corporation) at any time during the period from September 20, 2000, through May 31, 2008. Excluded from the "Plaintiff Class" are the following:

- (a) The United States of America insofar as its mineral interests are managed by the Minerals Management Service;
- (b) Indian Tribes and their allottees;
- (c) Parties to prior settlement agreements with Williams relating to payment of royalty (Puckett Land Company);
- (d) Royalty owners in oil and gas leases that provide a specific formula for payment of royalty tied to an index price, but only to the extent they receive royalty under such leases (the oil and gas lease dated July 20, 2005 between Mary Anne Bosely, *et al.* as "Lessor" and Williams as "Lessee," and the oil and gas lease dated May 9, 2006, between Jonathon H. Wellendorf and Diana L. Wellendorf as "Lessor" and Williams as "Lessee");
- (e) Parties who have previously litigated royalty payment issues with Williams, for the time period covered by the judgments entered in those cases (Joan L. Savage and William F. Clough);
- (f) the Meriam Zela Grynberg Trust, the Rachel Susan Grynberg Trust, and the Stephen Mark Grynberg Trust, which are plaintiffs asserting royalty payment claims in *Grynberg v. Williams*, Civil Action No. 02-CV-5167, pending in the Denver District Court;
- (g) EnCana Oil & Gas (USA) Inc., ExxonMobil, and Chevron USA (but these royalty owners will be given an opportunity to opt in to the Plaintiff Class);
- (h) Williams Production RMT Company and Barrett Resources Corporation and any of their affiliates; and
- (i) The legal representatives, heirs, successors, or assigns of any excluded party.

After hearing statements of counsel, after taking into account matters contained in the Court file, and after otherwise being duly advised of pertinent circumstances, the Court makes the following findings:

1. There are several hundred members of Plaintiff Class and their joinder would be impracticable. There are questions of law and fact common to the Plaintiff

Class. The claims of the Class Representatives are typical of the claims of the Plaintiff Class. The Class Representatives will fairly and adequately protect the interests of the Plaintiff Class. The prerequisites to maintain this action as a class action set forth in C.R.C.P. 23(a) are met.

2. The questions of law and fact common to all members of the Plaintiff Class predominate over questions, if any, affecting only individual members, and a class action is superior to any other available method for the fair and efficient adjudication of the controversy. The requirements of C.R.C.P. 23(b)(3) are met. Accordingly, a Plaintiff Class should be certified pursuant to C.R.C.P. 23(b)(3).

3. Plaintiffs Sidney Lindauer, Ruth Lindauer, and Ivo Lindauer, residents of Garfield County, Colorado, and Plaintiff Diamond Minerals, LLC, a Colorado limited liability company with its principal office in Garfield County, Colorado, should be designated as the Class Representatives.

4. Nathan A. Keever of Dufford, Waldeck, Milburn & Krohn, LLP, Grand Junction, Colorado, G.R. Miller of G.R. Miller, P.C., Durango, Colorado, and Thomas D. Kitch, Gregory J. Stucky and David G. Seely of Fleeson, Gooing, Coulson & Kitch, L.L.C., Wichita, Kansas, should be designated as Class Counsel.

B. APPROVAL OF SETTLEMENT AGREEMENT

The parties requested the Court to give final approval to the Settlement Agreement, which the Court conditionally approved on October 21, 2008.

After hearing statements of counsel, after being advised by certain Class Representatives concerning the proposed settlement, after taking into account matters

contained in the Court file, and after otherwise being duly advised of pertinent circumstances, the Court makes the following findings:

1. The definitions in Section 1 of the Settlement Agreement are incorporated by reference.

2. Pursuant to the Order entered on October 21, 2008, affidavits of mailing and publication, filed with the Court, demonstrate that Class Counsel has complied with this Court's directions with respect to the Notice. Counsel mailed the Notice approved by this Court to all members of the Plaintiff Class who could be reasonably identified. In addition, the Notice was published in the Denver Post, the Glenwood Post, and the Grand Junction Sentinel. The notice to Class Members and the manner of disseminating such notice comply with due process and with C.R.C.P. 23.

3. Pursuant to C.R.C.P. 23(c)(2) and the terms of the Notice, members of the Plaintiff Class have been provided with the opportunity to exclude themselves from the Plaintiff Class. The persons, firms and corporations listed on Exhibit A attached hereto have opted out of the Plaintiff Class and are excluded from the Plaintiff Class.

4. Plaintiffs and Plaintiffs' Counsel entered into the Settlement Agreement: (i) after taking into account the uncertainties, risks and potential delays associated with the continued prosecution of the Action, including those involved in securing a final judgment that would be favorable to the Plaintiff Class and not be disturbed on appeal; (ii) after taking into account the substantial benefits that will be received as a result of the settlement; and (iii) after having concluded that the settlement provided for herein confers substantial benefits on the members of the Plaintiff Class, and is fair, just, reasonable, adequate and in the best interests of the Plaintiff Class.

5. Defendant has denied and continues to deny any liability in the Action (except with respect to refunds of ad valorem tax withholding). Defendant asserted and continues to assert many defenses. Defendant entered into the settlement in order to put to rest the present controversy between Plaintiffs, the Plaintiff Class and Defendant and to avoid the further expense, inconvenience and disruption of defending against the Action. Defendant has also taken into account the uncertainty and risks inherent in any litigation, especially in complex cases like the Action, and the fact that substantial amounts of time, energy and resources of Defendant have been and, unless this settlement is consummated, will continue to be, devoted to the defense of this Action.

6. The Court finds that a class action settlement should be approved only if it is fair, reasonable and adequate after comparing the terms of the settlement with the likely results of litigation.

7. The Court finds that the settlement as set forth in the Settlement Agreement was arrived at through arms-length and vigorous and extensive negotiations between Plaintiffs' Counsel and counsel for the Defendant.

8. The Court finds that the settlement as set forth in the Settlement Agreement was arrived at in good faith and was based on a realistic appraisal by the parties and their counsel of the difficulties inherent in a case of this magnitude and complexity.

9. The Court recognizes that if this settlement as set forth in the Settlement Agreement had not been reached, even if the Plaintiff Class had prevailed, any recovery would have been delayed for a lengthy period of time given the high probability of an appeal and, in the event of a reversal or modification, a further delay resulting from another lengthy trial.

10. Based upon the evidence presented, the arguments of counsel, and the entire record of this case, the Court concludes that the Settlement Agreement is fair, adequate and reasonable and, accordingly, the Settlement Agreement and the terms of the settlement contained therein should be and hereby are finally approved.

C. APPROVAL OF THE DISTRIBUTION SCHEDULES

Defendant presented to the Court the Preliminary Distribution Schedule, and explained the manner in which the Preliminary Distribution Schedule has been prepared and how the Final Distribution Schedule will be prepared. The parties jointly requested the Court to approve the Preliminary Distribution Schedule and the method for preparation of the Final Distribution Schedule.

The Court finds that the Preliminary Distribution Schedule should be approved, and the Court approves of the manner in which the Final Distribution Schedule is to be prepared. The Court further finds that, within fifteen (15) days of the date of this Fairness Hearing, Defendant should file the Final Distribution Schedule with the Court under seal and shall also file a version of the Final Distribution Schedule (without names of the members of the Plaintiff Class but by the most current identification number of each such member assigned to it by Defendant in its normal course of business) with the Court. The Court further finds that, within five (5) days of the receipt of the Final Distribution Schedule from Defendant, Class Counsel should post the Final Payment Schedule (without names of the members of the Plaintiff Class but by the most current identification number of each such member assigned to it by Defendant in its normal course of business) on the web

site: www.fleeson.com. Defendant shall issue Distribution Checks in accordance with the Final Distribution Schedule.

D. AWARD OF FEES, EXPENSES, AND ADMINISTRATIVE EXPENSES.

The Class Counsel requested that their application for attorneys fees, expenses and Administrative Expenses be approved.

After hearing statements of Class Counsel, after considering testimony in connection therewith, after taking into account matters contained in the Court file, and after otherwise being duly advised of pertinent circumstances, the Court finds that Class Counsel should be:

1. Reimbursed the sum of \$74,989.36 for litigation costs and expenses;
2. Reimbursed the sum of \$21,680.80 for Administrative Expenses;
3. Awarded reasonable attorneys' fees in the amount of twenty-five percent (25%) of the Settlement Fund, after subtracting the above expenses;

and directs that such fees and expenses be paid to Plaintiffs' Counsel from the Settlement Fund.

IT IS, THEREFORE, HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The findings herein shall be the Order of the Court.
2. The parties shall take any and all steps necessary to implement the Settlement Agreement according to its terms and the terms of this Order.
3. The Settled Claims through the date of this Judgment are fully and completely settled, discharged, and released. Upon Williams' issuance of the Distribution Checks, Settlement Class members are deemed conclusively to have released

and settled the Settled Claims. All such members of the Plaintiff Class are barred and permanently enjoined from commencing or prosecuting either directly, representatively, derivatively or in any capacity, any of the Settled Claims against the Released Parties.

4. Without affecting the finality of this Final Judgment in any way, this Court shall retain continuing jurisdiction of this action to address any issues concerning implementation of the Settlement Agreement and enforcing this Final Judgment.

CERTIFICATION UNDER C.R.C.P. 54(b)

The Court's approval of the Settlement Agreement and issuance of this Judgment finally resolves all claims in this litigation, except for the two Reserved Claims. The Court hereby finds pursuant to C.R.C.P. 54(b) that there is no just reason for delay, and that final judgment as to the Settled Claims should be issued.

The two Reserved claims are easily separable from the Settled Claims. There is little or no likelihood that a reviewing court would have to consider the same issues more than once. Delaying entry of final judgment for the Settled Claims would serve no purpose. If anything, certification of this judgment as final will serve the litigants' interest in distributing the settlement fund for the Settled Claims, and in having the Settled Claims conclusively resolved. Accordingly, the time to appeal this Judgment and resolution of the Settled Claims begins to run upon issuance of the Judgment.

Signed this 20th day of March, 2009.

Denise K. Lynch
JUDGE DENISE K. LYNCH



Lindauer et al. v. Williams
Opt Outs

	Date Signed	Owner Number	Owner Name
	December 22, 2008	432250-1	Betty V. Stewart
2	December 26, 2008	437063-1	Edward J. Hoaglund Ida L. Hoaglund
3	February 2, 2009	406815	EOG Resources, Inc.
4	January 9, 2009	444261	Judy Harris
5	January 15, 2009	433188-2	Carbon Energy Corp, A Subsidiary of Evergreen/Now Pioneer Natural Resources USA, Inc.
6	January 15, 2009	403162	Pioneer Natural Resources USA Inc.
7	January 20, 2009	446813-1	Marcus Medved
8	January 21, 2009	451759-1	RME Petroleum, n/k/a Anadarko E&P Company, LP - Thomas P. Goresen
9	January 21, 2009	430436	Anadarko E&P Co LP a/k/a RME Petroleum Co
10	January 21, 2009	433723-1	Charlene M. Miller
11	January 23, 2009	474284	Arletta M. Fortik
12	January 23, 2009	452716-1	Rozann M. Tanner
13	January 26, 2009	484396	Clough Energy Co, LLC
14	January 29, 2009	479123	Linda Laphan Brown
15	January 30, 2009	440265-1	Green Liv Tr Dtd 4/28/00
16	January 30, 2009	448925-2	Myco Industries, Inc.
17	January 30, 2009	430946-1	Abo Petroleum Corporation
18	January 30, 2009	477603-1	Lindell Scarrow
19	January 30, 2009	457182	Yates Drilling Company
20	January 30, 2009	400050	Yates Petroleum Company
21	January 30, 2009	442463-1	Janice J. Baum
22	January 30, 2009	440140	GMW Company
TOTAL			

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 17-cv-01990-MSK-MEH

ELNA SEFCOVIC, LLC, JUHAN, LP, and ROY
ROYALTY, INC., individually and on behalf of all
others individually situated,

Plaintiffs,

v.

TEP ROCKY MOUNTAIN LLC,

Defendant.

JOINT MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT

Plaintiffs Elna Sefcovic, LLC (“Sefcovic”), Juhan, LP (“Juhan”), and Roy Royalty, Inc. (collectively, “Named Plaintiffs” or “Class Representatives”)¹, and Defendant TEP Rocky Mountain LLC (“TEP”), move for final approval of the parties’ class settlement agreement. As grounds for this Joint Motion, the parties state as follows:

INTRODUCTION

1. This case was filed in July 2017 alleging that TEP underpaid royalties to Plaintiffs and similarly situated royalty and overriding royalty owners over a six-year period. See First Amend. Class Action Compl. [Dkt. #43] at ¶¶ 7, 8. Plaintiffs alleged that TEP’s royalty

¹ Plaintiffs moved to file a Second Amended Complaint on October 26, 2018. The Second Amended Complaint adds White River Royalties, LLC as an additional class representative for Subclass 1, Juhan, LP as an additional class representative for Subclass 3, and includes information regarding Subclass 4 as set forth in the Settlement Agreement. TEP consents to Plaintiffs’ motion. To account for these new class representatives, the Parties amended the Settlement Agreement, attached in full as Exhibit 1.

payments were in breach of their royalty instruments and the terms of a class action settlement agreement entered in 2008 in *Lindauer v. Williams Production RMT Co.*, 2006-CV-317 (Garfield County, Colorado District Court) (the “*Lindauer Settlement Agreement*”). *See id.*

2. After over a year of litigation, the parties reached a proposed settlement that fully resolves the royalty underpayment claims of approximately 600 members of the proposed Settlement Class for the entire six-year period (the “*Sefcovic Settlement Agreement*”). *See Exhibit 1*. Pursuant to the terms of the *Sefcovic Settlement Agreement*, TEP agreed to pay over \$10 million to resolve the Settlement Class’ royalty underpayment claims on TEP’s production and sale of natural gas (and natural gas liquids) since July 2011, extending to TEP’s royalty payments prior to June 1, 2018. *See id.* at ¶ 2. In addition, TEP also agreed to a method of calculating royalties paid on or after June 1, 2018 to certain owners under particular royalty instruments. *See id.* at ¶ 9. The terms of the *Sefcovic Settlement Agreement* bestow a substantial economic benefit on the Settlement Class members.

3. The Class is defined as:

all persons and entities to whom TEP has paid royalties and/or overriding royalties, and deducted post-production costs from those royalties and/or overriding royalties, including owners whose royalties currently are held in suspense, since July 1, 2011, on natural gas production from any well subject to the oil and gas lease agreements which the settling parties in the *Lindauer Settlement* identified as Category 2, Category 3, Category 5, and Category 11 instruments.

The Settlement Agreement, as amended, divides the Class into four Subclasses (the “Subclasses”) as follows:

Subclass 1: Elna Sefcovic, LLC, White River Royalties, LLC, and all persons and entities to whom TEP has paid royalties, and deducted post-production costs from those royalties, including

owners whose royalties currently are held in suspense, since July 1, 2011, on natural gas production from any well subject to the oil and gas lease agreements which the settling parties in the *Lindauer* Settlement identified as either Category 2 or Category 3 royalty instruments.

Subclass 2: Juhan, LP, and all persons and entities to whom TEP has paid royalties and/or overriding royalties, and deducted post-production costs from those royalties and/or overriding royalties, including owners whose royalties currently are held in suspense, since July 1, 2011, on natural gas production from any well subject to the oil and gas lease agreements which the settling parties in the *Lindauer* Settlement identified as Category 5 instruments, and that currently are identified by TEP as Category 5 instruments.

Subclass 3: Roy Royalty, Inc., Juhan, LP, and all persons and entities to whom TEP has paid royalties and/or overriding royalties, and deducted post-production costs from those royalties and/or overriding royalties, including owners whose royalties currently are held in suspense, since July 1, 2011, on natural gas production from any well subject to the oil and gas lease agreements which the settling parties in the *Lindauer* Settlement identified as Category 11 instruments, and that currently are identified by TEP as Category 11 instruments.

Subclass 4: Juhan, LP, and all persons and entities to whom TEP has paid royalties and/or overriding royalties, and deducted post-production costs from those royalties and/or overriding royalties, including owners whose royalties currently are held in suspense, since July 1, 2011, on natural gas production from any well subject to the oil and gas lease agreements which the settling parties in the *Lindauer* Settlement identified as Category 5 or 11 instruments, but that currently are not identified by TEP as exclusively Category 5 or Category 11 instruments.

Id. at ¶ 1.

4. On August 16, 2018, the Court granted the parties' Joint Motion for preliminary approval of their settlement agreement, and provisionally certified a Settlement Class pursuant to Fed. R. Civ. P. 23(b)(3). See Order [Dkt. #61] at 7-9. A copy of the *Sefcovic* Settlement Agreement was attached as Exhibit A to their Joint Motion. See Joint Mot. [Dkt. #56] at Exhibit

A. The Court expressly found that, upon preliminary review, the settlement agreement was fair, reasonable, and adequate. *See* Order [Dkt. #61] at ¶ 8.

5. On August 30, 2018, TEP paid \$10,025,308 into an escrow account maintained by Bank of Oklahoma Financial. *See* Declaration of George Barton, attached as Exhibit 2, at ¶ 12. These escrowed funds represent the total settlement amount identified in paragraph 2 of the settlement agreement. *See* Exhibit 1 at ¶ 2.

6. At the Court's instruction, Plaintiffs mailed notice of the settlement to approximately 643 members of the defined Class on August 21, 2018. *See* Class Counsel's Confirmation of Notice [Dkt. #74]. Of these Class members, 36 elected to exclude themselves from the Settlement Class. *See* Class Counsel's Submission of List of Royalty Owners Who Have Submitted Request to Be Excluded from the Class and the Class Settlement Agreement [Dkt. #73]. These 36 individuals and entities are not included in the Settlement Class, and pursuant to Paragraph 4(e) of the settlement agreement, the total settlement amount to be paid by TEP has been reduced by the proportionate amount attributable to these individuals and owners. A copy of the Final Distribution Schedule allocating \$5,240,989.38 to the remaining Settlement Class members is attached as Exhibit 3. The \$5,240,989.38 allocation to the 607 Settlement Class members was determined by subtracting the following from the \$10,025,308 Class Settlement amount: (1) the \$2,033,803.67 opt-out credit; (2) Class Counsel's requested litigation expenses of \$104,915.95; (3) the \$3,000 fee of the Escrow Agent; (4) Class Counsel's requested attorneys' fees of \$2,627,600; and (5) the requested \$15,000 in incentive award payments to the Class Representatives.

7. The deadline for Class members to submit objections to the proposed settlement is November 6, 2018, which is one week from the date of this Joint Motion. *See* Order [Dkt. #61] at ¶ 32. To date, the parties have not received any Settlement Class member objections to the fairness, reasonableness, or adequacy of the proposed Class Settlement.

THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE

8. The proposed Class Settlement is fair, reasonable, and adequate, and should be finally approved.

9. With respect to owners in Subclass 1, TEP's settlement payment represents at least 100% of the total amount of processing costs that Plaintiffs challenged as improperly deducted. *See* Declaration of Donald Phend, attached as Exhibit 4, at ¶ 7(a). In addition, TEP's settlement payment represents a significant portion of fuel costs challenged by Plaintiffs as improperly deducted. *See id.* The deduction of these costs was an issue specifically left undecided by the *Lindauer* Settlement Agreement. *See Lindauer* Settlement Agreement, attached as Exhibit 5, at § 4.2. The *Sefcovic* Settlement Agreement resolves this undecided issue and establishes a method of calculating royalties to Subclass 1 Class members after the effective date of the settlement. *See Exhibit 1* at ¶ 9(a).

TEP denies that it underpaid royalties to members of Subclass 1. TEP believes that the *Lindauer* Settlement Agreement addresses processing costs for Category 2 and 3 instruments. *See Exhibit 5* at § 4.4. If, however, the *Lindauer* Settlement Agreement does not address processing costs, TEP would have overcompensated Category 2 and 3 owners, and would be entitled to recover those overpayments. TEP further believes that gathering and fuel costs are encompassed by transportation costs. TEP therefore is permitted to deduct these costs from

Category 2 and 3 owners, as their leases expressly require those owners to bear the cost of transporting such gas “from the mouth of the well to the point of sale or use.” See Exhibit 5 at Exhibit A; *accord* First Amend. Class Action Compl. [Dkt. #43] at Exhibit 1 (quoting relevant language from Category 2 and 3 leases).

10. With respect to owners in Subclasses 2 and 3, TEP’s settlement payment represents at least 100% of the total amount of post-production costs that Plaintiffs challenged as improperly deducted under the *Lindauer* Settlement Agreement. See Exhibit 4 at ¶¶ 7(c), (e).

11. With respect to owners in Subclass 4, TEP’s settlement payment represents more than 100% of the total amount of post-production costs that Plaintiffs challenged as improperly deducted under the *Lindauer* Settlement Agreement. See *id.* at ¶ 7(g). Subclass 4 was created because, in the course of converting division orders and royalty accounting systems from WPX Energy, Inc. (“WPX”) to TEP in 2016, TEP was unable to transfer the classification of some (but not all) Category 5 or Category 11 instruments. See Affidavit of Alan Simpson, attached as Exhibit 6, at ¶ 8. The Class members in Subclass 4 are those owners receiving royalties or overriding royalties under instruments properly designated as Category 5 or 11 instruments, but for whom TEP has not yet re-categorized these instruments in its division orders and royalty accounting systems. See Exhibit 1 at ¶ 1.

Paragraph 9(d) of the *Sefcovic* Settlement Agreement provides TEP with six months to evaluate the instruments held by Subclass 4 Class members, and to determine whether those instruments are properly classified as Category 5 or Category 11 instruments under the *Lindauer* Settlement Agreement. See *id.* at ¶ 9(d). While this process is underway, TEP will pay all Subclass 4 owners consistent with the methodology governing payments under Category 11

instruments. *See id.* at ¶ 9(d)(ii). Under *Lindauer*, Category 11 owners are exempt from all costs other than transportation and NGL fractionation, whereas Category 5 owners also are subject to the allowable share of processing costs under section 4.4 of the *Lindauer* Settlement Agreement. *See Exhibit 5* at § 4.4. Thus, while TEP is reviewing the Subclass 4 instruments, it will not deduct processing costs. *See Exhibit 1* at ¶ 9(d)(ii).

At the conclusion of this six-month review period, owners under instruments that properly should be classified as Category 5 will be paid consistent with the Category 5 methodology. *See id.* TEP also has the right to recoup uncharged processing costs from these owners, but only as to royalties paid after June 2018. *See id.* at ¶ 9(d)(iii). Owners under instruments that should be classified as Category 11 will be paid consistent with the Category 11 methodology. *See id.* at ¶ 9(d)(ii). Finally, for any instruments that TEP has not reviewed and re-classified after six months, those owners will permanently be paid consistent with the Category 11 methodology (*i.e.*, TEP will not deduct processing costs), regardless of the language of their instrument. *See id.* at ¶ 9(d)(v). The *Sefcovic* Settlement Agreement therefore confers a substantial benefit on Subclass 4 members.

12. The Class members' release of claims is limited to the calculation of royalties paid by TEP after July 1, 2011 and through May 31, 2018. *See id.* at ¶ 6.

13. After mailing notice of the proposed settlement to absent Class members, Plaintiffs' counsel received numerous telephone calls, and some requests for additional information, from Class members. *See Exhibit 2* at ¶ 13. Plaintiffs' counsel fully responded to the Class members' questions and requests. *See id.* At least one Class member advised that he

contacted the attorney for the *Lindauer* plaintiffs in 2017 concerning TEP's deduction of post-production costs, and was advised that the attorney would "look into" the matter. *See id.* at ¶ 14.

14. In the course of these communications from Class members, Plaintiffs' counsel received no objections to the Class Settlement or the Court giving it final approval. *See id.* at ¶ 13. The only Class members who have indicated the possibility of filing an objection are Ivo Lindauer and Diamond Minerals, LLC. *See* Correspondence from Lindauer Counsel, Exhibit 7.

15. Fed. R. Civ. P. 23(e) requires the Court's approval of a class-wide settlement agreement to ensure that it is fair, reasonable, and adequate. *See* F.R.C.P. 23(e)(2). Among the numerous factors that govern the Court's inquiry are (1) whether the proposed settlement was fairly and honestly negotiated; (2) if serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt; (3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and (4) the parties' judgment that the settlement is fair and reasonable. *Jones v. Nuclear Pharmacy, Inc.*, 741 F.2d 322, 324 (10th Cir. 1984). If the negotiated class settlement appears fair, reasonable, and adequate, it should be approved, in accordance with the "strong judicial policy in favor of class action settlement." *Tuten v. United Airlines, Inc.*, 41 F. Supp. 3d 1003, 1007 (D. Colo. 2014) (quoting *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 594 (3rd Cir. 2010)) (approving settlement as fair, reasonable, and adequate); *see also* 4 NEWBERG ON CLASS ACTIONS § 13:44 (5th ed.) ("The law favors settlement, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding lengthy trials and appeals.") (citations omitted).

a. Fair and Honest Negotiations. Negotiations are fair and honest when conducted at an arm's length by experienced counsel. *See, e.g., Alvarado Partners, L.P. v. Mehta*, 723 F. Supp. 540, 547 (D. Colo. 1989) (negotiations were fair where seasoned attorneys conducted negotiations with professionalism, and no party raised concern of collusion or improper pressure); *Belote v. Rivet Software, Inc.*, 2014 WL 3906205, at *3 (D. Colo. Aug. 11, 2014) (same). The "vigor with which the case is prosecuted" also weighs in favor of this factor. *Ashley v. Regional Transp. Dist. & Amalgamated Transit Union Div. 1001 Pension Fund Trust*, 2008 WL 384579, at *5 (D. Colo. Feb. 11, 2008) (quoting *Malchman v. Davis*, 706 F.2d 426, 433 (2nd Cir. 1983)) (approving settlement where parties "conducted extensive discovery which is sufficient to evaluate the merits of the claims and defenses as well as the efficacy of the settlement."); *see also Tuten*, 41 F. Supp. 3d at 1007 (approving settlement where experienced counsel undertook voluntary discovery, retained experts, and negotiated a damages methodology).

Here, Class Counsel have extensive experience prosecuting royalty underpayment cases in Colorado and elsewhere. *See Exhibit 2* at ¶¶ 5-8. They have litigated, and successfully resolved, a number of other very significant royalty underpayment cases on behalf of Colorado royalty owners. *See id.* This experience has been of great assistance to Plaintiffs' counsel in fairly and honestly negotiating resolution of this litigation with TEP's counsel. *See id.* at ¶ 10. Plaintiffs' counsel believe the *Sefcovic* Settlement Agreement represents a very good outcome that is fair, adequate, and reasonable for Class members on the claims at issue, both for the past and the future. *See id.* at ¶ 11.

Before the Settlement Agreement was reached, the Parties engaged in voluntary and extensive discovery. TEP produced hundreds of pages of documents, and gigabytes of data, totaling tens of millions of data entries. See Exhibit 6 at ¶ 9. Both Plaintiffs and TEP hired experienced royalty accounting experts to review this data and to calculate damages. See Exhibit 6 at ¶ 3; Exhibit 4 at ¶¶ 3, 4. These experts performed months of analysis, and shared their analyses with one another to confirm their accuracy. See Exhibit 6 at ¶ 10; Exhibit 4 at ¶¶ 4(f), 4(i), 4(l). The Parties, with the help of these experts, spoke on a weekly basis for several months to negotiate a methodology for determining damages and appropriate settlement terms. See Exhibit 2 at ¶ 10. There has been no assertion of collusion or improper pressure. See *id.*

The Settlement Agreement was therefore negotiated fairly and honestly.

b. Serious Questions of Law and Fact. This factor requires the Court to determine “whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt.” See *Ashley*, 2008 WL 384579 at *6 (internal citation omitted) (approving settlement of claims of over 200 class members to avoid the “risk” inherent “when the litigation is complex and involves numerous parties”). The existence of such doubt “augurs in favor of settlement.” *Belote*, 2014 WL 3906205 at *3 (internal citation omitted) (approving settlement). Courts analyzing this factor should consider that uncertainty is inherent in taking a case through jury trial. See *Wilkerson v. Martin Marietta Corp.*, 171 F.R.D. 273, 285 (D. Colo. 1997) (approving settlement and acknowledging that the “one constant about litigation... is that the ultimate jury result is uncertain, unknown, and unpredictable”).

Serious questions of law placed the ultimate outcome of this litigation in doubt. The royalty underpayment issues presented in this litigation are extremely complex. See

Exhibit 2 at ¶ 9; Exhibit 6 at ¶ 3. Plaintiffs' Class includes over 600 royalty owners covering four Subclasses. See Exhibit 2 at ¶ 12. Each Subclass represents a different subset of royalty instruments as defined in the *Lindauer* settlement, and each was subject to a distinct royalty payment methodology. See *id.* While each Subclass asserted breach of contract against TEP, the specific methodology underlying these allegations differed by each Subclass. See *id.*

The Parties retained experienced royalty accounting experts to perform the necessary analysis for each of the four Subclasses. See Exhibit 6 at ¶ 3; Exhibit 4 at ¶¶ 3, 4. These experts reviewed tens of millions of lines of royalty accounting data to understand payments made by TEP and the extent to which those payments were subject to challenge by each of the four Subclasses. See Exhibit 6 at ¶ 9; Exhibit 4 at ¶¶ 4(a)-(m).

Although Plaintiffs and their counsel believe they have a strong case based on their experts' analyses, and would have a good chance of prevailing on the issue of liability for two years within the six-year period, a favorable judgment in favor of the Class would be far from certain because of the serious questions of law and fact at issue. See Exhibit 2 at ¶ 9. Ultimately, the outcome of a trial would be predicated on a court's or jury's assessment of legal questions regarding interpretation of the *Lindauer* Settlement Agreement, the royalty language in the instruments held by Subclass 1 owners, the fuel deduction provisions in the instruments held by Subclass 2, 3 and 4 owners, and the competing experts' testimony over complex issues of natural gas marketing and royalty accounting. This inevitably would depend on the court's or jury's assessment of the credibility of each side's expert witness testimony regarding this subject matter, and the resolution of other risk factors, as identified in Class Counsel's declaration in

support of this motion. Thus, the Class would have faced a significant risk of a judgment in favor of TEP on the issue of liability. See Exhibit 2 at ¶ 9.

Plaintiffs and the Class also would have faced a serious question regarding the amount of the alleged damages to which the Class members would be entitled. Ultimately, if the case were tried, there would have been two vastly different viewpoints presented concerning the measure of the Class members' alleged damages. See *id.* at ¶ 9. As with the issue of liability, each side would have presented expert witness testimony concerning the proper calculation of any damages to which the Class members might be entitled. See *id.* at ¶ 9. Although Plaintiffs and their counsel are confident that they would have presented a persuasive damage calculation for all Class members, the amount of damages to which the Class members are entitled would be contested, and there was considerable uncertainty regarding the amount of damages that a jury may have awarded to the Class. See *id.*

If the parties had not been able to negotiate a fair and reasonable Settlement Agreement, then the Class members would have been required to undertake protracted litigation, which Class Counsel believes presents a serious risk and uncertainty as to ultimately recovering on their royalty underpayment claims. For instance, in two of the five other Colorado royalty underpayment class actions which Class Counsel have handled in the last three years, the defendant natural gas producers filed for protection under Chapter 11 of the Bankruptcy Code, and precluded the class members in each of those cases from obtaining any recovery on their prepetition royalty underpayment claims. See Declaration of Stacy Burrows, attached as Exhibit 8, at ¶¶ 5-28. On February 1, 2017, during the pendency of a class action litigation for royalty underpayments, Vanguard Natural Resources, LLC, a publicly traded limited liability company,

and its subsidiaries, filed a voluntary petition for protection under Chapter 11 of the Bankruptcy Code. *See id.* at ¶ 20. Because Vanguard Natural Resources, LLC filed for protection under Chapter 11 of the Bankruptcy Code, the putative class of royalty owners were precluded from prosecuting their class action claims against Vanguard Permian, LLC, and were unable to recover any damages related to their royalty underpayment claims. *See id.* at ¶ 4. Similarly, in a class action royalty underpayment case where Class Counsel were litigating royalty underpayment claims against August Energy Partners, LLC in this Court, and had received an order granting plaintiffs' motion for class certification, the natural gas producer filed for protection under Chapter 11 of the Bankruptcy Code. On March 16, 2018, only a few months before the trial on the certified class claims was to begin, Augustus Energy Partners, LLC, a privately-owned natural gas exploration, development and production company with assets in Yuma County, Colorado, filed for protection under the Bankruptcy Code. *See id.* at ¶ 13. Through its bankruptcy, Augustus Energy Partners, LLC was permitted to discharge the class members' pre-petition claims for royalty underpayments. Thus, from Class Counsel's perspective, the significant litigation risk faced by the Class members in this case further supports the parties' request for final approval of the Settlement Agreement. The foregoing analysis is from Class Counsel's perspective only. There has been no allegation or representation that TEP is financially unsound, and TEP maintains that it is financially sound.

Thus, these serious questions of law and fact, the potential risk, and the extent to which these risks placed the ultimate outcome of the litigation in doubt, further confirm the reasonableness of the *Sefcovic* Settlement Agreement.

c. Value of Immediate Recovery. Settlement is favorable under this factor when it enables a favorable outcome for a class and avoids litigation and appeal. *See Belote*, 2014 WL 3906205 at *4 (affirming value of immediate recovery where settlement occurred before the parties expended time and money on additional discovery, depositions, and dispositive motions); *Srebnik v. Dean*, 2007 WL 2422146, at *3 (D. Colo. Aug. 22, 2007) (approving settlement where proceeding to trial “would require the expenditure of significant resources by all parties”); *Alvarado Partners, L.P.*, 723 F. Supp. at 548 (value of immediate recovery outweighed possibility of future relief where partial settlement entitled plaintiffs to 17% of the damages sought).

Here, the Class derived noticeable value from immediate recovery. Through the *Sefcovic* Settlement Agreement, TEP has agreed to pay Subclass 1 at least 100% of the total amount of challenged processing costs. *See Exhibit 4* at ¶ 7(a). And TEP will pay Subclasses 2, 3, and 4 at least 100% of the total amount of challenged post-production costs. *See id.* at ¶¶ 7(c), (e), (g). The settlement thereby facilitates recovery for the entirety of most of Class members’ claims while avoiding a time- and resource-consuming litigation.

The likely duration of the litigation in the absence of settlement would certainly be several more years. *See Exhibit 2* at ¶ 10. Although this case has been litigated for over a year, the parties did not engage in class certification briefing, no hearing on class certification of a litigation class was set, and no trial date was set. If a settlement had not been reached, a trial on the merits likely would not have taken place until sometime in 2020. In addition, if the Class prevailed in a trial on the merits, TEP likely would have appealed from an adverse judgment. *See id.* at ¶ 9.

The experience of Plaintiffs' counsel confirms that royalty underpayment cases of this nature can take many years to resolve, particularly when such cases are actually tried to a conclusion. *See id.* at ¶ 10. For example, the original *Lindauer* action was filed in 2006, settlement was entered into two years later (2008), and approved by the state court in 2009, but litigation of the two reserved claims took another seven years to get to trial and through the appeal.

Accordingly, the value of the immediate recovery factor further demonstrates the reasonableness of the *Sefcovic* Settlement Agreement.

d. Parties' Judgment that the Settlement Is Fair and Reasonable. When reviewing this factor, "counsel's judgment as to the fairness of the agreement is entitled to considerable weight." *Belote*, 2014 WL 3906205 at *4 (quoting *Lucas v. Kmart Corp.*, 234 F.R.D. 688, 695 (D. Colo. 2006)) (approving settlement negotiated by experienced counsel) (citation and quotations omitted); *Alvarado Partners, L.P.*, 723 F. Supp. at 548 (approving settlement where experienced class counsel believed the settlement "is in the best interests of the class"); *Martinez v. Maketa*, 2011 WL 2222129, at *2 (D. Colo. June 7, 2011) (approving settlement after deferring to the parties' agreement that the settlement is fair and reasonable). As set forth fully in Paragraph 15(a) above, Plaintiffs' counsel are experienced in prosecuting royalty underpayment claims in Colorado and elsewhere, and view the fairness of this settlement against that experience. *See Exhibit 2* at ¶¶ 10, 11. Plaintiffs' counsel believe the *Sefcovic* Settlement Agreement represents a fair and reasonable outcome for Class members on the claims at issue. *See id.* at ¶ 11.

e. The Class Itself Believes that the Settlement Is Fair and Reasonable. In Plaintiffs' counsel's communications with the Class members to date, the reaction to the *Sefcovic* Settlement Agreement has been very positive. *See id.* at ¶ 13. Through the date of this filing, Plaintiffs' counsel have not received any objections to the fairness of the Class Settlement from the over 600 members of the settlement Class. *See id.* Only Ivo Lindauer and Diamond Minerals, LLC have suggested that they *may* object. *See Exhibit 7.*

The deadline for Class members to object to the settlement is November 6, 2018. It would appear at this point, however, that any objections to final approval of the *Sefcovic* Settlement Agreement will be minimal. The lack of any significant number of objectors to a class settlement is another factor that weighs heavily in favor of approval of the Class Settlement. *Make A Difference Foundation, Inc. v. Hopkins*, 2012 WL 917283, at *3 (D. Colo. Mar. 19, 2012) (“[T]he fact that only three conclusory written objections to the settlement were received... weighs heavily in favor of approval.”); *Ryskamp v. Looney*, 2012 WL 3397362, at *4 (D. Colo. Aug. 14, 2012) (“[O]nly two objections to the settlement were received.... This fact weighs heavily in favor of approval of the derivative litigation settlement.”); *Mohammed v. Ells*, 2014 WL 4212687, at *4 (D. Colo. Aug. 26, 2014) (“[T]he fact that no objections to the settlement were filed by any shareholder weighs heavily in favor of approval.”).

16. The above-referenced factors demonstrate that the *Sefcovic* Settlement Agreement is fair, adequate, and reasonable, and should be finally approved.

CONCLUSION

WHEREFORE, for the reasons stated above, Plaintiffs and TEP request that the Court:

- (a) determine that the settlement was made in good faith, and that its terms are fair, reasonable, and adequate;
- (b) finally approve the proposed Class Settlement;
- (c) enter a final judgment and order of dismissal with prejudice in the form submitted with this Joint Motion;² and
- (d) order any further relief deemed just by the Court.

A form of the proposed final judgment and order of dismissal with prejudice is submitted to the Court along with this Joint Motion.

Dated: October 30, 2018

s/ George A. Barton

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² The proposed Order Granting Final Approval to Class Settlement Agreement and Final Judgment submitted with this Joint Motion references and approves Class Counsel's requests for attorneys' fees and expenses, and incentive awards to Class Representatives. TEP takes no position on these requests.

CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2018, I filed the foregoing electronically with the Clerk of the Court using the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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EXHIBIT 1

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into effective June 1, 2018, (“Effective Date”) by and between ELNA SEFCOVIC, LLC, JUHAN LP, and ROY ROYALTY, INC. (the “Plaintiffs”), on behalf of themselves and a class of similarly situated royalty and overriding royalty owners (defined as the “Class” in Section 1 below), and TEP ROCKY MOUNTAIN LLC (“TEP”), a Delaware limited liability company. Plaintiffs and TEP may each be referred to as a “Party” or collectively as “the Parties.”

RECITALS

A. Plaintiffs, the Class, and TEP own interests in oil and natural gas produced in the Piceance Basin located in northwestern Colorado. Plaintiffs and the Class own royalty and/or overriding royalty interest in this production, and TEP owns working interests in this production. TEP also operates the wells from which the oil and natural gas is produced and sold.

B. Plaintiffs, the Class, and TEP are parties to a class-action settlement agreement approved by the District Court of Garfield County, Colorado in a case styled *Ivo Lindauer v. Williams Production RMT Co.*, 2006 CV 0317 (Garfield County District Court) (the “*Lindauer Settlement*”). The *Lindauer Settlement* resolved the parties’ dispute over the calculation and payment of royalties and overriding royalties on the production of natural gas and associated liquids, and also set forth a methodology for calculating and paying some or all of these royalties and overriding royalties after the effective date of the settlement. The *Lindauer Settlement* was approved by the Garfield County District Court on March 20, 2009.

C. On July 18, 2017, Plaintiffs sued TEP in the District Court for the City and County of Denver, Colorado (Case No. 2017 CV 32575) for allegedly calculating their royalties and overriding royalties in a manner that was inconsistent with the *Lindauer Settlement* and/or contrary to the underlying royalty instruments. Plaintiffs brought their claims on behalf of themselves and a class of similarly situated royalty and overriding royalty owners who were parties to the *Lindauer Settlement* (or their successors). The case was removed to federal court on August 17, 2017, and styled *Elna Sefcovic, LLC, et al. v. TEP Rocky Mountain LLC*, Case No. 17-cv-01990-MSK-MEH (the “Civil Action”). TEP denied that it underpaid Plaintiffs’ royalties and overriding royalties.

D. Over the past ten months, Plaintiffs and TEP have been engaged in extensive information discovery and data production relevant to TEP’s payment of royalties and overriding royalties since July 1, 2011. Plaintiffs’ attorneys (“Class Counsel”) and TEP’s attorneys have engaged experienced royalty accounting experts to assist in reviewing the data, analyzing the relevant costs allocated to royalty owners, and determining the amounts at issue in the case. Class Counsel and TEP’s attorneys also have engaged in extensive discussions between counsel and their accounting experts to evaluate the information and negotiate a full and final resolution of their dispute in order to avoid the cost, time, and uncertainty of continued litigation.

AGREEMENT

1. Joint Motion for Class Certification: Within seven (7) days of executing this Agreement, Plaintiffs and TEP will file the Joint Motion for Settlement Class Certification and Preliminary Approval of Class Action Settlement Agreement (the “Joint Motion”) in the form attached as Exhibit A. The Joint Motion shall seek certification of the following class (the “Class”):

all persons and entities to whom TEP has paid royalties and/or overriding royalties, and deducted post-production costs from those royalties and/or overriding royalties, including owners whose royalties currently are held in suspense, since July 1, 2011, on natural gas production from any well subject to the oil and gas lease agreements which the settling parties in the *Lindauer* Settlement identified as Category 2, Category 3, Category 5, and Category 11 instruments.

The Joint Motion shall seek certification of the following four subclasses (the “Subclasses”) that together compose the Class:

Subclass 1: Elna Sefcovic, LLC, and all persons and entities to whom TEP has paid royalties, and deducted post-production costs from those royalties, including owners whose royalties currently are held in suspense, since July 1, 2011, on natural gas production from any well subject to the oil and gas lease agreements which the settling parties in the *Lindauer* Settlement identified as either Category 2 or Category 3 royalty instruments.

Subclass 2: Juhan, LP, and all persons and entities to whom TEP has paid royalties and/or overriding royalties, and deducted post-production costs from those royalties and/or overriding royalties, including owners whose royalties currently are held in suspense, since July 1, 2011, on natural gas production from any well subject to the oil and gas lease agreements which the settling parties in the *Lindauer* Settlement identified as Category 5 instruments, and that currently are identified by TEP as Category 5 instruments.

Subclass 3: Roy Royalty, Inc., and all persons and entities to whom TEP has paid royalties and/or overriding royalties, and deducted post-production costs from those royalties and/or overriding royalties, including owners whose royalties currently are held in suspense, since July 1, 2011, on natural gas production from any well subject to the oil

and gas lease agreements which the settling parties in the *Lindauer* Settlement identified as Category 11 instruments, and that currently are identified by TEP as Category 11 instruments.

Subclass 4: Juhan, LP, and all persons and entities to whom TEP has paid royalties and/or overriding royalties, and deducted post-production costs from those royalties and/or overriding royalties, including owners whose royalties currently are held in suspense, since July 1, 2011, on natural gas production from any well subject to the oil and gas lease agreements which the settling parties in the *Lindauer* Settlement identified as Category 5 or 11 instruments, but that currently are not identified by TEP as exclusively Category 5 or Category 11 instruments.

The Joint Motion also shall seek certification of the proposed class settlement set forth in this Agreement. The Parties shall cooperate with one another and make their best efforts to obtain certification of the settlement class and subclasses, and approval of this Agreement.

2. Settlement Amount. Within fourteen (14) days of the date of the entry of the Preliminary Approval Order, as defined in Section 3(c) below, TEP shall deposit a total of Ten Million Twenty-Five Thousand Three Hundred Eight Dollars (\$10,025,308.00) in an interest-bearing account at BOKF, NA (the “Escrow Account”), to be held by BOKF, NA as the escrow agent (the “Escrow Agent”). The total shall represent payment to Plaintiffs and the Class in order to resolve all claims through the Effective Date of this Agreement (the “Settlement Amount”) as follows:

Subclass 1: \$454,845.00.

Subclass 2: \$5,787,732.00.

Subclass 3: \$1,157,145.00.

Subclass 4: \$2,625,587.00.

3. Preliminary Approval Hearing and Distribution Schedule:

a. As soon as practicable after the filing of the Joint Motion, the Parties shall seek to set a hearing with the Court (the “Preliminary Approval Hearing”).

b. Prior to the Preliminary Approval Hearing, the Parties will cooperate on the preparation of a distribution schedule identifying the distribution of the payments identified in Section 2 above to individual members of the Subclasses (the “Preliminary Distribution Schedule”).

c. At the Preliminary Approval Hearing, the Parties will request that the Court preliminarily approve this Agreement, certify the Class and Subclasses as settlement classes, order notice to be mailed to the Class in the form attached as Exhibit B. The Parties will submit a proposed order in the form attached as Exhibit C (the “Preliminary Approval Order”). The Parties also will request that the Court set a Final Fairness Hearing.

4. Notice to Class.

a. Within 7 days after the Court enters the Preliminary Approval Order, Class Counsel shall mail notice to the Class in the form attached as Exhibit B. The notice shall set a deadline for parties to request to exclude themselves from the Class (the “Opt Out Deadline”) and to object to this Agreement (the “Objection Deadline”).

b. TEP will cooperate with Class Counsel to provide addresses for the members of the Class to facilitate mailing the notice.

c. Neither the Opt Out Deadline nor the Objection Deadline will be extended without the written consent of all Parties.

d. Class Counsel shall provide TEP with weekly reports on the names of owners requesting to exclude themselves from the Class and this Agreement. Within 7 days after the Opt Out Deadline, Plaintiffs shall submit to the Court a list of the names of owners requesting to exclude themselves from the Class and this Agreement.

e. Within 7 days after the Opt Out Deadline, Plaintiffs and TEP shall instruct the Escrow Agent to distribute to TEP that portion of the Settlement Amount identified on the Preliminary Distribution Schedule attributable to those owners who have requested to exclude themselves from the Class in this Settlement Agreement.

5. Final Approval and Distribution.

a. Assuming that the Agreement has not terminated for any other reason (as described in Section 11 below), Plaintiffs and TEP will prepare a joint motion for final approval of the Agreement and to address any objections received prior to the Objection Deadline.

b. Along with the joint motion for final approval, Plaintiffs will prepare a final schedule for distributing the Settlement Amount (the “Final Distribution Schedule”) to the Class that eliminates owners requesting to exclude themselves from the Class and the Agreement and adjusts the distribution to account for attorneys’ fees and costs requested by Plaintiffs pursuant to Section 10 below. Plaintiffs will submit the Final Distribution Schedule along with the motion for final approval of the Agreement.

c. Provided that the Court enters an Order and Judgment approving of the Agreement and Final Distribution Schedule without modification, and upon entry of a

final non-appealable judgment (whether after appeal or after the deadline to appeal the Court’s Order and Judgment has expired) (the “Approval Event”), Class Counsel shall distribute payment to the owners consistent with the Final Distribution Schedule within fourteen (14) days after the Approval Event (the “Final Distribution”).

d. With respect to any Settlement Class members whose royalties currently are held in suspense by TEP, Class Counsel shall distribute their share of the Final Distribution to TEP, which shall deposit such share in the owners’ respective suspense account. Class Counsel shall distribute all necessary tax documents for Settlement Class members whose royalties currently are held in suspense, including but not limited to Form 1099s required by the Internal Revenue Service. TEP will provide Class Counsel with tax identification numbers for such Settlement Class members.

e. Within ninety (90) days after the Final Distribution, Class Counsel shall submit a report to the Court identifying all Class members who have not yet cashed the checks sent to them by Class Counsel, including a list of Class members whose checks have been returned as undeliverable. Class Counsel then shall have ninety (90) days to identify more current addresses and resend new checks to these Class members. TEP shall reasonably cooperate with Class Counsel to identify better addresses for affected Class members. Any portion of the Final Distribution unclaimed after one-hundred fifty (150) days after the date Class Counsel resends the checks to the affected Class members shall be returned to TEP.

f. Plaintiffs and the Settlement Class members shall be responsible for filing any tax returns and for paying any taxes that may be due on their proportionate share of the Final Distribution. Class Counsel shall distribute all necessary tax documents to the Settlement Class members, including but not limited to Form 1099s required by the Internal Revenue Service. TEP will provide Class Counsel with tax identification numbers for such Settlement Class members. TEP shall have no liability or responsibility for paying any taxes with respect to amounts paid under this Agreement.

6. Release. Upon the Approval Event, Plaintiffs and the Class release TEP and its predecessors (including but not limited to WPX Energy Inc., WPX Energy Holdings LLC, and their respective predecessors), successors, assigns, and its past, present and future officers, directors, affiliates, employees, agents, servants, and representatives (collectively, the “TEP Released Parties”) from any and all liabilities, rights, claims, demands, obligations, damages (including claims for or award of costs and/or expenses, court costs and attorneys’ fees), losses, causes of action in law or in equity arising from the calculation and/or payment of royalties and/or overriding royalties to Plaintiffs and the Class on the sale of natural gas, natural gas liquids, and associated hydrocarbons prior to the Effective Date (collectively, the “Class’ Released Claims”).

TEP releases Plaintiffs and the Class, as well as their predecessors, successors, assigns, and its past, present and future officers, directors, affiliates, employees, agents, servants, and representatives (collectively, the “Class Released Parties”) from any and all liabilities, rights, claims, demands, obligations, damages (including claims for or award of

costs and/or expenses, court costs and attorneys' fees), losses, causes of action in law or in equity arising from the calculation and/or payment of royalties and/or overriding royalties to Plaintiffs and the Class on the sale of natural gas, natural gas liquids, and associated hydrocarbons prior to the Effective Date (collectively, "TEP's Released Claims"). Notwithstanding the foregoing, neither the Class' Released Claims nor TEP's Released Claims shall include adjustments to prior royalty payments made by TEP in the ordinary course of business, as described in Section 9(b), 9(c), or 9(d) below.

7. Covenant Not to Sue. The Parties, for themselves and their officers, directors, agents, joint venturers, partners, members, parents, subsidiaries, affiliates, insurers, heirs, legal representatives, successors and assigns, covenant and agree that they will not commence, participate in, prosecute, or cause to be commenced or prosecuted against the other Party or any of the TEP Released Parties or Class Released Parties, any action or other proceeding based upon any of the TEP Released Claims or Class' Released Claims released by the parties pursuant to this Agreement.

8. Unknown Facts. The Parties and the Class acknowledge that they may hereafter discover facts different from or in addition to those which they now know to be or believe to be true with respect to the Class' Released Claims and TEP's Released Claims and/or the damages and injuries suffered, and the releases contained herein shall be and remain effective in all respects, notwithstanding such difference or additional facts or the discovery thereof. Each Party expressly undertakes and assumes the risk that this Agreement was made on the basis of mistake, mutual or unilateral. The Parties expressly understand and agree that the signing of this Agreement will be forever binding on them and the Class, and that no rescission, modification, or release of any Party or Class member from the terms of this Agreement will be made because of any mistakes in this Agreement.

9. Royalties Paid After the Effective Date and Adjustments to Royalties Paid Prior to the Effective Date.

a. With respect to royalties paid to Subclass 1 members after the Effective Date, *i.e.*, under instruments classified as Category 2 and Category 3 under the *Lindauer* Settlement, TEP shall be entitled: (1) to deduct a proportionate share of those members' gathering and fuel costs; (2) to deduct transportation costs as set forth in Paragraph 4.5 of the *Lindauer* Settlement Agreement; and (3) to account for the value of natural gas liquids ("NGLs") as set forth in Paragraphs 4.4 and 4.6 of the *Lindauer* Settlement Agreement.

b. TEP shall be entitled to recoup any overpayments made to Class members prior to the Effective Date as a result of not deducting allowable post-production costs. Such adjustments shall be made by TEP in the ordinary course of business.

c. With respect to royalties paid to Class members before and after the Effective Date, TEP shall be entitled to make any retroactive adjustments (whether positive or negative) to royalties and overriding royalties based on additional accounting

information received in the ordinary course of business, provided that such adjustments are consistent with the *Lindauer* Settlement.

d. With respect to royalties paid to Subclass 4 members after the Effective Date, TEP shall undertake the following:

i. TEP shall have the right to undertake an analysis of the interests of Subclass 4 members to determine whether such interests should be classified as Category 5 or Category 11 pursuant to the *Lindauer* Settlement;

ii. Unless and until TEP determines that any interest of a Subclass 4 member should be classified as Category 5, TEP shall calculate and pay royalties to such members on that interest consistent with the methodology applicable to Category 11 interests under the *Lindauer* Settlement;

iii. TEP's analysis shall be completed within six months after the Approval Event. Subject to paragraph 8(d)(iv), if TEP classifies an interest of a Subclass 4 member as a Category 5 interest, then TEP shall be entitled to perform a prior period adjustment to recover allowable processing costs for royalties paid after the Effective Date.

iv. TEP shall provide Class Counsel with a list of any Subclass 4 members whose interests are classified as Category 5, and an explanation as to the reason for the classification. Class Counsel shall have the right to object to TEP's classification within fourteen (14) days of receiving the list from TEP, and Class Counsel and TEP will confer in an attempt to resolve their difference(s). If the Parties cannot resolve their differences, they will present the issue to the Court for resolution.

v. Royalties paid on any interest of a Subclass 4 member that is not classified by TEP as a Category 5 interest within six months after the Approval Event will continue to be calculated consistent with the methodology applicable to Category 11 interests under the *Lindauer* Settlement.

e. With respect to all royalties paid to the Class after the Effective Date, TEP shall make all adjustments to its accounting system necessary to pay royalties consistent with the *Lindauer* Settlement and Section 9(a) and (d) within sixty (60) days after the Approval Event. TEP shall make any necessary prior period adjustments to conform to this Section 9(e) in the first accounting month after such adjustment is implemented. Upon completion of the adjustments, TEP shall provide Class Counsel with notice as well as an accounting of such adjustments.

10. Fees and Costs.

a. Class Counsel shall apply to the Court for (i) reimbursement of their reasonable litigation expenses; (ii) reimbursement of expenses associated with administering this Agreement, including compensation to the Escrow Agent as provided

by Section III(5) of the parties' Escrow Agreement; (iii) a reasonable incentive award in the amount of Five Thousand Dollars (\$5,000) for each of the Named Plaintiffs; and (iv) an award of attorneys' fees of up to one-third (1/3rd) of the Settlement Amount after reduction of (i) and (ii) above. Such award and reimbursements shall be paid out of the Settlement Amount.

b. TEP shall take no position regarding the award of fees and reimbursement of expenses. TEP will bear its own costs. TEP will have no obligation to bear the costs, fees, or expenses of the Class or Class Counsel.

c. This Agreement is not contingent upon the Court's approval of Class Counsel's application for attorneys' fees and reimbursement of expenses.

11. Conditions and Termination Events.

a. This Agreement is conditioned upon the non-occurrence of the following events, and shall immediately terminate upon the occurrence of any of the following events:

i. The Court denies the entry of the Preliminary Approval Order substantially in the form attached as Exhibit C;

ii. The Court denies the entry of an Order and Judgment approving this Agreement;

iii. The Approval Event is not achieved; or

iv. Greater than twenty percent (20%) of the Class members request to exclude themselves from the Class and this Agreement, unless TEP waives this requirement in writing. For purposes of this Section 10(d), 20% shall be measured by (i) 20% of the total number of owners in the Class identified on the Preliminary Distribution Schedule, or (ii) 20% of the Settlement Amount attributable to owners requesting to exclude themselves, as identified on the Preliminary Distribution Schedule.

b. Upon the occurrence of any of the events described in Section 11(a):

i. this Agreement shall terminate;

ii. the Escrow Agent shall immediately distribute all of the Settlement Amount to TEP;

iii. any Order and/or Judgment entered pursuant to this Agreement shall be vacated, certification of the Class shall be vacated, and the litigation shall proceed as if this Agreement had never been executed; and

iv. the Agreement may not be used in this action or otherwise for any purpose, including whether the case should be certified as a class action pursuant to Fed. R. Civ. P. 23.

12. Continued Effect of the *Lindauer* Settlement. Except as provided in this Agreement, the terms of the *Lindauer* Settlement shall remain in full force and effect.

13. Dismissal With Prejudice: Upon the occurrence of the Approval Event, Plaintiffs, the Class, and TEP shall be deemed to have dismissed the Civil Action with prejudice.

14. Other Matters.

a. Nothing in this Agreement shall be construed as an admission by or on behalf of any Party of any wrongful acts or liabilities whatsoever.

b. The Parties represent and warrant to one another that the individual who executes this Agreement has the right and legal authority to execute such document on behalf of the Party for whom it acts, and that the Party has not sold, assigned, conveyed or otherwise disposed of or transferred to another entity or individual any of such Party's Released Claims.

c. The Parties expressly acknowledge that they have had the opportunity to consult additional professionals of their choice, including lawyers, accountants, and others regarding any and all damages, losses, costs, expenses, liabilities, claims and the consequences thereof, of whatsoever kind and nature, which they may have incurred or which they may or will incur, whether suspected or unsuspected, known or unknown, foreseen or unforeseen. The Parties have relied upon their own counsel's advice in entering into this Agreement and not upon the advice of any other Party's counsel.

d. The Parties and their counsel have mutually contributed to the preparation of this Agreement and the Exhibits hereto. No provision of this Agreement or the Exhibits shall be construed for or against any Party because that Party or its counsel drafted the provision. No Party has made any representation, promise or agreement of any kind to do or refrain from doing any act or thing or pay any money or other consideration not expressly set forth herein.

e. All of the Exhibits to this Agreement are material and integral parts hereto, and the Exhibits are fully incorporated herein by reference.

f. This Agreement may be amended or modified only by a written agreement signed by or on behalf of the Parties or their successors in interest.

g. This Agreement may be executed in any number of counterparts, each of which when so executed shall constitute in the aggregate but one and the same document. Facsimile signatures and/or signatures transmitted by electronic mail shall be valid and binding as original signatures.

h. This Agreement constitutes the complete Agreement between the Parties relating to the subject matter hereof, and there are no written or oral understandings or agreements directly or indirectly connected with this Agreement that are not incorporated herein. Any prior negotiations, correspondence or understandings related to the subject matter of this Agreement shall be deemed to be merged into this Agreement.

i. The provisions of this Agreement shall, where possible, be interpreted in a manner to sustain their legality and enforceability, except that the provisions of this Agreement cannot be severed, and rendering any portion of the Agreement to be unenforceable shall render the entire Agreement to be unenforceable.

j. This Agreement and its Exhibits shall be construed and interpreted under the laws of the State of Colorado.

k. This Settlement Agreement and its Exhibits shall be binding upon, and inure to the benefit of, the Parties' and the Class' successors and assigns.

The Parties hereby execute this Agreement this 8th day of August, 2018, effective as of the Effective Date

Elna Sefcovic, LLC

Roy Royalty, Inc.

Elna Sefcovic, LLC

By: Debra A Anderson

Title: Operations Manager

By: _____

Title: _____

Juhan LP

TEP Rocky Mountain LLC

By: _____

Title: _____

By: _____

Title: _____

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Elna Sefcovic, LLC

Roy Royalty, Inc.

By: _____

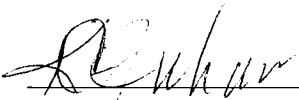
Title: _____

By: _____

Title: _____

Juhan LP

TEP Rocky Mountain LLC

_____
By: Kathryn C. Juhan

Title: General Partner

By: _____

Title: _____

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Elna Sefcovic, LLC

Roy Royalty, Inc.

By: _____

Title: _____

Roy Royalty Inc.
By: *Barbara Chen*
Title: *Managing Director*

Juhan LP

TEP Rocky Mountain LLC

By: _____

Title: _____

By: _____

Title: _____

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Elna Sefcovic, LLC

Roy Royalty, Inc.

By: _____

By: _____

Title: _____

Title: _____

Juhan LP

TEP Rocky Mountain LLC

Michael S. Land

By: _____

By: Michael S. Land

Title: _____

Title: President and CEO

APPROVED:

Counsel for Plaintiffs and Class

Counsel for TEP Rocky Mountain LLC

Law Offices of George A. Barton, P.C.

By:  _____

By: _____

APPROVED:

Counsel for Plaintiffs and Class

By: _____

Counsel for TEP Rocky Mountain LLC



By: Christopher A. Chrisman, Holland & Hart LLP

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 17-cv-01990-MSK-MEH

ELNA SEFCOVIC, LLC, JUHAN, LP, and ROY
ROYALTY, INC., individually and on behalf of all
others individually situated,

Plaintiffs,

v.

TEP ROCKY MOUNTAIN LLC,

Defendant.

**JOINT MOTION FOR ORDER (1) PRELIMINARILY APPROVING
CLASS SETTLEMENT, (2) PROVISIONALLY CERTIFYING OPT-OUT
SETTLEMENT CLASS, (3) APPROVING NOTICE TO CLASS MEMBERS, (4)
ESTABLISHING OPT OUT AND OBJECTION PROCEDURES, AND (5) SETTING A
FINAL HEARING DATE TO CONSIDER FINAL APPROVAL OF THE CLASS
SETTLEMENT, ATTORNEYS' FEES, EXPENSES, AND INCENTIVE AWARDS**

Plaintiffs Elna Sefcovic, LLC ("Sefcovic"), Juhan, LP ("Juhan"), and Roy Royalty, Inc. (collectively, "Plaintiffs"), and Defendant TEP Rocky Mountain LLC ("TEP"), respectfully request that the Court approve a class settlement agreement on a preliminary basis, provisionally certify a proposed Class (as defined in paragraph 9 below), and enter related procedural orders in anticipation of a final hearing.

As grounds for this Joint Motion, Plaintiffs and TEP state as follows:

BACKGROUND

1. The Plaintiffs filed their class action complaint against TEP on July 18, 2017, in the District Court for the City and County of Denver, Colorado. TEP removed the case to this Court on August 17, 2017.

EXHIBIT A TO SETTLEMENT AGREEMENT

2. In this case, the Plaintiffs, on behalf of themselves and a class of similarly situated royalty owners, assert various claims against TEP for alleged royalty underpayments on the production and sale of natural gas. The parties' royalty agreements are subject to a class action settlement agreement approved by a Colorado state district court in 2009 in a case styled *Ivo Lindauer v. Williams Production RMT Co.*, 2006 CV 317 (Garfield County District Court) (the "*Lindauer Settlement*").

3. The Plaintiffs' First Amended Class Action Complaint alleges that TEP failed to calculate royalties and overriding royalties consistent with the terms of the *Lindauer Settlement*, and therefore underpaid the Plaintiffs and the proposed Class. TEP has denied those allegations.

4. Since filing this action, the Plaintiffs and TEP have exchanged extensive accounting data spanning more than six years of monthly royalty payments in order to evaluate the parties' claims and defenses. The Plaintiffs and TEP have retained experienced royalty accounting experts to analyze the data. Given the size and complexity of this data, the examination of the relevant royalty accounting information took several months to review.

5. Counsel for the Plaintiffs ("Class Counsel") and for TEP have participated in continuous settlement discussions in order to resolve the claims of the Plaintiffs and the Class. The parties reached agreement on the basic terms of the settlement on June 28, 2018, subject to the negotiation of mutually agreeable settlement documents. The parties have completed the negotiation and drafting of those settlement documents, and present them to the Court along with this Motion.

6. The parties have agreed upon a class settlement agreement (the "Settlement Agreement"), which is attached as Exhibit A.

7. The Parties and their counsel now are requesting that this Court enter an Order preliminarily approving the Settlement Agreement, provisionally certifying a Fed. R. Civ. P. 23(b)(3) opt-out Settlement Class, approving the proposed form of notice to Class members, establishing a deadline for Class member opt-out requests, establishing an objection procedure and deadline, and setting a date for final hearing on the issues of class certification, the Settlement Agreement, an award of attorneys' fees and litigation expenses to Class Counsel, and a proposed incentive award to each of the named Plaintiffs.

8. The Parties submit that, unless the Court's evaluation of the grounds and evidence discloses a basis to doubt the fairness of the proposed Settlement Agreement, then the Court may preliminarily approve the Settlement Agreement, provisionally certify the proposed Class, approve notice to Class members of the proposed settlement (including their rights to opt out or object), and set a date for a final fairness hearing.

THE SETTLEMENT AGREEMENT

9. The Settlement Agreement defines a Fed. R. Civ. P. 23(b)(3) class (the "Class") as follows:

all persons and entities to whom TEP has paid royalties and/or overriding royalties, and deducted post-production costs from those royalties and/or overriding royalties, including owners whose royalties currently are held in suspense, since July 1, 2011, on natural gas production from any well subject to the oil and gas lease agreements which the settling parties in the *Lindauer* Settlement identified as Category 2, Category 3, Category 5, and Category 11 instruments.

The Settlement Agreement divides the Class into four Subclasses (the "Subclasses") as follows:

Subclass 1: Elna Sefcovic, LLC, and all persons and entities to whom TEP has paid royalties, and deducted post-production costs from those royalties, including owners whose royalties currently

are held in suspense, since July 1, 2011, on natural gas production from any well subject to the oil and gas lease agreements which the settling parties in the *Lindauer* Settlement identified as either Category 2 or Category 3 royalty instruments.

Subclass 2: Juhan, LP, and all persons and entities to whom TEP has paid royalties and/or overriding royalties, and deducted post-production costs from those royalties and/or overriding royalties, including owners whose royalties currently are held in suspense, since July 1, 2011, on natural gas production from any well subject to the oil and gas lease agreements which the settling parties in the *Lindauer* Settlement identified as Category 5 instruments, and that currently are identified by TEP as Category 5 instruments.

Subclass 3: Roy Royalty, Inc., and all persons and entities to whom TEP has paid royalties and/or overriding royalties, and deducted post-production costs from those royalties and/or overriding royalties, including owners whose royalties currently are held in suspense, since July 1, 2011, on natural gas production from any well subject to the oil and gas lease agreements which the settling parties in the *Lindauer* Settlement identified as Category 11 instruments, and that currently are identified by TEP as Category 11 instruments.

Subclass 4: Juhan, LP, and all persons and entities to whom TEP has paid royalties and/or overriding royalties, and deducted post-production costs from those royalties and/or overriding royalties, including owners whose royalties currently are held in suspense, since July 1, 2011, on natural gas production from any well subject to the oil and gas lease agreements which the settling parties in the *Lindauer* Settlement identified as Category 5 or 11 instruments, but that currently are not identified by TEP as exclusively Category 5 or Category 11 instruments.

10. For purposes of the Settlement Agreement, each Plaintiff is deemed to be a member of the Class, and one or more Plaintiffs is a member of each Subclass.

11. In order to resolve the Class' claims for past royalty underpayments, TEP has agreed to pay a gross settlement amount of \$10,025,308 to the members of the Class, which would be paid into an interest-bearing escrow account within 14 days after the Court enters its

Order granting preliminary approval of the Settlement Agreement. In the event that one or more members of the Class elects to opt out of the Settlement Agreement, TEP is entitled to an opt-out credit against the \$10,025,308 settlement amount, which is determined based on each opt-out member's proportionate share of the Class Settlement Fund. The settlement amount being paid by TEP is in settlement of royalty underpayment claims asserted by members of the Class on natural gas production sold by TEP through March 2018. The distribution to the Class members who do not opt out of the proposed Settlement Agreement will be made *pro rata*, based upon each Class member's proportionate share of disputed post-production cost deductions. A projected proportionate distribution of the Class Settlement Fund (the "Final Distribution Schedule") will be presented to the Court along with the parties' Motion for Final Approval of the Settlement Agreement.

12. Class Counsel will request an award of attorneys' fees and reimbursement of expenses that have been or will be incurred by Class Counsel, and an incentive award to each of the named Plaintiffs, which shall be paid from the Class Settlement Fund. TEP takes no position on such requests, and is not responsible under the Settlement Agreement for any award of attorneys' fees, expense reimbursements, or named Plaintiff incentive awards.

13. All Class members who do not elect to exclude themselves from the Class shall be bound by the provisions of the Settlement Agreement, including the provisions relating to the calculation and payment of royalties on production by TEP after the Effective Date of the Settlement Agreement.

14. Upon the Court's final approval of the proposed Settlement Agreement, the claims asserted in this lawsuit will be dismissed with prejudice.

15. Until and unless approved by the Court and it becomes effective under its terms, the Settlement Agreement shall not be deemed to waive, withdraw, resolve, or prejudice any Party's position, claims, defenses, or any other matter related to this action.

**THE REQUIREMENTS FOR PROVISIONAL CERTIFICATION OF A
FED. R. CIV. P. 23(b)(3) SETTLEMENT CLASS ARE SATISFIED**

16. As the United States Supreme Court stated in *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 621-623 (1997), "all Federal Circuits recognize the utility of Rule 23(b)(3) settlement classes" as a means to facilitate the settlement of complex class actions. In *Amchem*, the Supreme Court confirmed that certification of a class for settlement purposes is consistent with Fed.R.Civ.P. 23, provided that the district court determines that the class certification requirements set forth in Rule 23(a) and 23(b) are satisfied. *Id.* at 621. Thus, if a settlement class appears to be certifiable under Fed.R.Civ.P. 23(a) and (b)(3), it may be certified provisionally, for settlement purposes only, pending further scrutiny at the final approval hearing. MANUAL FOR COMPLEX LITIGATION, § 21.632 (4th ed. 2005) ("MCL") (the court "should make a preliminary determination that the proposed class satisfies the criteria set out in Rule 23(a) and at least one of the subsections of Rule 23(b)"); *Perry v. FleetBoston Financial Corp.*, 229 F.R.D. 105, 111 (E.D. Pa. 2005) (recognizing that a settlement class may be provisionally certified at the preliminary approval stage). Thus, this Court should provisionally determine whether this case satisfies the following requirements for certification of a Rule 23(b)(3) settlement class: (1) the class is so numerous that joinder of the class members is impracticable ("numerosity"); (2) there are questions of law or fact common to the class ("commonality"); (3) the claims of the class representatives are typical of the claims of the class ("typicality"); (4) the class representatives will fairly and adequately protect the interests of the

class (“adequacy of representation”); (5) the common questions of law or fact predominate over individual issues (“predominance”); and (6) a class action is superior to individual actions for resolving the claims of the class members (“superiority”). Fed.R.Civ.P. 23(a) and 23(b)(3). As demonstrated below, each of the requirements for certification of a Rule 23(b)(3) settlement class is satisfied.

17. Rule 23(a)(1) requires the class be “so numerous that joinder of all members is impracticable.” In this case, there are approximately 600 members of the Settlement Class, a number which is more than sufficient to satisfy the numerosity requirement. *Pliego v. Los Arcos Mexican Rests., Inc.*, 313 F.R.D. 117, 126 (D. Colo. 2016) (finding that a class of 177 members satisfied the numerosity requirement); *Mathis v. Bess*, 138 F.R.D. 390, 393 (S.D.N.Y. 1991) (joinder impracticable based solely on the fact that the class had 120 members); *Lockwood Motors, Inc. v. General Motors Corp.*, 162 F.R.D. 569, 574-75 (D. Minn. 1995) (where class consisted of 96 members, numerosity requirement was satisfied). The numerosity requirement is therefore satisfied.

18. Rule 23(a)(2) requires questions of law or fact exist which are common to the class. The Tenth Circuit has recognized that “commonality requires only a single issue common to the class.” *J.B. ex rel. Hart v. Valdez*, 186 F.3d 1280, 1288 (10th Cir. 1999); *DG ex rel. Stricklin v. DeV Vaughn*, 594 F.3d 1188, 1195 (10th Cir. 2010). However, this “common contention” must be of such a nature that it is capable of classwide resolution – which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). In this case, the named Plaintiffs have identified a common contention that is capable of classwide

resolution. The success of each Class member’s claim depends on whether TEP engaged in a common course of conduct under which it deducted certain post-production costs in the calculation of royalties which it was not permitted to deduct under the terms of the *Lindauer* Class Settlement. TEP denies the named Plaintiffs’ claims for breach of contract, and likewise denies that it improperly calculated their royalties, but its denial is not based on individualized issues that would undermine a common question capable of a common resolution. Accordingly, the determination of whether TEP improperly deducted certain post-production costs in calculating the Class members’ royalties will “resolve an issue that is central to the validity of each one of the claims in one stroke.” *Wal-Mart Stores*, 564 U.S. at 350. Accordingly, common contentions exist as to all of the Class members’ breach of contract claims against TEP.

19. Rule 23(a)(3) requires that “the claims of the representative parties are typical of the claims of the class.” Typicality is established if the claims of the plaintiff and the class arise from the same course of conduct and are based on the same legal theory. *Clark v. State Farm Mutual Auto Insurance Co.*, 245 F.R.D. 478, 484 (D. Colo. 2007). If there is a nexus between the named plaintiffs’ claims and the common questions of fact or law that unite the class, the typicality requirement is satisfied. *Cook v. Rockwell International Corp.*, 151 F.R.D. 378, 385 (D. Colo. 1993). Here, the Plaintiffs and the members of the Class claim to have been damaged by the same course of conduct, namely TEP’s common practice of deducting certain post-production costs in the calculation and payment of royalties to the members of the Class. TEP denies the named Plaintiffs’ claims for breach of contract, and likewise denies that it improperly calculated their royalties, but its denial is not based on distinctions between the claims asserted by the named Plaintiffs and those asserted on behalf of the proposed Class. The Plaintiffs’

claims are based upon a common course of conduct by TEP, and the Plaintiffs’ theories of liability are the same as those of the other Class members. The typicality requirement is therefore satisfied.

20. Rule 23(a)(4) requires that “the representative parties will fairly and adequately protect the interests of the class.” The adequacy of representation requirement focuses on two issues: (1) whether the named plaintiffs and their counsel have any conflicts of interest with other class members; and (2) whether the named Plaintiffs and their counsel will prosecute the action vigorously on behalf of the class? *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1187-88 (10th Cir. 2002). Neither the named plaintiffs nor their counsel have any conflicts of interest with the other members of the Class. In addition, the named Plaintiffs and their counsel have continuously prosecuted this class action vigorously on behalf of all Class members, and will continue to do so in their requests for preliminary and final approval of the Settlement Agreement. Moreover, Class Counsel have very extensive experience successfully representing royalty owners in numerous other class action royalty underpayment cases against natural gas producers in Colorado, and therefore are qualified to represent the Class in this case. The adequacy of representation requirement is therefore satisfied.

21. In order to certify a class under Rule 23(b)(3), the questions of law or fact which are common to the class members must predominate over any questions affecting only individual class members. Plaintiffs must show that the “common, aggregation-enabling issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues.” *CGC Holding Co. v. Broad and Cassell*, 773 F.3d 1076, 1087 (10th Cir. 2014) (internal citations omitted). Here, the predominant issue is whether TEP breached its contractual obligations to the

members of the Class, based upon TEP's consistent practice of deducting certain post-production costs in the calculation and payment of royalties to the Class members. TEP has employed a common method of royalty accounting with respect to the royalties paid to the members of the Class, and the issue of whether TEP's royalty accounting methods constitute a breach of TEP's contractual obligations to the Class is the predominant issue in this litigation. TEP denies the named Plaintiffs' claims for breach of contract, but its denial is not based on individualized issues that would predominate over common questions of law and fact. There are no significant individual issues of fact or law which exist in this litigation. The common questions of fact and law for the Class members therefore predominate over any individual issues which might exist.

22. Rule 23(b)(3) also requires that a class action be the superior method of adjudicating the controversy. Rule 23(b)(3) identifies four factors pertinent to this issue:

(A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action.

An evaluation of these four factors confirms that class adjudication is the superior method of resolving this controversy. First, there are no members of the Class who have expressed any interest in prosecuting a separate royalty underpayment lawsuit against TEP. Second, there have been no individual lawsuits filed by any of the Class members regarding the claims at issue, which weighs in favor of class action superiority. *In re Revco Securities Litig.*, 142 F.R.D. 659, 669 (N.D. Ohio 1992). Third, concentrating this litigation in this Court is desirable, because all of the natural gas production at issue occurred in this judicial district, and most of the Class members reside in this judicial district. Finally, because this is a request for settlement—only

certification—the manageability factor should not be considered in determining whether the superiority requirement has been satisfied. *Amchem*, 521 U.S. at 620. For these reasons, Rule 23(b)(3)’s superiority requirement is satisfied.

**THE PROPOSED SETTLEMENT AGREEMENT IS FAIR,
REASONABLE AND ADEQUATE**

23. With respect to approval of a Rule 23 class settlement, courts engage in a two-step process to ensure the fairness of any class action settlement. *Pliego*, 113 F.R.D. at 128. This Joint Motion pertains to the first step of this process, in which the Court makes a preliminary determination regarding the fairness, reasonableness, and adequacy of the settlement terms. *Id.* The object of preliminary approval is for the Court “to determine whether notice of the proposed settlement should be sent to the class, not to make a final determination of the settlement’s fairness. Accordingly, the standard that governs the preliminary approval inquiry is less demanding than the standard that applies at the final approval phase.” *Rhodes v. Olson Assocs., P.C.*, 308 F.R.D. 664, 666 (D. Colo. 2015). A district court will ordinarily grant preliminary approval where the proposed class settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval. *Pliego*, 313 F.R.D. at 128; *In re Motor Fuel Temperature Sales Practices Litigation*, 2011 WL 4431090, at *5 (D. Kan. Sept. 22, 2011).

24. Under Fed. R. Civ. P. 23(e)(2), a class action settlement must be “fair, reasonable and adequate.” The Tenth Circuit has instructed district courts to analyze the following factors to determine whether this standard is met: (1) whether the proposed settlement was fairly and honestly negotiated; (2) whether serious questions of law and fact exist, such that the ultimate

outcome of the litigation is in doubt; (3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and (4) the judgment of the parties that the settlement is fair and reasonable. *Rutter*, 314 F.3d at 1188. An evaluation of the above-referenced factors fully supports preliminary approval of the proposed Class Settlement. First, the settlement was fairly and honestly negotiated. Prior to reaching a settlement, the Parties engaged in extensive discovery, including an exhaustive analysis of TEP's royalty accounting data. The Parties also engaged in extensive negotiations before reaching agreement on the terms of a settlement for each of the four subclasses at issue. Second, serious questions of law and fact exist which place the ultimate outcome of this litigation in doubt, including whether, and to what extent, TEP has taken improper post-production cost deductions in the calculation of royalties paid to the Class members. TEP denies that it breached its contracts with the Class members or has acted improperly, and would vigorously defend its rights if the case were litigated. Third, the value of an immediate recovery clearly outweighs the mere possibility of future relief after protracted and expensive litigation. The amount which TEP has agreed to pay the Class members to settle their claims constitutes a very substantial percentage of the amount in controversy, and avoids the risk to the Class members that they might recover a substantially smaller amount at an uncertain date in the future. Finally, it is the judgment of the Parties and their counsel that the proposed Settlement Agreement is fair and reasonable. For these reasons, the Court should determine that the Settlement Agreement is fair, reasonable, and adequate, and should preliminarily approve the proposed Settlement Agreement.

**NOTICE TO THE CLASS AND PROCEDURE FOR CLASS MEMBER
OPT-OUTS AND OBJECTIONS**

25. The Parties have agreed on the form and content of the Notice to the Class members, attached as Exhibit B (the “Notice”).

26. The Notice advises the Class members of (a) the existence of this action; (b) the provisional certification of a Class pending final approval of the Settlement Agreement; (c) the monetary amount that TEP has agreed to pay to resolve the past royalty underpayment claims of the Class; (d) Class Counsel’s anticipated request for payment of attorneys’ fees, litigation expense reimbursements, and for named Plaintiff incentive awards to be paid from the Class Settlement Fund; (e) the date, time, and place of the hearing to consider final approval of the proposed Settlement Agreement; (f) their right to object and be heard at the hearing to consider final approval of the Settlement Agreement; (g) their right to opt out of the proposed Settlement Agreement and the deadline by which such opt-out right must be exercised; and (h) the agreement between TEP and the Class relating to TEP’s calculation and payment of royalties on natural gas production after the Effective Date of the Settlement Agreement. The Court should therefore approve the form and content of the Notice.

27. Class Counsel has agreed to be responsible for the mailing of the Exhibit B Notice to the members of the Settlement Class. The Court should therefore order that Class Counsel send the Exhibit B Notice to all members of the Settlement Class whose addresses are available from TEP’s accounting records within 7 days after the Court enters its Order granting preliminary approval of the Settlement Agreement.

28. The Parties request that the Court enter an Order that any Class member wishing to opt-out of the Settlement Agreement must send a written opt-out request to Class Counsel by a

deadline which is forty-five days after the postmark date on which Class Counsel mails the Settlement Notice to the proposed Class members by first class United States mail. The postmark deadline for Class members to mail their written opt-out requests to Class Counsel shall be reflected in the mailed Notice of Class Settlement.

29. The Parties request that the Court enter an Order that any Class member wishing to object to, or comment on, any aspect of the proposed Class Settlement must file their written objection with the Court by a deadline which is 14 days before the scheduled date for the final fairness hearing, and any member wishing to be heard at the final fairness hearing must file a written Notice of Intent to Appear at the final fairness hearing by a deadline which is 7 days before the scheduled date of the final fairness hearing.

30. The Parties will file their Motion for Final Approval of the Settlement Agreement, and any papers in support, at least 21 days prior to the scheduled date of the final fairness hearing. Class Counsel will file their motion for an award of attorneys' fees, litigation expense reimbursements, and for an incentive award to each of the named plaintiffs, at least 21 days prior to the final fairness hearing. The Parties will file their response to any Class member objections to the Settlement Agreement at least 7 days prior to the final fairness hearing.

31. All costs and expenses associated with mailing the Notice to the Class members, and with the administration of the Settlement Agreement, shall be borne by Class Counsel, and reimbursed out of the Class Settlement Fund, as approved by the Court.

PLAINTIFFS' POSITION ON LITIGATION EXPENSES AND ATTORNEYS' FEES

32. Plaintiffs assert that, if the Settlement Agreement is approved, Class Counsel should be paid from the Settlement Fund for (a) the actual out-of-pocket expenses incurred by

Class Counsel, including expenses which Class Counsel will incur in the further handling of this litigation and in the administration of the Class Settlement, and (b) attorneys' fees to Class Counsel. Class Counsel estimates that the out-of-pocket expense reimbursement request will not exceed the sum of \$150,000. Class Counsel intends to request an award of attorneys' fees that does not exceed one-third (1/3rd) of the Class Settlement Fund after reimbursement of litigation expenses, and after adjustment for any opt-out credits to which TEP may be entitled.

33. Plaintiffs and Class Counsel request that the Court consider Class Counsel's request for attorneys' fees and expense reimbursements, and Class Counsel's request for an incentive award to each of the named Plaintiffs, at the final fairness hearing.

34. The Parties agree that the payment of any and all attorneys' fees and expenses that may be awarded to Class Counsel, as well as all expenses of administering the Settlement Agreement, are to be made from the Class Settlement Fund. TEP believes that the monetary settlement and other consideration being offered to the Class are fair and reasonable. TEP takes no position on Class Counsel's request for an award of attorneys' fees and expense reimbursements, or on the request for an incentive award to each of the named Plaintiffs.

REQUEST FOR STAY OF DISCOVERY AND CASE MANAGEMENT DEADLINES

35. Pursuant to the Court's Scheduling Order [Dkt. # 30, 42], the Parties currently are responsible for taking and defending discovery, preparing expert reports, and briefing motions for class certification. A stay of discovery and case management deadlines would avoid unnecessary discovery and case management burdens.

36. Pursuant to Fed. R. Civ. P. 16 and 26(c), the Parties request that the Court stay all discovery and case management deadlines, until further Order of the Court.

CONCLUSION

For the foregoing reasons, the Court should enter its Order:

- (1) preliminarily determining that the Settlement Agreement is fair, reasonable, and adequate, and granting the Parties' joint motion for preliminary approval of the Class Settlement;
- (2) appointing the named Plaintiffs as the Class Representatives;
- (3) appointing Plaintiffs' attorneys as Class Counsel for the Settlement Class;
- (4) provisionally determining that the Settlement Class meets the requirements for certification of a Fed. R. Civ. P. 23(b)(3) class;
- (5) approving the form and content of the Notice which is attached to this Joint Motion for Preliminary Approval as Exhibit B;
- (6) directing that Class Counsel be responsible for mailing the Exhibit B Notice of Class Settlement to the members of the Class by first class U.S. Mail within 7 days after the Court enters its Order granting preliminary approval of the Class Settlement;
- (7) establishing a deadline for any member of the Class to mail a written election to Class Counsel to be excluded from the Class, which postmark deadline will be 45 days after the postmark date of Class Counsel's mailing of the Exhibit B Notice to the members of the Class;
- (8) establishing a deadline for any member of the Settlement Class to submit objections or comments regarding the proposed Class Settlement, Class Counsel's request for attorneys' fees and expense reimbursements, or Class Counsel's request for named Plaintiff incentive awards, which deadline will be 14 days before the scheduled date for the final fairness hearing;

(9) establishing a deadline for members of the Class to give written notice of intent to appear at the final fairness hearing, which deadline will be 7 days before the scheduled date of the final fairness hearing;

(10) establishing a deadline of the date which is 21 days before the final fairness hearing for the Parties' attorneys to file motions and memoranda in support of final approval of the Class Settlement, for Class Counsel's motion for award of attorneys' fees, expense reimbursements, and for an incentive award to each of the named Plaintiffs;

(11) establishing a deadline of 7 days before the date of the final fairness hearing for the Parties' attorneys to file responses, if any, to Class member objections or comments regarding the proposed Class Settlement, Class Counsel's request for attorneys' fees and expenses, or the request for named Plaintiff incentive awards;

(12) scheduling a final fairness hearing date to consider final approval of the proposed Class Settlement, Class Counsel's request for an award of attorneys' fees and expense reimbursements, and the request for named Plaintiff incentive awards; and

(13) staying all discovery and case management deadlines until further order of the Court.

Dated: August 13, 2018

Respectfully submitted,

s/ George A. Barton

Stacy A. Burrows, Co. Bar No. 49199
George A. Barton, Mo. Bar No. 26249
LAW OFFICES OF GEORGE A. BARTON, P.C.
7227 Metcalf Ave. Suite 301
Overland Park, KS 66204
Phone: (816) 300-6250
Fax: (816) 300-6259
gab@georgebartonlaw.com
stacy@georgebartonlaw.com
**ATTORNEYS FOR PLAINTIFFS
AND THE PROPOSED CLASS**

s/ Christopher A. Chrisman

John F. Shepherd, P.C., #9956
Christopher A. Chrisman, #33132
Lauren R. Caplan, #49228
HOLLAND & HART LLP
555 Seventeenth Street, Suite 3200
Denver, CO 80201-8749
Phone: (303) 295-8000
cachrisman@hollandhart.com
lrcaplan@hollandhart.com
**ATTORNEYS FOR DEFENDANT
TEP ROCKY MOUNTAIN, LLC**

CERTIFICATE OF SERVICE

I hereby certify that on August 13, 2018, I filed the foregoing electronically with the Clerk of the Court using the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

George A. Barton
Stacy A. Burrows
Law Offices of George A. Barton, P.C.
7227 Metcalf Ave. Suite 301
Overland Park, KS 66204
gab@georgebartonlaw.com
stacy@georgebartonlaw.com

s/ Christopher A. Chrisman

11138209_1

**EXHIBIT A TO JOINT MOTION
(Settlement Agreement – to be attached to
Joint Motion filed with the Court)**

**EXHIBIT B TO JOINT MOTION
(Class Notice – to be attached to
Joint Motion filed with the Court)**

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

There is a Proposed Settlement in a class action brought against TEP Rocky Mountain LLC on behalf of certain royalty owners.

You may be able to obtain benefits

A court authorized this notice. This is NOT a solicitation from an attorney.

A Proposed Settlement (“TEP Settlement”) has been reached in a class action lawsuit against TEP Rocky Mountain LLC (“TEP”). The lawsuit is about the alleged underpayment of royalty payments made by TEP on the production of natural gas in Garfield County, Colorado. This Notice is being sent to you because you may be a member of the TEP Settlement Class who is eligible to receive monetary benefits from the TEP Settlement. Please read this Notice carefully.

A SUMMARY OF YOUR RIGHTS AND CHOICES	
REMAIN A TEP SETTLEMENT CLASS MEMBER	To remain a member of the TEP Settlement Class, you do not need to take any action. TEP Settlement Class Members will receive money from the TEP Settlement as outlined in Section 4 of this Notice. Due Date: <u>Automatic Distribution</u>
EXCLUDE YOURSELF FROM THE PROPOSED TEP SETTLEMENT	You can exclude yourself from (opt out of) the TEP Settlement and not be bound by the Court’s rulings. You will also not share in the distribution of monetary relief. You may bring your own lawsuit. See Section 7 of this Notice. Due Date: <u>Post-marked on or before _____, 2018</u>
OBJECT OR COMMENT ON THE PROPOSED TEP SETTLEMENT	If you are a Class Member, you can object to or comment on the TEP Settlement on your own or through your attorney. See Section 8 of this Notice. Due Date: <u>Post-marked on or before _____, 2018</u>

EXHIBIT B TO SETTLEMENT AGREEMENT

1. WHY YOU RECEIVED THIS NOTICE.

Records show that you have received a royalty payment from TEP since July 1, 2011 from wells in Garfield County, Colorado. This Notice is sent to you to inform you about the proposed settlement of a class action lawsuit, captioned *Elna Sefcovic, LLC, Juhan, LP, and Roy Royalty, Inc., individually and on behalf of all others similarly situated, Plaintiffs v. TEP Rocky Mountain LLC, Defendant*, Civil Action No. 17-cv-01990-MSK-MEH, in the United States District Court for the District of Colorado (the “Lawsuit”), brought on behalf of certain royalty and overriding royalty payees who received royalty payments from TEP for natural gas or natural gas liquids (“Gas”) produced in Garfield County, Colorado. The settlement has been preliminarily approved by the Court as being fair, reasonable and adequate. As explained below, you will be entitled to monetary benefits under this TEP Settlement if you do not opt out of the TEP Settlement and the TEP Settlement is finally approved by the Court.

You are a member of the class of royalty payees defined below who are covered by a proposed settlement of the Lawsuit. In this Notice, the settlement is referred to as the “TEP Settlement” and the class of TEP Gas royalty payees covered by the Settlement is referred to as the “TEP Settlement Class.” The TEP Settlement Class includes the following:

All persons and entities to whom TEP has paid royalties and/or overriding royalties, and deducted post-production costs from those royalties and/or overriding royalties, including owners whose royalties currently are held in suspense, since July 1, 2011, on natural gas production from any well subject to the oil and gas lease agreements which the settling parties in the *Lindauer* Settlement identified as Category 2, Category 3, Category 5, and Category 11 instruments.

The Court has appointed the Plaintiffs in the Lawsuit as class representatives for the TEP Settlement Class, and the Plaintiffs’ attorneys as counsel for the TEP Settlement Class (“Class Counsel”).

This Notice outlines the terms of the TEP Settlement, who is a TEP Settlement Class member, your right to remain a member of the TEP Settlement Class, how TEP Settlement monies will be paid, how to comment on or object to the proposed TEP Settlement, and how to exclude yourself from the TEP Settlement Class. This Notice also explains that the Court will hold a Final Fairness Hearing to decide whether to approve the TEP Settlement on _____, 2018, at _____.m., in Courtroom ____ of the United States District Court of the District of Colorado, 901 19th Street, Denver, Colorado.

2. WHAT IS A CLASS ACTION?

A class action is a type of lawsuit in which a named Plaintiff brings a suit on behalf of all of the members of a similarly-situated group to recover damages and other relief for the entire group, without the necessity of each member filing an individual lawsuit, incurring expenses or appearing as an individual plaintiff. Class actions are used by the courts when the claims raise issues of law or fact that are common, making it fair to bind all class members to the orders and judgments in the case, without the necessity of multiple lawsuits involving hearing the same claims over and over.

3. THE LAWSUIT.

Plaintiffs, on behalf of themselves and all other similarly situated royalty payees, filed the Lawsuit against TEP on July 18, 2017, in the District Court for the City and County of Denver, Colorado, which subsequently was removed to the United States District Court for the District of Colorado on August 17, 2017. This Lawsuit seeks monetary relief against TEP for a class of Gas royalty payees, except for certain payees who are excluded from the class. The Lawsuit has been pending before the Honorable Marcia S. Krieger, District Court Judge of the United States District Court for the District of Colorado.

Plaintiffs have alleged that, at various times since July 1, 2011, TEP deducted or adjusted from royalties certain charges for costs that should not have been deducted. Specifically, Plaintiffs have asserted that TEP should

not have deducted from Gas royalties certain costs that were not permissible to deduct under the terms of a class action settlement agreement approved by a Colorado state district court in a lawsuit captioned *Ivo Lindauer v. Williams Production RMT Co.*, Case No. 2006-CV-0317 (Garfield County District Court) (the “*Lindauer Settlement*”). These deductions are referred to in this Notice as “Disputed Deductions.”

Class Counsel have extensively reviewed and analyzed information and documents regarding TEP’s calculation of royalties paid to the members of the TEP Settlement Class. The Parties also have engaged in continuous negotiations over the resolution of the claims alleged by the Plaintiffs (the “Claims”). The TEP Settlement described in this Notice is the result of those negotiations.

Class Counsel and the Plaintiffs believe that the issues before the Court are complex, and there is uncertainty as to the outcome of the TEP Litigation should it proceed to trial. TEP denies all of the Plaintiffs’ Claims and continues to deny any wrongdoing or liability to Plaintiffs or any member of the TEP Settlement Class in connection with the Claims. TEP contends that the Claims have no merit, and that TEP would prevail at trial in the Lawsuit, including any necessary appeal.

Class Counsel and the Plaintiffs have considered both the monetary benefits of the proposed TEP Settlement and the risks of proceeding if the TEP Settlement was rejected. Class Counsel and the Plaintiffs have concluded that the proposed TEP Settlement provides members of the TEP Settlement Class with substantial monetary benefits, resolves disputed issues without prolonged litigation and expense, avoids the delay and expense of likely appeals, eliminates inherent risks of litigation, and is in the best interests of the TEP Settlement Class. Plaintiffs and Class Counsel have concluded that the proposed TEP Settlement is fair, reasonable, and adequate.

4. THE SETTLEMENT.

TEP has agreed to pay the sum of \$10,025,308 in order to settle the Lawsuit (the “Settlement Fund”), to be paid into an interest-bearing escrow account on or before _____, 2018 [14 days after the Court enters its Order granting preliminary approval of the TEP Settlement Agreement]. The amount of the Settlement Fund that will be available for distribution to each member of the TEP Settlement Class (*i.e.*, the members who do not “opt out” of the TEP Settlement Class) will be determined by each member’s designated subclass and each member’s proportionate share of Disputed Deductions within that subclass.

The Court has preliminarily approved the TEP Settlement for four subclasses, which are based on certain categories of royalty interests defined in the *Lindauer Settlement*. Subclass 1 is composed of owners with interests in royalty instruments classified as Category 2 or Category 3 instruments under the *Lindauer Settlement*. Subclass 2 is composed of owners with interests in royalty and/or overriding royalty instruments classified as Category 5 instruments under the *Lindauer Settlement*. Subclass 3 is composed of owners with interests in royalty instruments classified as Category 11 instruments under the *Lindauer Settlement*. Subclass 4 is composed of owners with interests in royalty instruments classified as Category 5 or Category 11 instruments under the *Lindauer Settlement*, but that currently cannot be designated exclusively as Category 5 or Category 11 instruments.

The expenses and attorneys’ fees of the Plaintiffs and Class Counsel (“Litigation Expenses”) and any incentive awards to class representatives, as approved by the Court, will be subtracted from the Settlement Fund to determine the amount available for distribution to the members of the TEP Settlement Class. Class Counsel will request that the Court award Litigation Expenses up to one-third of the net Class Settlement Fund. You may receive a copy of Class Counsel’s Application regarding Litigation Expenses by contacting Class Counsel as identified in Section 10 of this Notice.

With respect to royalties paid after June 1, 2018, the TEP Settlement provides, as to owners with interests in Subclass 1, that TEP is entitled to calculate royalties by allocating a proportionate share of gathering and fuel costs, and that TEP will calculate royalties on natural gas liquids in accordance with the terms of the *Lindauer Settlement*. As to owners with interests in Subclass 4, TEP will determine whether those affected interests should be classified as Category 5 or Category 11 interests under the *Lindauer Settlement*. While TEP conducts this determination, it will calculate royalties paid to owners with interests in Subclass 4 consistent with royalties paid to Category 11 owners. TEP will adjust royalties paid to any owners whose interests are determined to be in Category

5 under the *Lindauer* Settlement. Any interest that is not adjusted within six months will be considered a Category 11 interest under the *Lindauer* Settlement.

Upon final Court approval, all members of the TEP Settlement Class who choose not to timely exclude themselves from the TEP Settlement Class (*i.e.*, who do not “opt out” of the TEP Settlement Class) will receive the monetary benefits of the TEP Settlement and will be bound by the resulting Order in the Lawsuit, barring them from bringing any claim against TEP related to royalty calculations that are covered by the TEP Settlement Agreement (“Settled Claims”). If a member of the TEP Settlement Class does not opt out, that member will receive payment of a portion of the Settlement Fund as described above, and may not thereafter bring Claims. Additionally, a member of Subclass 1 or Subclass 4 who does not opt out agrees that TEP may pay and report royalties in the future according to the method described above, and that such payment shall satisfy TEP’s contractual obligations to each class member who does not opt out. If you sell or transfer your interest, the new owner or transferee also will be entitled to receive and be bound to accept payment of royalties on future production calculated in accordance with the applicable method.

For more detailed information regarding the terms of the TEP Settlement, please read the TEP Settlement Agreement, which you may review online at www.georgebartonlaw.com, or you may obtain a copy of the TEP Settlement Agreement by contacting Class Counsel as identified in Section 10 of this Notice.

5. THE COURT HAS CONDITIONALLY APPROVED THE SETTLEMENT.

The Court has provisionally determined that the TEP Settlement is fair, reasonable and adequate. The Court has also ordered that, for purposes of the proposed TEP Settlement only, this case may proceed as a class action and that the TEP Settlement Class shall be conditionally certified. This does not mean that Plaintiffs would be successful if the case went to trial. The Court has made no final determination as to the merits of the Lawsuit, and this Notice and the proposed TEP Settlement do not imply that TEP is liable to Plaintiffs or to any member of the TEP Settlement Class for any of the Claims. Furthermore, if the TEP Settlement is not finally approved or is withdrawn at any time, the Parties have agreed that the conditional class certification shall be void and of no effect. There are also other circumstances under which the Parties may cancel the TEP Settlement. In any such event, the Lawsuit would proceed as though no class had been certified previously.

6. REMAINING A MEMBER OF THE SETTLEMENT CLASS.

If you chose to remain a TEP Settlement Class member, you do not need to take any action whatsoever. Plaintiffs and Class Counsel will represent your interests as a member of the TEP Settlement Class. You will not be charged for their services or any expenses other than the payment of Litigation Expenses from the Settlement Fund that are approved by the Court. You may enter an appearance in the Lawsuit by yourself or through your attorney, at your own expense. You will be bound by the judgment and final disposition of the Lawsuit, and you should receive a distribution check for your share of the Settlement Fund approximately 14 days after the Approval Event specified in the TEP Settlement Agreement (as defined by the TEP Settlement Agreement). If you are a TEP Settlement Class member, you will be barred from bringing any further legal action against TEP, its affiliates, and its predecessors, as described in Section 6 of this Notice.

Should you remain in the TEP Settlement Class, and the TEP Settlement is approved, you will:

- 1) Receive your allocated share of the Settlement Fund.
- 2) Release all Settled Claims.
- 3) Consent to TEP’s calculation of future royalties as described in Section 4 of this Notice.

7. REQUEST TO BE EXCLUDED FROM THE TEP SETTLEMENT CLASS.

You may elect to be excluded from the TEP Settlement Class. If you elect to be excluded from the TEP Settlement Class, you will not be bound by any judgment, disposition, or settlement of the Lawsuit, nor will you

receive any monetary benefits of the TEP Settlement. You will retain, and will be free to pursue, any claims you may have on your own behalf against TEP. TEP will be free to assert any defenses or counterclaims it may have against you.

To be excluded from the Class, you must mail a written election to be excluded from the TEP Settlement Class to **George Barton, Law Offices of George A. Barton, P.C., 7227 Metcalf Ave. Suite 301, Overland Park, Kansas 66204**. The election must contain the full name, current address, telephone number, and signature of the person requesting exclusion. **The written election must be postmarked on or before _____, 2018 [45 days after the postmarked date on the Mailed Class Notice]**. If your spouse or anyone else shares your interest in the royalty payments, they must also follow this procedure if they want to be excluded from the Class.

Any potential TEP Settlement Class member may revoke that member's election to be excluded from the TEP Settlement Class. If you wish to revoke your request to be excluded from the TEP Settlement Class, you must mail a written signed statement that you request to revoke your election to be excluded from the TEP Settlement Class to George Barton, Law Offices of George A. Barton, P.C. by _____, **2018 [45 days after the postmarked date on the Mailed Class Notice]**. By revoking the election to be excluded, the potential TEP Settlement Class member becomes a TEP Settlement Class member with all rights of a TEP Settlement Class member at the time of the revocation.

Class Counsel will provide the Court a compilation of all potential class members who request to be excluded from the TEP Settlement Class.

8. RIGHT TO OBJECT TO THE TEP SETTLEMENT.

If you do not opt out of the TEP Settlement Class, you may object to the proposed TEP Settlement, Class Counsel's Application for Litigation Expenses, or the request for class representative incentive awards. **All objections shall be in writing and must be filed on or before _____, 2018 [14 days before the date of the Final Fairness Hearing]**, with the Court at the address of the District Court Clerk as it appears below. Your objection must set forth your full name, current address, and telephone number. In addition, your objection must include **a written statement of the position that you wish to assert**. Your objection also must be mailed to each of the following and postmarked on or before _____, 2018 **[14 days before the date of the Final Fairness Hearing]**:

Class Counsel

George A. Barton
Stacy A. Burrows
LAW OFFICES OF GEORGE A. BARTON, P.C.
7227 Metcalf Ave. Suite 301
Overland Park, KS 66204

Counsel for TEP

John F. Shepherd, P.C.
Christopher A. Chrisman
Lauren R. Caplan
HOLLAND & HART LLP
555 Seventeenth Street, Suite 3200
Denver, CO 80201-8749

You or your attorney may appear at the Final Fairness Hearing, but are not required to do so. **In order to be heard at the Final Fairness Hearing you must file a Notice of Intent to Appear at the Final Fairness Hearing with the Court on or before _____, 2018 [7 days before the date of the Final Fairness Hearing]**. Any TEP Settlement Class member who does not file a notice of intent to appear at the Final Fairness Hearing may be prohibited from participating at that Hearing.

9. FINAL FAIRNESS HEARING.

A Final Fairness Hearing will be held on _____, 2018, at _____m. in Courtroom ____ of the United States District Court for the District of Colorado, located at 901 19th Street, Denver, Colorado 80294. The purpose of the Hearing will be to finally determine whether the proposed TEP Settlement is fair, reasonable, and adequate, and whether a final judgment approving the TEP Settlement Agreement should be entered. The amount of the Litigation Expenses to be paid from the Settlement Fund to Class Counsel, and the requested incentive awards to

the class representatives, will also be considered at the Final Fairness Hearing. The Hearing may be continued or adjourned without further notice to the TEP Settlement Class.

If the TEP Settlement is approved, Plaintiffs and each member of the TEP Settlement Class who has not properly and timely elected to be excluded from the TEP Settlement Class will be bound by the TEP Settlement. Additionally, the respective heirs, executors, administrators, representatives, agents, successors, and assigns of the TEP Settlement Class members will be deemed bound by the TEP Settlement as to that member's interests. Likewise, the TEP Settlement will bind TEP and its successors and assigns.

10. ATTORNEYS FOR THE PARTIES.

Attorneys for the Plaintiffs and the TEP Settlement Class ("Class Counsel")

George A. Barton, Mo. Bar No. 26249
Stacy A. Burrows, Co. Bar No. 49199
LAW OFFICES OF GEORGE A. BARTON, P.C.
7227 Metcalf Ave. Suite 301
Overland Park, KS 66204
Phone: (913) 563-6250
Fax: (913) 563-6259
gab@georgebartonlaw.com
stacy@georgebartonlaw.com

Attorneys for TEP Rocky Mountain LLC

John F. Shepherd, P.C., #9956
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Lauren R. Caplan, #49228
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555 Seventeenth Street, Suite 3200
Denver, CO 80201-8749
Phone: (303) 295-8000
Fax: (303) 291-8261
jshepherd@hollandhart.com
cachrisman@hollandhart.com
lrcaplan@hollandhart.com

ANY QUESTIONS CONCERNING THE SETTLEMENT SHOULD BE DIRECTED TO CLASS COUNSEL.

In any written correspondence with the attorneys or submissions to the Court, it is important that the envelope and any documents inside contain the following case name and identifying number:

Sefcovic v. TEP Rocky Mountain LLC
Civil Action No. 17-cv-01990-MSK-MEH

In addition, you must include your full name, address, and telephone number.

11. IF YOU WANT TO INSPECT THE COURT FILE.

The complaints, answers, pleadings, court orders, and other documents, including the TEP Settlement Agreement, are available online at www.georgebartonlaw.com. In addition, all pleadings are on file in this case and may be inspected at the following address:

United States District Court of the District of Colorado
Alfred A. Arraj United States Courthouse, Room A105
901 19th Street
Denver, Colorado 80294

DO NOT WRITE OR TELEPHONE THE CLERK'S OFFICE if you have any questions about this Notice or the TEP Settlement. Please address any questions regarding this Notice or the proposed TEP Settlement in writing to Class Counsel, at the address identified in Section 10 of this Notice, or by telephone to Class Counsel, at the telephone number identified in Section 10 of this Notice.

DO NOT CALL THE COURT OR THE COURT CLERK

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 17-cv-01990-MSK-MEH

ELNA SEFCOVIC, LLC, JUHAN, LP, and ROY
ROYALTY, INC., individually and on behalf of
all others individually situated,

Plaintiffs,

v.

TEP ROCKY MOUNTAIN LLC,

Defendant.

**ORDER PRELIMINARILY APPROVING THE PARTIES’
PROPOSED CLASS SETTLEMENT**

This matter comes before the Plaintiffs’ and Defendant TEP Rocky Mountain LLC’s (“TEP”) joint motion for an order: (1) preliminarily approving the proposed Class Settlement; (2) appointing the named Plaintiffs as the Class Representatives for the Settlement Class; (3) appointing Plaintiffs’ attorneys as Class Counsel for the Settlement Class; (4) provisionally determining that the Settlement Class meets the requirements for certification of a Fed. R. Civ. P. 23(b)(3) Class; (5) approving the proposed Mailed Notice and proposed Publication Notice to the Class members; (6) establishing the deadline and manner for the Class members’ submission of any elections to opt out of the Settlement Class; (7) establishing the deadline and manner for Class members to submit objections to the proposed Class Settlement, Class Counsel’s request for attorneys’ fees and expense reimbursements, and the request for incentive awards to the three Class Representatives; (8) establishing the deadline for the Parties’ submission of motions in support of final approval of the Class Settlement, Class Counsel’s request for an award of attorneys’ fees and expenses, and the request for Class Representative incentive awards; and (9) setting a hearing date

EXHIBIT C TO SETTLEMENT AGREEMENT

to consider the motions for final approval of the proposed Class Settlement, Class Counsel's attorneys' fees and expenses, and the Class Representative incentive awards.

The Court, having reviewed and considered the Parties' Joint Motion, the proposed Class Settlement Agreement, the proposed Mailed Notice and Publication Notice, pertinent portions of the entire record in this litigation to date, and after hearing the arguments of the Parties' attorneys at the hearing to consider the Joint Motion, finds as follows:

1. On July 18, 2017, Plaintiffs filed their class action complaint against TEP in the District Court for the City and County Denver, Colorado. TEP removed the case to this Court on August 17, 2017.

2. The Plaintiffs, on behalf of themselves and a Class of similarly situated royalty owners, assert various claims against TEP for alleged royalty underpayments on the production and sale of natural gas. The Parties' royalty agreements are subject to a class action settlement agreement which was approved by a Colorado state district court in 2009 in a case styled *Ivo Lindauer v. Williams Production RMT Co.*, Case No. 2006-CV-0317 (Garfield County District Court) (the "*Lindauer Settlement*").

3. The Plaintiffs' first amended class action complaint alleges that TEP failed to calculate royalties and overriding royalties in accordance with the terms of the *Lindauer Settlement*, and therefore underpaid the Plaintiffs and the proposed Class. In its answer to the first amended class action complaint, TEP has denied those allegations.

4. Since this litigation was commenced, the Plaintiffs' attorneys ("Class Counsel") have engaged in extensive informal discovery. Class Counsel have requested, received, and reviewed very voluminous documents and electronic data regarding TEP's calculation and payment of royalties to the Plaintiffs and the Class for a seven year time period extending back to July 2011.

Both Parties have retained royalty accounting experts to assist in the evaluation and analysis of the electronic royalty accounting data maintained by TEP. Class Counsel, with the assistance of a qualified royalty accounting expert, have been able to thoroughly analyze the full amount of alleged royalty underpayments by TEP to all of the Class members, based upon TEP's deduction of certain post-production costs in the calculation of royalties paid to the Class members.

5. The terms of the proposed Class Settlement are set forth in the Settlement Agreement which is attached to the Joint Motion as Exhibit A. The definitions set forth in the Settlement Agreement are incorporated herein by reference. The Settlement Agreement resolves the claims of the Class against TEP for natural gas royalty underpayments through June 1, 2018, and also resolves the claims of the Class regarding the method for TEP's calculation and payment of future royalties after June 1, 2018 for the Class members who are members of Subclass 1 and Subclass 4.

6. The Settlement Class, as defined in the Parties' Settlement Agreement, includes the following persons:

all persons and entities to whom TEP has paid royalties and/or overriding royalties, and deducted post-production costs from those royalties and/or overriding royalties, including owners whose royalties currently are held in suspense, since July 1, 2011, on natural gas production from any well subject to the oil and gas lease agreements which the settling parties in the *Lindauer* Settlement identified as Category 2, Category 3, Category 5, and Category 11 instruments.

The Settlement Agreement divides the Class into four Subclasses (the "Subclasses") as follows:

Subclass 1: Elna Sefcovic, LLC, and all persons and entities to whom TEP has paid royalties, and deducted post-production costs from those royalties, including owners whose royalties currently are held in suspense, since July 1, 2011, on natural gas production from any well subject to the oil and gas lease agreements which the settling parties in the *Lindauer* Settlement identified as either Category 2 or Category 3 royalty instruments.

Subclass 2: Juhan, LP, and all persons and entities to whom TEP has paid royalties and/or overriding royalties, and deducted post-production costs from those royalties and/or overriding royalties, including owners whose royalties currently are held in suspense, since July 1, 2011, on natural gas production from any well subject to the oil and gas lease agreements which the settling parties in the *Lindauer* Settlement identified as Category 5 instruments, and that currently are identified by TEP as Category 5 instruments.

Subclass 3: Roy Royalty, Inc., and all persons and entities to whom TEP has paid royalties and/or overriding royalties, and deducted post-production costs from those royalties and/or overriding royalties, including owners whose royalties currently are held in suspense, since July 1, 2011, on natural gas production from any well subject to the oil and gas lease agreements which the settling parties in the *Lindauer* Settlement identified as Category 11 instruments, and that currently are identified by TEP as Category 11 instruments.

Subclass 4: Juhan, LP, and all persons and entities to whom TEP has paid royalties and/or overriding royalties, and deducted post-production costs from those royalties and/or overriding royalties, including owners whose royalties currently are held in suspense, since July 1, 2011, on natural gas production from any well subject to the oil and gas lease agreements which the settling parties in the *Lindauer* Settlement identified as Category 5 or 11 instruments, but that currently are not identified by TEP as exclusively Category 5 or Category 11 instruments.

7. For purposes of the Settlement Agreement, each Plaintiff is a member of the Class, and one or more Plaintiffs is a member of each Subclass.

8. The Settlement Agreement between the Class and TEP appears, upon preliminary review, to be fair, reasonable, and adequate.

9. In determining that the proposed Class Settlement appears to be fair, reasonable and adequate, the Court has considered the following: (a) the proposed Class Settlement has been fairly and honestly negotiated; (b) serious questions of law and fact exist which put the ultimate outcome of a trial on the merits in doubt; (c) the amount of the proposed Class Settlement outweighs the possibility of further relief after protracted and expensive litigation; and (d) the Parties and their

attorneys, who are very experienced in class action royalty underpayment litigation, believe that the Class Settlement is fair and adequate, and are requesting that the Class Settlement be preliminarily approved.

10. The Parties have entered into the Settlement Agreement after conducting extensive discovery and fact gathering, and with full knowledge of the relevant factual and legal issues. The Settlement Agreement is the product of non-collusive, arm's-length bargaining between the Parties and their Counsel.

11. The Settlement Class benefits from the Settlement Agreement because TEP has agreed to pay \$10,025,308 to settle the Class members' claims in this litigation, and has agreed to a future royalty calculation methodology for royalty payments to Class members in Subclass 1 and Subclass 4 (as described in the Settlement Agreement), after the June 1, 2018 effective date of the Class Settlement.

12. The benefits provided to the Class under the terms of the Settlement Agreement provide a reasonable resolution of the claims of the Class, considering the risk of litigation, likelihood of protracted and expensive litigation in the absence of the Settlement Agreement, and the Parties' various claims and defenses.

13. TEP also benefits from the Settlement Agreement through the avoidance of protracted and expensive litigation, the elimination of risk of an adverse judgment, the final resolution of disputes with the Class members, and the promotion of a mutually productive business relationship with the Class members.

14. The Court also provisionally determines that each of the requirements for certification of a Fed. R. Civ. P. 23(b)(3) Settlement Class is satisfied, as set forth below.

15. Because there are approximately six hundred members of the defined Settlement Class, the

numerosity requirement of Rule 23(a)(1) is satisfied.

16. Because there is at least one question of law and fact which is common to the claims of each of the Class members, the commonality requirement of Rule 23(a)(2) is satisfied.

17. Because the claims of the named Plaintiffs are typical of the claims of the other Class members, the typicality requirement of Rule 23(a)(3) is satisfied.

18. Because the Class Representatives and Class Counsel have vigorously prosecuted this litigation on behalf of the named Plaintiffs and the Class, because the Class Representatives and Class Counsel do not have any conflicts of interest with the other members of the Class, and because Class Counsel have had extensive experience in litigating class action royalty underpayment cases, the adequacy of representation requirement of Rule 23(a)(4) is satisfied.

19. Common questions of law and fact predominate over individual questions regarding the Class members' claims against TEP. The overreaching issue binding the Class, and mooted by the Settlement Agreement, is the question of whether TEP complied with the terms of the *Lindauer* Settlement, which governs the royalty instruments held by the Class members. The predominance requirement of Rule 23(b)(3) is therefore satisfied.

20. A class action is superior to other available methods for fairly and efficiently adjudicating the Class members' claims against TEP. The fact that none of the Class members have expressed interest in individually controlling the prosecution of separate litigation against TEP further supports the Court's finding that the superiority requirement for certification of a Rule 23(b)(3) Settlement Class is satisfied. The Court makes no finding, however, whether this case, if litigated as a class action, would present intractable case management problems, because evaluation of the manageability factor is unnecessary in cases where class certification is sought only for a Settlement Class.

21. Accordingly, the Court finds that the proposed Class and its four Subclasses may be provisionally certified, for settlement purposes only, under Fed. R. Civ. P. 23(a) and (b)(3) as an opt-out Class.

22. The Notice of Class Settlement to be mailed to the members of the Class, which is attached to the Joint Motion as Exhibit B (“Mailed Notice”), adequately informs the Class members of the following: (1) the nature of this Class action lawsuit; (2) the definition of the proposed Settlement Class and each of the Subclasses; (3) the Class members' claims, the issues, and TEP's denial of the Class members' claims; (4) that the Court will exclude from the Class any member who requests exclusion; (5) the deadline and manner for requesting exclusion; (6) a description of the terms of the Class Settlement, including information about the Class members' right to obtain a copy of the Settlement Agreement from Class Counsel; (7) the right of any Class member to object to the proposed Class Settlement, Class Counsel's request for reimbursement of expenses and for attorneys' fees, or to the requested incentive awards for the Class Representatives, and the deadline for any such objections; and (8) the binding effect of the Class Settlement on Class members who do not elect to be excluded from the Class.

ORDER

In light of the Court's findings and conclusions, and pending further consideration at a final fairness hearing, IT IS HEREBY ORDERED THAT:

23. The Settlement Agreement is preliminarily approved as being fair, adequate and reasonable.

24. The named Plaintiffs are appointed as the Class Representatives for the Settlement Class, and Plaintiff Elna Sefcovic, LLC is appointed as the Class Representative for Subclass 1, Plaintiff Juhan, LP is appointed as the Class Representative for Subclass 2, Plaintiff Roy Royalty, Inc. is

appointed as the Class Representative for Subclass 3, and Plaintiff Juhan, LP is appointed as the Class Representative for Subclass 4.

25. The Plaintiffs' attorneys are appointed as Class Counsel for the Settlement Class, and for each of the four Subclasses.

26. The Court provisionally determines that each of the requirements for certification of a Fed. R. Civ. P. 23(b)(3) Settlement Class is satisfied.

27. Within 14 days of the date of this Order preliminarily approving the Class Settlement, TEP shall deposit the settlement payment of \$10,025,308 into the Escrow Account established pursuant to the Escrow Agreement, as provided for in Paragraph 2 of the Settlement Agreement, and subject to the conditions set forth in the Settlement Agreement and the Escrow Agreement.

28. The Court approves the form and content of the Mailed Notice attached to the Joint Motion as Exhibit B.

29. Class Counsel shall be responsible for mailing the Mailed Notice, by first class United States mail, to the Settlement Class members within seven days after the date of this Order preliminarily approving the Class Settlement.

30. Any member of the Settlement Class who wishes to request exclusion (“Opt Out”) from the Settlement Class must submit a written Opt Out election, which must be postmarked on or before the date which is 45 days after the postmark date of Class Counsel’s mailing of the Mailed Notice to the members of the Class, which date shall be specified in the Mailed Notice. In accordance with the procedures set forth in the Mailed Notice, any such Opt Out election must be in writing, and must be mailed to Class Counsel at the address provided in the Notice.

31. On or before the date which is 21 days before the scheduled date for the final fairness hearing, the Parties shall file motions in support of final approval of the Class Settlement, and

Class Counsel shall file their request for attorneys' fees and expense reimbursements, and for Class Representative incentive awards.

32. Any member of the Class who wishes to make objections to, or comment on, the proposed Class Settlement, Class Counsel's request for attorney's fees and expenses reimbursements, or the request for Class Representative incentive awards, shall postmark and mail such objections or comments on or before the date which is 14 days before the scheduled date for the final fairness hearing. In accordance with the procedures set forth in the Mailed Notice, any such objections or comments must be mailed to Class Counsel, TEP's counsel, and the Court.

33. Any Class member who wishes to appear and be heard at the final approval hearing must postmark and mail notice of such intention at least 7 days before the scheduled date for the final fairness hearing. Notice of such intention must be mailed to Class Counsel, TEP's counsel, and the Court.

34. At least 7 days before the scheduled date for the final fairness hearing, Class Counsel and TEP may file a response to any Class member's objections or comments. A copy of such response shall be mailed to all Class members who have submitted timely objections or comments.

35. The Court will conduct a hearing to consider final approval of the proposed Class Settlement, Class Counsel's request for attorneys' fees and expense reimbursements, and the request for Class Representative incentive awards, beginning at _____ .m, on _____, in Courtroom _____ of this Court.

36. All pending discovery and case management deadlines in this action are stayed until further order of this Court.

IT IS SO ORDERED.

Dated this ____ day of _____, 2018

United States District Judge

AMENDMENT TO SETTLEMENT AGREEMENT

This Amendment (the “Amendment”) to the Settlement Agreement (“Agreement”) is entered into on October 26, 2018, effective June 1, 2018 (“Effective Date”), by and between ELNA SEFCOVIC, LLC, JUHAN LP, ROY ROYALTY, INC., and WHITE RIVER ROYALTIES, LLC (the “Plaintiffs”), on behalf of themselves and a class of similarly situated royalty and overriding royalty owners (defined as the “Class” in the Agreement) and TEP ROCKY MOUNTAIN LLC (“TEP”), a Delaware limited liability company. Plaintiffs and TEP may each be referred to as a “Party or collectively as “the Parties.”

All capitalized terms in this Amendment are given the meanings defined in the Agreement.

RECITALS

A. The Agreement was entered into effective June 1, 2018, by and between Elna Sefcovic, LLC, Juhan LP, and Roy Royalty, Inc., on behalf of themselves and the Class, and TEP.

B. On October 25, 2018, Plaintiffs moved to add White River Royalties, LLC (“White River”) as a Plaintiff in the Civil Action. Plaintiffs moved to add White River so that it can serve as a representative of the Class, in particular, a representative of Subclass 1 along with Elna Sefcovic, LLC.

C. The purpose of this Amendment is to modify the Settlement Agreement to include White River as a representative of the Class and representative of Subclass 1, and to add Juhan LP as an additional representative of Subclass 3. This Amendment makes no other modifications to the Agreement.

AGREEMENT

1. Addition of White River as Party to Agreement: The parties agree to add White River as a party to the Agreement, a representative of the Class, and a representative of Subclass 1.

2. Modification of Agreement as to White River: In order to effectuate paragraph 1 of this Amendment, the Agreement is modified as follows:

- a. The terms “Plaintiffs,” “Named Plaintiffs,” and “Parties” each is defined to include White River.
- b. All references to Subclass 1, including the representatives of Subclass 1, are defined to include White River in addition to Elna Sefcovic, LLC. The class representatives of Subclass 1 are Elna Sefcovic, LLC and White River.

3. Modification of Agreement as to Juhan LP: All references in the Agreement to Subclass 3, including the representatives of Subclass 3, are modified to include Juhan LP in addition to Roy Royalty, Inc. The class representatives of Subclass 3 are Roy Royalty, Inc. and Juhan LP.

4. Authority to Amend: This Amendment is executed by the Parties pursuant to paragraph 14(f) of the Agreement.

5. Incorporation of Agreement: All terms of the Agreement are hereby incorporated by reference.

6. No Other Modifications: Except as modified by this Amendment, no modification is made to the Agreement, which remains in full force and effect.

The Parties hereby execute this Agreement this 26th day of October, 2018, effective as of the Effective Date.

Elna Sefcovic, LLC

Roy Royalty, Inc.

By: _____
Title: _____

By: _____
Title: _____

Juhan LP

White River Royalties, LLC

By: _____
Title: _____


By: Susan J. Terman
Title: Manager

TEP Rocky Mountain LLC

By: _____
Title: _____

3. Modification of Agreement as to Juhan LP: All references in the Agreement to Subclass 3, including the representatives of Subclass 3, are modified to include Juhan LP in addition to Roy Royalty, Inc. The class representatives of Subclass 3 are Roy Royalty, Inc. and Juhan LP.

4. Authority to Amend: This Amendment is executed by the Parties pursuant to paragraph 14(f) of the Agreement.

5. Incorporation of Agreement: All terms of the Agreement are hereby incorporated by reference.

6. No Other Modifications: Except as modified by this Amendment, no modification is made to the Agreement, which remains in full force and effect.

The Parties hereby execute this Agreement this 26th day of October, 2018, effective as of the Effective Date.

Elna Sefcovic, LLC

Roy Royalty, Inc.

Elna Sefcovic, LLC
 By: Debra A Anderson
 Title: Operations Manager

 By: _____
 Title: _____

Juhan LP

White River Royalties, LLC

 By: _____
 Title: _____

 By: _____
 Title: _____

TEP Rocky Mountain LLC

 By: _____
 Title: _____

3. Modification of Agreement as to Juhan LP: All references in the Agreement to Subclass 3, including the representatives of Subclass 3, are modified to include Juhan LP in addition to Roy Royalty, Inc. The class representatives of Subclass 3 are Roy Royalty, Inc. and Juhan LP.

4. Authority to Amend: This Amendment is executed by the Parties pursuant to paragraph 14(f) of the Agreement.

5. Incorporation of Agreement: All terms of the Agreement are hereby incorporated by reference.

6. No Other Modifications: Except as modified by this Amendment, no modification is made to the Agreement, which remains in full force and effect.

The Parties hereby execute this Agreement this 26th day of October, 2018, effective as of the Effective Date.

Elna Sefcovic, LLC

By: _____
Title: _____

Roy Royalty, Inc.

By: Brian Cifer
Title: MANAGING DIRECTOR

Juhan LP

By: _____
Title: _____

White River Royalties, LLC

By: _____
Title: _____

TEP Rocky Mountain LLC

By: _____
Title: _____

3. Modification of Agreement as to Juhan LP: All references in the Agreement to Subclass 3, including the representatives of Subclass 3, are modified to include Juhan LP in addition to Roy Royalty, Inc. The class representatives of Subclass 3 are Roy Royalty, Inc. and Juhan LP.

4. Authority to Amend: This Amendment is executed by the Parties pursuant to paragraph 14(f) of the Agreement.

5. Incorporation of Agreement: All terms of the Agreement are hereby incorporated by reference.

6. No Other Modifications: Except as modified by this Amendment, no modification is made to the Agreement, which remains in full force and effect.

The Parties hereby execute this Agreement this 26th day of October, 2018, effective as of the Effective Date.

Elna Sefcovic, LLC

Roy Royalty, Inc.

By: _____

By: _____

Title: _____

Title: _____

Juhan LP

White River Royalties, LLC

 _____

By: Kathryn C. Juhan

By: _____

Title: Gen. Partner

Title: _____

TEP Rocky Mountain LLC

By: _____

Title: _____

3. Modification of Agreement as to Juhan LP: All references in the Agreement to Subclass 3, including the representatives of Subclass 3, are modified to include Juhan LP in addition to Roy Royalty, Inc. The class representatives of Subclass 3 are Roy Royalty, Inc. and Juhan LP.

4. Authority to Amend: This Amendment is executed by the Parties pursuant to paragraph 14(f) of the Agreement.

5. Incorporation of Agreement: All terms of the Agreement are hereby incorporated by reference.

6. No Other Modifications: Except as modified by this Amendment, no modification is made to the Agreement, which remains in full force and effect.

The Parties hereby execute this Agreement this 26th day of October, 2018, effective as of the Effective Date.

Elna Sefcovic, LLC

Roy Royalty, Inc.

By: _____

By: _____

Title: _____

Title: _____

Juhan LP

White River Royalties, LLC

By: _____

By: _____

Title: _____

Title: _____

TEP Rocky Mountain LLC

_____

By: Michael S. Land

Title: President & CEO

APPROVED:

Counsel for Plaintiffs and Class


By: George Barton

Counsel for TEP Rocky Mountain LLC


By: Christopher Christman

11570894_1

EXHIBIT 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 17-cv-01990-MEH

ELNA SEFCOVIC, LLC, JUHAN, LP,
and ROY ROYALTY, INC, individually
and on behalf of all others similarly situated,

Plaintiffs,

v.

TEP ROCKY MOUNTAIN, LLC,

Defendant.

DECLARATION OF GEORGE A. BARTON

I, George A. Barton, declare as follows:

1. I am an attorney and the sole shareholder of the Law Offices of George A. Barton, P.C. (“the Barton law firm”). On August 16, 2018, the Court appointed me as one of the Class Counsel in the above-captioned matter when entering its Order Preliminary Approving the Parties’ Proposed Class Action Settlement. I am submitting this declaration in support of the Parties’ Joint Motion for Final Approval of the Class Action Settlement. This declaration is based on my personal knowledge of the facts set forth herein, and if called to testify, I could and would testify to such facts.

2. I graduated from Washburn University School of Law, magna cum laude, in May 1977. I was admitted to the Bar in the state of Missouri in August 1977, and in the State of Kansas in 2015. I am admitted to practice law in the state courts of Missouri and Kansas, the United States District Courts for the Western District of Missouri, the District of Kansas, the District of

Colorado, the Central District of California, and the Western District of Kentucky. I am also admitted in the United States Court of Appeals for the Sixth, Seventh, Eighth, and Tenth Circuits.

3. The Barton law firm employs five full time attorneys, two full time legal assistants, and a law clerk. Each of the firm's attorneys specializes in representing plaintiffs in complex business litigation, including class actions. The Barton law firm is currently involved in representing plaintiffs and plaintiff classes in several class action lawsuits, in addition to this litigation. The firm also regularly represents plaintiffs in complex litigation lawsuits which are not class actions, in numerous jurisdictions throughout the United States.

4. For the forty-one years since my graduation from law school, I have been continuously engaged in the private practice of law, and have focused my practice exclusively in civil litigation, primarily specializing in commercial litigation. I have had extensive experience representing plaintiffs in commercial class action litigation. I have represented named plaintiffs in more than thirty class action lawsuits, which have been litigated in Arizona, Colorado, Florida, Kansas, Kentucky, Missouri, Arkansas, New Mexico, and Oklahoma. In the vast majority of those cases, I have acted as either lead counsel or co-lead counsel for the plaintiff class.

5. For the last twenty-five years, I have specialized in representing plaintiffs in royalty underpayment litigation against various energy producers, including coal producers and natural gas producers. I have handled more than thirty significant royalty underpayment cases against such producers during the last twenty-five years, including cases filed in Kentucky, Illinois, Indiana, Oklahoma, Colorado, New Mexico, and West Virginia. My royalty underpayment litigation experience in Colorado includes acting as lead counsel for the twenty-five royalty owner plaintiffs in the *Rogers v. Westerman Farm* litigation. The *Rogers* case was tried to a jury during a two-week period in November 1996 in Wray, Colorado, resulting in a verdict in favor of the

royalty owner plaintiffs. The case was subsequently appealed and cross-appealed, and ultimately the Colorado Supreme Court agreed to hear the case. I handled all of the appellate briefing in *Rogers*, and also argued the *Rogers* case to the Colorado Supreme Court on behalf of the royalty owner plaintiffs, which ultimately resulted in the opinion from the Colorado Supreme Court, which is reported at 29 P.3d 887 (Colo. 2001). After the *Rogers* case was remanded to the trial court, the case was settled.

6. In addition, I have handled a number of other significant royalty underpayment cases against other Colorado natural gas producers, including significant cases against Augustus Energy Resources, LLC, Kerr-McGee Rocky Mountain Corporation, Noble Energy, Inc., EnCana Oil and Gas (USA), Inc., Merit Energy Company, Petroleum Development Corporation, BP America Production Co., Exco Resources, and Berry Petroleum Company. Between November 2001 and October 2004, I represented ninety-eight royalty owners in the *Kerr-McGee Rocky Mountain Corporation v. Abbett* litigation, Case No. 01CV5929 (Denver District Court), which involved royalty underpayment issues which are similar to the ones at issue in this class litigation. That litigation was successfully resolved on behalf of those royalty owners. I also handled a subsequent class action royalty underpayment litigation against Kerr-McGee, captioned *Boulter, et al. v. Kerr-McGee Rocky Mountain, Inc.*, Case No. 04CV7739 (Denver District Court). The *Boulter* case was settled on a class-wide basis, including a 6.4 million dollar settlement payment to the class, and an improved method for calculation of future royalties. I also represented 260 royalty owners in royalty underpayment litigation against Noble Energy Production, Inc. which was filed in 2005 under the caption *Ace Royalties, LLC, et al. v. Noble Energy Production, Inc.*, Case No. 05CV5633 (Denver District Court). In 2007, a settlement was reached regarding the claims of each of those 260 royalty owners, on both their past underpayment claim and their claim

regarding the proper method of calculating natural gas royalties in the future. Beginning in April 2005, I acted as lead class counsel in a royalty underpayment lawsuit against EnCana Oil & Gas (USA) Inc. in Denver District Court. In March 2008, the Plaintiff Class and EnCana reached a Class Settlement in which EnCana agreed to pay forty million dollars to resolve the past royalty underpayment claim, and also agreed to an improved method for calculating future royalties. The Denver District Court granted final approval of that Class Settlement in August 2008. I also acted as class counsel in class action royalty underpayment cases against Berry Petroleum Company which was settled for \$2.5 million, against Merit Energy Company which was settled for \$13.5 million, and against Petroleum Development Company which settled for approximately \$9 million.

7. I also acted as lead class counsel for the certified class in a protracted class action royalty underpayment litigation against BP America Production Co. (“BP”), in which the Denver District Court granted plaintiffs’ contested motion for class certification, the Supreme Court of Colorado ultimately affirmed the District Court’s class certification order, 263 P.3d 103 (Colo. 2011), and the claims of the certified class of royalty owners was thereafter tried to a jury, resulting in a forty million dollar judgment in favor of the class. In 2015, the judgment in favor of the class was affirmed by the Colorado Court of Appeals. *Patterson v. BP America Production, Co.*, 360 P.3d 211 (Colo. App. 2015).

8. As a result of my extensive experience in handling natural gas royalty underpayment litigation in Colorado, I have obtained a thorough understanding of the factual and legal issues that typically arise in this type of litigation, including the litigation risks for both the royalty owners and the natural gas producers.

9. This class action against TEP Rocky Mountain, LLC (“TEP”) has involved complex legal and factual issues relating to TEP’s calculation and payment of royalties on the

production and sale of natural gas subject to a class action settlement agreement approved by a Colorado state district court in 2009 in a case styled *Ivo Lindauer v. Williams Production RMT Co.*, 2006 CV 317 (Garfield County District Court) (the “*Lindauer* Class Settlement”). In my opinion, having reviewed and analyzed voluminous documents and royalty accounting data produced by TEP spanning more than six years of natural gas production and royalty payments, the Class members have valid royalty underpayment claims against TEP. However, serious questions of fact and law have existed which placed the ultimate outcome of this class action litigation in doubt, including the following: (1) whether the Court would grant a contested motion to certify a Fed. R. Civ. P. 23(b)(3) class; (2) whether TEP might, at some point during a protracted class action litigation, file for Chapter 11 bankruptcy protection, as two other Colorado natural gas producers facing natural gas royalty underpayment class actions have done within the last three years (Burrows Decl., ¶¶ 4-28); (3) whether the Subclass 1 Class members would prevail on any part of their claim for royalty underpayments against TEP, including the extent to which some or all of the disputed gathering and fuel cost deductions might be found to be deductions which TEP is entitled to take under the express provisions of the Subclass 1 lease agreements, which require the members of Subclass 1 to “bear...the cost of transporting such gas...from the mouth of the well to the point of sale or use.”; (4) the extent to which the members of Subclasses 2, 3 and 4 would not prevail on their claim for TEP’s improper deduction of fuel costs in the calculation of royalties paid to Subclass 2, 3 and 4 members under the express provisions of the Subclass 2, 3 and 4 leases, which permit TEP to “use, free of cost, gas, oil and water produced on said land for its operation thereon...”; (5) the extent to which TEP might prevail on its alleged counterclaim against all of the Class members for a setoff against the Settlement Class members’ monetary recovery related to ad valorem taxes; (6) the uncertainty inherent in a jury trial, including the jury’s

opinion on expert witness testimony regarding the appropriate damages calculation, and (7) the likelihood that TEP would have appealed from an adverse judgment. (Doc. No. 52). I also note that throughout this class action litigation, TEP has consistently denied that it is liable to the Plaintiffs and the Class members for any alleged royalty underpayments. (Doc. No. 52).

10. Based on my substantial experience in handling complex class action litigation, if the claims of the Class members in this case were litigated to a conclusion instead of being settled, this litigation would be complex and expensive. Moreover, this class action litigation would likely take at least three more years to complete. I therefore spoke with TEP's counsel on a weekly basis for several months to negotiate a methodology for determining damages and appropriate settlement terms. These negotiations were fair and honest, and involved no improper pressure or collusion.

11. Based upon the risk factors set forth in Paragraphs 9 and 10 of this Declaration, as well as expert royalty accountant Don Phend's royalty underpayment calculations, it is my opinion that the Class Settlement which was entered into between TEP and the Plaintiffs in this litigation is a fair, adequate and reasonable settlement, and a good outcome, for each of the four defined Subclasses, including both the monetary settlement amount for each of the Subclasses, and the future royalty payment method on TEP's royalty payments to the members of Subclass 1 and Subclass 4.

12. In the parties' Class Settlement Agreement (Doc. No. 56-1), defendant TEP Rocky Mountain, LLC ("TEP") agreed to pay a total of \$10,025,308 to the members of four defined Subclasses, as described in Paragraphs 1 and 2 of the Class Settlement Agreement, which consisted of 643 total Settlement Class members. Each Subclass represents a different subset of royalty instruments subject to a distinct payment methodology. On August 30, 2018, TEP paid \$10,025,308 into an escrow account maintained by Bank of Oklahoma Financial. These escrowed

funds represent the total settlement amount identified in paragraph 2 of the settlement agreement. Pursuant to Paragraph 4 of the Class Settlement Agreement, TEP is entitled to a proportionate opt out credit against the \$10,025,308 Settlement Amount for the portion of the Preliminary Distribution Schedule to the Settlement Class attributable to those Settlement Class members who have requested to exclude themselves from the Settlement Class and the Class Settlement Agreement. Thirty-six of the 643 Settlement Class members elected to opt out of the Settlement Class. The proportionate share of the Class Settlement Amount for the 36 persons who opted out of the Settlement Class is \$2,033,802.67, and that amount has been returned to TEP from the \$10,025,308 escrow account. The remaining balance, \$7,991,505.33, is the Class Settlement Amount for the 607 Settlement Class members who remain in the Class.

13. The deadline for Class members to submit objections to the Class Settlement in this case is November 6, 2018. I have received numerous phone calls from members of the Settlement Class, asking questions about the Class Settlement Agreement, and other issues, to which I have fully responded. To date, my law firm has not received any objection to the fairness, adequacy and reasonableness of the Class Settlement from any of the 607 Settlement Class members in this case. In my phone conversations with members of the Settlement Class, the Settlement Class members' reaction to the settlement has been very positive.

14. One Settlement Class member, Mr. Nate Bernklau, informed Stacy Burrows of my office that in 2017 he contacted Nate Keever, the attorney for the *Lindauer* plaintiffs, concerning TEP's deduction of post-production costs, and was advised by Mr. Keever that he would "look into" the matter.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 30th day of October, 2018.

A handwritten signature in blue ink, appearing to be "G. A. Barton", written over a horizontal line.

GEORGE A. BARTON

EXHIBIT 3

Elna Sefcovic, LLC et al v. TEP Rocky Mountain, LLC
 Final Distribution Schedule

5,240,989.38

Owner Number	Final Distribution Schedule
3464	13.68
9650	151.21
2556	53,430.70
4022	9.61
2719	107.02
2720	106.73
4369	1,442.22
1180	2.56
8280	10.95
3497	3,306.39
10100	215.74
7762	37.66
8551	19.31
4020	45.14
11000	1,102.89
9948	45,281.47
10386	2.44
3496	3,306.35
5533	9,185.97
7028	12.09
4759	63.46
3190	1,405.07
3074	6,113.05
7497	34,502.35
7309	41.04
10442	9,918.32
8099	22.67
8292	25,958.11
7713	14.95
3529	309.61
4141	14,978.73
6831	1.55
7447	425.44
7650	399.20
1428	89.12

7651	2.22
10707	1,035.59
1917	2.09
8504	1,093.28
5111	46.49
6934	2.22
7059	19.93
6837	12,651.15
10264	29,778.69
10305	70,921.15
2780	4,927.10
3264	424.31
10254	117.97
7137	310.56
7325	1.94
8134	512.26
7125	30,117.20
11001	6,908.14
7568	49.86
7255	486.79
1300	8.41
6966	5.65
4858	14.57
7418	8.06
7730	5,593.01
7558	633.86
8881	15,588.30
3584	14.90
1446	2.53
7652	2.67
11002	2.17
7223	18.30
8483	1,347.60
4298	12.86
4705	1.91
6852	17.09
8617	2.82
11003	3.44
7398	533.92
6958	3,854.41
2678	46.53
3566	16,655.85
7433	1.49
6869	3,613.81
11050	6,908.14
8604	6.64
4533	6.30

7123	98.99
2827	25,872.74
11049	239.22
7046	8.48
7508	603.34
10006	2,973.69
10060	108.44
8619	35,751.00
6785	428.68
11048	1,248.09
7402	1,988.88
1459	491.45
7404	126.65
11004	94.38
1480	2.21
7827	6.84
4704	9,528.22
7111	872.86
8595	14.45
7623	1,019.94
6932	1,021.01
10563	2,771.80
4781	8.40
10616	64.23
8430	3.84
7053	3.86
7145	2.22
7196	271.63
7234	58.45
11005	52.93
8452	615.86
1842	68.46
7732	36.21
5311	209.01
8242	3.26
6950	18,357.42
6886	24.82
2506	824.06
8556	19.30
8083	14,365.69
7326	20.97
5122	623.42
7930	6.24
7122	98.96
2686	2,664.97
8196	6.49
11117	243.49

11006	1.95
11007	357.73
7437	82.21
11008	1,692.88
8626	849.32
4821	4,821.73
7763	36.29
11009	1,035.40
7182	126.37
8312	77.60
7232	2.22
1330	2.65
2675	277.76
8197	7.10
7022	2.73
9867	287,639.87
1479	34.06
10817	25.67
7282	26.76
2923	53,540.71
7937	3.24
7379	1.32
3112	2,078.78
6021	93,000.48
5701	71.22
7788	41.42
5434	17.12
5413	2,635.35
9512	79,653.75
1334	208.92
5287	8.98
8494	3.09
7136	310.83
6775	5,509.85
7566	1,451.99
7168	20,885.87
4585	2.51
2297	16.48
7723	17.14
8320	1,959.33
11010	3,738.98
7285	7.93
4201	5.68
5271	12,651.24
7378	49.20
7303	20.14
4848	31,276.11

7395	849.09
7595	5.79
1843	34.59
2817	104.60
7955	5.34
9034	15.02
6779	303.72
1342	133.97
2334	219.96
7238	21.45
6255	8.97
1444	23.73
1445	24.30
1497	92.77
11011	50.11
4597	6.31
2086	73.02
2339	27.25
10715	549.32
10232	2,973.72
2343	4.23
8961	2,788.04
10781	102.96
10524	15,800.47
2347	40.25
6797	43,743.10
11012	1,705.64
6801	18,357.82
9075	26.78
7967	6.91
6885	51.78
5496	9.74
3263	19.24
11013	26.12
9908	1,963.52
9909	5,405.93
6930	562.54
4267	1,261.51
11014	116.98
5960	69.33
11015	2.22
7276	1.94
7024	18.64
7506	152.35
2979	54,242.70
7487	13.74
7301	2.51

7143	1.33
5197	58,405.23
2752	46.51
7702	1,119.34
4918	8,241.09
3331	48,868.54
11016	1.83
3590	1,349.25
3216	5,542.11
3111	52,659.91
5136	585.38
5619	66.53
3772	2.35
3621	147,387.00
4944	42,234.34
4439	4.52
1478	23.97
1485	11.69
7521	9,992.48
8135	2,688.05
3378	48,983.69
7399	546.43
2750	30,016.19
1437	715.54
8237	2.89
9109	146.37
9449	87.77
10579	113,011.85
5148	4,236.07
10469	106.87
11017	10.52
11018	29.75
7545	165.58
7048	32,012.19
7584	3,637.79
7565	21,615.59
4555	24.42
3384	35,673.03
8360	55,841.50
6063	4.27
8028	37.23
2221	1,888.96
8316	63.01
3095	5.77
7097	200.22
11019	46.34
11020	352.48

4851	424.31
1457	99.87
6913	220.42
3440	3,850.90
7485	31.39
7295	186.80
7756	1.73
6937	990.91
7486	114.98
7703	197.93
7825	7.92
7493	21,227.79
8319	77.55
8547	19.30
7938	3.28
7263	92.83
3287	37,676.30
5210	72.90
7105	288.00
4065	402,302.19
8272	176.08
7616	3.00
8184	215.74
7110	317.67
11021	633.14
2673	11.64
7101	77.90
5166	1,165.99
7334	43,785.22
7231	677.05
6826	27,726.56
1181	2.99
5115	93,011.58
7797	45.14
4380	13.06
4303	46.51
7266	2.82
7814	8.41
10319	89,383.94
8226	14.75
11022	63.28
1349	9.82
6861	2.22
7427	4.32
2144	51,805.73
10577	111,909.27
2239	163.05

4749	58,445.08
3881	41.67
3882	3,808.70
1460	110.90
4365	12.94
6946	20,606.56
8499	107.30
3152	2,078.03
2877	19,973.78
2270	11,830.23
8659	281.68
7632	428.72
11023	988.82
1226	11.69
9845	8.99
9150	15,475.47
8461	53,183.84
4649	4,821.58
2602	209,943.49
9230	938.36
1182	2.55
10535	8,667.09
4559	3,007.99
7522	486.60
6865	20.06
7347	12,650.82
1310	9.01
7761	37.71
7593	4.96
7968	6.80
8478	77.54
5593	20,886.55
8593	1.91
3477	297.93
6819	871.63
7049	1,313.45
7835	7.95
3586	648.46
7941	7.92
6942	37.64
4546	20.21
1289	510.01
3298	549.31
3358	59,884.69
8003	8.19
10237	2,887.16
10587	94.01

9096	34.16
7270	18,357.19
9282	33,076.16
2848	203,839.55
2763	7,694.09
3266	59.63
2973	39,654.29
7209	6.39
8163	55,842.21
7342	147.67
7139	311.32
10716	60,063.68
7929	8.22
4163	3.94
8954	33,371.43
8214	4.00
11024	381.77
6809	11.69
8241	2.90
7004	10,331.32
7547	599.03
11025	6.77
6850	4,300.70
8082	14,359.75
7344	147.97
10061	191.29
3964	4.92
1458	43.62
1456	116.97
7530	147.84
10521	10,257.90
7511	186.80
1183	2.29
7453	625.02
6848	115.10
3045	1,062.45
8193	3,475.21
11026	4.83
7438	82.24
6922	833.61
8002	40.23
7185	165.57
4515	1,417.56
3068	6,649.21
11027	19,314.09
6879	45.99
7044	424.84

9082	985.41
5700	71.23
6856	649.25
6839	223.94
6859	6,607.08
7586	3,112.46
7585	525.37
3872	4,983.73
7008	2,105.81
9462	10,006.58
2207	130.56
3383	25,452.92
7463	3,851.35
7032	1.32
11028	1.47
7777	3.88
8285	55,841.56
7042	424.65
8087	126.32
8603	189.11
1335	103.64
11029	60.09
11119	4,769.16
7045	424.86
7904	6.39
8716	46,318.96
6817	24,339.94
6799	424.65
11030	846.34
4495	21,968.08
10404	1,290.18
8396	104.57
9005	91,398.33
7450	4,019.85
9861	55.80
7082	8,613.74
2312	17,595.05
9850	6,710.55
3454	33,344.91
7261	4.57
2091	4.55
7189	646.97
3156	2,078.72
4510	228.41
7553	308.92
5455	16.77
4001	1,943.53

3362	59,884.48
11031	101.79
5075	2,635.35
10056	396.85
7478	57.53
11032	1.31
7305	217.95
3071	2,077.82
7318	46,912.44
10155	299.24
7715	3.87
7462	358.00
11033	454.35
8212	6,479.05
11034	19,096.66
8236	916.91
5500	849.09
8023	6.86
4212	3.66
11035	7.43
4347	502.48
4746	14,093.26
3849	35.91
3850	7.64
3549	307.62
3485	44,289.08
11036	341.24
10392	36.17
11037	83.81
7329	46,913.19
6891	350.25
11038	633.14
10020	4,404.47
8253	9.64
4590	519.92
11039	1,036.32
3511	3,307.03
1220	18,113.26
6825	27,723.70
2166	67.81
8830	48.90
8476	19,963.73
7184	24,124.04
11040	28.67
7866	20.15
7839	6.86
7557	633.87

7138	311.17
7146	1.49
8482	123.44
10462	298.46
7092	2,772.20
6818	6.39
7245	1,729.89
3550	311.20
8610	11,553.82
8652	4.92
1476	5.98
7460	10.98
5566	507.03
6959	3,851.71
3678	52.53
3571	3.68
5409	1,520.02
2567	3,567.37
1221	18,135.93
7112	1,320.20
7542	673.16
7180	2.51
7291	3,852.79
8560	41,052.73
9868	76,503.50
2916	2,642.54
8297	107.28
3600	384.16
2940	1,484.58
8579	4,158.96
7090	2,772.62
9929	16,199.40
2951	53,544.48
5198	2,951.81
7440	88.28
3906	3,851.64
7317	210.38
4370	1,442.17
7173	2.24
8327	4.69
7800	42.27
8585	4,157.97
7432	26,239.76
4535	140.67
9099	2,487.23
11041	469.83
7624	425.41

6941	646.95
8291	3.21
7041	298.42
10037	32,722.25
3096	1,025.55
11042	1,914.92
3510	3,308.22
2090	59.58
4782	8.40
2484	1,032.45
2182	34.28
8584	830.30
2555	46,837.33
9503	228.81
7719	197.90
3606	137.47
8451	28,741.63
1482	2.21
2129	2,862.30
7439	34.94
11043	4.87
9420	47.45
4514	23.41
6940	3,009.83
8088	126.30
11044	21.21
8553	18.54
10758	549.31
7512	17,555.01
7095	605.25
10360	162.98
6992	15.93
7205	287.04
3498	3,306.03
3396	106.40
3397	106.96
1483	2.21
2772	4,932.52
11045	229.77
1222	18,114.74
7311	1.50
2667	13,990.95
7529	47.57
3523	30,703.02
7361	2,688.01
7733	37.73
6796	3.87

5101	8,451.29
8389	17.19
7249	8,980.27
4320	3,748.82
4321	620.29
11046	138.50
4178	5.72
1481	2.21
2880	7,795.90
	5,240,989.38

EXHIBIT 4

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 17-cv-01990-MEH

ELNA SEFCOVIC, LLC, JUHAN, LP,
and ROY ROYALTY, INC, individually
and on behalf of all others similarly situated,

Plaintiffs,

v.

TEP ROCKY MOUNTAIN, LLC,

Defendant.

DECLARATION OF DONALD A. PHEND

I, Donald A. Phend, CPA, declare as follows:

1. My name is Donald A. Phend. I am over twenty-one (21) years of age and am competent to make this declaration. This declaration is based on my personal knowledge of the facts set forth herein, and if called to witness, I could and would testify to such facts.

2. I am a Certified Public Accountant licensed in the State of Colorado. I have been continuously employed or engaged in oil and gas accounting and tax matters since 1980. As set forth in my resume attached hereto as Exhibit A, my job responsibilities have included extensive experience reviewing gas revenue and gas plant accounting for production and valuation in the State of Colorado, and has also included performing expert witness services in royalty valuation cases. I am submitting this declaration in support of the parties' joint motion for final approval of the *Elna Sefcovic, LLC et al. v. TEP Rocky Mountain, LLC* class action settlement agreement (the "Settlement Agreement").

3. I have been retained by Class Counsel as a gas revenue accounting expert in the above-referenced class action litigation. Through my work in this matter, I have become familiar with the revenue accounting practices of TEP Rocky Mountain, LLC (“TEP”) for natural gas production, including residue gas and natural gas liquids extracted therefrom, and TEP’s electronic accounting data regarding the same. For example, and without limitation, I have reviewed TEP’s services contracts for gathering, processing, and transporting natural gas; the class-action settlement agreement in a case styled *Ivo Lindauer v. Williams Production RMT Co.*, 2006 CV 317 (Garfield County District Court) (the “*Lindauer* Settlement Agreement”); gathering and plant statements; weighted average sales price schedules and invoices; accounting and allocation spreadsheets; settlement statements; and other accounting data produced by TEP in electronic format. The data I reviewed was produced by TEP and/or its affiliates in this litigation and relates to the royalty payments TEP made to the Subclasses I, II, III, and IV royalty owners, including production volume, sales prices, and post-wellhead expense data. Based on my review and analysis of this information, I have gained a full understanding of the methodology employed by TEP, and its predecessor in interest, WPX Energy Rocky Mountain, LLC (“WPX”), to calculate and pay royalties to the members of the Subclasses I, II, III, and IV royalty owners in the this class action litigation.

4. In December of 2017, I was retained by and began assisting Class Counsel in reviewing the data produced by TEP related to the natural gas produced from royalty instruments classified as Categories 2, 3, and 5 under *Lindauer* Settlement Agreement. My review and analysis of the electronic data provided by TEP in this litigation included the following:

- a. On December 4, 2017, I began reviewing the documents and data produced by TEP, which included: (1) relevant contracts related to the gathering and processing services and the sale of natural gas liquids by TEP and WPX; (2) sample revenue accounting data including invoices, statements, and allocation workbooks; and (3) sample revenue accounting data from September 2012, September 2013, September 2014 and September 2015, including pricing sheets, invoices, statements and allocation workbooks related to WPX's method of allocating revenues and post-production costs to the royalty owner Subclass members;
- b. On December 19, 2017, TEP produced the royalty accounting data associated with monthly royalty payments made by WPX to the royalty owners with royalty instruments identified as Category 2, 3, or 5 under the *Lindauer* Settlement Agreement from July 2011 to July 2016, and I immediately began reviewing that royalty accounting data in order to identify the post-production costs WPX deducted from the royalty payments;
- c. On January 19, 2018, TEP produced the royalty accounting data spreadsheets associated with monthly royalty payments TEP had made to the royalty owners with royalty instruments identified as Category 2, 3, or 5 under the *Lindauer* Settlement Agreement from July 2016 through September 2017. Upon receipt, I began reviewing the royalty accounting data TEP produced. During this time period, I had extensive communications with Class Counsel regarding the electronic royalty accounting data produced by TEP for the TEP and WPX royalty accounting time periods, and I addressed with Class Counsel the various issues I had identified, which were directly related to

calculation and payment of royalties to the Subclass I royalty owners as defined within in the Settlement Agreement;

d. In January 2018, for the first time, I was provided with the electronic royalty accounting data recently produced by TEP for royalty instruments identified as Category 11 under the *Lindauer* Settlement Agreement. During my review of TEP's electronic royalty accounting data, I identified certain transportation and fractionation post-production costs that TEP had deducted from the Class members' royalties, which are prohibited under Paragraph 4.6 of the *Lindauer* Class Settlement Agreement. After my review of the royalty accounting data related to the Category 11 royalty instruments, the Plaintiffs filed their First Amended Class Action Complaint which added claim on behalf of royalty owners which had been paid under royalty instruments classified as Category 11 under the *Lindauer* Settlement Agreement, which is identified as Subclass III in the Settlement Agreement;

e. On April 9, 2018, TEP produced its weighted average sales price workbooks reflecting the residue gas sales prices TEP received for its Piceance Basin natural gas sales from July 2016 through December 2016, and additional information regarding the new residue gas sales contract TEP had entered into with a gas marketing company, Concord Energy, LLC;

f. In late April of 2018, TEP provided information that indicated there were royalty owners included within the electronic data for Subclasses I, II, and III royalty instruments that should be excluded from Subclasses I, II, and III royalty accounting data because the royalty owners associated with those royalty instruments and royalty owners had been

either excluded from, or opted of, the *Lindauer* Settlement Agreement. I analyzed the electronic royalty accounting data provided by TEP's royalty accounting expert, Alan P. Simpson, related to this issue. Through this analysis, I determined that there were royalty owners in the electronic data produced by TEP that were not a part of the *Lindauer* Settlement Agreement, and therefore, were not part of Subclasses I, II or III as defined in the First Amended Class Action Complaint;

g. On or around April 25, 2018, I was provided with the additional royalty accounting data TEP had produced for the royalty owners with Category 11 royalty instruments. Through this process, I identified additional gathering, fuel, and processing deductions which were taken by TEP for the royalty owners with Category 11 royalty instruments under the *Lindauer* Class Settlement Agreement;

h. On April 25 and April 30, 2018, after multiple discussions between TEP and Class Counsel, TEP produced the royalty accounting data related to the TEP's royalty owners that had been excluded from or opted out of Categories 2, 3, 5 and 11 under the *Lindauer* Settlement Agreement, so that I could properly remove the royalty accounting data from my analysis and potential damage calculations;

i. In May and June of 2018, TEP revealed that the royalty accounting data produced by TEP had multiple duplicate royalty owners for Subclass II and III royalty owners, resulting in errors in TEP's production of the original royalty accounting data. The electronic data was cross checked for duplicate owners by Mr. Simpson, and I was asked to and did review Mr. Simpson's duplicate royalty owner totals to determine the appropriate adjustments which were necessarily made to the Subclass II and III royalty

owners' royalty underpayment calculations. Specifically, in the royalty accounting data produced by TEP, there were identical royalty owner line items that were provided for royalty instruments identified as both Category 5 and Category 11 royalty instruments under the *Lindauer* Settlement Agreement. I participated in extensive discussions with Class Counsel and TEP's royalty accounting expert regarding TEP's efforts to identify and to properly categorize the royalty accounting data associated with the royalty instruments at issue. These duplicates were identified and removed from both Subclasses II and III, and were set up and further identified as Subclass IV royalty instruments. After the duplicate entries were removed, I recalculated the post-production cost deductions for both Subclass II and III royalty owners, and calculated the post-production costs for the newly identified Subclass IV royalty owners;

j. On July 2, 2018, TEP supplemented its production of the electronic royalty accounting data produced for all the Sefcovic Class members for natural gas production through March 2018, for royalty payments made through the end of May 2018 (there is a 60-day lag, which is normal in the industry, from the date of production to the date on which the royalties are paid), which I reviewed and incorporated into my damage calculations;

k. On July 5, 2018 TEP produced the comparison data in order for the parties to properly identify the Subclass IV royalty owners;

l. Throughout July 2018, I had extensive discussions with Class Counsel regarding the calculation of damages associated with the excessive processing deductions (i.e. beyond what is permitted under Paragraph 4.4 of the *Lindauer* Settlement Agreement) that

were deducted for putative class members' royalties under Subclass II. At Class Counsel's request I prepared a supplemental royalty underpayment calculation for each of the Subclasses I, II, III, and IV. Through this process, I also had numerous discussions with Class Counsel related to issues regarding TEP's fuel deductions. During this time period, I was also asked to evaluate the royalty accounting analysis prepared by TEP's royalty accounting expert, Mr. Simpson. Throughout this process, I evaluated the royalty accounting data regarding the royalty owners from whom no deductions were taken beyond those specifically allowed under the *Lindauer* Class Settlement; and

m. In August 2018, I had numerous conferences with Class Counsel regarding my evaluation of TEP's royalty accounting data. I also reviewed and analyzed the supplemental data provided by TEP for the Subclass IV members, and evaluated various issues regarding the Subclass IV members' claims.

5. In addition to reviewing and analyzing the above-referenced documents and information, I have reviewed the Settlement Agreement which has been executed by the parties and preliminarily approved by the Court. From reviewing the data described above, I prepared a calculation of post-wellhead expenses deducted from class members' royalties for the period from July 2011 through May 2018 for each of the Subclasses identified in the Settlement Agreement. My opinions expressed herein are based on the entirety of the materials produced by TEP in this litigation, my discussions with Class Counsel regarding my analysis of the data, my collective work with TEP's royalty accounting expert, and on my background and experience as an accountant who has specialized in oil and gas accounting for over 38 years.

6. Under the Settlement Agreement, the “Settlement Amount” provided for a settlement payment of \$10,025,308, relating to royalties paid on natural gas produced by TEP, and its predecessor WPX, through August 2018. Plaintiffs allege that TEP has improperly deducted various post-production costs from the Class members’ royalties, including owners whose royalties currently are held in suspense, since July 1, 2011, on natural gas production from any well subject to the royalty instruments identified in the *Lindauer* Settlement Agreement as either Categories 2, 3, 5, or 11 royalty instruments.

7. Based on my analysis and review of the information and data provided by TEP during discovery in this case, I have identified and calculated all of the post-production costs deducted by TEP, and its predecessor WPX, beyond what was specifically provided for under the *Lindauer* Class Settlement for each of the Subclasses 1 through IV, and the amount of the total remaining Settlement Amount associated with each Subclass after the reduction of the Settlement Amount for the opt outs. A summary of my calculations for each Subclass is as follows.

a. Under the Settlement Agreement, Subclass I includes royalty owners with royalty instruments identified as either Category 2 or 3 under the *Lindauer* Settlement Agreement, which are royalty agreements which expressly permit the lessee to deduct, in calculating royalties, certain transportation costs from the mouth of the well to the point of delivery to the gas purchaser. In analyzing the royalty accounting data associated with the Subclass I royalty owners, I was initially asked to identify all of the post-production costs deducted from Subclass I royalty owners’ royalty payments from July 2011 through August 2017. After some additional information was produced, I was then asked to identify and provide a calculation of all the fuel and gathering charges from the WPX time period, July

2011 through August 2016, and the calculation of all the fuel use, gathering and processing cost deduction from September 2016 through September 2017. Based on my analysis and review of the accounting information provided by TEP in this case, the amount of the gathering, fuel and excessive processing costs deducted from the Subclass I royalty owners from July 2011 through May 2018, was \$3,070,543.69, broken down as follows: For royalty payments made by WPX from July 2011 through August 2016, for the Subclass I royalty owners, WPX took deductions for Fuel Costs in the amount of \$574,986.99, and Gathering Cost deductions in the amount of \$1,646,951.11. From royalty payments made by TEP from September 2016 through May 2018, for the Subclass I royalty owners, TEP took deductions for Fuel Costs in the amount of \$162,553.15, deductions for Gathering Costs in the amount of \$508,100.50, and Excessive Processing Costs in the amount of \$177,951.94. Under the Settlement Agreement, TEP has agreed to resolve the claims of the Subclass I royalty owners for \$454,845.00. Based on the negotiations between Class Counsel and TEP, TEP has agreed to settle the Subclass I royalty owners' claims for one-hundred percent of the alleged improper deductions for Excessive Processing Costs and approximately forty percent of the alleged improper deductions for Fuel Costs.

b. I have recently been provided with a list of the royalty owners who have opted out of the settlement, and have been asked to calculate the reduction of the Settlement Amount for the Subclass I royalty owners based on the opt out requests. Based on my calculations, the opt out requests result in a reduction in the Subclass I settlement in the amount of \$27,057.69. Accordingly, the remaining Settlement Amount for the Subclass I royalty owners is \$427,787.31.

c. Under the settlement Agreement, Subclass II includes royalty owners with royalty instruments under the *Lindauer* Class Settlement Agreement identified as Category 5. Under the terms of the *Lindauer* Class Settlement Agreement, TEP is prohibited from taking any deductions from the selling price or market value of residue gas and marketable natural gas liquids, except for certain deductions as described in Paragraphs 4.4, 4.5, and 4.6 of the *Lindauer* Class Settlement Agreement. I was asked to identify certain post-production costs taken from Subclass II Class members' royalty payments. Based on my analysis and review of the accounting information provided by TEP during the discovery in this case, the amount of the Subclass II Class members' damages resulting from TEP's deduction of post-production costs, which are prohibited under the terms of the *Lindauer* Settlement, is \$5,787,732.00, broken down as follows: Fuel Costs in the amount of \$1,130,085; Gathering Costs in the amount of \$3,269,255; and Excessive Processing Costs in the amount of \$1,388,392. The amount in which the Sefcovic Class Representatives and TEP have agreed to resolve the claims of the Subclass II royalty owners includes one-hundred percent of the alleged post-production cost deductions which I identified in the royalty accounting data produced by TEP in this litigation for all of the Category 5 royalty owners under the *Lindauer* Settlement Agreement.

d. I have recently been provided with a list of the royalty owners have opted out of the settlement and have been asked to calculate the reduction of the Settlement Amount for the Subclass II royalty owners based on the opt out requests. Based on my calculations, the opt out requests result in a reduction in the Subclass II settlement in the

amount of \$1,176,475.66. Accordingly, the remaining Settlement Amount for the Subclass II royalty owners is \$4,611,256.34.

e. Under the Settlement Agreement, Subclass III includes royalty owners with royalty instruments identified as Category 11 royalty instruments under the *Lindauer* Class Settlement Agreement. Under the express terms of the *Lindauer* Class Settlement Agreement, TEP is prohibited from taking any deductions from the selling price or market value of residue gas and marketable natural gas liquids, except for certain transportation and fractionation deductions permitted under Paragraph 4.6 of the *Lindauer* Class Settlement Agreement. I was asked to identify all the post-production costs taken from Subclass III Class members' royalty payments. Based on my analysis and review of the accounting information provided by TEP during the discovery process of this case, the amount of the Subclass III Class Members' damages resulting from TEP's deduction of post-production costs under the terms of the *Lindauer* Settlement Agreement is \$1,157,145.00, broken down as follows: Fuel Costs in the amount of \$147,730.66; Gathering Costs in the amount of \$610,417.47; and Excessive Processing Costs in the amount of \$398,996.87. For the Subclass III royalty owners' royalty underpayment claims, all of the post-production cost deductions that I identified were taken during TEP payment of royalties from August 2016 through May 2018. The amount in which the Class Representatives and TEP have agreed to in order to resolve the Subclass III royalty owners' claims includes one hundred percent of the post-production cost deductions I identified in the royalty accounting data produced by TEP in this litigation for all of the Category 11 royalty owners under the *Lindauer* Settlement Agreement.

f. I have recently been provided with a list of the royalty owners who have opted out of the Settlement Agreement and have been asked to calculate the reduction of the settlement amount for the Subclass III royalty owners based on the opt out requests. Based on my calculations, the opt out requests result in a reduction in the Subclass III settlement in the amount of \$313,331.89. Accordingly, the remaining Settlement Amount for the Subclass III royalty owners is \$843,813.11.

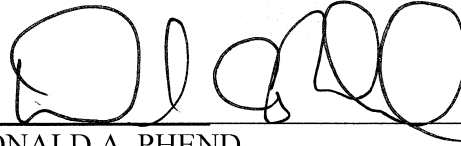
g. Under the Settlement Agreement, Subclass IV included royalty owners with royalty instruments identified as either Category 5 or Category 11 royalty instruments under the *Lindauer* Class Settlement Agreement, but that currently are not identified by TEP as exclusively Category 5 or Category 11 royalty instruments. Under the terms of the Settlement Agreement, TEP shall have the right to undertake an analysis of the interests of Subclass IV royalty owners to determine whether such interests should be classified as Category 5 or 11 pursuant to the *Lindauer* Settlement. Until TEP determines that any interest of a Subclass IV royalty owner should be classified as Category 5 under the *Lindauer* Settlement Agreement, TEP shall calculate and pay royalties to such royalty owners on their interests consistent with the methodology applicable to Category 11 interests under the *Lindauer* Settlement. Under the express terms of the *Lindauer* Class Settlement Agreement, regarding Category 11 royalty interests, TEP is prohibited from taking any deductions from the selling price or market value of residue gas and marketable natural gas liquids, except for certain transportation and fractionation deductions permitted under Paragraphs 4.5 and 4.6 of the *Lindauer* Class Settlement Agreement. Based on my analysis and review of the accounting information provided by TEP during the discovery

process of this case, I calculated the amount of the Subclass IV royalty owners' royalty underpayments resulting from TEP's deduction of post-production costs under the terms of the *Lindauer* Settlement as if all the Subclass IV royalty interests were Category 11 royalty interests to be \$2,625,587.00, broken down as follows: Fuel Costs in the amount of \$389,722; Gathering Costs in the amount of \$1,286,299; and Excessive Processing Costs in the amount of \$949,567. For the Subclass IV royalty owners' royalty underpayments, all of the post-production cost deductions were taken from royalty payments made by TEP from August 2016 through May 2018. The amount in which the Class Representatives and TEP have agreed to settle the Subclass IV royalty owners' claims includes one-hundred percent of the post-production cost deductions I identified in the royalty accounting data produced by TEP in this litigation for all of the Subclass IV royalty owners as if their royalty instruments were Category 11 royalty instruments under the *Lindauer* Settlement Agreement.

h. I have recently been provided with a list of the royalty owners who have opted out of the settlement and have been asked to calculate the reduction of the Settlement Amount for the Subclass IV royalty owners based on the opt out requests. Based on my calculations, the opt out requests result in a reduction in the Subclass IV settlement in the amount of \$516,938.43. Accordingly, the remaining Settlement Amount for the Subclass IV royalty owners is \$2,108,648.57.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 30th day of October, 2018.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a solid horizontal line.

DONALD A. PHEND

EXHIBIT 5

DISTRICT COURT, GARFIELD COUNTY, COLORADO 109 8 th Street, Glenwood Springs, CO 81601 Telephone: (970) 945-5075		☐ COURT USE ONLY ☐
Plaintiffs: IVO LINDAUER, SIDNEY and RUTH LINDAUER, and DIAMOND MINERALS, LLC, on behalf of themselves and all others similarly situated, v. Defendant: WILLIAMS PRODUCTION RMT COMPANY		
		Case Number: 2006cv317 Div.: Ctrm.:
SETTLEMENT AGREEMENT		

This Agreement is made between Plaintiffs Ivo Lindauer, Sidney and Ruth Lindauer, and Diamond Minerals, LLC, on behalf of themselves and all others similarly situated, and Defendant Williams Production RMT Company, effective June 1, 2008.

RECITALS

WHEREAS, on September 20, 2006, Plaintiffs filed suit in Colorado State District Court for Garfield County, Colorado ("Court"), Case No. 2006CV317, alleging that Defendant has underpaid royalty and overriding royalty interest owners on gas production in Garfield County, Colorado, and has not made refunds of excess ad valorem tax withholding for certain years.

WHEREAS, Plaintiffs seek to bring this suit as a class action on behalf of all other royalty and overriding royalty owners who are similarly situated.

WHEREAS, Defendant denies the allegations that it has underpaid royalty and overriding royalty and maintains that it was in the process of determining the ad valorem tax refunds when the lawsuit was filed.

WHEREAS, the parties recognize that they will expend substantial resources in continuing this litigation and agree that settlement of most of the claims raised is in their respective interests.

WHEREAS, the parties have been able to agree to settlement of all but two distinct and severable claims in this litigation, and as to those two claims, have agreed on the manner in which those claims should be resolved by the Court.

WHEREAS, subject to the two Reserved Claims described below, the parties desire by this Agreement to (1) resolve all class claims relating to past calculation of royalty and overriding royalty, (2) establish certain rules to govern future royalty and overriding royalty payments so as to avoid or minimize disputes over royalty payments in the future, and (3) resolve all claims relating to past withholding for ad valorem tax payments, and establish a procedure for refunds of any such excess withholding in the future.

WHEREAS, after substantial discovery relating to the claims and defenses (including information obtained in two prior cases that were tried in the Garfield County district court involving other royalty owners), the parties participated in a mediation conducted by former Colorado Supreme Court Justice William D. Neighbors on April 3, 2007, and thereafter continued to exchange documents, voluminous accounting data, and other relevant information before reaching this Agreement.

NOW, THEREFORE, IT IS HEREBY AGREED by the Settling Parties that, subject to final approval by the Court and the entry of Judgment as to the Settled Claims, the class claims of the Settlement Class Members other than the two Reserved Claims described below be settled and dismissed with prejudice, subject to the following terms and conditions:

SECTION 1

1. DEFINITIONS

As used in the Settlement Agreement and the Exhibits hereto, the following terms have the meanings specified below.

1.1 “Action” means the class action identified in the caption of this Settlement Agreement.

1.2 “Administrative Expenses” means the reasonable expenses incurred in providing notice to the Plaintiff Class, including costs of printing, publishing and mailing the Notice, as well as expenses incurred by Class Counsel in locating members of Plaintiff Class and performing the activities referred to in paragraph 8.10.

1.3 “Class Counsel” means Nathan A. Keever of Dufford, Waldeck, Milburn & Krohn, L.L.P.; G.R. Miller of Miller, Agro & Robbins, LLC; and Thomas D. Kitch, Gregory J. Stucky, and David G. Seely of Fleeson, Gooing, Coulson & Kitch, LLC.

1.4 “Class Representatives” means Ivo Lindauer, Sidney and Ruth Lindauer, and Diamond Minerals, LLC.

1.5 “Class Wells” means the wells located on or with production allocated to the oil and gas leases listed on Exhibit A.

1.6 “Deduction” means any monetary or volumetric deduction taken by Williams when calculating and paying royalty or overriding royalty to any member of the Plaintiff Class since September 2000 for costs attributed to operations between the initial point(s) of measurement of gas produced from the Class Wells to the point of access into a Mainline

Transmission Pipeline.

1.7 “Distribution Check” means a check payable to a Settlement Class Member in the net amount owed to such Settlement Class Member pursuant to this Agreement.

1.8 “Distribution Date” means the date on which the Distribution Check is sent to each Settlement Class Member.

1.9 “Effective Date” means the date on which the Court’s Judgment for the Settled Claims becomes Final and Unappealable as set forth in paragraph 1.12.

1.10 “Fairness Hearing” means the hearing to be held before the Court at which an order in a form substantially similar to Exhibit F hereto shall be presented for approval.

1.11 “Final Distribution Schedule” means a schedule that shows the net amount due each Settlement Class Member under Section 3 of this Settlement Agreement, after prorata reduction for any award of attorney’s fees and expenses and Administrative Expenses.

1.12 “Final and Unappealable Judgment” means the following: If no appeal from the Judgment has been filed, the Judgment becomes “Final and Unappealable” upon the expiration of the time under Colorado Appellate Rule 4(a) for filing a notice of appeal from the Judgment. If a timely appeal from the Judgment is filed and either the Judgment is affirmed or the appeal is dismissed, the Judgment becomes “Final and Unappealable” upon the earlier of (i) the filing of no petition for writ of certiorari after such affirmance or dismissal within the time for filing such a petition, or (ii) expiration of the time for rehearing of the denial or dismissal of such a petition after such affirmance or dismissal, or (iii) expiration of the time for seeking rehearing of the Supreme Court’s affirmance of such affirmance or dismissal.

1.13 “Judgment” means the order in a form substantially similar to Exhibit F hereto.

1.14 “Leasehold Estates” means those leasehold interests that Williams has owned or operated in Garfield County, Colorado, at any time during the period from September 2000 through May 2008. Those leases are listed under the categories set forth on Exhibit A.

1.15 “Mainline Transmission Pipeline” means the transmission pipelines indicated below, and transmission pipelines located downstream of those pipelines. The parties agree that the following pipelines in the Piceance Basin qualify as Mainline Transmission Pipelines: CIG, NWPL, Questar, TransColorado, Wyoming Interstate Gas, PSCO as specified below (including the interests in that pipeline owned by Public Service Company and Rocky Mountain Natural Gas), and Rockies Express. The parties also agree that gathering pipeline systems in the Piceance Basin, such as Williams’ Grand Valley Gathering System and the gathering system operated by Canyon Gas Resources and/or Energy Transfers, do not qualify as a Mainline Transmission Pipeline. The parties further agree that to the extent the PSCO pipeline is connected directly to Williams’ wells and operates like the Grand Valley Gathering System, then that portion of the PSCO pipeline does not qualify as a Mainline Transmission Pipeline. (The portion of the PSCO pipeline into which the Grand Valley Gathering System delivers gas does qualify as a Mainline Transmission Pipeline.) With respect to pipeline systems not identified in this paragraph (or not yet constructed), the parties agree that a pipeline that collects gas directly from many wells and then delivers the gas to a common collection point in the field or brings gas to a Plant is not a Mainline Transmission Pipeline; however, a pipeline that transports the gas beyond common collection points in the field towards end use or downstream markets for the gas without processing or treatment of the gas after entry into that pipeline (and after any compression required to bring the gas to the equivalent levels of pressure maintained on the above listed

transmission pipelines) is a Mainline Transmission Pipeline, regardless of whether the pipeline is regulated by the Federal Energy Regulatory Commission.

1.16 “Natural Gas Liquids” or “NGLs” means liquid hydrocarbons recovered or obtained by or on behalf of Williams from the gas after the gas is measured at or near the well. It includes liquid hydrocarbons recovered from the Grand Valley Gathering System and the Plants.

1.17 “Net Settlement Fund” means the Settlement Amount less all amounts approved by the Court for payment of (i) attorneys’ fees and expenses to Class Counsel, and (ii) Administrative Expenses.

1.18 “Notice” means the notice as approved by the Court at the Preliminary Approval Hearing pursuant to C.R.C.P. 23 (c)(2). A proposed Notice is attached as Exhibit B.

1.19 “Opt-Out Claimant” means a member of the Plaintiff Class who submits a timely and valid request for exclusion in accordance with the Preliminary Order, and who does not revoke that request for exclusion in writing at least seven (7) days before the Fairness Hearing.

1.20 “Plaintiff Class” means all royalty owners, including overriding royalty interest owners, who have been entitled to receive royalty payments under oil and gas leases located in Garfield County, Colorado, owned in whole or in part, or operated by, Williams at any time during the period from September 20, 2000, through May 31, 2008. Excluded from the “Plaintiff Class” are the following:

- (a) The United States of America insofar as its mineral interests are managed by the Minerals Management Service;
- (b) Indian Tribes and their allottees;

(c) Parties to prior settlement agreements with Williams relating to payment of royalty (Puckett Land Company);

(d) Royalty owners in oil and gas leases that provide a specific formula for payment of royalty tied to an index price, but only to the extent they receive royalty under such leases (the oil and gas lease dated July 20, 2005 between Mary Anne Bosely, *et al.* as “Lessor” and Williams as “Lessee,” and the oil and gas lease dated May 9, 2006, between Jonathon H. Wellendorf and Diana L. Wellendorf as “Lessor” and Williams as “Lessee”);

(e) Parties who have previously litigated royalty payment issues with Williams, for the time period covered by the judgments entered in those cases (Joan L. Savage and William F. Clough);

(f) the Meriam Zela Grynberg Trust, the Rachel Susan Grynberg Trust, and the Stephen Mark Grynberg Trust, which are plaintiffs asserting royalty payment claims in *Grynberg v. Williams*, Civil Action No. 02-CV-5167, pending in the Denver District Court;

(g) EnCana Oil & Gas (USA) Inc., ExxonMobil, and Chevron USA (but these royalty owners will be given an opportunity to opt in to the Plaintiff Class);

(h) Williams Production RMT Company and Barrett Resources Corporation and any of their affiliates; and

(i) The legal representatives, heirs, successors, or assigns of any excluded party.

1.21 “Plants” means Williams’ existing and future plants in the Piceance Basin which treat or process gas from the Class Wells.

1.22 “Preliminary Approval Hearing” means the hearing to be held before the Court at which an Order in a form substantially similar to Exhibit E hereto shall be presented for approval.

1.23 “Preliminary Distribution Schedule” means a schedule created by Williams that shows the amount due each member of Plaintiff Class under Section 3 of this Agreement, without (i) deletion of Opt-Out Claimants, and (ii) prorata reduction for any award of attorney’s fees and expenses and Administration Expenses. The Preliminary Distribution Schedule shall also identify the category of the Royalty Instrument(s) associated with each class member as well as the name and most current identification number assigned to each such member by Williams in the normal course of business.

1.24 “Preliminary Order” means the order in a form substantially similar to Exhibit E hereto.

1.25 “Released Parties” means Williams and all other working interest owners in the Class Wells for whom Williams has paid royalty or overriding royalty and for whom Williams makes Settlement Payments to members of Plaintiff Class, as well as the past and present employees, officers, directors, representatives, agents, attorneys, parents, affiliates, subsidiaries, stockholders, predecessors, successors and assigns of Williams and all such working interest owners.

1.26 “Reserved Claims” means the two claims not resolved by this Settlement Agreement and reserved for resolution by the Court, as more particularly described in Section 7 of this Agreement.

1.27 “Royalty Instruments” means all oil and gas leases creating royalty interests and all other contracts or instruments creating overriding royalty interests, covering lands in Garfield

County, Colorado, under which Williams is or has been a lessee during the period from September, 2000 through May 31, 2008, and in which a Settlement Class Member owns or has previously owned an interest.

1.28 “Royalty Instrument Categorization” means the categorization of Royalty Instruments set forth in Exhibit A.

1.29 “Settled Claims” means any and all claims, demands, rights, liabilities, and causes of action of every nature and description whatsoever, known or unknown, suspected or unsuspected, asserted or unasserted, that might have been asserted prior hereto or in the future, directly, representatively, derivatively, or otherwise by the members of the Plaintiff Class based on any facts, circumstances, transactions, events, occurrences, statements, acts, omissions, failures to act, conflicts of interest, tortious acts, intentional acts, negligent acts, grossly negligent acts, acts of unjust enrichment, breaches of express provisions, breaches of implied covenants or any other duties arising under the leases or overriding royalty instruments, or breach of other statutory or common law duties which occurred at any time, which were or could have been properly alleged under Colorado Rule of Civil Procedure 23 by the Class Representatives on behalf of the Plaintiff Class arising from payment of royalty or overriding royalty by Williams, or the withholding of ad valorem taxes, except for the two Reserved Claims.

1.30 “Settlement Amount” means the total amount of Settlement Payments, prior to any reduction for amounts awarded by the Court for Class Counsel’s attorneys’ fees, litigation costs, expenses, and Administrative Expenses.

1.31 “Settlement Class Members” means all members of the Plaintiff Class except Opt-Out Claimants.

1.32 “Settlement Payments” means those payments described in Section 3 of this Settlement Agreement.

1.33 “Settling Parties” means Class Representatives and Williams.

1.34 “Statutory Interest” means the rate of 8%, compounded annually, pursuant to C.R.S. § 5-12-102.

1.35 “Transition Date” means the last day of Williams’ accounting month in which the Court executes Exhibit E.

1.36 “Weighted Average Sales Price” or “WASP” means all proceeds Williams and any affiliate receives for the applicable production month from third parties in arms-length transactions for all products, including residue gas, unprocessed gas, and NGL’s, allocated to each applicable grouping of Class Wells whose production Williams has appropriately assigned to an accounting sales pool, divided by the total volume related to each such sales pool (on an Mmbtu basis in the case of residue gas and unprocessed gas, and gallons or barrels in the case of NGLs). There is or will be a separate WASP for residue gas, unprocessed gas, and NGLs. With respect to any products that Williams has used or stored, Williams will calculate and pay royalty based on the WASP received in the month of production for the same types of products, less applicable deductions permitted under Section 4.

1.37 “Williams” means Williams Production RMT Company, together with its affiliated persons and entities, and includes Barrett Resources Corporation, which merged into Williams in 2001.

SECTION 2

2. PAST AND PRESENT ROYALTY PAYMENT METHODOLOGIES

Subject to any mistakes or miscalculations that Williams has made in its accounting (which Williams will be correcting under Section 3 of this Agreement), Williams makes the following representations of fact:

2.1 From September 2000 until merging with Williams in August 2001, Barrett Resources calculated royalties by starting with an arm's-length sales price and then deducting all expenses incurred between the wellhead and the point of sale, including but not limited to Deductions, which included a fee for utilizing its wholly-owned Grand Valley Gathering System (GVGS). During this period, the GVGS fee was \$0.22 per mcf plus a 2.5% fuel charge.

2.2 Effective with September 2001 production, Williams stopped taking Deductions. For production from September 2001 through December 2005, Williams paid royalties by calculating a Weighted Average Sales Price (or "WASP") for the residue gas and unprocessed gas. Williams applied the WASP to the volumes of gas measured at each wellhead and only deducted third-party fees which it actually incurred to move the gas on one or more Mainline Transmission Pipelines to the point of sale or consumption.

2.3 From January 2006 production until the Effective Date, Williams has included NGLs when calculating royalties on gas that is processed. Williams allocates NGLs back to the wells based on gas analyses performed for each well, so that each well producing processed gas shares proportionately in the NGL recovery. Williams then calculates the residue gas volume for each well based on the total volume of gas measured at the wellhead less the Mmbtu's removed as NGLs. Williams calculates royalty on the residue gas by applying the WASP for residue gas and

deducting only transportation costs incurred to move the gas on Mainline Transmission Pipelines. Williams calculates royalty on the NGLs based on the applicable WASP for NGLs, less any transportation costs incurred beyond the Plants.

2.4 From January 2006 production to the Effective Date, Williams has not deducted processing costs, including any volumetric reductions for Plant fuel, which it has incurred to extract NGLs; before this lawsuit was filed, however, it had been engaged in the planning necessary for it to begin deducting such costs from its royalty payments.

SECTION 3

3. SETTLEMENT PAYMENTS FOR PAST PRODUCTION

3.1 With respect to all Royalty Instruments except those in categories 1, 2, 3 and 13 on Exhibit A, Williams will pay Settlement Class Members for all Deductions taken in calculating royalty from the September 2000 accounting month to the Transition Date. Williams will compute and pay Statutory Interest on the principal amount of each Deduction, from the date upon which it was taken until the Transition Date. After the Transition Date, Williams will compute and pay interest at the rate of 4% simple interest until the Distribution Date.

3.2 With respect to all Royalty Instruments for the September 2000 accounting month through the December 2005 production month, Williams will pay Settlement Class Members 75% of the additional value of NGLs recovered downstream of the initial measurement point at or near each Class Well, for each such well, as compared to the original payment of royalty on those Mmbtus based on a residue gas price. Williams will compute and pay royalty on the additional value of the NGLs as follows. Step 1: For each month of the period covered by this paragraph 3.2, Williams will first calculate the Mmbtus of wellhead production that were recovered and sold

as NGLs. Step 2: Williams will then compare the proceeds received from the sale of NGLs for that month with the value used to pay royalty on the Mmbtus recovered as NGLs (*i.e.*, the Mmbtus recovered as NGLs times the residue gas price). Step 3: Williams will multiply the difference between NGL value and residue gas value computed in Step 2 by 75%. Step 4: Williams will then divide the resulting number in Step 3 by total wellhead Mmbtus for that month (thus obtaining the value per wellhead Mmbtu for calculation of additional royalty). Step 5: Williams will multiply the resulting numbers in Step 4 by the wellhead Mmbtus for that month for each well. Step 6: Finally, for each well, Williams will multiply the answer from Step 5 times a Settlement Class Member's royalty percentage interest in wellhead Mmbtus for that month (which will yield the principal amount of additional royalty to be paid each month). In making calculations of additional royalty under this paragraph, Williams will not subtract any costs incurred at the Plants. In addition, for any months in which the original royalty value of the Mmbtus recovered and sold as NGLs is higher than the value calculated under this paragraph, Williams will not make any negative adjustments or otherwise reduce the total amount of additional royalty to be paid under this paragraph. Williams will pay Statutory Interest on the principal amount calculated each month under this paragraph from the date such amount would have been due until the Transition Date. After the Transition Date, interest will accrue at the rate of 4% simple interest until the Distribution Date.

3.3 With respect to all Royalty Instruments, Williams will reimburse all Settlement Class Members any amounts withheld from royalty payments for ad valorem taxes for the years 2000, 2001, and 2004, in excess of the taxes actually paid by Williams on behalf of each such royalty owner, together with Statutory Interest, beginning the month after the tax payment was due and continuing through the date of disbursement. (During the pendency of this litigation,

Williams has repeatedly expressed its intent to repay any excess ad valorem withholdings to its royalty owners, whether or not a settlement agreement was reached or approved and whether or not a particular royalty owner was covered by such agreement.)

3.4 With respect to all Royalty Instruments, Williams will also correct any errors discovered in the accounting for the period from the September 2000 accounting month to the Transition Date, including its prior use of index pricing to establish royalty value, to the extent those errors have not previously been corrected. Williams will pay Statutory Interest on any amounts found to be due, calculated from the date of the error until the Transition Date. After the Transition Date, interest will accrue at the rate of 4% simple interest until the Distribution Date.

3.5 With respect to any Royalty Instruments in category 12 on Exhibit A, Williams will refund any deductions (including transportation on Mainline Transmission Pipelines) taken in calculating royalty for the period from the September 2000 accounting month to the Transition Date. Williams will pay Statutory Interest on any amounts found to be due, calculated from the date the deduction was taken until the Transition Date. After the Transition Date, interest will accrue at the rate of 4% simple interest until the Distribution Date.

3.6 The amounts calculated above will be proportionately reduced by an amount awarded by the Court for Class Counsel's attorneys' fees, litigation costs, and Administrative Expenses.

3.7 The provisions in paragraph 3.1 relating to category 2 and 3 leases are not intended to represent an agreement by Class Representatives that Deductions are allowed by those leases. It appears that the Deductions in question were taken before any leases in those categories were issued by any member of the Plaintiff Class and therefore resolution of whether category 2 and 3 leases allow Deductions is not necessary for determination of settlement payments for past

production.

SECTION 4

4. FUTURE ROYALTY PAYMENTS

With respect to monthly royalty payments made after the Effective Date, Williams agrees to pay Settlement Class Members in the following manner:

4.1 With respect to all Royalty Instruments except those in categories 1, 2, 3, 12 and 13 on Exhibit A, Williams will not take any Deductions (except for processing deductions allowed by paragraph 4.4), regardless of (a) whether the costs relate to activities on or off the Leasehold Estates (except when the applicable Royalty Instrument expressly provides that no royalty is due on fuel consumed by Williams for lease operations on the Leasehold Estate), (b) what entity provides such services or how it is paid, and (c) where or how title to the gas is transferred.

4.2 With respect to Royalty Instruments in categories 2 and 3 on Exhibit A, nothing herein prohibits Williams from taking any Deductions it claims it is entitled to take under the terms of such Royalty Instruments, and nothing herein prohibits any Settlement Class Member from challenging such deductions.

4.3 With respect to Royalty Instruments in category 12 on Exhibit A, Williams will not take any deductions (including third party transportation) in calculating royalty, except to the extent it fractionates NGLs into component products, in which case paragraph 4.6 will apply.

4.4 With respect to all Royalty Instruments, Williams will account for the value of NGLs extracted from the gas (using the methodology described in paragraph 2.3). With respect

to all Royalty Instruments except those in categories 8, 9, 11, 12 and 13 on Exhibit A, in accounting for the value of NGLs extracted from the gas, Williams shall be permitted to deduct 50% of the amount allowed as a processing deduction under the regulations of the Mineral Management Service (the processing deduction will be limited to those costs incurred within a processing plant and will not exceed 1/3 of the value of the NGLs, since the MMS limit on processing costs is 2/3 of the value of the NGLs), but under no circumstances shall Williams be entitled to take any other Deduction when making such calculation. If Williams transports NGLs to sales points beyond the tailgate of a Plant, Williams can deduct such transportation costs when calculating royalties thereon. If Williams fractionates NGLs and sells the component products, royalty on the fractionated products will be determined by paragraph 4.6.

With respect to Royalty Instruments in categories 8, 9, and 11 on Exhibit A, the Plaintiff Class reserves the right to argue that such Royalty Instruments prohibit any or all deductions described in the first paragraph of this Section 4.4 when litigating the Reserved Claim described in paragraph 7.2.

With respect to Royalty Instruments in category 13 on Exhibit A, Williams will be permitted to deduct the same processing costs as allowed under federal leases.

Nothing herein precludes any royalty owner(s) from contending in any subsequent litigation that, when creating a second marketable product in the form of NGLs or subsequent fractionated products, Williams has failed to enhance (or increase proportionally) the total royalties received by such royalty owner(s).

4.5 Subject to the Reserved Claims, under all Royalty Instruments except those in categories 8, 9, 11 and 12 on Exhibit A, Williams shall be entitled to deduct a proportionate amount of any costs it actually incurs to transport gas in a Mainline Transmission Pipeline to

downstream sales points, including demand or reservation charges, commodity charges, and fuel charges; provided, however, that no such credit shall be permitted unless the Settlement Class Members also received the benefit of the price actually paid for such gas at such location. Williams will not, however, deduct unused demand or reservation charges in calculating royalty, but shall be permitted to contend that such charges should be considered in determining whether Williams has “enhanced” the value of the gas, as described in Section 7.

4.6 If Williams transports NGLs to Conway or Bushton, Kansas, or other locations and Williams then fractionates such NGLs and sells the fractionated components, Williams will pay royalty on the fractionated components (ethane, propane, normal butane, iso-butane and natural gasoline) attributable to a well in which a Settlement Class Member has an interest, based on the published Mt. Belvieu, Texas “non-TET” monthly average Oil Price Information Service (“OPIS”) prices in effect for the then current production month, less transportation tariffs and fractionation fees (and the cost of extracting NGLs as allowed under paragraph 4.4). If the Mt. Belvieu, Texas “non-TET” OPIS prices cease to be published, Williams will pay royalty on fractionated products using a replacement price as published in OPIS. Upon request, Williams will provide the applicable OPIS prices to any Settlement Class Member

4.7 As provided by Colorado law, Williams will withhold from royalty payments amounts to cover the royalty or overriding royalty owner’s estimated share of severance, ad valorem, and conservation taxes. Williams will withhold for ad valorem taxes based on the latest tax rate from Garfield County multiplied by 87.5%. Each quarter, Williams will review the withholding rate to determine if it is still an accurate estimate and make adjustments accordingly. With respect to withholding for ad valorem taxes, Williams will reimburse royalty owners for any excess withholding within 90 days after receiving the bill for ad valorem taxes from Garfield

County. If Williams does not make the refunds by that date, it will pay Statutory Interest until the refunds are made.

4.8 Williams and the Settlement Class Members shall be bound prospectively by the royalty methodology set forth in this Section 4 of this Settlement Agreement.

SECTION 5

5. REPRESENTATIONS CONCERNING ROYALTY PAYMENTS

5.1 Taking into account the Settlement Payments in Section 4 to Settlement Class Members, Williams represents that, for the period beginning with the September 2000 accounting month:

(a) it has properly accounted for all volumes of gas extracted, sold or used from the Class Wells on the basis of Mmbtu's measured at the wellhead, and will do so in the future, on the basis on Mmbtus at the initial measurement point at or near each Class Well;

(b) except for those Royalty Instruments in categories 1, 2, 3 and 13 on Exhibit A and except for the processing deduction described in paragraph 4.4, Williams has not taken and will not take any Deductions;

(c) Williams has used and will use in the future the Weighted Average Sales Price to calculate royalty payments, except as provided in paragraph 4.6 relating to future sales of fractionated products.

5.2 Settlement Class Members are entitled to rely on the representations in this Section, as well as the description of past and future royalty methodologies in Sections 2 and 4.

The Court has continuing jurisdiction to enforce this paragraph.

SECTION 6

6. RETROACTIVE ADJUSTMENTS

6.1 Except with respect to the Reserved Claims, this Agreement is intended to settle all class claims (the Settled Claims) for the period ending with the Transition Date, and Williams shall not make any retroactive debit adjustments with respect to the Settled Claims for production to the Transition Date.

6.2 Williams may make appropriate retroactive adjustments in the ordinary course of business related to matters other than the Settled Claims, subject to the right of the affected royalty owner(s) to object thereto.

SECTION 7

7. CLAIMS NOT RESOLVED BY THIS SETTLEMENT AGREEMENT

7.1 This Settlement Agreement resolves all claims for all Royalty Instruments held by the Plaintiff Class, except one distinct claim that relates only to Royalty Instruments in categories 8, 9 and 11 on Exhibit A, and one distinct claim that relates to Royalty Instruments in categories 5, 6 and 7 on Exhibit A. These two unresolved claims are referred to as the Reserved Claims.

7.2 The first Reserved Claim is whether Williams is entitled to deduct a pro-share of any expenses incurred beyond the tailgates of the Plants when calculating royalties under the Royalty Instruments in categories 8, 9 and 11 on Exhibit A. The Plaintiff Class contends that these instruments expressly prohibit the deduction of such expenses, and Williams contends that those royalty instruments are subject to the same rules as silent leases under *Rogers v. Westerman*

Farm Co., 29 P.3d 887 (Colo. 2001). (The Plaintiff Class also specifically reserves the right to argue that the Royalty Instruments in Categories 8, 9 and 11 on Exhibit A prohibit Williams from deducting any processing costs when paying royalties on NGLs.) If the Plaintiff Class does not prevail on this Reserved Claim, these Royalty Instruments will be subject to the outcome of the second Reserved Claim.

7.3 The second Reserved Claim is whether Williams can establish that it has “enhanced” or proportionately increased the value of (and royalties paid on) gas produced prior to the Transition Date under Royalty Instruments in categories 5, 6 and 7 on Exhibit A by transporting that gas on a Mainline Transmission Pipeline to the points of sale (and deducting a pro-rata share of those transportation costs in calculating royalty).

When this claim is being adjudicated, the Plaintiff Class stipulates that it will claim that (1) the gas is marketable and has reached the commercial marketplace when it arrives at one or more locations used by the publication Inside FERC to establish the CIG-Rocky Mountain, the Northwest Pipeline-Rocky Mountain, and the Questar Pipeline-Rocky Mountain Index Prices; (2) the volume weighted average of these three Indexes is the best available evidence for determining whether Williams has met the test for determining if it has enhanced the royalties paid to the Plaintiff Class by incurring expenses to transport the gas to points of sale beyond these locations; and (3) for gas not entering one of those three pipelines (such as gas being transported on the TransColorado or PSCO pipelines), they will not claim that Williams must transport the gas to sales locations in New Mexico or Wyoming in order to render the gas marketable (and at a commercial marketplace) under Colorado law.

While this claim is being adjudicated, Williams stipulates that it will claim that (1) the gas is first marketable and at the location of the commercial marketplace when it reaches one of the

outlets of the Plants or the entry to a Mainline Transmission Pipeline, and (2) that the value to be used to determine whether the “enhancement” test has been met are the prices received for the gas at those locations.

The second Reserved Claim will include two principal sub-issues: the location of the first commercial marketplace (for purposes of determining enhancement, not whether the gas is marketable under *Rogers v. Westerman Farm*); and the period used to determine whether enhancement has been achieved.

7.4 Nothing contained in this section shall bar or otherwise prejudice Williams’ right to contend that an “enhancement” test does not exist under Colorado law or that the test is different from the one that the Plaintiff Class contends exists. In addition, notwithstanding Williams’ agreement in paragraph 4.5 to pay royalty in the future without deducting unused demand or reservation charges on Mainline Transmission Pipelines, Williams will be permitted to contend that such unused demand or reservation charges should be considered by the Court when determining whether Williams has satisfied any enhancement test that may apply.

7.5 In litigation of the Reserved Claims, evidence relating to the Settled Claims will be inadmissible and the Plaintiff Class will not seek to introduce evidence, testimony or argument relating to those claims.

7.6 The Reserved Claims are strictly limited to claims for breach of contract and are confined to the time period from and after the September 2000 accounting month. The Plaintiff Class will release all other claims, including claims for moratory interest on the Reserved Claims. Williams agrees that, if the Plaintiff Class obtains judgment on one or both of the Reserved Claims for damages commencing with the September 2000 accounting month, it will pay

Statutory Interest on the amount awarded.

7.7 The Reserved Claims will be tried to or otherwise resolved by the Court, without a jury.

7.8 Except as set forth in this Section 7, nothing contained in this Settlement Agreement shall alter whatever obligation Williams may have under the “enhancement” test. Nothing contained herein precludes any member of the Plaintiff Class from contending that Williams has failed to meet the “enhancement test” with reference to gas produced after the Transition Date.

7.9 Williams agrees to support certification of the plaintiff class(es) under C.R.C.P. 23 with respect to the Reserved Claims.

SECTION 8

8. IMPLEMENTATION OF THE SETTLEMENT AGREEMENT AND DISTRIBUTION OF THE SETTLEMENT FUND

8.1 Within forty-five (45) days of the execution of this Agreement, Williams will supplement accounting information previously provided to Class Counsel to show the paid history royalty accounting information for the Plaintiff Class from and after the September 2000 accounting month. Class Counsel may use that information only for purposes of this litigation and shall otherwise preserve the confidentiality of any such information designated as confidential.

8.2 As soon as practicable after this Settlement Agreement has been executed, counsel for the parties shall jointly submit to the Court the Motion substantially in the form as Exhibit C.

8.3 At the Preliminary Approval Hearing, the Settling Parties shall jointly urge the

Court to enter an Order substantially similar in form to Exhibit D.

8.4 At least forty-five (45) days before the Fairness Hearing, Williams will provide Class Counsel with a copy of the Preliminary Distribution Schedule for review and shall file it with the Court. Within fifteen (15) days after the Fairness Hearing, Williams will provide Class Counsel and the Court with a copy of the Final Distribution Schedule.

8.5 At the Fairness Hearing, counsel for the parties shall jointly move the Court for entry of the Judgment substantially in the form attached as Exhibit E. Williams will also present the Preliminary Distribution Schedule for the Court's approval.

8.6 Within fifteen (15) days from the Effective Date, Williams shall (1) distribute the Net Settlement Fund, in accordance with the Final Distribution Schedule in the form as approved by the Court at the Fairness Hearing, by mailing the Distribution Checks to Settlement Class Members at the most current addresses then reasonably available, with each Distribution Check accompanied by a transmittal letter in the form attached as Exhibit G; and (2) shall pay to Class Counsel the attorneys' fees and costs and Administrative Expenses assessed by the Court.

8.7 Within ten (10) business days after the Distribution Date, Williams will file an affidavit certifying that the checks were sent to the Settlement Class Members in the amounts set forth on the Final Distribution Schedule.

8.8 One hundred (100) days after the Distribution Date, Williams will file an accounting of the Distribution Checks, showing (1) the Distribution Checks that have been cashed; (2) the Distribution Checks that have been returned to Williams; (3) the Distribution Checks that have not been returned but remain uncashed; and (4) all available information relating to the Distribution Checks described in (2) and (3).

8.9 Thereafter, the Court shall enter any further orders it deems proper in connection with the disposition of such remaining portion of the Net Settlement Fund, including, but not limited to, directing Class Counsel to take reasonable steps to distribute such remaining portion of the Net Settlement Fund to the proper Settlement Class Members or their successors or assigns.

8.10 Any portion of the Net Settlement Fund that remains after reasonable efforts have been exhausted to distribute the Net Settlement Fund to Settlement Class Members or their successors or assigns shall become the property of Williams.

8.11 If any Settlement Class Member receives a Distribution Check to which such Settlement Class Member is not entitled, that Settlement Class Member shall refund the amount of such Distribution Check to the Net Settlement Fund.

8.12 No Settlement Class Member shall have any claim against the Settling Parties or their respective counsel based on distributions made in accordance with the Final Distribution Schedule approved by the Court at the Fairness Hearing.

SECTION 9

9. UNDERTAKINGS OF THE SETTLING PARTIES

9.1 The Settling Parties agree to deal in good faith in implementing this Settlement Agreement and agree to cooperate and exercise their best efforts to the extent necessary to effectuate and implement all of its terms and conditions, as quickly as possible, by taking all actions contemplated by this Settlement Agreement, including its Exhibits.

9.2 The Class Representatives agree to participate as Settlement Class Members and agree to not request exclusion.

9.3 The Settling Parties agree to affirmatively present their support for final judicial approval of this Settlement Agreement.

9.4 The Settling Parties agree not to encourage in any way any member of the Plaintiff Class to become an Opt-Out Claimant or discourage any member of Plaintiff Class or any party with the right to opt in from participating in this settlement as a Settlement Class Member.

9.5 The Settling Parties agree to waive any right to appeal or collaterally attack the Judgment entered pursuant to this Settlement Agreement.

9.6 In proceedings before the Court and before any appellate courts, if necessary, the Settling Parties agree affirmatively to present support for certification of a Plaintiff Class (including, as appropriate, subclasses) and for final judicial approval of this Settlement Agreement.

SECTION 10

10. ATTORNEYS' FEES AND EXPENSES

10.1 Class Counsel shall apply to the Court for (i) reimbursement of their reasonable litigation expenses; (ii) reimbursement of Administrative Expenses; and (iii) an award of attorneys' fees of 25% of the Settlement Amount after reduction of (i) and (ii) above. Such award and reimbursements shall be paid out of the Settlement Amount as provided herein.

10.2 Williams will take no position regarding the award of fees and reimbursement of expenses.

10.3 This Settlement Agreement is not contingent upon the Court's approval of Class Counsel's application for attorneys' fees and expenses.

SECTION 11

11. TAXES

Class Representatives and Settlement Class Members shall be responsible for filing any tax returns and for paying any taxes that may be due on their proportionate share of the Net Settlement Fund. Williams shall have no liability or responsibility for paying any taxes with respect to amounts paid under this Settlement Agreement.

SECTION 12

12. EXCESSIVE OPT-OUT CLAIMANTS

If greater than twenty percent (20%) of the members of the Plaintiff Class request to exclude themselves pursuant to the Notice, Williams shall have the right to terminate the Settlement Agreement, in which event the provisions of Section 14 of this Settlement Agreement shall govern.

SECTION 13

13. CONDITIONS OF SETTLEMENT

13.1 This Agreement shall be effective only on the condition that all of the following events occur:

- (a) The Court enters the Preliminary Order, substantially in the form of Exhibit E;
- (b) The Court enters the Judgment, substantially in the form of Exhibit F, and
- (c) There is an Effective Date.

13.2 Upon the occurrence of all of the events referenced in Section 13.1 above, all Settlement Class Members shall be deemed to have: (a) dismissed the Action against Williams with prejudice as to the Settled Claims, and (b) acknowledged full and complete satisfaction of, and fully, finally and forever settled, released and discharged the Settled Claims against Released Parties.

SECTION 14

14. NON-OCCURRENCE OF CONDITIONS OF SETTLEMENT

14.1 In the event that the conditions of settlement, as provided in Section 13.1 above, are not satisfied:

- (a) This Settlement Agreement shall terminate;
- (b) Any Judgment entered pursuant to this Settlement Agreement shall be vacated;
- (c) The litigation commenced by Plaintiffs' Complaint shall proceed as if this Settlement Agreement had never been executed;
- (d) The certification of the Settlement Class (whether conditional or final) shall be vacated and the Action shall proceed as though the Settlement Class had never been certified; and
- (e) This Settlement Agreement may not be used in this Action or otherwise for any purpose, including whether the case should properly be certified as a class action pursuant to C.R.C.P. 23.

SECTION 15

15. NO ADMISSION OF LIABILITY

The settlement embodied in this Settlement Agreement is made to compromise and settle the Action without further litigation. It is not, and it should not be interpreted as, an admission of any liability or wrongdoing by Williams, nor should it be construed as an admission of any strength or weakness in the claims against Williams. Williams denies any wrongdoing or liability.

SECTION 16

16. MISCELLANEOUS

16.1 Each of the Settling Parties has relied upon its own counsel's advice in entering into this Settlement Agreement and not upon the advice of any other party's counsel.

16.2 The Settling Parties and their counsel have mutually contributed to the preparation of this Settlement Agreement and the Exhibits thereto. Consequently, no provision of this Agreement or the Exhibits shall be construed against any party because that party or its counsel drafted the provision.

16.3 All of the Exhibits to this Settlement Agreement are material and integral parts hereof, and they are fully incorporated herein by reference. The Exhibits to this Settlement Agreement are as follows:

Exhibit A – List of Class Royalty Instruments and Categorization Thereof;

Exhibit B – Notice of Class Action and Proposed Settlement;

Exhibit C – Joint Motion 1) to Enter an Order Certifying a Plaintiff Class, Preliminarily Approving Settlement Agreement, Approving Form of Notice, and Scheduling Fairness Hearing, and 2) to Establish a Hearing Date for the Joint Motion;

Exhibit D – Order Establishing Hearing Date;

Exhibit E – Order Certifying a Plaintiff Class, Preliminarily Approving Settlement Agreement, Approving Form of Notice, and Scheduling Fairness Hearing;

Exhibit F – Judgment; and,

Exhibit G – Transmittal Notice to Accompany Distribution Checks.

16.4 The placement of any particular lease in the lease categories on Exhibit A, or the treatment of such categories in this Settlement Agreement, shall not be used as a basis for advancing any position with respect to the resolution of the Reserved Claim described in paragraph 7.2; provided, however, that in the proceedings on the Reserved Claim, the parties can make arguments about different lease language in the categories on Exhibit A.

16.5 If Williams voluntarily makes any payment to EnCana Oil & Gas (USA) Inc., ExxonMobil, or Chevron U.S.A. in connection with Deductions from the September 2000 accounting month to the Transition Date, such payment will not exceed any payment those companies would have received under this Agreement.

16.6 Overriding royalty instruments will be initially treated as falling within category 5 on Exhibit A, except for overriding royalty instruments placed in a different category on the attached Exhibit A. Category 5 includes leases and other royalty instruments that are silent on allocation of costs under *Rogers v. Westerman Farm Co.*, 29 P.3d 887 (Colo. 2001). However, the Notice of Class Action and Proposed Settlement (attached as Exhibit B) will give Plaintiff

Class members who believe their overriding royalty instrument expressly addresses cost deductions the opportunity to provide a copy of their instrument to Class Counsel for review and determination as to the appropriate category under Exhibit A. If the Settling Parties cannot agree on the appropriate category for an overriding royalty (including any new categories that may be necessary), they will submit the issue to the Court for determination.

16.7 This Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of the Settling Parties or their successors in interest.

16.8 This Settlement Agreement may be executed in multiple counterparts.

16.9 This Settlement Agreement and the Exhibits hereto constitute the entire agreement among the Settling Parties.

16.10 The provisions of this Settlement Agreement shall, where possible, be interpreted in a manner to sustain their legality and enforceability.

16.11 A waiver by one party to this Agreement of the breach of any provision shall not constitute a waiver of any other prior or subsequent breach of the same or any other provision.

16.12 This Settlement Agreement (including the Exhibits hereto) and all documents relating hereto shall be construed and interpreted under the laws of the State of Colorado.

16.13 This Settlement Agreement and the Exhibits thereto shall be binding upon and inure to the benefit of, successors and assigns of the parties, including Settlement Class Members.

The Settling Parties hereby approve this Settlement Agreement on the dates indicated below.

PLAINTIFFS AND CLASS
REPRESENTATIVES

Date: 10/8/08

By: Ivo E. Lindauer
Ivo Lindauer

Date: 10/10/08

By: Sidney Lindauer
Sidney Lindauer

Date: 10-10-08

By: Ruth Lindauer
Ruth Lindauer

Date: 10/10/08

By: Danley R. Lindauer
Diamond Minerals, LLC

WILLIAMS PRODUCTION RMT
COMPANY

Date: 10/7/08

By: Jeff Hill

APPROVED:

DUFFORD, WALDECK, MILBURN & KROHN, LLP

By 
Nathan A. Keever

G.R. MILLER, P.C.
FLEESON, GOOING, COULSON & KITCH, LLC
Thomas D. Kitch
Gregory J. Stucky
David G. Seely

CLASS COUNSEL

HOLLAND & HART LLP

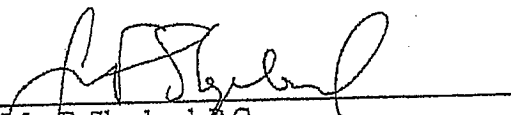
By 
John F. Shepherd, P.C.
ATTORNEYS FOR DEFENDANT

Exhibit A
Categorization of Royalty Instruments

Category	Explanation
1	Specifically allows deduction of compressing, dehydrating, treating, gathering and transportation
2	Specifically allows deduction of transporting gas "from the mouth of the well to the point of sale," or "customary transportation costs," or "all transportation charges"
3	Specifically allows deduction of third party transportation costs from the mouth of the well to the point of sale
4	Specifically allows deduction of transportation costs on interstate pipelines
5	Calculates royalty payments based on, for example, "market value at the well," "proceeds at the well," "market value," or "proceeds" (or without explanation)
6	Calculates royalty payments based on "net proceeds"
7	Calculates royalty payments based on "gross proceeds at the well"
8	Royalty is based on the market value of the gas at the well "free of all costs of developing and operating the Leased Premises and free of all costs of production"
9	Royalty paid in kind, "free of all costs"
10	Specifically addresses processing costs
11	Calculates royalty payments based on "gross proceeds"
12	Specifically bars deduction of gathering, compression, or transportation costs
13	Agreement provides for payment of royalty based on the same valuation of production as federal leases

Summary

Category Number	Number of Leases/Overrides	Percentage
	908	100.00%
1	173	19.05%
2	284	31.28%
3	22	2.42%
4	14	1.54%
5	185	20.37%
6	2	0.22%
7	0	0.00%
8	14	1.54%
9	13	1.43%
10	1	0.11%
11	194	21.37%
12	5	0.55%
13	1	0.11%
	908	100.00%

EXHIBIT 6

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 17-cv-01990-MSK-MEH

ELNA SEFCOVIC, LLC, JUHAN, LP, and ROY
ROYALTY, INC., individually and on behalf of
all others individually situated,

Plaintiffs,

v.

TEP ROCKY MOUNTAIN LLC,

Defendant.

AFFIDAVIT OF ALAN SIMPSON

I, Alan Simpson, being of lawful age and first duly sworn, state as follows:

1. I am a Director of Zeeb & Company, Inc. ("Zeeb"). I have worked for Zeeb since July 2003, and I have been a Director since then. Previously, I was a manager with Arthur Andersen LLP and KPMG LLP.

2. I have over 32 years of experience in providing economic, financial, and forensic consulting services. This includes over 30 years of experience in the oil and gas industry, including dispute resolution engagements including the calculation of royalties for oil, natural gas and carbon dioxide; experience with financial audits of production companies in the United Kingdom and Canada; preparation of cost-of-service calculations and related regulatory filings; net profit interest payments; working interest payments; processing and transportation agreements; cost-of service calculations; production tax calculations; facility emissions under the

Clean Air Act; and environmental consulting services related to refineries, pipelines, and tank farms.

3. I was retained by TEP Rocky Mountain LLC (“TEP”) to provide expert royalty accounting analysis and advice in the class action case *Elna Sefcovic, LLC, et al. v. TEP Rocky Mountain LLC*, Case No. 17-cv-01990-MSK-MEH (“*Sefcovic*”). The royalty underpayment issues in this case are extremely complex, due to the number of class members, multiple requirements for calculating royalties, variety of cost components at issue, and length of time at issue.

4. My analysis and advice is related to each of the four “Subclasses” identified in the Joint Motion for Final Approval of Class Settlement to which this Affidavit is attached. These Subclasses were defined in part by a categorization of royalty instruments set forth in the class action settlement agreement approved by a Colorado state court in *Lindauer v. TEP Rocky Mountain, LLC*, 2006-CV-317 (“*Lindauer*”).

5. Subclass 1 includes owners with royalty instruments in *Lindauer* Categories 2 and 3. Under the *Sefcovic* Settlement Agreement, TEP agreed to pay \$454,845.00 to this Subclass (which includes amounts attributable to parties that have since opted out of the settlement class). Based on my calculations, this amount represents 50% of the processing costs and 42% of the fuel costs deducted by TEP since July 2011. Six members of Subclass 1 opted out of the settlement, and their portion of the settlement fund (\$27,057.69) was returned to TEP as required by the *Sefcovic* Settlement Agreement. Accounting for these opt-outs, TEP’s overall settlement payment for Subclass 1 is \$427,787.31.

6. Subclass 2 includes owners with royalty instruments in *Lindauer* Category 5. Under the *Sefcovic* Settlement Agreement, TEP agreed to pay \$5,787,732.00 to this Subclass (which includes amounts attributable to parties that have since opted out of the settlement class). Based on my calculations, this amount represents 50% of the processing costs and 100% of the fuel and gathering costs deducted by TEP since July 2011. Thirty-one members of Subclass 2 opted out of the settlement, and their portion of the settlement fund (\$1,176,475.66) was returned to TEP as required by the *Sefcovic* Settlement Agreement. Accounting for these opt-outs, TEP's overall settlement payment for Subclass 2 is \$4,611,256.34.

7. Subclass 3 includes owners with royalty instruments in *Lindauer* Category 11. Under the *Sefcovic* Settlement Agreement, TEP agreed to pay \$1,157,145.00 to this Subclass (which includes amounts attributable to parties that have since opted out of the settlement class). Based on my calculations, this amount represents 100% of the processing costs and 100% of the fuel and gathering costs deducted by TEP since July 2011. Five members of Subclass 3 opted out of the settlement, and their portion of the settlement fund (\$313,331.89) was returned to TEP as required by the *Sefcovic* Settlement Agreement. Accounting for these opt-outs, TEP's overall settlement payment for Subclass 3 is \$843,813.11.

8. Subclass 4 consists of seventy owners with royalty instruments in either *Lindauer* Category 5 or *Lindauer* Category 11. In the course of converting accounting systems from WPX Energy, Inc. ("WPX") to TEP in July 2016, TEP's system did not capture the classification of all of these instruments. TEP therefore must reclassify these instruments as either Category 5 or Category 11 instruments. With respect to resolving claims for alleged underpayments from July 2016 through March 2018, TEP has agreed to pay \$2,625,587.00 to this Subclass (which

includes amounts attributable to parties that have since opted out of the Subclass. This accounts for 100% of the processing costs and 100% of the fuel and gathering costs deducted by TEP during this period. Thus, for owners in Subclass 4 with Category 11 instruments, this accounts for 100% of the costs sought by Plaintiffs. For owners in Subclass 4 with Category 5 instruments, this accounts for more than 100% of the costs sought by Plaintiffs. Six members of Subclass 4 opted out of the settlement, and their portion of the settlement fund (\$516,938.43) was returned to TEP as required by the *Sefcovic* Settlement Agreement. Accounting for these opt-outs, TEP's overall settlement payment for Subclass 4 is \$2,108,648.57.

9. In an effort to ensure that both TEP and Plaintiffs had a comprehensive understanding of the complicated issues related to each subclass, TEP produced gigabytes of discovery data. This included hundreds of documents, and detailed Excel spreadsheets containing extensive accounting records that spanned six years of royalty payments made to over six hundred owners. In total, Zeeb reviewed approximately 35 million lines of data to fully understand the payments that TEP made to owners in the four Subclasses, and the extent to which Plaintiffs were challenging those payments. This analysis took approximately ten months of work.

10. On multiple occasions throughout those ten months, I exchanged documents and analyses with Plaintiffs' royalty accounting expert, Don Phend. Mr. Phend and I discussed our respective analyses to ensure that our reviews of this comprehensive data set were accurate. The data that informed the settlement negotiations was verified as accurate by both myself and Mr. Phend.

FURTHER Affiant Sayeth Naught.

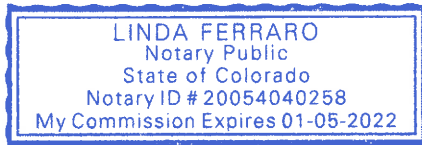
Dated this 30th day of October 2018

Alan P. Simpson
Alan Simpson, Affiant

STATE OF COLORADO)
) ss
COUNTY OF Arapahoe)

The foregoing Affidavit was subscribed and sworn to before me this 30th day of October, 2018, by Alan Simpson.

NOTARY SEAL:



Linda Ferraro
(Notary's official signature)

01-05-2022
(Commission Expiration Date)

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EXHIBIT 7

From: Nate Keever <keever@dwmk.com>
Subject: D.C. COLO. LCivR 7.1 (a)
Date: September 24, 2018 at 11:10:49 AM MDT
To: Chris Chrisman <CACHrisman@hollandhart.com>, "gab@georgebartonlaw.com"
<gab@georgebartonlaw.com>

Gentlemen,

We will be seeking intervention in:

Civil Action No: 17-CV-01990-MEH

ELNA SEFCOVIC, LLC a Colorado limited liability company, and JUHAN, LP, a Colorado limited partnership, INDIVIDUALLY AND ON BEHALF OF ALL OTHER SIMILARLY SITUATED,

Plaintiffs,

v.

TEP ROCKY MOUNTAIN, LLC.

Defendant.

on behalf of Ivo Lindauer, Sidney and Ruth Lindauer and Diamond Minerals, LLC, as Class Representatives of the Plaintiff Class in *Lindauer v. Williams Production RMT Co.* (Williams), now known as TEP Rocky Mountain LLC (TEP), in Case No. 2006 CV 317 filed in the District Court of Garfield County, Colorado. If permitted to intervene, the Petitioners intend to move for dismissal of this action, object to class certification, and object to the requested approval of the proposed settlement. Pursuant to D.C. COLO. LCivR 7.1 (a) please let me no if you clients object to this intervention.

Thank you,

Nate

Partner
Dufford, Waldeck, Milburn & Krohn, LLP
744 Horizon Court, #300
Grand Junction, CO 81506
(970) 241-5500 – Main Phone No.
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EXHIBIT 8

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 17-cv-01990-MEH

ELNA SEFCOVIC, LLC, JUHAN, LP,
and ROY ROYALTY, INC, individually
and on behalf of all others similarly situated,

Plaintiffs,

v.

TEP ROCKY MOUNTAIN, LLC,

Defendant.

DECLARATION OF STACY A. BURROWS

I, Stacy A. Burrows, declare as follows:

1. My name is Stacy A. Burrows. I am over twenty-one (21) years of age and am competent to make this declaration. This declaration is based on my personal knowledge of the facts set forth herein, and if called to testify, I could and would testify to such facts.

2. I am an attorney with the Law Offices of George A. Barton, P.C. (the “Barton Firm”) and was appointed by the Court as one of the Class Counsel in the above-captioned matter in the Court’s August 16, 2018 Order Preliminary Approving the Parties’ Proposed Class Action Settlement. I am submitting this declaration in support of the Parties’ Joint Motion for Final Approval of the Class Action Settlement and Class Counsel’s Motion for An Award of Attorneys’ Fees, Expenses, and an Incentive Award Payment to Class Representatives.

3. I graduated from Washburn University in May 2003 with a Juris Doctorate, and later received a Master of Business Administration Degree in 2004. In 2006, I subsequently received a Masters of Law in Taxation (L.L.M.) from the University of Missouri, Kansas City. I

was admitted to the Bar in the State of Kansas in September 2003 and in the State of Colorado in December 2015. For the past 15 years since my graduation from law school in May 2003, I have been in private practice and I have focused my practice exclusively in civil litigation, with a primary focus in commercial litigation for the last eleven years. I have had extensive experience in the preparation and trial of complex commercial lawsuits, which includes extensive experience in representing plaintiffs in commercial class action litigation. I have represented named plaintiffs in several class action lawsuits, which have included cases filed in Colorado, Kansas, and numerous federal courts. In each of those cases I have acted as class counsel or co-lead counsel for the plaintiff classes.

4. Through my representation of royalty owners in class action royalty underpayment disputes, I and my firm have recently been involved in two class action cases in which the defendants, both Colorado oil and gas producers, filed Chapter 11 Bankruptcy during the pendency of the class action litigation. As set forth in detail *infra*, in each case the oil and gas producer was permitted, under the Bankruptcy Code, to extinguish its prepetition royalty underpayment debt. In these cases, the natural gas producers' filing of bankruptcy precluded the royalty owner class members from recovering any portion of their royalty underpayment claims. In addition, in these cases, the Barton Firm did not recover any attorneys' fees for the hours invested in prosecuting the royalty underpayment cases or expenses in which the Barton Firm had invested in the case before or after the natural gas producers filed for protection under the Bankruptcy Code.

Augustus Energy Resources, LLC's Bankruptcy

5. Mellissa Clarke Crichton and Cristy Hedgpeth filed their class action complaint in the District Court for Yuma County, Colorado on March 12, 2015, individually and on behalf of all others similarly situated, in the case styled *Mellissa Clarke Crichton and Cristy Hedgpeth*,

individually, and on behalf of all others similarly situated v. Augustus Energy Resources, LLC, Case No. 2015CV30009.

6. The Defendant Augustus Energy Resources, LLC (“Augustus”) filed its Notice of Removal on April 20, 2015, removing the case to the United States District Court for the District of Colorado, Case No. 1:15-cv-00835-KLM. (Doc. No. 1).

7. In their Amended Class Action Complaint and Demand for Jury Trial, the named plaintiffs alleged that, they along with the putative class members were entitled to receive royalties from oil and gas wells operated by Augustus pursuant to royalty agreements, and that Augustus has failed to properly pay royalties to the putative Class member by: (a) by deducting a proportionate share of the fees and costs for gathering, dehydration, compression, transportation, fuel, treating, processing, and/or other marketing costs incurred to place the natural gas into a marketable condition, in the calculation of the royalties paid to the members of the putative Class; (b) by failing to pay royalties on the full commercial market value of the natural gas. (Case No. 1:15-cv-00835-KLM, Doc. No. 5).

8. On March 31, 2017, the U.S. District Court of the District of Colorado certified a defined Class, which consisted of approximately 780 royalty owners, who were actively pursuing their breach of contract claims against Augustus for the underpayment of royalties in natural gas produced in Yuma County, Colorado, since December 2009, from wells in which the royalty owners Class members had an interest. (Case No. 1:15-cv-00835-KLM, Doc. No. 56).

9. Following class certification, Augustus filed its Motion to Dismiss the Amended Class Action Complaint on June 9, 2017, which the Honorable Judge Kristen L. Mix denied on October 26, 2017. (Case No. 1:15-cv-00835-KLM, Doc. No. 76).

10. After class certification, the parties participated in extensive discovery pertaining to the issues of liability and the damages sustained by the class member royalty owners.

11. Plaintiffs retained an accounting expert, Mr. Donald A. Phend, who had compiled a damages estimation for the entire class of putative class members for the time period of December 2009 through July 2017, totaling approximately \$3,766,796.38, inclusive of interest. (Case No. 1:15-cv-00835-KLM, Doc. No. 87).

12. The class action was set to proceed to trial on August 6, 2018. (Case No. 1:15-cv-00835-KLM, Doc. No. 64).

13. Augustus filed its Voluntary Chapter 11 Bankruptcy in the United States Bankruptcy Court for the District of Delaware on March 16, 2018. (Case No. 18-10580-LSS).

14. The Augustus class action case before Magistrate Judge Mix has been administratively closed since April 2, 2018, following Augustus's Notice of Voluntary Bankruptcy Filing under Chapter 11 of the Bankruptcy Code and the imposition of an Automatic Stay Pursuant to Section 362(a) of the Bankruptcy Code. (Case No. 1:15-cv-00835-KLM, Doc. Nos. 95-96).

15. After Augustus filed for bankruptcy, my firm retained local bankruptcy counsel in Delaware to assist us in pursuing any potential action or recovery for the royalty owners in the Bankruptcy Court.

16. On June 15, 2018, the bankruptcy court in Delaware entered an Order (A) Approving the Purchase Agreement Between the Debtor and the Purchaser, (B) Authorizing the sale of Substantially all of the Debtor's Asset's Free and Clear of All Liens, Claims, Encumbrances, and Interests, (C) Authorizing the Assumption and Assignment of Contract, and (D) Granting Related Relief. All other prepetition debts which had not been paid by Augustus

were dismissed through the bankruptcy filings. Thus, the class members' royalty underpayment claims against Augustus were discharged. (Case No. 18-10580-LSS, Doc. No. 174).

17. During the Augustus class action litigation and through the bankruptcy proceeding, the Barton Firm has invested over \$435,000 worth of time value, and incurred more than \$55,000 in out-of-pocket litigation expenses.

18. The filing of bankruptcy by Augustus precluded the class members from obtaining any recovery from Augustus, and precluded any award of attorneys' fees to the Barton Firm in that class action case.

Vanguard Operating, LLC's and Vanguard Permian, LLC's Bankruptcy

19. On December 10, 2015, Retova Resources, LP ("Retova") filed a complaint before the District Court for the City and County of Denver, Colorado, Case No. 2015CV34352, on behalf of itself and a proposed class of similarly situated royalty owners for royalty underpayments against Vanguard Operating, LLC and Vanguard Permian, LLC (collectively, "Vanguard"). Between December 10, 2015 and February 1, 2017, the Barton Firm, on behalf of Retova, prosecuted the royalty underpayment claims against Vanguard, including successfully defending against: (1) Vanguard's motion to dismiss for failure to exhaust administrative remedies filed on January 4, 2016, which was denied on February 18, 2016; (2) Vanguard's motion to deny class certification filed on April 15, 2016, which was denied on June 27, 2016; and (3) Vanguard's refusal to produce royalty accounting data that identifies the method by which Vanguard calculated Retova's and the proposed class members' royalties since December 2014, which, on January 26, 2017, Vanguard was ordered to produce such royalty accounting data for a sample of 50 royalty owners.

20. On February 1, 2017, Vanguard, along with several other Vanguard related entities, filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas, Houston Division. (Case No. 17-30560, Doc. No. 1).

21. After Vanguard filed for bankruptcy, my firm retained local bankruptcy counsel in Houston, Texas to assist us in pursuing any potential action or recovery for the royalty owners in the Bankruptcy Court.

22. In the bankruptcy proceeding, on July 17, 2017, Vanguard filed its amended joint plan of reorganization under Chapter 11 of the Bankruptcy Code. A day later, the Bankruptcy Court confirmed the Plan, which became effective according to its term August 1, 2017. Pursuant to the Plan: (1) an automatic stay was implemented on Retova's December 10, 2015 class action complaint against Vanguard until the effective August 1, 2017 date; (2) the allowance or disallowance of Retova's class claims for royalties Vanguard underpaid between December 2014 and February 1, 2017 would be paid from a bankruptcy pool, which provided that Retova and the class would be paid at most 12 cents on the dollar for their royalty underpayment claims; and (3) Retova and each member of the proposed class had until August 31, 2017 to file their respective administrative priority claims. (Case No. 17-30560, Doc. No. 1109).

23. On August 31, 2017, Retova filed its administrative priority claim, to which Vanguard objected, causing Retova's administrative priority claim to become a contested matter under the Bankruptcy Code. (Case No. 17-30560, Doc. No. 1324). Retova was then required to file a motion with the Bankruptcy Court in order to permit Retova to pursue an administrative priority claim on behalf of the proposed class of royalty owners. (Case No. 17-30560, Doc. No. 1325).

24. On November 20, 2017, the bankruptcy court denied Retova's motion to pursue class-wide administrative priority claims on behalf of the proposed class. Thus, the proposed class members who did not file their own individual administrative priority claims were prohibited from pursuing claims against Vanguard for royalty underpayments that occurred between February 1, 2017 and August 1, 2017. (Case No. 17-30560, Doc. Nos. 1543-44).

25. It was obvious that Vanguard would also object to Retova pursuing royalty underpayment claims on behalf of the class that occurred prior to February 1, 2017. Based on this objection, Retova would be required to file the same motion with the Bankruptcy Court to seek permission to allow it to pursue class-wide claims which was denied by the Bankruptcy Court on November 20, 2017. Such an order would have prevented Retova from pursuing claims against Vanguard for royalties underpaid at any time before February 1, 2017 on behalf of the class.

26. On February 12, 2018, Retova and Vanguard executed a stipulation. Though the parties' stipulation, Vanguard agreed to pay \$2,400 to Retova for its royalty underpayment claims through August 1, 2017, in exchange for Retova withdrawing its class claims filed in the bankruptcy court. (Case No. 17-30560, Doc. No. 1758). Pursuant to the stipulation, on February 20, 2018, Retova dismissed its December 10, 2015 class action complaint against Vanguard. (Case No. 2015CV34352).

27. Through its Chapter 11 Bankruptcy, Vanguard was permitted to discharge all of its prepetition royalty underpayment debt including the class members' claims for royalty underpayments.

28. During the class action litigation and through the bankruptcy proceeding, the Barton Firm invested more than \$335,000 in time value in prosecuting the class members' claims, and incurred more than \$65,000 in out-of-pocket litigation expenses. The filing of bankruptcy by

Vanguard precluded the class members from obtaining any recovery, and precluded any award of attorneys' fees to the Barton Firm as class counsel.

29. Based on my experience as Class Counsel in prosecuting royalty underpayment cases for royalty owners in Colorado and elsewhere, I believe the Class action settlement between TEP and the Class Representatives is a fair and satisfactory resolution of the claims at issue for the potential members of the Settlement Class.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 30th day of October, 2018.



STACY A. BURROWS

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 17-cv-01990-MSK-MEH

ELNA SEFCOVIC, LLC, WHITE RIVER
ROYALTIES, LLC, JUHAN, LP, and ROY
ROYALTY, INC., individually and on behalf of
all others individually situated,

Plaintiffs,

v.

TEP ROCKY MOUNTAIN LLC,

Defendant.

**ORDER GRANTING FINAL APPROVAL TO CLASS
SETTLEMENT AGREEMENT AND FINAL JUDGMENT**

On November 20, 2018, this case comes before the Court for hearing to consider:

(1) certification of a plaintiff class pursuant to Fed. R. Civ. P. 23; (2) approval of the Settlement Agreement dated effective June 1, 2018 and amended on October 26, 2018 (the “Settlement Agreement”); (3) approval of the Final Distribution Schedule; and (4) approval of the amount of attorneys’ fees and expenses requested by Plaintiffs’ counsel.

Plaintiffs and the proposed class appear by and through George A. Barton and Stacy A. Burrows of the Law Offices of George A. Barton, P.C. Defendant appears by and through John F. Shepherd, Christopher A. Chrisman, and Lauren R. Caplan of Holland & Hart LLP.

A. CERTIFICATION OF PLAINTIFF CLASS.

The parties requested the Court’s consideration, pursuant to Fed. R. Civ. P. 23, of the creation of a Plaintiff Class, described as follows:

all persons and entities to whom TEP has paid royalties and/or overriding royalties, and deducted post-production costs from those royalties and/or overriding royalties, including owners whose royalties currently are held in suspense, since July 1, 2011, on natural gas production from any well subject to the oil and gas lease agreements which the settling parties in the *Lindauer* Settlement identified as Category 2, Category 3, Category 5, and Category 11 instruments.

The parties further requested the creation of four Plaintiff Subclasses (the “Subclasses”) as follows:

Subclass 1: Elna Sefcovic, LLC, White River Royalties, LLC, and all persons and entities to whom TEP has paid royalties, and deducted post-production costs from those royalties, including owners whose royalties currently are held in suspense, since July 1, 2011, on natural gas production from any well subject to the oil and gas lease agreements which the settling parties in the *Lindauer* Settlement identified as either Category 2 or Category 3 royalty instruments.

Subclass 2: Juhan, LP, and all persons and entities to whom TEP has paid royalties and/or overriding royalties, and deducted post-production costs from those royalties and/or overriding royalties, including owners whose royalties currently are held in suspense, since July 1, 2011, on natural gas production from any well subject to the oil and gas lease agreements which the settling parties in the *Lindauer* Settlement identified as Category 5 instruments, and that currently are identified by TEP as Category 5 instruments.

Subclass 3: Roy Royalty, Inc., Juhan, LP, and all persons and entities to whom TEP has paid royalties and/or overriding royalties, and deducted post-production costs from those royalties and/or overriding royalties, including owners whose royalties currently are held in suspense, since July 1, 2011, on natural gas production from any well subject to the oil and gas lease agreements which the settling parties in the *Lindauer* Settlement identified as Category 11 instruments, and that currently are identified by TEP as Category 11 instruments.

Subclass 4: Juhan, LP, and all persons and entities to whom TEP has paid royalties and/or overriding royalties, and deducted post-production costs from those royalties and/or overriding royalties, including owners whose royalties currently are held in suspense, since July 1, 2011, on natural gas production from any well subject

to the oil and gas lease agreements which the settling parties in the *Lindauer* Settlement identified as Category 5 or 11 instruments, but that currently are not identified by TEP as exclusively Category 5 or Category 11 instruments.

After hearing statements of counsel and the testimony of their accounting experts, and after taking into account matters contained in the Court file, and after otherwise being duly advised of the pertinent circumstances, the Court makes the following findings:

1. There are several hundred members of the Plaintiff Class and their joinder would be impracticable. There are questions of law and fact common to the Plaintiff Class. The claims of the Plaintiff Class Representatives are typical of the claims of the Plaintiff Class. The Plaintiff Class Representatives will fairly and adequately protect the interests of the Plaintiff Class. The prerequisites to maintain this action as a class action set forth in Fed. R. Civ. P. 23(a) are met.

2. The questions of law and fact common to all members of the Plaintiff Class predominate over questions, if any, affecting only individual members, and a class action is superior to any other available method for the fair and efficient adjudication of the controversy. The requirements of Fed. R. Civ. P. 23(b)(3) are met. Accordingly, a Plaintiff Class with the Subclasses identified above should be certified pursuant to Fed. R. Civ. P. 23(b)(3).

3. Plaintiffs Elna Sefcovic, LLC, White River Royalties, LLC, Juhan LP, and Roy Royalty, Inc, should be designated as the Class Representatives.

4. George A. Barton and Stacy A. Burrows of the Law Offices of George A. Barton, P.C. should be designated as Class Counsel.

B. APPROVAL OF SETTLEMENT AGREEMENT.

The parties requested that the Court give final approval to the Settlement Agreement, which the Court preliminarily approved on August 16, 2018 [Dkt. # 61].

After hearing statements of counsel and the testimony of their accounting experts, and after taking into account matters contained in the Court file, and after otherwise being duly advised of the pertinent circumstances, the Court makes the following findings:

1. The defined terms of the Settlement Agreement are incorporated by reference.
2. Pursuant to the Order entered on August 16, 2018 [Dkt. #61], Class Counsel has complied with the Court's directions with respect to sending notice to the Class members. Class Counsel mailed the notice approved by the Court to all members of the Plaintiff Class who could be reasonably identified. The notice to Class members and the manner of sending such notice comply with due process and with Fed. R. Civ. P. 23.
3. Pursuant to Fed. R. Civ. P. 23(c)(2) and the terms of the notice, members of the Plaintiff Class have been provided with the opportunity to exclude themselves from the Plaintiff Class. The persons and entities listed on Exhibit A attached hereto have opted out of the Plaintiff Class and are excluded from the Plaintiff Class.
4. Plaintiffs and Class Counsel have entered into the Settlement Agreement (i) after taking into account the uncertainties, risks, and potential delays associated with the continued prosecution of this action, including those involved in securing a final judgment that would be favorable to the Plaintiff Class and not be disturbed on appeal; (ii) after taking into account the substantial benefits that will be received as a result of the settlement; and (iii) after having concluded that the settlement provided for herein confers substantial benefits on the members of

the Plaintiff Class, is fair, just, reasonable, and adequate, and in the best interests of the Plaintiff Class.

5. Defendant has denied and continues to deny liability in this action, and asserted many defenses. Defendant entered into the settlement in order to put to rest the present controversy between Plaintiffs, the Plaintiff Class, and Defendant, and to avoid the further expense, inconvenience, and disruption of defending against the action. Defendant also has taken into account the uncertainty and risks inherent in any litigation, especially in complex cases like this action, and the fact that substantial amounts of time, energy, and resources of Defendant have been and, unless this settlement is consummated, will continue to be devoted to the defense of this action.

6. The Court finds that a class action settlement should be approved only if it is fair, reasonable, and adequate, after comparing the terms of the settlement with the likely results of litigation.

7. The Court finds that the settlement as set forth in the Settlement Agreement was arrived at through arms-length, vigorous, and extensive negotiations between Class Counsel and counsel for the Defendant.

8. The Court finds that the settlement as set forth in the Settlement Agreement was arrived at in good faith and was based on a realistic appraisal by the parties and their counsel of the difficulties inherent in a case of this magnitude and complexity.

9. The Court recognizes that if this settlement as set forth in the Settlement Agreement had not been reached, even if the Plaintiff Class had prevailed, any recovery would

have been delayed for a lengthy period of time given the high probability of an appeal and, in the event of a reversal or modification, a further delay resulting from another lengthy trial.

10. Based upon the evidence presented, the arguments of counsel, and the entire record in the case, the Court concludes that the Settlement Agreement is fair, adequate, and reasonable, and accordingly, the Settlement Agreement and the terms of the settlement contained therein should be and hereby are finally approved.

C. AWARD OF FEES AND EXPENSES.

Class Counsel have requested that their application for attorneys' fees and expenses [Dkt. #___], and their application for incentive awards to the Class Representatives, be approved. Defendant takes no position on this request.

After hearing statements of Class Counsel, after considering testimony in connection therewith, after taking into account matters contained in the Court file, and after otherwise being duly advised of the pertinent circumstances, the Court finds:

1. Class Representatives Elna Sefcovic, LLC, Juhan, LP and Roy Royalty, Inc. should be awarded an incentive award of \$5,000 each;
2. Class Counsel should be reimbursed the sum of \$104,915.95 for litigation costs and expenses; and
3. Class Counsel should be awarded reasonable attorneys' fees in the amount of \$2,627,600, representing 33.33% of the Settlement Amount, after subtracting litigation expenses, the escrow fee, and the incentive award payments.

The Court directs that such fees and expenses be paid to Class Counsel from the Settlement Amount defined in paragraph 2 of the Settlement Agreement.

D. APPROVAL OF THE FINAL DISTRIBUTION SCHEDULE.

The parties presented to the Court the Final Distribution Schedule, which represents the Class members' proportionate share of the Settlement Amount defined in paragraph 2 of the Settlement Agreement, less the amounts awarded in paragraph C above. The Court finds that the Final Distribution Schedule should be approved, and the Court approves of the manner in which the Final Distribution Schedule was prepared. Class Counsel shall distribute payments to the Class members consistent with the Final Distribution Schedule, as provided in paragraph 5 of the Settlement Agreement.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. The finding herein shall be the Order of the Court.
2. The parties shall take any and all steps necessary to implement the Settlement Agreement according to its terms and the terms of this Order.
3. The Class' Released Claims (as defined in paragraph 6 of the Settlement Agreement) are fully and completely settled, discharged, and released. Distribution of the Settlement Amount shall be conducted pursuant to paragraph 5 of the Settlement Agreement. As set forth in paragraph 6 of the Settlement Agreement, class members are deemed conclusively to have released and settled the Class' Released Claims. All such members of the Plaintiff Class are barred and permanently enjoined from commencing or prosecuting, either directly, representatively, derivatively or in any capacity, any of the Settled Claims, against the TEP Released Parties (as that term is defined in paragraph 6 of the Settlement Agreement).

4. Without affecting the finality of this Final Judgment in any way, this Court shall retain continuing and exclusive jurisdiction of this action to address any issues concerning implementation of the Settlement Agreement and enforcing this Final Judgment.

IT IS SO ORDERED.

Dated this ____ day of November, 2018

Michael E. Hegarty
United States Magistrate Judge

EXHIBIT A

1. Howard Orona
2. Pamela Mead
3. Kirk Dotson
4. Union Pacific Railroad Co.
5. Carole Quiat Leight Living Trust dtd March 8, 2008
6. Bernklau Family LLLP
7. Carl H. Bernklau Charitable Lead Unitrust
8. Arnold L. Mackey and E. Darleen Mackey
9. Trahern Energy, LLC
10. Nathaniel Ross Bernklau
11. Maxwell Petroleum, Inc.
12. Pal Inc.
13. Next Generation LLC
14. Audrey Kentz
15. Audrey Halverson
16. Jolley Potter Ranches Energy Co.
17. Shear, Inc.
18. Sunnyside Production Co.
19. McNary Family Properties, LP
20. Leonard Quiat
21. Natalie Noelle Glesener
22. Jolley Potter Ranches (Betty Ross Potter)
23. MJ Wells, LLC
24. Theodore Carl Bernklau
25. Theodore C. and Linda L. Bernklau
26. Cottonwood Minerals, LLC
27. Gary Lee Mahaffey
28. Daniel and Meg Quiat
29. Retova Resources, LP
30. DWG, LLC
31. EGQ, Inc.
32. Melinda Quiat
33. Gerald K. Hollenbaugh
34. Robert Arnett
35. ConocoPhillips
36. Oil Shale Corp.

11569587_2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No: 17-CV-01990-MEH

ELNA SEFCOVIC, LLC a Colorado limited
liability company, JUHAN, LP, a Colorado
limited partnership, and ROY ROYALTY, INC.,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

TEP ROCKY MOUNTAIN, LLC,

Defendant,

**OBJECTIONS TO APPROVAL OF PROPOSED *SEFCOVIC* CLASS SETTLEMENT
AND NOTICE OF INTENT TO APPEAR AT FINAL APPROVAL HEARING**

Objectors Charles Dean Gonzales and Susannah Gonzales, by and through their undersigned attorneys, file this objection to the requested approval of the proposed *Sefcovic* Class Settlement. Charles Dean and Susannah Gonzales are original lessors under lease number 113336, which was categorized as a category 2 lease in the *Lindauer* Class Settlement. Charles Dean and Susannah Gonzales did not opt-out of the *Sefcovic* Class Settlement and as such are members of the putative *Sefcovic* Class Settlement – Subclass I.

Objectors Ted L. and Hilda M. Vaughan, by and through their undersigned attorneys, file this objection to the requested approval of the proposed *Sefcovic* Class Settlement. Ted L. and Hilda M. Vaughan are original lessors under lease No. 113378, which was categorized as a category 2 lease in the *Lindauer* Class Settlement. Ted L. and Hilda M.

Vaughan did not opt-out of the *Sefcovic* Class Settlement and as such are members of the putative *Sefcovic* Class Settlement—Subclass I.

This Objection outlines the Objectors' objections to the putative *Sefcovic* Class Settlement. Objectors also intend to present their arguments and evidence in full at the Final Approval Hearing.

A. The *Sefcovic* Settlement sacrifices Subclass I members.

The *Sefcovic* Notice to putative class members states that the total sum TEP has agreed to pay in settlement is \$10,025,308 (minus amounts attributable to opt-outs), but does not disclose the amount allocated to each *Sefcovic* Subclass. After deduction of attorney fees, litigation costs and opt outs, the amount proposed to be distributed among all putative *Sefcovic* class members who did not opt out is stated on the Final Distribution Schedule as \$5,240,989.38. The amount proposed to be distributed to putative Subclass I class members who did not opt out is approximately \$280,457.

However, if the *Sefcovic* Settlement were to be approved, it would require Subclass I royalty owners to release their claims for past improper gathering, gathering fuel, and processing deductions. These past claims total approximately \$3,000,000 in improper deductions from Subclass I members. As a result, the Subclass I class members are proposed to receive a distribution of \$280,457 in exchange for their past improper deduction claim of approximately \$3,000,000, or less than \$.10 for each dollar owed.

In addition, paragraph 9.a. of the putative *Sefcovic* Settlement proposes to entitle TEP the right to deduct gathering, gathering fuel, and processing costs from Subclass I royalty owners going forward – a deduction not taken by TEP’s predecessor. Based on the improper deductions TEP made in the last 21 months, this would allow TEP to deduct approximately \$37,856 per month from the putative Subclass I members of the *Sefcovic* Settlement. If that rate of deduction continued:

a) TEP would recoup the entire net distribution to Subclass I royalty owners in a period of just 7.4 months ($\$280,457 / \$37,856 = 7.4$ months).

b) TEP would recover the entire distribution made by the *Sefcovic* Settlement to the all putative *Sefcovic* royalty owners from deductions permitted to be taken from Subclass 1 royalty owners alone in a period of just 139 months or 11.5 years ($\$5,240,989 / \$37,856 = 138.5$ months = 11.5 years).

c) Assuming the prolific Mancos Shale continues to be developed and these leases have an additional productive life of 50, TEP could recover over \$23M from these Subclass I royalty owners as a result of these newly authorized deductions in paragraph 9.a. of the *Sefcovic* Settlement.

In less than one year, Subclass I members are in a better position if their deduction claims were unresolved, as the *Lindauer* Settlement Agreement now provides, than simply acquiescing to those deductions in the future under paragraph 9.a. of the putative *Sefcovic* Settlement.

In contrast, Subclass II, Subclass III and Subclass IV class members are proposed to receive distribution of 100% of the improper deductions taken from them by TEP.

Furthermore, they are not subject to the deductions under paragraph 9.a. of the *Sefcovic* Settlement, which Subclass I must alone bear. “[T]here is no reason why some class members should be forced to give up something of value to enable other class members to

benefit from a settlement made richer at their expense. (Citations omitted).” *Karvaly v. Ebay, Inc.*, 245 F.R.D. 71, 90 (E.D.N.Y. 2007). *See also*, 4 Newberg, On Class Actions §13.60; *Nat’l Super Spuds v. N.Y. Merch. Exch.*, 660 F.2d 9, 18 (2nd Cir. 1981) (Sacrifice of uncompensated claims of putative class members indicates inadequate representation.)

This Court has the duty to act as “a fiduciary who must serve as a guardian of the rights of the absent class members,” including the Objectors and other Subclass I royalty owners, by ensuring that the proposed settlement and the conduct of these proceedings is fair, adequate and reasonable with respect to the interests of the absent class members. *In Re General Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 785 (3rd Cir. 1985); *Ross v. Convergent Outsourcing, Inc.*, 323 F.R.D. 656, 6609 n. 5 (D.Colo. 2018). Here the interests of Subclass I royalty owners are being disproportionately sacrificed to achieve a settlement satisfactory to TEP. Because the proposed *Sefcovic* Settlement does not adequately protect the interests of the absent Subclass I royalty owners, and as such, the Settlement cannot be approved.

B. The Notice provided was inadequate.

Fed. R. Civ. P. 23(b)(3) requires that the putative class receive the “best notice practicable.” Rule 23(b)(3) notice is required to contain “information a reasonable person would consider to be material in making an informed, intelligent decision of whether to opt out or remain a member of the class.” *Karvaly v. Ebay, Inc.*, 245 F.R.D. 71, 90 (E.D.N.Y. 2007). The Notice fails to meet the minimum standards due process requires of class notices and this settlement must be disapproved.

Specifically, with respect to Subclass I, the *Sefcovic* Notice does not disclose the devastating effect on the Subclass of the legal and financial consequences of the magnitude described above. These are material matters that any reasonable Subclass I member would want to know when making an informed and intelligent decision regarding whether to opt out or remain in the *Sefcovic* Class.

C. The *Sefcovic* Settlement is not within the range of reasonableness.

A district court may approve a proposed settlement only after “finding that it is fair, reasonable, and adequate” Fed. R. Civ. P. 23(e)(2). Or stated conversely, “[t]he court cannot accept a settlement that the proponents have not shown to be fair, adequate and reasonable.” *Grunin v. Inter. House of Pancakes*, 513 F.2d 114, 123 (8th Cir. 1975). “The most important factor relevant to the fairness of a class action settlement is....the strength of plaintiff’s case on the merits balanced against the amount offered in the settlement. *Synfuel Tech., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006) *citing In Re General Motors Corp. Engine Interchange Litig.*, 594 F.2d 1106, 1132 (7th Cir. 1979).

Here, as demonstrated by the affidavit attached to the Motion To Enforce filed in Garfield County District Court, TEP has taken gathering, gathering fuel, and excessive NGL processing deductions, which are precluded by the terms of the *Lindauer* Settlement Agreement. As addressed below, the likelihood of recovering the full amount of these improper deductions utilizing the Rule 107 proceeding in the Garfield County District Court is quite high, and that proceeding offers a prompt remedy without the disadvantages to the *Lindauer* Class of: entitling TEP to additional deductions, granting an overbroad release,

fragmenting the *Lindauer* Class, and diluting the *Lindauer* Settlement Agreement. In sum, the recovery proposed in the proposed *Sefcovic* Settlement would leave the putative *Sefcovic* Class significantly worse off than if no action had been filed, and the limitations period was allowed to expire. As such, the putative *Sefcovic* settlement must be disapproved because it is not in the range of reasonableness, it is unfair, and it is wholly inadequate.

D. The putative *Sefcovic* Class is not superior to other methods for enforcing the *Lindauer* Settlement.

In order to certify the putative *Sefcovic* class this Court must find that this putative class action “is superior to other methods for fairly and efficiently adjudicating the controversy.” Fed.R.Civ. P. 23(b)(3). Superiority explicitly requires fairness to absent class members. *Katz v. Carte Blanche Corp.*, 496 F.2d 747 (Pa. D. 1974). Among other matters, the superiority determination should consider:

- a) the impact on recoveries by class members. *Carter v. Pub. Fin. Corp.*, 73 F.R.D. 488 (N.D. Ala. 1977) (considered evidence that individual recoveries would be larger than class recoveries).
- b) the avoidance of piecemeal litigation. *In Re Ephedra Products Liab. Litig.*, 329 B.R. 1 (S.D.N.Y. 2005) (Bankruptcy forum found superior because all claims could be consolidated in one forum, allows filing proof of claims without counsel and at virtually no cost).
- c) the extent and nature of any litigation already commenced. *White v. Deltona Corp.*, 66 F.R.D. 560 (S.D. Fla. 1975).
- d) other class actions which may be utilized. *Abla v. Brinker Restaurant Corp.* 279 F.R.D. 51 (D. Mass. 2011) (Statewide classes superior to national class action.).

Ivo Lindauer, Sidney and Ruth Lindauer, and Diamond Minerals, LLC, as designated class representatives of the certified and on-going *Lindauer* Class have filed their Motion To

Enforce Court Order And Settlement Agreement Against TEP Rocky Mountain, LLC in the Garfield County Colorado District Court (“*Lindauer* Motion To Enforce”). The *Lindauer* Motion To Enforce is superior to the *Sefcovic* Class, because the Motion To Enforce offers the superior method of enforcing the *Lindauer* Settlement Agreement and remedying breaches of the *Lindauer* Settlement Agreement, for at least the following reasons:

- a) the *Lindauer* Class is certified, on-going and represented by court-designated representative plaintiffs and class counsel;
- b) the Garfield County District Court has formally advised TEP pursuant to a Rule 107 contempt proceeding and has scheduled a setting conference for the show cause hearing for January 4, 2019. This contempt proceeding offers a prompt and straight forward accounting remedy for breaches of the *Lindauer* Settlement Agreement;
- c) it is clear from the expert witness affidavit attached to the Motion To Enforce that the Representative Plaintiffs have in hand information necessary to establish both liability and the per mmbtu measurement of damages with respect to breaches of the *Lindauer* Settlement Agreement by TEP, and that no substantial discount from the full amount due is warranted, nor can any amendment to the terms of the *Lindauer* Settlement Agreement unfavorable to some or all of the *Lindauer* Class be justified. *See e.g., Zink v. First Niagara Bank, N.A.*, 155 F. Supp. 3d 297, 313 (W.D.N.Y. 2016);
- d) the state court contempt proceeding can provide an accounting remedy to recover 100% of any and all damages due to the *Lindauer* Class Members without entitling TEP to take any new deductions, recoupments, or adjustments going forward, without any unfavorable amendments to the terms of the *Lindauer* Settlement, and without the overlybroad release of claims – all of which are proposed in the *Sefcovic* Settlement;
- e) the state court contempt proceeding can provide an accounting remedy to recover all damages due to all *Lindauer* Categories of Royalty Instruments, rather than the 4 of 13 categories of Royalty Instruments addressed in the *Sefcovic* action, thereby avoiding piecemeal litigation, fragmentation of the *Lindauer* Class, and dilution of the terms of the *Lindauer* Settlement Agreement;

The burden of proving that the putative *Sefcovic* Settlement is the superior method of protecting the interests of the putative class members is on the proponents of the

proposed settlement. Here, it is clear that the Motion To Enforce filed in the District Court of Garfield County, Colorado assures a much better method of protecting the interests of the putative class members, particularly those who are the *Lindauer* Category 2 and 3 owners, who make up Subclass I herein. Because the *Sefcovic* Settlement is not the best method of protecting the interest of the putative class members, and actually would result in a reduction of their royalty payments over the productive life of the applicable royalty instruments, certification of the putative *Sefcovic* Class must be denied.

E. The *Sefcovic* release is overly broad.

Class settlements may only release claims that are based on the “identical factual predicate” or “common nucleus of operative fact” as the settled claims. Newberg, On Class Actions, §18.19 (5th ed.) The factual predicate for the *Sefcovic* Settlement is stated in the Notice to putative class members as follows:

TEP has deducted or adjusted from royalties certain charges for costs that should not have been deducted. Specifically, Plaintiffs have asserted that TEP should have not deducted from Gas royalties certain costs that were not permissible to deduct under the terms of a class action settlement agreement (*Lindauer*)....These deductions are referred to in this Notice as “Disputed Deductions.”

Sefcovic Notice at 2-3.

These “Disputed Deductions” are limited to: 1) cost deductions, 2) which are expressly precluded by the *Lindauer* Settlement, 3) wrongfully taken by TEP from gas royalty, 4) paid to *Lindauer* Category 2, 3, 5 and 11 royalty owners, and 5) taken prior to June 1, 2018.

But the *Sefcovic* release attempts to release a much broader set of claims unrelated to “Disputed Deductions:”

the Class release[s]....TEP [and many others] from any and all liability, rights, claims, demands, ...arising from the calculation and/or payment of royalties and/or overriding royalties to Plaintiffs and the Class on the sale of natural gas, natural gas liquids, and associated hydrocarbons prior to [June 1, 2018].

Sefcovic Settlement at paragraph 6.

Broad class action releases which attempt to release claims that are not included within the identical factual predicate of the settled class claims are disapproved. *Boyd v. Avanquest North Amer. Inc.*, 2015 WL 4396137 (N.D. Cal. 2015) (Court found the release in a class action settlement to be over-broad because it attempted to release claims which were not based on the identical factual predicate, and denied preliminary approval of the class settlement, with leave to refile if the parties could agree on a satisfactory release.) *Gonzalez v. CoreCivic of Tenn., LLC*, 2018 WL 4388425 at 12 (E.D.Cal. 2018) (denying preliminary approval of a class settlement based on over broad release and citing *Boyd* and 5 other cases); *Shawn v. Rovini Concrete Corp.*, 2017 WL 462310 at 1 (S.D.N.Y. 2017) (rejecting FLSA settlement based on overbroad release); *Flood v. Carlson*, 2015 WL 4111668 (S.D.N.Y. 2015) (same).

The following claims, among others, can be characterized as released by the overbroad *Sefcovic* Release, which are not “Disputed Deductions,” are not settled claims, do not have the identical factual predicate as the settled claims, and for which the putative class members would receive no consideration:

- I) claims that TEP affiliates charged the *Sefcovic* Class excessive costs (in excess of their actual costs) or that TEP engaged in wrongful affiliate transactions in order to artificially reduce its royalty payments by engaging in non-arms-length transactions;
- II) claims that TEP deducted from royalty payments to the *Sefcovic* Class unreasonable and excessive firm transportation charges;
- III) claims that TEP breached its duty to pay royalty on NGLs in the manner required by the “enhancement test” as it applies to NGL processing;
- IV) claims TEP imprudently processed gas into less valuable NGLs, resulting in lower royalty payments to the *Sefcovic* Class;
- V) claims that TEP paid royalty based on an amount which was less than the prevailing market price in the Piceance Basin;
- VI) and potentially individual claims of royalty owners related to mistakes in decimal interests, mis-measurement of volumes, broken meters, title disputes and other matters which may affect royalty payment and calculation.

The Notice also states that class members will “Release all Settled Claims.” Because the claims which are proposed to be settled in the *Sefcovic* Settlement are claims for those deductions precluded by the *Lindauer* Settlement, due process requires that the scope of the release be limited to those same settled claims. The proposed release is much broader than the claims the putative class members were told they would be required to release, and is, for that reason alone, overly broad, unenforceable, and should not be approved.

A settlement cannot be fair, reasonable and adequate if the release is overbroad. *Oladapo v. Smart One Energy, LLC*, 2017 WL 5956907, at p. 14 (S.D.N.Y. 2017); *Nat’l Super Spuds, Inc. v. New York Merchantile Exch.*, 660 F.2d 9, 19 (2nd Cir. 1981) (“The Court’s most serious concern with the terms of the proposed settlement is the unduly broad general release that the parties seek to impose on all Class Members as a condition of this

settlement.”) “[T]o strip [these] individuals of their rights to sue the defendants upon a wide range of offenses that have nothing to do with the misconduct alleged in the present action, for no more consideration....., is an offense to the principle of due process so egregious as to render the proposed settlement untenable...” *Karvaly v. Ebay, Inc.*, 245 F.R.D. 71, 88-89 (E.D.N.Y. 2007).

“Here the defendants sought a broad waiver from plaintiff, which included claims plaintiff did not allege, did not litigate, and did not believe had any value. Moreover, it would not be possible for absent class members to know the extent of the claims they are releasing given the language of the settlement agreement [and the non-disclosure of material information].... This is the sort of behavior about which reviewing courts must be vigilant, because it is suggestive of collusion.” *Gonzalez v. Corecivic Of Tennessee, LLC*, 2018 WL 4388425, at p.12 (E.D. Cal. 2018). The *Sefcovic* Release raises the same concerns for the same reasons and requires similar strict scrutiny by this reviewing Court.

F. The *Sefcovic* Settlement Improperly Attempts To Amend The *Lindauer* Settlement Agreement

In paragraph 4.2 of the *Lindauer* Settlement Agreement, the parties agreed not to resolve the issue of whether or not the lessee (now TEP) was entitled to take deductions from Category 2 and 3 Instruments, expressly reserving to the Category 2 and 3 royalty owners the right to contest any and all deductions the lessee may take from royalty payments to such owners. Paragraph 4.2 provides:

4.2 With respect to Royalty Instruments in categories 2 and 3 on Exhibit A, nothing herein prohibits Williams [now TEP] from taking any deductions it claims it is entitled to take under the terms of such Royalty Instruments, and

nothing herein prohibits any Settlement Class Member from challenging such deductions.

The *Sefcovic* Plaintiffs concede that this right was reserved to Category 2 and 3 owners who, under the proposed *Sefcovic* Settlement, are Subclass 1 owners:

The *Lindauer* Class Settlement provides that with respect to Subclass I Leases, the Settlement class members who receive royalties under such Leases are not prohibited from challenging any deductions which TEP may take in the calculation and payment of royalties under such Leases.

Second Amended Class Action Complaint And Demand For Jury Trial, paragraph 18.¹

However, paragraph 9.a. of the proposed *Sefcovic* Settlement seeks to amend paragraph 4.2 of the *Lindauer* Settlement Agreement to authorize TEP to take new and additional deductions from Category 2 and 3 Royalty Instruments and to remove the right of Category 2 and 3 class members to contest such deductions when it states:

a. With respect to royalties paid to Subclass 1 members after the Effective Date [June 1, 2018], TEP shall be entitled: (1) to deduct a proportionate share of those members' gathering and fuel costs; (2) to deduct transportation costs as set forth in Paragraph 4.5 of the *Lindauer* Settlement Agreement; and (3) to account for the value of natural gas liquids ("NGLs") as set forth in Paragraphs 4.4 and 4.6 of the *Lindauer* Settlement Agreements.

Paragraphs 16.7 and 1.33 of the *Lindauer* Settlement Agreement provide that the *Lindauer* Settlement Agreement cannot be amended without the written agreement of the *Lindauer* Class Representatives:

¹ Plaintiffs also assert that, independent of the *Lindauer* Settlement, TEP is not entitled to deduct gathering, fuel and processing costs from Subclass 1 royalty payments. They state that these leases "expressly permitted the Lessee to deduct, in calculating royalties, only certain transportation costs from the mouth of the well to the point of delivery to the gas purchaser. (Emphasis supplied)." Second Amended Class Action Complaint And Demand For Jury Trial, paragraph 17.

16.7 This Settlement may be amended or modified only in a written instrument signed by or on behalf of the Settling Parties or their successors in interest.

...

1.33 “Settling Parties” means Class Representatives and Williams.

The *Lindauer* Class Representatives have not agreed in writing to any amendment of the *Lindauer* Settlement Agreement by the *Sefcovic* Settlement Agreement. As such, the parties to the *Sefcovic* Settlement (Plaintiffs and TEP), in paragraphs 9.a., 9.b., 9.c., and 9.d., have improperly attempted to amend the *Lindauer* Settlement Agreement in a manner which is precluded by the very terms of the same settlement agreement Plaintiffs seek to enforce. Therefore, the *Sefcovic* Settlement must be disapproved because it improperly seeks to amend the *Lindauer* Settlement Agreement.

G. The requested attorney fees are excessive.

In class action cases, the “common fund doctrine” recognizes that “a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole...The doctrine rests on the perception that persons who obtain the benefit of a lawsuit without contributing to its costs are unjustly enriched at the successful litigant’s expense.” *The Boeing Company v. Van Gemert*, 444 U.S. 472, 477 (1980). In order to recover “common fund” attorneys fees the court is required: “1) to sufficiently identify a class of beneficiaries, 2) [to] accurately trace the benefits, and 3) [to] shift the fee to those benefiting with some exactitude.” *Id.* at 478-479.

A reasonable attorney fee in a common fund case, such as a class action, is measured in comparison to the net benefit obtained by the class as a whole.

The attorney fee sought by *Sefcovic* Counsel is one-third of the cash payment proposed to be distributed to the *Sefcovic* Class. Considering the amount of the deductions that will be permitted to be taken by TEP in the future, as described above, the benefit, if any, which results to the putative class members is much less than the amount of the cash distribution. Because the requested attorney's fee far exceeds one-third of the "benefit" to be received by the *Sefcovic* Class, the request is excessive, especially as to Subclass I members.

H. Objectors intend to present evidence and argument at the Fairness Hearing.

Objectors intend to present argument and evidence at the Fairness Hearing set for November 20, 2018 at 10:00am. Based on the evidence presented, and for all of the foregoing reasons, Objectors will request that this Court reject the putative *Sefcovic* Settlement.

Respectfully submitted this 6th day of November, 2018.

By: /s/ Nathan A. Keever
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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of November, 2018, I mailed and filed the foregoing electronically with the Clerk of the Court using the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO
1/29/2019
JEFFREY P. COLWELL, CLERK

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 17-cv-01990-MEH

ELNA SEFCOVIC, LLC, a Colorado limited liability company, WHITE RIVER ROYALTIES, LLC, JUHAN, LP, a Colorado limited partnership, and ROY ROYALTY, INC., individually and on behalf of all others similarly situated,

Plaintiffs,

v.

TEP ROCKY MOUNTAIN, LLC,

Defendant.

**SECOND AMENDED CLASS ACTION
COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiffs Elna Sefcovic, LLC, (“Sefcovic”), White River Royalties, LLC (“White River”), Juhan, LP, and Roy Royalty, Inc. (“Roy Royalty”), for themselves and on behalf of the four subclasses described below, with the written consent of the attorneys for Defendant TEP Rocky Mountain, LLC (“TEP”), for their second amended class action complaint against TEP, allege:

JURISDICTION, VENUE, AND PARTIES

1. Plaintiff Sefcovic is a Colorado limited liability company, with its principal place of business located at 1972 South Grant Street, Denver, Colorado 80210. The members of Sefcovic are Valent Lee Sefcovic, Catherine Rose Chase, Fred L. Sefcovic, Felix Alan Sefcovic, Robert S. Sefcovic, Mary M. Burns, Debra A. Anderson, and Wynona G. Mahaffey.

2. Plaintiff White River is a Colorado limited liability company, with its principal place of business located at 4194 South Valentia Street, Denver, Colorado 80210. The managing member of White River is Susan J. Jerman.

3. Plaintiff Juhan, LP is a Colorado limited partnership, with its principal place of business located at 2440 N. Coyote Dr., Suite #121, Tucson, Arizona 85745. The general partner of Juhan, LP is Kathryn C. Juhan, who is a citizen of the State of Arizona, residing at 2440 N. Coyote Dr., Suite #121, Tucson, Arizona 85745.

4. Plaintiff Roy Royalty is an Oklahoma corporation, with its principal place of business located at P.O. Box 3681, Boys Town, Nebraska 68010.

5. Defendant TEP is a Delaware limited liability company, with its principal place of business located at 4828 Loop Central Drive, Suite 900, Houston, Texas 77081. TEP was formerly known as WPX Energy Rocky Mountain, LLC, as Williams Production RMT Company, LLC, and as Williams Production RMT Company.

6. Jurisdiction exists in this action pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d), because: (a) this is a Fed.R.Civ.P. 23(b)(3) class action involving more than 100 persons; (b) multiple members of the proposed subclasses are citizens of a state different from that of TEP; and (c) the aggregate amount in controversy exceeds the sum of \$5,000,000, exclusive of interest and costs.

7. Venue is appropriate in this Court because TEP properly removed this action to this Court under 28 U.S.C. § 1446(a). The Plaintiffs did not contest removal.

**GENERAL DESCRIPTION OF THE CLAIMS ASSERTED
AGAINST TEP**

8. This class action litigation involves the claims of the three named Plaintiffs and the members of the four subclasses, as defined below, that TEP has underpaid royalties owed to them

under numerous leases and overriding royalty agreements which are subject to certain future royalty payment provisions which are set forth in the class settlement agreement approved in 2008 by the Garfield County District Court in *Lindauer v. Williams Production RMT Co.*, Case No. 2006CV317 (“the *Lindauer* Class Settlement Agreement”).

9. Since July 1, 2011, the Plaintiffs and the defined Subclasses were not properly paid royalties pursuant to their leases or overriding royalty agreements (collectively, “Royalty Instruments”) which are subject to the *Lindauer* Class Settlement Agreement. TEP underpaid royalties to the defined Subclasses on natural gas production, including natural gas liquids extracted therefrom, sold by TEP (or those acting on TEP’s behalf) from wells subject to the Royalty Instruments at issue.

SUBCLASS I DEFINITION

10. Plaintiffs Sefcovic and White River bring this action on behalf of themselves and the Subclass (“Subclass I”) defined as follows:

All persons and entities to whom TEP has paid royalties, and deducted postproduction costs from those royalties, including owners whose royalties currently are held in suspense, since July 1, 2011, on natural gas production from any well subject to the oil and gas lease agreements which the settling parties in the *Lindauer* Settlement identified as either Category 2 or Category 3 royalty instruments. (collectively the “Subclass I Leases”).

FACTUAL ALLEGATIONS RELEVANT TO THE CLAIMS OF SEFCOVIC, WHITE RIVER, AND THE MEMBERS OF SUBCLASS I

11. On July 15, 2002, Elna Gay Sefcovic, as Lessor, entered into an Oil and Gas Lease with Petrogulf Corporation, as Lessee (“Sefcovic Lease Agreement”). TEP has subsequently been assigned the rights and obligations of Lessee Petrogulf Corporation under the Sefcovic Lease Agreement. Subsequent to the initial payment of royalties to Elna Gay Sefcovic under the Sefcovic

Lease Agreement, Sefcovic was assigned all of the Lessor's rights and interests under the Sefcovic Lease Agreement.

12. The applicable royalty provision in the Sefcovic Lease Agreement obligates TEP:

[T]o pay Lessor a sum equal to fifteen percent (15%) of the net proceeds received from the sale of such produced substances where the same is sold at the mouth of the well or, if not sold at the mouth of the well, then fifteen percent (15%) of the market value thereof at the mouth of the well, but in no event more than fifteen percent (15%) of the actual amount received by Lessee for the sale thereof. Without limiting the foregoing, it is expressly agreed that Lessee shall have the right to deduct from Lessor's royalty on any gas produced hereunder the royalty share of costs, if any, of transportation to the point of delivery to the purchaser of such production and all applicable production, severance, and other taxes.

13. On November 21, 2005, White River Royalties, LLC, as Lessor, entered into an Oil and Williams Production RMT Company, as Lessee ("White River Lease Agreement"). TEP has subsequently been assigned the rights and obligations of Lessee Williams Production RMT Company under the White River Lease Agreement.

14. The applicable royalty provision in the White River Lease Agreement obligates TEP:

[T]o pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, seventeen and-a-half percent of the net proceeds delivered from such sale or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of seventeen and-a-half percent of such gas and casinghead gas from the mouth of the well, lessor's interest, in either case, to bear seventeen and-a-half percent of the cost of transporting such gas and casinghead gas from the mouth of the well to the point of sale.

15. Under the Future Royalty Payment provisions of the *Lindauer* Class Settlement Agreement, the leases which are subject to that class settlement were broken down into designated

“categories” for purposes of determining the applicable future royalty payment provisions which took effect after the Effective Date of that class settlement, which Effective Date was in 2008.

16. The *Lindauer* Class Settlement Agreement categorizes the Sefcovic Lease Agreement and the White River Lease Agreement as Category 2 Royalty Instruments.

17. All of the other Leases in Subclass I were categorized as either Category 2 or Category 3 Leases by the settling parties in the *Lindauer* Class Settlement Agreement, which, as Exhibit 1 reflects, were lease agreements which expressly permitted the Lessee to deduct, in calculating royalties, only certain transportation costs from the mouth of the well to the point of delivery to the gas purchaser.

18. The *Lindauer* Class Settlement Agreement provides that with respect to Subclass I Leases, the settlement class members who receive royalties under such Leases are not prohibited from challenging any deductions which TEP may take in the calculation and payment of royalties under such Leases.

19. As of July 1, 2011, Defendant TEP, which was then operating under the name of WPX Energy Rocky Mountain, LLC, was producing gas from wells subject to the Subclass I Leases, and was obligated to pay royalties to the members of Subclass I. TEP has continued to produce gas from wells subject to the Subclass I Leases since July 1, 2011, and continuing to the present.

20. Effective October 1, 2015, controlling interest in WPX Energy Rocky Mountain, LLC was sold to TEP, and WPX Rocky Mountain Energy, LLC changed its name to TEP. Thus, any references in this Complaint to TEP also refers to the names under which TEP operated prior to October 1, 2015, including WPX Energy Rocky Mountain, LLC, Williams Production RMT Company, LLC, and Williams Production RMT Company.

21. Under the Sefcovic Lease Agreement, the White River Lease Agreement, and the other Subclass I Leases, TEP has the implied duty to market the gas produced under such Leases, and to pay royalties based upon prices received for marketable natural gas products at the location of the first commercial market, less only the reasonable cost of transporting the gas from the mouth of the well to the point of sale.

22. TEP has breached its royalty payment obligations to Sefcovic, White River, and the other members of Subclass I under the Subclass I Leases by engaging in a common royalty calculation method in which it: (1) failed to pay royalties based upon first commercial market prices for residue gas which was sold to third party purchasers after it was placed into a marketable condition, less only a reasonable transportation cost deduction to the point of sale; and (2) failed to pay royalties based upon first commercial market prices for marketable natural gas liquid products, less only a reasonable transportation cost deduction to the point of sale.

23. TEP, in underpaying the royalties owed to Sefcovic, White River, and the other members of Subclass I, has consistently taken improper post-production deductions from the selling price of residue gas and marketable natural gas liquid products, including processing, gathering, and fuel costs.

CLASS ACTION ALLEGATIONS RELATED TO SUBCLASS I

24. Plaintiffs Sefcovic and White River bring this action on behalf of themselves and the members of Subclass I, as defined above, pursuant to Fed.R.Civ.P. 23(b)(3), and requests this Court to certify that the claims of the members of Subclass I should be maintained as a Fed.R.Civ.P. 23(b)(3) class action. As described below, each of the six requirements for certification of a Rule 23(b)(3) class action is satisfied with respect to Subclass I.

25. The membership of Subclass I is so numerous that joinder of all such persons in this litigation is impracticable. There are more than 500 members of Subclass I.

26. There are numerous questions of law and fact which are common to the royalty underpayment claims of the members of Subclass I, including:

- A. Whether TEP had a common obligation to pay royalties to Sefcovic, White River, and the members of Subclass I based upon prices received at the first commercial market for residue gas and marketable natural gas liquid products, less only a reasonable transportation cost deduction.
- B. Whether TEP had a common obligation to pay royalties based on the weighted average sales price of residue and marketable natural gas liquid products after they were fractionated, less only a reasonable transportation cost deduction.
- C. Whether TEP failed to pay royalties to Subclass I members based upon the weighted average sales price of residue gas, less only a reasonable transportation cost deduction.
- D. Whether TEP improperly deducted post-production costs other than a reasonable transportation deduction in the calculation of royalties paid to the Subclass I members.
- E. Whether TEP failed to pay royalties based upon the weighted average sales price of marketable natural gas liquid products—ethane, propane, butane, isobutane, and natural gasoline—less only a reasonable transportation cost deduction.

24. Plaintiffs Sefcovic's and White River's claims are typical of the claims of the members of Subclass I.

25. Plaintiffs Sefcovic, White River, and their attorneys will fairly and adequately protect the interests of Subclass I.

26. The common questions of law and fact regarding the claims of Subclass I predominate over any individual questions which may exist.

27. The maintenance of this case as a Fed.R.Civ.P. 23(b)(3) class action on behalf of the defined Subclass I is superior to other available methods for the fair and efficient adjudication of the claims of the members of Subclass I against TEP. It would be unduly burdensome for this Court to separately adjudicate numerous individual lawsuits by the members of Subclass I, every one of which would present the same issues that are presented in this class action lawsuit.

SUBCLASS II DEFINITION

28. Plaintiff Juhan, LP brings this action on behalf of itself and the subclass (“Subclass II”) defined as follows:

All persons and entities to whom TEP has paid royalties and/or overriding royalties, and deducted post-production costs from those royalties and/or overriding royalties, including owners whose royalties currently are held in suspense, since July 1, 2011, on natural gas production from any well subject to the oil and gas lease agreements which the settling parties in the Lindauer Settlement identified as Category 5 instruments, and that currently are identified by TEP as Category 5 instruments. (collectively, “the Subclass II Royalty Instruments”).

FACTUAL ALLEGATIONS RELEVANT TO THE CLAIMS OF PLAINTIFF JUHAN, LP AND THE MEMBERS OF SUBCLASS II

29. Plaintiff Juhan, LP is the successor in interest to the Lessor’s interests in a number of Leases which the settling parties in the *Lindauer* Class Settlement Agreement identified as Category 5 Royalty Instruments, including the following leases which the settling parties described as follows:

- A. Lease No. 255, dated 10/17/55, Joe T. Juhan, “proceeds from the Sale of the gas, as such for gas from wells where gas only is found.”
- B. Lease No. 258, dated 1/15/1958, Joe T. Juhan, “proceeds from the Sale of the gas, as such for gas from wells where gas only is found.”
- C. Lease No. 314, dated 2/9/1981, Joseph Paul Juhan, “from each well where only gas is found... the market value at the well for such gas used off the premises.”

D. Lease No. 430, dated 10/29/1986, Joseph P. Juhan, “on gas marketed from each well where only gas is found... if marketed by the lessee off the leased premises, then _____ of its market value at the well.”

E. Lease No. 6108, dated 11/1961, Joe T. Juhan, “_____ of the proceeds from the sale of the gas.”

These leases are hereafter sometimes referred to as “the Juhan, LP leases.”

30. Under the express terms of the *Lindauer* Class Settlement Agreement, TEP, in paying royalties after July 1, 2011 to Juhan, LP and the members of Subclass II, under the oil and gas leases and overriding royalty agreements designated as Category 5 Royalty Instruments, is prohibited from taking any deductions from the selling price or market value of residue gas and marketable natural gas liquids, except for certain deductions described in Paragraphs 4.4, 4.5, and 4.6 of the *Lindauer* Class Settlement Agreement.

31. Effective July 1, 2011, Defendant TEP, which was then operating under the name of WPX Energy Rocky Mountain, LLC, was producing gas from wells subject to the Subclass II Royalty Instruments, and was obligated to pay royalties to members of Subclass II. TEP has continued to produce gas from wells subject to the Subclass II Royalty Instruments since July 1, 2011, and continuing to the present.

32. Effective October 1, 2015, controlling interest in WPX Energy Rocky Mountain, LLC was sold to TEP, and WPX Rocky Mountain Energy, LLC changed its name to TEP. Thus, any references in this Complaint to TEP also refers to the names under which TEP operated prior to October 1, 2015, including WPX Energy Rocky Mountain, LLC, Williams Production RMT Company, LLC, and Williams Production RMT Company.

33. TEP, in its calculation and payment of royalties paid to Juhan, LP and the members of Subclass II, has breached its contractual obligations to Juhan, LP and the members of Subclass II under the *Lindauer* Class Settlement Agreement by: (1) deducting various post-production costs,

including gathering and fuel deductions, which it is not permitted to deduct under the Future Royalty Payments provisions of the *Lindauer* Class Settlement Agreement applicable to Category 5 Royalty Instruments; (2) failing to properly account for the correct value of the natural gas liquid components—ethane, propane, normal butane, iso-butane and natural gasoline—in the manner required under the terms of the *Lindauer* Class Settlement Agreement; (3) taking processing deductions in amounts greater than those permitted under Paragraph 4.4 of the *Lindauer* Class Settlement Agreement; and (4) failing to properly account for the selling price of the residue gas which came from the Subclass II members’ wells, in breach of the *Lindauer* Class Settlement Agreement.

CLASS ACTION ALLEGATIONS RELATED TO SUBCLASS II

34. Plaintiff Juhan, LP brings this action on behalf of itself and the members of Subclass II, as defined above, pursuant to Fed.R.Civ.P. 23(b)(3), and requests this Court to certify that the claims of the members of Subclass II should be maintained as a Fed.R.Civ.P. 23(b)(3) class action. As described below, each of the six requirements for certification of a Rule 23(b)(3) class action is satisfied with respect to Subclass II.

35. The membership of Subclass II is so numerous that joinder of all such persons in this litigation is impracticable. There are more than three hundred members of Subclass II.

36. There are numerous questions of law or fact which are common to the royalty underpayment claims of Juhan, LP and the members of Subclass II, including:

- A. Whether TEP had an obligation to pay royalties based on the weighted average sales price of residue gas and marketable natural gas liquid products after they were fractionated, less only the deductions allowed under Paragraphs 4.4, 4.5 and 4.6 of the *Lindauer* Class Settlement Agreement.
- B. Whether TEP failed to pay royalties to Subclass II members based upon the weighted average sales price of residue gas, less

only the above-referenced deductions allowed under the *Lindauer* Class Settlement Agreement.

- C. Whether TEP, in calculating royalties paid to Juhan, LP and the members of Subclass II since July 1, 2011, has taken post-production cost deductions which it is not permitted to take under the Future Royalty Payment provisions of the *Lindauer* Class Settlement Agreement.
- D. Whether TEP failed to pay royalties to the Subclass II members based upon the appropriate value of marketable natural gas liquid products—ethane, propane, butane, isobutane, and natural gasoline—less only the above-referenced deductions which are permitted under the *Lindauer* Class Settlement Agreement.

37. Plaintiff Juhan, LP's claims are typical of the claims of the members of Subclass II.

38. Plaintiff Juhan, LP and its attorneys will fairly and adequately protect the interests of Subclass II.

39. The questions of law and fact common to the claims of Plaintiffs Juhan, LP and Subclass II predominate over any individual issues of law or fact which may exist.

40. The maintenance of this case as a Fed.R.Civ.P. 23(b)(3) class action on behalf of the members of Subclass II is superior to other available methods for the fair and efficient adjudication of the claims of the Subclass II members against TEP. It would be unduly burdensome for this Court to individually adjudicate numerous individual lawsuits by the members of Subclass II, each of which would present the same issues of law and fact that are presented in this class action lawsuit.

SUBCLASS III DEFINITION

41. Plaintiffs Roy Royalty and Juhan, LP, bring this action on behalf of themselves and the subclass ("Subclass III") defined as follows:

All persons and entities to whom TEP has paid royalties and/or overriding royalties, and deducted post-production costs from those royalties and/or overriding royalties, including owners whose royalties currently are held in suspense, since July 1, 2011, on natural gas production from any well subject to the oil and gas lease agreements which the settling parties in the *Lindauer* Settlement identified as Category 11 instruments, and that currently are identified by TEP as Category 11 instruments. (collectively, “the Subclass III Royalty Instruments”).

**FACTUAL ALLEGATIONS RELEVANT TO THE CLAIMS OF
PLAINTIFF ROY ROYALTY, JUHAN, LP, AND THE MEMBERS OF SUBCLASS III**

42. On August 1, 1981, Roy Royalty, as Lessor, entered into an Oil and Gas Lease with Northwest Exploration Company, as Lessee (“Roy Royalty Lease Agreement”). TEP has subsequently been assigned the rights and obligations of Lessee Northwest Exploration Company under the Roy Royalty Lease Agreement.

43. The applicable royalty provision in the Roy Royalty Lease Agreement obligates TEP:

2nd. To pay Lessor one-eighth (1/8) of the gross proceeds each year, payable quarterly, for the gas from each well where gas only is found, while the same is being used off the premises, and if used in the manufacture of gasoline a royalty of one-eighth (1/8), payable monthly at the prevailing market rate for gas.

44. On August 31, 1988, Kathryn P. Chalfin, Personal Representative of the Estate of Joseph Paul Juhan, as Lessor, entered into an Oil and Gas Lease with Barrett Energy Company, as Lessee (“Juhan Category 11 Lease Agreement”). TEP has subsequently been assigned the rights and obligations of Lessee Barrett Energy Company under the Juhan Category 11 Lease Agreement. Subsequent to the initial payment of royalties to Kathryn P. Chalfin, Personal Representative of the Estate of Joseph Paul Juhan, under the Juhan Category 11 Lease Agreement, Juhan, LP was assigned a portion of the Lessor’s rights and interests under the Juhan Category 11 Lease Agreement.

45. The applicable royalty provision in the Juhan Category 11 Lease Agreement obligates TEP:

2nd. To pay Lessor one-eighth (1/8) gross proceeds each year, payable quarterly, while the same is being used off the premises for the gas from each well where gas only is found, while the same is being used off the premises. . .

46. The Roy Royalty Lease Agreement and the Juhan Category 11 Lease Agreement are two of the Category 11 Royalty Instruments in the *Lindauer* Class Settlement Agreement.

47. Under the express terms of the *Lindauer* Class Settlement Agreement, TEP, in paying royalties after July 1, 2011 to Roy Royalty, Juhan LP, and the members of Subclass III, under the oil and gas leases designated as Category 11 Royalty Instruments, is prohibited from taking any deductions from the selling price or market value of residue gas and marketable natural gas liquids, except for certain transportation and fractionation deductions permitted under Paragraph 4.6 of the *Lindauer* Class Settlement Agreement.

48. Effective July 1, 2011, Defendant TEP, which was then operating under the name of WPX Energy Rocky Mountain, LLC, was producing gas from wells subject to the Subclass III Royalty Instruments, and was obligated to pay royalties to members of Subclass III in accordance with the terms of the *Lindauer* Class Settlement Agreement. TEP has continued to produce gas from wells subject to the Subclass III Royalty Instruments since July 1, 2011, and continuing to the present.

49. Effective October 1, 2015, controlling interest in WPX Energy Rocky Mountain, LLC was sold to TEP, and WPX Rocky Mountain Energy, LLC changed its name to TEP. Thus, any references in this Complaint to TEP also refers to the names under which TEP operated prior to October 1, 2015, including WPX Energy Rocky Mountain, LLC, Williams Production RMT Company, LLC, and Williams Production RMT Company.

50. TEP, in its calculation and payment of royalties paid to Roy Royalty, Juhan, LP, and the members of Subclass III, has breached its contractual obligations to Roy Royalty, Juhan, LP, and the members of Subclass III under the *Lindauer* Class Settlement Agreement by: (1) deducting various post-production costs, including gathering, fuel, and processing costs, which TEP is not permitted to deduct under the Future Royalty Payments provisions of the *Lindauer* Class Settlement Agreement applicable to Category 11 Royalty Instruments; and (2) failing to properly account for the correct value of the natural gas liquid components—ethane, propane, normal butane, iso-butane and natural gasoline—in the manner required under the terms of the *Lindauer* Class Settlement Agreement applicable to Category 11 Royalty Instruments.

CLASS ACTION ALLEGATIONS RELATED TO SUBCLASS III

51. Plaintiffs Roy Royalty and Juhan, LP, bring this action on behalf of themselves and the members of Subclass III, as defined above, pursuant to Fed.R.Civ.P. 23(b)(3), and requests this Court to certify that the claims of the members of Subclass III should be maintained as a Fed.R.Civ.P. 23(b)(3) class action. As described below, each of the six requirements for certification of a Rule 23(b)(3) class action is satisfied with respect to Subclass III.

52. The membership of Subclass III is so numerous that joinder of all such persons in this litigation is impracticable. There are more than three hundred members of Subclass III.

53. There are numerous questions of law or fact which are common to the royalty underpayment claims of Roy Royalty, Juhan, LP, and the members of Subclass III, including:

- A. Whether TEP had an obligation to pay royalties based on the weighted average sales price of residue gas and marketable natural gas liquid products after they were fractionated, less only the deductions allowed under Paragraph 4.6 of the *Lindauer* Class Settlement Agreement.
- B. Whether TEP, in calculating royalties paid to Roy Royalty and the members of Subclass III, took post-production cost

deductions which it is not permitted to take under the Future Royalty Payment provisions of the *Lindauer* Class Settlement Agreement.

- C. Whether TEP failed to pay royalties based upon the appropriate value of marketable natural gas liquid products—ethane, propane, butane, isobutane, and natural gasoline—less only the above-referenced deductions which are permitted under the *Lindauer* Class Settlement Agreement.

54. Plaintiffs Roy Royalty’s and Juhan, LP’s claims against TEP are typical of the claims of the members of Subclass III against TEP.

55. Plaintiffs Roy Royalty, Juhan, LP, and their attorneys will fairly and adequately protect the interests of the members of Subclass III.

56. The questions of law and fact common to the claims of Plaintiff Roy Royalty, Juhan, LP, and the members of Subclass III predominate over any individual issues of law or fact which may exist.

57. The maintenance of this case as a Fed.R.Civ.P. 23(b)(3) class action on behalf of the members of Subclass III is superior to other available methods for the fair and efficient adjudication of the claims of the Subclass III members against TEP. It would be unduly burdensome for this Court to individually adjudicate numerous individual lawsuits by the members of Subclass III, each of which would present the same issues of law and fact that are presented in this class action lawsuit.

SUBCLASS IV DEFINITION

58. Plaintiff Juhan, LP, bring this action on behalf of itself and the subclass (“Subclass IV”) defined as follows:

All persons and entities to whom TEP has paid royalties and/or overriding royalties, and deducted post-production costs from those royalties and/or overriding royalties, including owners whose royalties currently are held in suspense, since July 1, 2011, on

natural gas production from any well subject to the oil and gas lease agreements which the settling parties in the *Lindauer* Settlement identified as Category 5 or 11 Royalty Instruments, but that currently are not identified by TEP as exclusively Category 5 or Category 11 Royalty Instruments.

**FACTUAL ALLEGATIONS RELEVANT TO THE CLAIMS OF
PLAINTIFF JUHAN, LP, AND THE MEMBERS OF SUBCLASS IV**

59. The allegations contained in Paragraphs 1 through 58, inclusive, are restated and incorporated by reference herein.

60. TEP has acknowledged that there are sixty-four (64) TEP royalty owners, including Juhan, LP, which the *Lindauer* Settlement identified with either Category 5 or Category 11 Royalty Instruments that are not currently identified by TEP as exclusively Category 5 or Category 11 Royalty Instruments. These sixty-four (64) royalty owners, including Juhan, LP, represent Subclass IV. Juhan, LP is therefore a member and proper class representative of Subclass IV.

61. Effective July 1, 2011, Defendant TEP, which was then operating under the name of WPX Energy Rocky Mountain, LLC, was producing gas from wells subject to the Subclass III Royalty Instruments, and was obligated to pay royalties to members of Subclass IV in accordance with the terms of the *Lindauer* Class Settlement Agreement. TEP has continued to produce gas from wells subject to the Subclass IV Royalty Instruments since July 1, 2011, and continuing to the present.

62. Effective October 1, 2015, controlling interest in WPX Energy Rocky Mountain, LLC was sold to TEP, and WPX Rocky Mountain Energy, LLC changed its name to TEP. Thus, any references in this Complaint to TEP also refers to the names under which TEP operated prior to October 1, 2015, including WPX Energy Rocky Mountain, LLC, Williams Production RMT Company, LLC, and Williams Production RMT Company.

63. TEP, in its calculation and payment of royalties paid to Juhan, LP, and the members of Subclass IV, has breached its contractual obligations to Juhan, LP, and the members of Subclass IV under the *Lindauer* Class Settlement Agreement by deducting certain post-production costs, including gathering, fuel, and processing costs, which TEP is not permitted to deduct under the Future Royalty Payments provisions of the *Lindauer* Class Settlement Agreement applicable to Category 11 Royalty Instruments.

CLASS ACTION ALLEGATIONS RELATED TO SUBCLASS IV

64. Plaintiff Juhan, LP, bring this action on behalf of itself and the members of Subclass IV, as defined above, pursuant to Fed.R.Civ.P. 23(b)(3), and requests this Court to certify that the claims of the members of Subclass IV should be maintained as a Fed.R.Civ.P. 23(b)(3) class action. As described below, each of the six requirements for certification of a Rule 23(b)(3) class action is satisfied with respect to Subclass IV.

65. The membership of Subclass IV is so numerous that joinder of all such persons in this litigation is impracticable. There are sixty-four (64) members of Subclass IV.

66. There are numerous questions of law or fact which are common to the royalty underpayment claims of Juhan, LP, and the members of Subclass IV, including:

- A. Whether TEP had an obligation to pay royalties based on the weighted average sales price of residue gas and marketable natural gas liquid products after they were fractionated, less only the deductions allowed under Paragraph 4.6 of the *Lindauer* Class Settlement Agreement.
- B. Whether TEP, in calculating royalties paid to Juhan, LP and the members of Subclass IV, took post-production cost deductions which it is not permitted to take under the Future Royalty Payment provisions of the *Lindauer* Class Settlement Agreement.

67. Plaintiff Juhan, LP's claims against TEP are typical of the claims of the members of Subclass IV against TEP.

68. Plaintiff Juhan, LP and its attorneys will fairly and adequately protect the interests of the members of Subclass IV.

69. The questions of law and fact common to the claims of Juhan, LP and the members of Subclass IV predominate over any individual issues of law or fact which may exist.

70. The maintenance of this case as a Fed.R.Civ.P. 23(b)(3) class action on behalf of the members of Subclass IV is superior to other available methods for the fair and efficient adjudication of the claims of the Subclass IV members against TEP. It would be unduly burdensome for this Court to individually adjudicate numerous individual lawsuits by the members of Subclass IV, each of which would present the same issues of law and fact that are presented in this class action lawsuit.

FIRST CLAIM FOR RELIEF

TEP's Breach of the Subclass I Royalty Instruments

71. The allegations contained in Paragraphs 1 through 70, inclusive, are restated and incorporated by reference herein.

72. Defendant TEP has failed to properly pay royalties to Plaintiffs Sefcovic, White River, and the members of Subclass I since the effective date of the *Lindauer* Class Settlement Agreement by: (1) failing to pay royalties based upon first commercial market prices for residue gas which was sold to third party purchasers after it was placed into a marketable condition, less only a reasonable transportation cost deduction; and (2) failing to pay royalties based upon first commercial market prices for marketable natural gas liquid products, after such natural gas liquid products are fractionated into marketable natural gas liquids, such as ethane, propane, butane, iso-

butane, and natural gasoline, less only a reasonable transportation cost deduction to the point of sale.

73. Defendant TEP has breached the provisions of the applicable Subclass I Leases, in the calculation of royalties paid to the Subclass I members, by consistently taking improper post-production deductions from the selling price of residue gas and marketable natural gas liquid products, beyond the reasonable transportation cost deduction which it is permitted to take with respect to the Subclass I Leases.

74. Plaintiffs Sefcovic, White River, and the members of Subclass I have sustained substantial damages as a direct consequence of such breaches of the Subclass I Leases, and are entitled to judgment in their favor and against TEP in an amount to be determined at trial.

SECOND CLAIM FOR RELIEF

TEP's Breach of the Subclass II Royalty Instruments

75. The allegations contained in Paragraphs 1 through 74, inclusive, are restated and incorporated by reference herein.

76. Defendant TEP has breached its contractual obligations in calculating royalties paid to Plaintiff Juhan, LP and the members of Subclass II under the Category 5 Royalty Instruments since the effective date of the *Lindauer* Class Settlement Agreement by: (1) deducting various post-production costs which it is not permitted to deduct under the Future Royalty Payments provisions of the *Lindauer* Class Settlement Agreement applicable to Category 5 Royalty Instruments; (2) failing to properly account for the correct value of the natural gas liquid components in the manner required under the terms of the *Lindauer* Class Settlement applicable to the Category 5 Royalty Instruments; (3) taking processing deductions in amounts greater than those permitted under the terms of the *Lindauer* Class Settlement Agreement applicable to

Category 5 Royalty Instruments; and (4) failing to properly account for the selling price of the residue gas which came from the Subclass II members' wells in the manner required under the terms of the *Lindauer* Class Settlement Agreement applicable to Category 5 Royalty Instruments.

77. Defendant TEP has breached the provisions of the *Lindauer* Class Settlement Agreement by failing to properly calculate and pay royalties to Plaintiff Juhan, LP and the Subclass II members, in the manner described herein.

78. Plaintiff Juhan, LP and Subclass II members have sustained substantial damages as a direct result of such breaches, and are entitled to judgment in their favor and against TEP in an amount to be determined at trial.

THIRD CLAIM FOR RELIEF

TEP's Breach of the Subclass III Royalty Instruments

79. The allegations contained in Paragraphs 1 through 78, inclusive, are restated and incorporated by reference herein.

80. Defendant TEP has breached its contractual obligations in calculating royalties paid to Plaintiffs Roy Royalty, Juhan, LP, and the members of Subclass III under the Category 11 Royalty Instruments since the effective date of the *Lindauer* Class Settlement Agreement by: (1) deducting various post-production costs which it is not permitted to deduct under the Future Royalty Payments provisions of the *Lindauer* Class Settlement Agreement applicable to Category 11 Royalty Instruments, including, but not limited to, gathering, fuel, and processing; and (2) failing to properly account for the correct value of the natural gas liquid components in the manner required under the terms of the *Lindauer* Class Settlement applicable to the Category 11 Royalty Instruments.

81. Defendant TEP has breached the provisions of the *Lindauer* Class Settlement Agreement by failing to properly calculate and pay royalties to the Plaintiffs Roy Royalty, Juhan, LP, and the Subclass III members, in the manner described herein.

82. Plaintiffs Roy Royalty, Juhan, LP, and the Subclass III members have sustained substantial damages as a direct result of such breaches, and are entitled to judgment in their favor and against TEP in an amount to be determined at trial.

FOURTH CLAIM FOR RELIEF

TEP's Breach of the Subclass IV Royalty Instruments

83. The allegations contained in Paragraphs 1 through 82, inclusive, are restated and incorporated by reference herein.

84. Defendant TEP has breached its contractual obligations in calculating royalties paid to Plaintiff Juhan, LP and the members of Subclass IV under the Category 5 and Category 11 Royalty Instruments since the effective date of the *Lindauer* Class Settlement Agreement by: (1) deducting various post-production costs which it is not permitted to deduct under the Future Royalty Payments provisions of the *Lindauer* Class Settlement Agreement applicable to Category 11 Royalty Instruments, including, but not limited to, gathering, fuel, and processing; and (2) failing to properly account for the correct value of the natural gas liquid components in the manner required under the terms of the *Lindauer* Class Settlement applicable to the Category 11 Royalty Instruments.

85. Defendant TEP has breached the provisions of the *Lindauer* Class Settlement Agreement by failing to properly calculate and pay royalties to the Plaintiff Juhan, LP and the Subclass IV members, in the manner described herein.

86. Plaintiff Juhan, LP and the Subclass III members have sustained substantial damages as a direct result of such breaches, and are entitled to judgment in their favor and against TEP in an amount to be determined at trial.

FIFTH CLAIM FOR RELIEF

Claim for Declaratory Relief

87. The allegations contained in Paragraphs 1 through 86, inclusive, are restated and incorporated by reference herein.

88. A controversy exists between TEP and Plaintiffs and the members of Subclasses I and IV concerning the manner in which royalties on natural gas production from the wells at issue should be paid to Plaintiffs and the members of Subclasses I and IV, as described above, with respect to royalties to be paid by TEP to such persons after May 31, 2018.

89. Plaintiffs and the members of the Subclasses I and IV request that a declaratory judgment be entered determining the full extent of TEP's royalty payment obligations to the members of Subclasses I and IV under the *Lindauer* Class Settlement Agreement with respect to the royalties to be paid after May 31, 2018, in accordance with the parties' Class Settlement Agreement.

90. The claims for declaratory relief of the Plaintiffs and the members of Subclasses I and IV, should be certified for class action treatment.

91. Pursuant to Fed.R.Civ.P. 57, this Court should enter its order for the declaratory relief requested above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the members of Subclass I, Subclass II, Subclass III, and Subclass IV, pray for the following relief:

A. An Order that the claims asserted herein by Plaintiffs Sefcovic and White River on behalf of themselves and the members of Subclass I should be certified as a Fed.R.Civ.P. 23(b)(3) class action, that Plaintiff Sefcovic be appointed the class representative for Subclass I, and that Plaintiff Sefcovic's attorneys be appointed Class Counsel for Subclass I;

B. An Order that the claims asserted herein by Plaintiff Juhan, LP on behalf of itself and the members of Subclass II should be certified as a Fed.R.Civ.P. 23(b)(3) class action, that Plaintiff Juhan, LP be appointed the class representative for Subclass II, and that Plaintiff Juhan LP's attorneys be appointed Class Counsel for Subclass II;

C. An Order that the claims asserted herein by Plaintiffs Roy Royalty and Juhan, LP on behalf of themselves and the members of Subclass III should be certified as a Fed.R.Civ.P. 23(b)(3) class action, that Plaintiffs Roy Royalty and Juhan, LP be appointed the class representatives for Subclass III, and that Plaintiffs Roy Royalty's and Juhan, LP's attorneys be appointed Class Counsel for Subclass III;

D. An Order that the claims asserted herein by Plaintiff Juhan, LP on behalf of itself and the members of Subclass IV should be certified as a Fed.R.Civ.P. 23(b)(3) class action, that Plaintiff Juhan, LP be appointed the class representative for Subclass IV, and that Plaintiff Juhan, LP's attorneys be appointed Class Counsel for Subclass IV;

E. A judgment in favor of Plaintiffs Sefcovic, White River, and the members of Subclass I against TEP for damages sustained as a result of TEP's breaches of the Subclass I Leases, in an amount to be proved at trial;

F. A judgment in favor of Plaintiff Juhan, LP and the members of Subclass II against TEP for damages sustained as a result of each of TEP's breaches of the Subclass II Royalty Instruments, in an amount to be proved at trial;

G. A judgment in favor of Plaintiffs Roy Royalty, Juhan, LP, and the members of Subclass III against TEP for damages sustained as a result of TEP's breaches of the Subclass III Royalty Instruments, in an amount to be proved at trial;

H. A judgment in favor of Plaintiff Juhan, LP and the members of Subclass IV against TEP for damages sustained as a result of TEP's breaches of the Subclass IV Royalty Instruments, in an amount to be proved at trial;

I. An award of prejudgment interest on all royalty underpayments, at the Colorado statutory rate of eight percent per annum, compounded annually, pursuant to C.R.S. § 5-12-102(1)(b);

J. An award of court costs; and

K. A declaratory judgment which sets forth the full extent of TEP's royalty payment obligations to Subclasses I and IV on the future royalty payments made after May 31, 2018, in accordance with the parties' Settlement Agreement.

JURY DEMAND

PLAINTIFFS DEMAND A JURY TRIAL ON ALL ISSUES SO TRIABLE.

DATED: October 26, 2018

/s/ George A. Barton
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Stacy A. Burrows, Co. Bar No. 49199
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**ATTORNEYS FOR PLAINTIFFS
AND THE PROPOSED SUBCLASSES**

CERTIFICATE OF SERVICE

I hereby certify that on October 26, 2018, I filed the foregoing electronically with the Clerk of the Court using the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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**ATTORNEYS FOR DEFENDANT
TEP ROCKY MOUNTAIN, LLC**

/s/ George A. Barton

UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

ELNA SEFCOVIC, LLC	.	Case No. 17-cv-1990-MEH
	.	
Plaintiff,	.	
	.	
vs.	.	Alfred A. Arraj Courthouse
	.	901 19th Street
TEP ROCKY MOUNTAIN, LLC,	.	Denver, CO 80294
	.	
Defendant.	.	February 20, 2019
.	.	1:30 p.m.

**TRANSCRIPT OF PROCEEDINGS HELD BEFORE THE HONORABLE
MICHAEL E. HEGARTY, UNITED STATES MAGISTRATE JUDGE**

APPEARANCES:

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For the Defendant:	Holland & Hart, LLP - Denver Christopher Chrisman, Esq. P.O. Box 8749 555 17th Street, Suite 3200 Denver, CO 80201-8749
For the Objectors:	Dufford Waldeck Milburn & Krohn Nathan A. Keever, Esq. 744 Horizon Court, Suite 300 Grand Junction, CO 81504
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App. 370

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EXHIBITS

IDENTIFIED

ADMITTED

For the Plaintiff:

None

For the Defendant:

None

1 (Time Noted: 1:30 p.m.)

2 THE COURT CLERK: All rise. Court is in session.

3 THE COURT: Please be seated. Case No. 17-cv-1990,
4 Sefcovic vs. TEP. Make your appearances, please.

5 MR. BARTON: Good afternoon, Your Honor, George
6 Barton for the Plaintiffs and for the settlement class.

7 MR. CHRISMAN: Good afternoon, Your Honor, Chris
8 Chrisman for the Defendant.

9 THE COURT: Okay.

10 MR. KEEVER: Nathan Kever, Your Honor, for the
11 Objectors.

12 THE COURT: Thank you. Just some administrative
13 things first.

14 So I wanted to know, I guess, from Mr. Kever, having
15 known about the hearing that was scheduled for today, which I
16 believe was set on January 29th, is it reasonable for you to
17 have filed a 21, 22-page brief with attachments after I go home
18 last night and expect me to know it today? What was your
19 thinking in doing that? You need to use the microphone,
20 please.

21 MR. KEEVER: My thought really, Your Honor, was that
22 most of what was set out in that trial brief would set out the
23 law for you so that you could utilize that with the evidence
24 that we would present today and that this wouldn't be something
25 that you would necessarily help you with today's hearing but

1 would be something that might be helpful to you in reaching a
2 ruling in this matter.

3 THE COURT: But don't you think full knowledge of the
4 law would assist me in asking the right questions in the first
5 place because if I want to read your brief and it reveals
6 something new tomorrow or a week from now and I realize I
7 should have asked them some different questions or pressed
8 harder in certain areas, you don't think that's the value of a
9 trial brief?

10 MR. KEEVER: I agree with you, Your Honor. It would
11 be more valuable to you if it would be at a time when you would
12 have full opportunity to review it.

13 THE COURT: Right and why did you do it last night
14 when you -- did you know that I set this matter January 29th?

15 MR. KEEVER: I did, Your Honor, and I filed a reply
16 brief to their objections. They didn't file their objections
17 until I believe -- I don't have that date in front of me -- but
18 I filed a reply brief to their response to our objections and
19 then thought, and that was kept within the 15-page page limit
20 and then thought it might be useful to the Court to have it set
21 out in a trial brief.

22 THE COURT: Well, I agree. Nobody can reasonably
23 dispute that or even argue with the length of it if that's as
24 long as it needed to be but you can't expect me to fully
25 appreciate this when it came in last night, you know. I mean,

1 I had a full morning. I just haven't had time to review it so,
2 you know, I guess you're going to have to preserve a record
3 today on your own without my assistance in part because I just,
4 I don't know what you said. You understand?

5 MR. KEEVER: I do, Your Honor.

6 THE COURT: Okay. All right. So how do you want to
7 proceed?

8 MR. BARTON: Your Honor, what I suggest is, I know
9 Your Honor's had significant amount of briefing on this final
10 approval and the objections so I'm prepared to move to the
11 calling of our three witnesses and to do so right away.

12 THE COURT: That's fine. I'd like you to have an
13 opening statement and I'd like you to be able to respond to it
14 though, just to set the tone for the day.

15 MR. BARTON: Sure. Should I proceed on that?

16 THE COURT: Yes.

17 MR. BARTON: Okay. Your Honor, as you know, this is,
18 we are here today on the Plaintiff's and the Defendant's joint
19 motion for final approval of this class settlement and this is
20 a case that has been pending in this court since I believe
21 August of 2017. It was originally filed in state court and
22 removed by the Defendant. It was filed in state court in July
23 of 2017 after a fairly exhaustive investigation on the part of
24 my firm with respect to the claims of the various class members
25 that were described in the original complaint.

1 Since that time there have actually been two
2 additional class complaints that have been submitted to the
3 Court and have been accepted but at this point we are asking
4 the Court to finally approve a class settlement for each of
5 four subclasses that are described in detail in the joint
6 motion for preliminary approval and they are commonly referred
7 to as subclasses 1, 2, 3, and 4. The claims of all subclasses
8 derive from what we alleged was a breach of the state court
9 class settlement agreement in what's commonly referred as the
10 Lindauer (phonetic) Class Action which was pending up in
11 Garfield County and in which a settlement was presented to the
12 Court, a class settlement back in 2008 and in which the
13 Garfield County District Court approved that settlement in
14 2009.

15 Our basic -- we have really, of the four subclasses
16 where three of those subclasses, 2, 3 and 4, there really is no
17 objection that's been raised or was raised in the objections
18 that the objectors originally filed to any aspect of subclasses
19 2, 3 and 4 as far as the fairness or adequacy of those
20 settlements and for each of those settlements which involved
21 what, respectively involved, were subclass 2 is the category 5
22 Lindauer leases; for subclass 3 it is the category 11 Lindauer
23 class settlement leases and for subclass 4 it's what I
24 sometimes describe as a hybrid. It's certain persons who
25 either had category 5 leases or category 11 leases but because

1 of some accounting difficulties TEP for a period of time was
2 not able to identify, you know, which lease certain royalty
3 owners are under and so ultimately we reached a settlement on
4 the subclass 4 which was for the full amount of the deductions
5 as if everybody in that subclass 4 was a category 11 royalty
6 owner which really maximizes the value of that settlement to a
7 dollar amount that's really greater than the ultimate amount of
8 the deduction, so for subclasses 2 and 3 and 4 we're talking
9 about settlements for the full amount of the disputed
10 deductions that we think for a lot of reasons is a very, very
11 good settlement.

12 The other subclass is subclass 1 which is the
13 subclass which covers with in Lindauer were referred to as the
14 category 2 and 3 lease agreements which are significantly
15 different than the category 5 and 11 leases because they,
16 unlike the category 5 and 11 leases, generally have provisions
17 that expressly permit the lessee, in this case WPX and TEP to
18 deduct the full cost of transporting the gas from the well head
19 to the point of sale and as a result of that, the claims that
20 are really available to the members of subclass 1 are
21 significantly less and more restricted and the claims that they
22 have are in our view primarily claims related to certain
23 excessive processing deductions that were taken by TEP.

24 Ultimately with respect to subclass 1, our position
25 is that what the objectors primarily complain about which is

1 the failure to get a recovery for the gathering cost
2 deductions, that those gathering cost deductions are
3 essentially the cost of transporting the gas from the well head
4 to the point of sale and so that for the gathering cost
5 deductions about which they complain, there are express
6 provisions in the lease which foreclose that.

7 There perhaps would be an argument that a small
8 portion of the gathering costs might be outside the scope of
9 transportation from the well head to the point of sale, but we
10 have to believe that's a very difficult claim, so ultimately
11 what really exists with respect to the settlement on subclass 1
12 is that, that the settlement is \$454,000. It really relates to
13 about 40 percent of the fuel costs that were deducted by WPX
14 and TEP plus all of the excessive processing cost deductions
15 that were deducted by TEP after July of 2016. We believe and
16 we're going to talk about it sort of through the witnesses,
17 that that's a fair and reasonable settlement for subclass 1
18 because of this particular provision that allows the, you know,
19 the operators to deduct the cost of going from the well to the
20 point of sale and for other reasons as well. There was fuel
21 cost allowance provisions and the express terms of the leases
22 as well which we'll be pointing out so that claim, the claim of
23 the members of subclass 1 was a very difficult claim. It's not
24 the same as the subclass 5 and 11 category members who under
25 the Lindauer settlement, TEP was expressly prohibited from

1 deducting gathering charges and so it's just apples and oranges
2 in terms of what the claims of subclass 1 are and the claims of
3 subclasses 2, 3 and 4. So -- and we're going to be talking a
4 little bit today about other risks that exist, too. I mean,
5 this is a fair and adequate settlement because there are
6 significant other risks including the fact that TEP has a
7 counterclaim for an offset with respect to ad valorem taxes
8 which has to be factored into the equation which, you know,
9 that hadn't been adjudicated yet but there was at least some
10 plausible merit to that claim, in addition to the fact that
11 there was just the risks of prolonged litigation.

12 There are six class action cases that I've been
13 involved in in Colorado over the last three years and I've got
14 two of them in state court in Colorado that have been held up
15 because of a referral to the Oil and Gas Commission which
16 ultimately probably is going to end up back in the state court
17 system.

18 I've got another one that is moving very slowly but
19 the other two cases, other than this case, after considerable
20 amounts of litigation, the natural gas producer declared
21 Chapter 11 bankruptcy and including a case in this court that
22 was being adjudicated by Judge Mix in which Judge Mix had
23 certified the class. The Defendant in that case, Augustus
24 Energy, filed for Chapter 11 bankruptcy and our \$4 million
25 claim on behalf of the class members was wiped out.

1 Same thing happened in a state court action I had in
2 Denver District Court against Vanguard Resources which had not
3 moved as far as the Augustus case, but I had that case. It was
4 in front of Judge Starrs in Denver District Court. It was
5 proceeding along. The defendant, Vanguard, filed for Chapter
6 11 bankruptcy as well, so there's the risk in these cases with
7 natural gas prices being where they are, that after prolonged
8 litigation, you have to recognize that you have the risk of
9 having the entire claim wiped out. We don't have that here.
10 We have, you know, the settlement amount was paid into escrow.
11 There were some opt-outs. The opt-out credits have been taken
12 in the amount of approximately \$2 million plus. We now have a
13 \$7.9 million settlement, I believe, and I respectfully will
14 submit to the Court that it's a very fair and reasonable
15 settlement for all four subclasses and we're asking the Court
16 to approve that settlement.

17 Thank you.

18 THE COURT: Well, hold on a second. Let me ask a few
19 questions to start.

20 Remind me of the total persons who were in the
21 classes before the Lindauer court, how many are here?

22 MR. BARTON: Well, in this case we have 608 class
23 members that are part of the class or part of the settlement
24 class who have not opted out.

25 In terms of the categories of all Lindauer class

1 members, I couldn't tell you that exact number but certainly
2 the classes that we represent would represent the majority, the
3 vast majority of all of the Lindauer class members, I believe,
4 because if you include categories 2, 3, 5 and 11, that's the
5 majority of the Lindauer class members by I would say at least
6 it's got to be 70 percent and maybe higher than that so it's a
7 considerable percentage of the people that were in Lindauer.
8 There are other categories from the Lindauer settlement that
9 are not in this settlement but the categories that are, 2, 3, 5
10 and 11, are the biggest I think four categories of class
11 members from Lindauer but there's, I guess there's a 6, 7, 8,
12 I'm not sure, but there are a series of categories maybe going
13 from 1, 6, 7, 8, 9, 10 and maybe 12 of categories, but those,
14 but the number of persons in those is significantly smaller, I
15 believe, for all of those. In other words, all of those would
16 not add up to category 5.

17 THE COURT: Okay. So if the opt-ins and opt-outs in
18 this case, there are some people from Lindauer that weren't in
19 these classes of people, correct? Yes. And does this
20 settlement adversely affect any of them?

21 MR. BARTON: No, it does not. It doesn't, I mean,
22 they're not affected by this. Anybody that's not in this
23 settlement class is not affected.

24 THE COURT: The operation of the settlement as to
25 their rights continues as it always has been into the future?

1 MR. CHRISMAN: Your Honor, if I might. I can't give
2 you the exact number of (indiscernible). I can tell you
3 the(indiscernible) that essentially (indiscernible)give these
4 back (indiscernible). It's (indiscernible). We think
5 (indiscernible) is about 10 million, \$10.8 million of disputed
6 deductions that (indiscernible) on all of (indiscernible) if
7 Lindauer (indiscernible). Of that amount of 10.8 million,
8 approximately \$7.7 million will be resolved (indiscernible), so
9 those claims that add up to the remaining \$3.1 million will be
10 left to be adjudicated (indiscernible).

11 THE COURT: Right but of that 10.8, in addition to
12 the 7.7 that you say will be resolved by a settlement here if
13 approved, there is another two plus within that 10.8 that opt
14 out?

15 MR. CHRISMAN: Yes, Your Honor, and I'm including
16 those dollars in the \$3.1 million that would be resolved in
17 Lindauer.

18 THE COURT: Right. Okay. But they have the option
19 of participating and these opted out?

20 MR. CHRISMAN: That's right, Your Honor.

21 THE COURT: All right.

22 MR. CHRISMAN: And so from our perspective, if they
23 opted out here, then they fall within Lindauer, and so their
24 claims would be adjudicated in Lindauer as class members there
25 along with the other categories of owners that Mr. Barton

1 described.

2 THE COURT: Okay. I understand.

3 Anything further?

4 MR. BARTON: No, Your Honor.

5 THE COURT: And did you want to say anything?

6 MR. CHRISMAN: Other than to join in Mr. Barton's
7 statement --

8 THE COURT: Okay.

9 MR. CHRISMAN: -- that TEP (indiscernible).

10 THE COURT: All right. And you may go ahead.

11 MR. KEEVER: Thank you, Your Honor.

12 THE COURT: You're welcome.

13 MR. KEEVER: The parties pursuing this settlement
14 agreement use some of these terms very loosely to this Court.
15 Two terms, what is a disputed amount and the second is what is
16 transportation and what they do is they try to gloss over the
17 fact that transportation is different than gathering.

18 For example, in the category 1 leases, they
19 specifically say that TEP can deduct for gathering and
20 transportation.

21 Category 2 leases say they can deduct for
22 transportation. No mention of gathering.

23 Category 3 leases say they can only deduct for third
24 party transportation. In other words, if it's transportation
25 they're handling themselves, they still can't deduct for it and

1 the distinction is point of marketability, that transportation
2 is moving gas. That's true. Gathering is moving gas. That's
3 true. So they try to blur it and say there's no dispute here,
4 it's all moving gas. That's not true. The terms are very
5 specific. Transportation is after the point of marketability
6 and under the Lindauer settlement, it's very clear here where
7 the point of marketability is. It's at the interstate
8 pipelines. And you'll notice in 9, section 9 of their proposed
9 settlement agreement, when TEP is now saying they get to deduct
10 and they get to keep deductions they already took, they
11 specifically used the word gathering. That's 9(a),
12 subparagraph 1.

13 THE COURT: And what is the financial detriment to
14 the royalty holders?

15 MR. KEEVER: The financial detriment is three-fold.
16 One, and this is for the category 2 and category 3 which make
17 up about a third of the Lindauer leases in total --

18 THE COURT: Okay.

19 MR. KEEVER: -- so it's about 300 of the original 900
20 leases and is what they call disputed amounts, so what they're
21 saying is the offset amounts here -- just look at the \$10
22 million, Your Honor. Don't look at the offset amounts because
23 they're saying those aren't disputed. I'm not even sure they
24 know how much they are, how much they've allowed TEP to take,
25 so what TEP gets to do is it gets to pay a small amount for

1 gathering fuel that it took. It gets to keep the rest of it.
2 That's the other \$2.5 million.

3 It also gets to go back and charge even more for
4 deductions, for gathering, that it didn't even take before.
5 Now it gets to go back and the third part is it gets to
6 continue to take these for as long as the lease and that would
7 even survive a bankruptcy, so the 2 and 3 categories,
8 leaseholders, are in a worse position here than if they just
9 lost because if they just lost, at least they wouldn't have
10 gotten to go back This is the ultimate lose situation that TEP
11 gets in this case under this settlement.

12 THE COURT: Well, what's, what's a ball park
13 financial figure for a particular lessee?

14 MR. KEEVER: If you take Dean Gonzales, for example.
15 He's going to get approximately \$2500. He's then going to get
16 an offset -- and our expert will testify to this as well --
17 they're going to get an offset of about \$28,000, so 10 times
18 the amount right away before the payout even occurs, the
19 offset, he only gets 3,000 a month in a check. So it's going
20 to be months before he even gets another check due to these
21 offsets that you won't see a spreadsheet provided as to what
22 these offsets are. They have 60 days after this is all
23 approved to even come up with the numbers for what their offset
24 is but we went through and tried to calculate what it would be,
25 and, and in the future, that could be -- I don't want to tell

1 you incorrectly -- the deductions would be about \$1.2 million a
2 year going forward for the category 2 and 3 and that means
3 about, about --

4 THE COURT: If you need an advisory --

5 MR. KEEVER: I'm just trying to make sure I don't
6 tell you an incorrect number -- so 10,000 to Dean Gonzales, one
7 individual, a year going forward.

8 THE COURT: What do you believe is going on here?

9 MR. KEEVER: I think it's a win for TEP. You know,
10 they don't have to -- they got something they could not get in
11 the Lindauer settlement. I would not agree on behalf of the
12 class to let them take these deductions from people who had
13 transportation only written, not gathering. They agreed at
14 that time to pay back the gathering charges that they took
15 under these leases. They paid them back with interest when we
16 settled Lindauer.

17 What we said was, okay, if you start taking these
18 again, since we have this dispute of whether you can take them
19 again, then the class members can challenge it. Well, they
20 didn't take them for a while then apparently WPX started taking
21 them, then TEP steps in and you'll see they ramped up the
22 gathering in the last two years and so they are getting
23 something they always wanted, which is to be able to take these
24 deductions, so they're willing to agree to this little teeny
25 payout to forever, you know, these are 30-year leases. There's

1 a (indiscernible) formation that some of the experts say is
2 going to last 120 years under these leases --

3 THE COURT: So --

4 MR. KEEVER: -- to that these deductions and what's
5 happening is, you know, the class counsel gets their cut, the
6 other categories, you know, they don't have to deal with this
7 because they're not being harmed by it so one-third is
8 basically being harmed so that the other two get basically what
9 they're entitled to because what was going on here was a breach
10 of the Lindauer settlement agreement. There's no real dispute
11 there, so all they have to pay back is what they were going to
12 have to pay back no matter what.

13 THE COURT: So you believe that non-opt outs don't
14 really understand what they're getting?

15 MR. KEEVER: Then, yeah, that they -- it is very
16 difficult even reading the settlement agreement, especially
17 when you have no idea of what these offsets are. You can't
18 read the settlement agreement and realize what's about to
19 happen, how little even that first check's going to be because
20 of the offset. You know, it's impossible to tell and I'm not
21 even sure they know. I don't think when their expert gets up
22 there he's going to be able to say what these offsets are and
23 they wipe out everything, you know, and there's no point in it.
24 You know, we already have a contempt action. I mean, my hope
25 would be they would just pay what they're supposed to pay under

1 Lindauer and be done and that would be it. If they wouldn't,
2 there's a contempt action to say hey, this is what you're
3 supposed to pay. Nobody has to concede anything here. Nobody
4 has to say yeah, we'll reconfigure the language of these leases
5 so you get a new deduction that you couldn't get before. You
6 know, it's unnecessary.

7 THE COURT: Aren't there inherent uncertainties in
8 any kind of oil and gas lease situation that lasts 30 to 50
9 years --

10 MR. KEEVER: Absolutely.

11 THE COURT: -- what the future is going to be with
12 regard to that?

13 MR. KEEVER: Absolutely but you don't solve those
14 inherent uncertainties as to what the language of the lease is
15 by just saying yeah, go ahead, we'll take your methodology for
16 it. You know, you at least have to get a ruling. Do sometimes
17 the rulings come down a different way? Yeah, sometimes they
18 do, you know, but at least you got a ruling. You didn't just
19 say yeah, go ahead, take it, you know, and I'll take my 3,000
20 now and then you next month can take 30,000, and the second
21 issue we'll be discussing is just the scope of the release and
22 whether it's just too broad given the factual predicate in this
23 case.

24 Thank you, Your Honor.

25 THE COURT: Thank you. Okay. Call your first

1 witness.

2 MR. BARTON: Plaintiff would call Don Phend.

3 THE CLERK: Raise your right hand.

4 Do you solemnly swear or affirm the testimony you
5 give in this case will be the truth, the whole truth and
6 nothing but the truth?

7 THE WITNESS: I do.

8 DONALD A. PHEND, PLAINTIFF'S WITNESS, SWORN

9 THE CLERK: Please state your name and spell it for
10 the record.

11 THE WITNESS: My name is Donald A. Phend, D-O-N-A-L-D
12 A. P-H-E-N-D.

13 MR. BARTON: May I proceed, Your Honor?

14 THE COURT: Yes.

15 **DIRECT EXAMINATION**

16 BY MR. BARTON:

17 Q Good afternoon, Mr. Phend. Can you just tell us what
18 your profession is and where your office is here in Denver?

19 A I'm a certified public accountant licensed in
20 Colorado. My office is at 1801 Broadway in Denver.

21 Q And you've been hired in this case on behalf of the
22 Plaintiffs --

23 A Yes.

24 Q -- to do certain royalty accounting work and
25 analysis, correct?

1 A Yes, that is correct.

2 Q All right. And before we get into all that, I'm just
3 going to briefly have you describe a little bit about your
4 background. You mentioned you're a CPA. When did you graduate
5 from college?

6 A I graduated in March of 1980 from Wayne State
7 University in Detroit, Michigan.

8 Q Okay. And after, after that graduation, did you work
9 in the accounting field for a period of time?

10 A I did. I moved to Houston and I was a revenue
11 accountant at Shell Oil for three years.

12 Q And did you become during that period of time or
13 prior to that a certified public accountant?

14 A Yes, I did. I took the CPA exam while I was working
15 at Shell and did get my license while I was still working at
16 Shell.

17 Q Okay. And after you left Shell, what did you do?

18 A I went to work for a CPA firm in Houston called
19 Dillashaw (phonetic), Hawthorne and Company, which did a
20 substantial amount of their practice in oil and gas.

21 Q Okay. And were you yourself involved in oil and gas
22 accounting at that point?

23 A Yes, almost exclusively.

24 Q Okay. And how long were you with that organization?

25 A I was with Dillashaw Hawthorne for about three years

1 also.

2 Q Okay. And after that employment, where did you go?

3 A Then I moved to Denver and I joined Hein and
4 Associates, H-E-I-N and Associates.

5 Q And what was the work you did with Hein and
6 Associates?

7 A It is a CPA firm and I did accounting and tax work
8 and again primarily in the oil and gas industry, probably 75
9 percent of my work was oil and gas related.

10 Q And did you at some point after -- how long were you
11 with Hein and Associates?

12 A I was with Hein and Associates for about six years.

13 Q And that brings you up to what year?

14 A 1994, 1995 range.

15 Q And in that time period, did you start your own
16 accounting firm?

17 A Yes, I left Hein and Associates and immediately
18 started my own firm, Phend and Company, LLC, which I have been
19 doing ever since.

20 Q Okay. And in your own accounting firm, have you from
21 time to time been retained by royalty owners to do a royalty
22 accounting analysis in connection with royalty underpayment
23 disputes?

24 A Yes, many, many times in both litigation situations
25 and non-litigation situations.

1 Q Okay. And have you been retained as an expert on
2 behalf of royalty owners in natural gas royalty owner payment
3 cases here in Colorado?

4 A Yes.

5 Q Okay. And just to try to move this along, I think
6 you were involved in a case and my firm was involved in that
7 was a class action against Encana Oil and Gas, right?

8 A That is correct.

9 Q And that ultimately there was a class settlement in
10 that case --

11 A Yes.

12 Q -- in the amount of \$40 million, correct?

13 A Yes.

14 Q And you testified actually at the final approval
15 hearing, correct?

16 A I did.

17 Q Do you recall that Mr. Keever was there representing
18 the objectors in that case?

19 A I recall yes, he was.

20 Q Okay. And so you've also been involved as the
21 royalty accounting expert in significant royalty underpayment
22 class actions and royalty underpayment cases that were not
23 class actions, correct?

24 A Right.

25 Q That includes a case against Merritt Energy that was

1 in front of Judge Babcock in this court that ultimately settled
2 for \$13 million?

3 A Yes.

4 Q And another case against Petroleum Development
5 Corporation in this court that settled, and it was in front of
6 Judge Kane, that settled for \$9 million, correct?

7 A Yes.

8 Q And you've been involved in a number of state court
9 cases in Colorado including a case in which Noble Energy was
10 the Defendant, correct?

11 A Yes.

12 Q Also a case that was against Kerr McGee, correct?

13 A Yes.

14 Q And I think I've, you've mentioned you were also
15 involved in a case where I was representing a man named James
16 Huffman that was a royalty underpayment case that was against a
17 firm down in Texas, correct?

18 A Correct.

19 Q All right. So have you consistently been qualified
20 in the cases where you've testified as a royalty underpayment
21 and a royalty accounting expert in those cases?

22 A Yes, I have. I've never had a problem being
23 qualified.

24 Q Okay. I would like to turn, Mr. Phend, to the work
25 that you did in this case and sort of start --

1 THE COURT: Do you want to go ahead and offer him as
2 an expert?

3 MR. BARTON: Yes, I would offer Mr. Phend as a
4 qualified royalty accounting expert and particularly in the
5 field of natural gas royalty accounting.

6 THE COURT: (Indiscernible).

7 MR. CHRISMAN: No objection.

8 THE COURT: He will be permitted to render opinions
9 in those skills.

10 MR. BARTON: Thank you.

11 Q (By Mr. Barton) I'd sort of like to approach this in
12 a chronological fashion, Mr. Phend, so the Court can get a
13 sense of all the work that you did in this case.

14 According to your records, when were you first
15 retained in this case by my firm to do work in connection with
16 certain royalty accounting issues that existed for the
17 Plaintiffs in the proposed class in this Sefcovic class action?

18 A I believe that would have been approximately December
19 2017.

20 Q Okay. And in connection with that retention, did you
21 have occasion or did you have the opportunity to review some of
22 the -- I'm separating here from the royalty accounting data --
23 documents that related to some of the, some of the processes in
24 terms of how the gas and natural gas in this case was treated
25 and how it was processed and things of that nature, such as

1 processing agreements between the producer, TEP, and another
2 party?

3 A Yes. Whenever I, in these cases I like to make sure
4 I understand the entire big picture. I look to agreements as
5 well as journal accounting documents. I go far beyond just the
6 actual royalty payment detail. What I ascribe to understand is
7 a full understanding I'd say from the well head to the royalty
8 check to make sure I understand every piece. Once I have that
9 full understanding, then I can concentrate on the specific
10 royalty issues at hand once those are identified but I don't
11 want to start that procedure until I have a complete
12 comprehension of the entire big picture.

13 Q So in this case did you look at some of the
14 processing contracts that were produced by TEP?

15 A I did.

16 Q And did you actually look at some of the pricing
17 sheets for the residue gas in this case?

18 A I did.

19 Q Did you also look at invoices?

20 A Yes.

21 Q All right. For the residue gas?

22 A For residue gas, yes.

23 Q Okay. And did you beginning in December of 2017,
24 work with certain royalty accounting data provided to you by,
25 by counsel for TEP?

1 A Yes. The first large block of data that I received,
2 actual accounting data, was the royalty payment detail for WPX,
3 which went from the time period of sometime in 2011 until mid-
4 2016 when that asset was transferred to TEP.

5 Q So just to make sure it's clear for the record, this
6 case involves a period of time where the producer was referred
7 to commonly as WPX Energy, correct?

8 A Yes.

9 Q And then there was a transaction sometime in 2016 in
10 which WPX actually sold its assets to Tara Energy Partners in
11 some fashion?

12 A Yes.

13 Q And actually, Tara Energy Partners became, there was
14 sort of a name change so it all sort of was all one company but
15 TEP basically acquired WPX's assets and leases that are at
16 issue in this litigation, correct?

17 A I don't know that my opinion really involves
18 understanding that complete transaction but there were
19 basically two different entities during that time period and it
20 was a complex acquisition transaction --

21 Q Okay.

22 A -- that resulted in two different sets of accounting
23 records.

24 Q And so when you received the accounting data in
25 December 2017, you understood that it came from WPX?

1 A Yes, I was aware that the WPX time period was around
2 2011 through mid-2016 and that's what the data was for. In
3 fact, they were even titled, each of the spreadsheets were
4 titled WPX as I recall.

5 Q And did you at that time review and analyze that
6 royalty accounting data. That royalty accounting data, just so
7 it's clear, at that time was for what really referred to under
8 the Lindauer settlement and what we've been talking about here
9 as categories 2, 3 and 5; is that right?

10 A Yes, it was categories 2, 3 and 5 --

11 Q Okay.

12 A -- or subclass 1 and subclass 2.

13 Q And just tell us briefly what, what you were asked to
14 do and what you did in terms of analyzing that royalty
15 accounting data.

16 A Well, by that point I had already done my
17 comprehensive review to understand the process involved.
18 Looking at this data I could see that it was actual royalty
19 payment detail to WPX at that time as royalty owners for
20 categories 2, 3 and 5 for the 2011 through mid-2016 time
21 period. It included all of the information that would have
22 been on the royalty checks and in some cases a greater amount
23 of detail but it was directly traceable to the amounts they
24 ultimately were paid.

25 Q Okay. And so were you able, looking at that data, to

1 make some calculations as to the amount of certain post-
2 production cost deductions that have been taken by WPX over a
3 period of time?

4 A Yes, I could see the ones that were listed as what I
5 call stated deductions and the process itself was relatively
6 straightforward. The amount of the bulk of work was simply
7 because of the large volume of data that came in on I think 19
8 spreadsheets. Each one of those had category 2, category 3,
9 category 5 which had to be at that point assessed individually
10 so it ended up being, and the sheets were so big I could not
11 combine them, so it ended up being something around the range
12 of say 70 separate calculations, so the same type of
13 calculation just because of the bulk of the data it had to be
14 done that many times separately and not be combined.

15 Q Ultimately what you were looking at in that
16 particular point in time, Mr. Phend, was processing deductions,
17 fuel deductions, gathering deductions primarily, correct?

18 A Yes.

19 Q All right. And so you were able to make certain
20 calculations for the category 2 royalty owners, the category 3
21 and the category 5 based upon that data, correct?

22 A Yes, I was able to identify and quantify all of those
23 costs on an owner by owner, well by well, month by month,
24 however I wanted to sort it basis so that I could say even
25 royalty owner had this many gathering deductions, this many

1 processing deductions, this much fuel deduction and there was,
2 you know, other deductions. I could see those as well,
3 probably not an issue but things like severance taxes and such
4 like that were also in there.

5 Q And that process, my office actually worked with you
6 in connection with that valuation and certainly one of the
7 younger lawyers in my office was involved in sort of
8 communicating with you and himself looking at the electronic
9 data as well, correct?

10 A Yes. I did all of my own work but I worked closely
11 with Mr. Barton's office and one of his attorneys on this same
12 data and we were literally a lock step in our understanding of
13 it. We didn't have any, any differences between our approaches
14 to it.

15 Q Okay. And so I'm going to move to sort of the next
16 batch of electronic data that you received and I guess later on
17 about a month later or thereabouts did you receive from Mr.
18 Chrisman's office actually accounting data that was TEP
19 accounting data for the period of July 2016 through September
20 of 2017?

21 A Yes, that was received by me. It was what I referred
22 to internally as the early original TEP information.

23 Q Okay. When you say original, you're really talking
24 about the July 2016 to September 2017 time period?

25 A Correct, yes, that was the first of two releases.

1 There was a later set that covered a time period after that.

2 Q Okay. And did you evaluate this TEP royalty
3 accounting data over a period of time looking to calculate the
4 same totals with respect to processing deductions, gathering
5 deductions and fuel deductions?

6 A Yes, I did, did the same type of analysis. I did it
7 in a different manner using a different program but the work
8 and the results were exactly the same.

9 Q Okay.

10 A That it was TEP instead of WPX and for a later time
11 period.

12 Q Okay. And by the way, you've prepared a declaration
13 in connection with, which was submitted along with our motion
14 for final approval in this case on October 30th, 2018 and your
15 declaration sort of generally describes this process as well;
16 is that correct?

17 A It does, yes.

18 Q Okay. So moving forward into January of 2018, the
19 following month, at some point that month did you begin to get
20 some of the category 11 accounting data for the category 11
21 leases under the Lindauer settlement?

22 A As I recall it was about that time period. After we
23 were getting into this, we realized that category 11 might also
24 be an issue and we received some data on category 11 as well.

25 Q And so you realized at that point we had filed a

1 First Amended Complaint that had added a claim on behalf of
2 category 11 royalty owners, correct?

3 A I knew that you did file an amended complaint. What
4 it meant to me was it was just another download, another big
5 batch of data that we needed to look at in the same way.

6 Q Okay. And did you ultimately, were you able to make
7 the same sorts of calculations on deductions as it related to
8 category 11 royalty owners?

9 A Yes and again, I was able to identify and quantify
10 those types of deductions by any I wanted -- by well, by owner,
11 by month, any combination thereof.

12 Q And again, and I assume this is true throughout the
13 process, you worked with the attorneys in our office in
14 connection with all of these evaluations?

15 A I did, yes. We worked on it daily and were in
16 constant communication.

17 Q In April of 2018, did you review certain sales price
18 workbooks that were received from TEP and WPX?

19 A I did.

20 Q Okay. And then in late April 2018, did you learn
21 that the original data that had been provided to you also
22 included some individuals who were actually not part of the
23 proposed class in this case?

24 A Yes, we called those the excluded owners. I had
25 those excluded owners in my data. When I was apprised of who

1 those excluded owners were, I was able to isolate them and
2 remove their amounts from the totals and recalculate with those
3 excluded owners no longer in the results.

4 Q Okay. So you, you actually worked in part with the
5 royalty accounting expert that had been hired by TEP to work
6 cooperatively to determine, you know, what was the proper
7 calculation of or the proper subtraction from the calculations
8 you had made previously to take out the excluded owner
9 calculations, correct?

10 A Yes, I worked with them with the agreement of both
11 counsels and we were able to jointly come to the same
12 conclusions.

13 Q This process took how long, a couple months, three
14 months?

15 A Well, I think we're talking April or May by now so
16 we've been going on for four and a half, five months --

17 Q Okay.

18 A -- easily.

19 Q Then in later in April, I think it's around April
20 25th, 2018, did you receive additional royalty accounting data
21 for the category 11 Lindauer leases?

22 A Yes.

23 Q Those royalty owners?

24 A Yes.

25 Q And did that enable you ultimately to make certain

1 calculations for processing cost deductions and gathering
2 deductions and fuel cost deductions as it related to category
3 11 royalty owners?

4 A Yes, it was the same type of process. The data may
5 have been in a different format but it had the same types of
6 items in it and I was able to work with that and come up with
7 the same results.

8 Q In May and June of 2018, Mr. Phend, did you learn
9 that there were certain issues that had come up in the data
10 that you had been analyzing with respect to duplicate royalty
11 owners?

12 A Yes, I understood that in the TEP timeframe, which
13 was mid-2016 forward, there was some problem with identifying
14 owners that might be in category 5 or might be in category 11
15 and in fact were produced in batches of each of those and we
16 realized there were duplicates so a particular owner, a
17 particular well may have been in the category 5 batch and again
18 in the category 11 batch and obviously we did not want to do a
19 double count of those.

20 Q So did you again work with Alan Simpson, TEP's
21 royalty accounting expert to try to resolve those issues so
22 that the calculation was accurate?

23 A Yes, Mr. Simpson came up with what I would have to
24 say is an ingenious routine to isolate the ones that were
25 duplicated and we were able to take those from both the

1 category 5 and the category 11 totals, net those 5 and 11's
2 down by that much and establish them as their own sub-group at
3 this time.

4 Q Okay. And in July of 2018, did you receive a
5 supplemental royalty accounting data from TEP that related to a
6 later time period that sort of brought it up through May of
7 2018?

8 A Yes, that --

9 Q So that would be the period of October 2017 through
10 May of 2018?

11 A That is correct and if we received that in July, that
12 would have been the last run of revenue data, so we were up to
13 the current date at that time.

14 Q Okay. And so that, did that enable you to make
15 additional calculations of deductions for categories 2, 3, 5
16 and 11?

17 A Yes, same type of calculations just additional months
18 of it.

19 Q And continued to work with the lawyers in our office
20 on those --

21 A Yes.

22 Q -- those issues?

23 A Yes.

24 Q Okay. In July of 2018, did -- did you become aware
25 of certain issues that had to do with TEP's inability to

1 determine for some of the royalty owners whether they were
2 properly under a category 5 lease or a category 11 lease?

3 A I know we have that problem. I look at it as more of
4 a land problem but I was aware of the problem and we mutually
5 came up with a solution to deal with that by creating the new
6 subclass 4.

7 Q Okay. And I think this is dealt with and to some
8 extent, Mr. Phend, you've talked about it in what is I think of
9 your declaration that was submitted to this Court on October
10 30th, 2018, you I think in paragraph 4(k), if you can look at
11 your declaration which is here in Exhibit 1, and that's on page
12 6 of your declaration, Mr. Phend.

13 A Yes.

14 Q So tell us a little bit about that. This was in July
15 5th of 2018, TEP produced what you have described as comparison
16 data in order for the parties to properly identify the subclass
17 4 royalty owners.

18 A Yes and Mr. Simpson was able to do a routine to
19 identify duplicates and we were able to remove those duplicates
20 from both category 5 and category 11 and set them up one time
21 only in, I'm sorry, category -- set them up one time in
22 subclass 4, so we really had a double count. Someone would be
23 in 5 and in 11. We didn't want to double count that.

24 My understanding was TEP was unable to determine if they
25 were properly in 5 or properly in 11, so we treated them as a

1 whole new subclass.

2 Q And were you able to make royalty underpayment
3 calculations or alleged royalty underpayment calculations
4 related to processing cost deductions for this subclass and
5 gathering cost deductions for this subclass and also fuel cost
6 deductions?

7 A Yes. Once that data was removed from the duplicate
8 categories, it was still the same kind of data that was in the
9 other, other data sources so the same analysis could be done.
10 It was just identifying the fact that they were in two
11 different categories and doubled up but once they were removed
12 on their own, it was the same calculation.

13 THE COURT: Mr. Phend, I'd like you to describe
14 please really the genesis of why of these two, one could not
15 determine which class they belonged to.

16 THE WITNESS: I don't know how that would be done and
17 it's really the land department problem. A lease has terms in
18 it. A lease has perhaps multiple wells in that lease. The
19 lease could be say for 648 years and there could be 10 wells
20 drilled on that lease. There might also be other leases with
21 that well so it was impossible to really say a well by well
22 breakdown as to what lease was which from a lessor to royalty
23 payee. There's also a piece of information that would be land
24 department. In other words, if a person took a lease and then
25 signed those interested are children who had different last

1 names, for example, they would still have a legal title to that
2 but it might not be readily associable with that first lease.
3 You'd have to actually have to go through what I call the well
4 files or the lease files and it would take an exhaustive
5 piecing together to see that John Smith really inherited this
6 interest from his mother, Mary Jones, on this lease here and
7 wouldn't have a direct connection to that lease terms.

8 Once a division order is set up, they're kind of in a
9 static file so at some point in the past somebody associated
10 that well with that lease and it might be very difficult to say
11 that that particular lease's terms were different than another
12 lease's terms that apply to the same well, so it's something
13 that could be done if you had all the land records and an
14 unlimited amount of time, patience and money to sort out but
15 from a practical standpoint it may not be readily apparent.

16 THE COURT: Please explain why more than one lease
17 might apply to one well.

18 THE WITNESS: Well, for example, if you and a sibling
19 each had a different percent interest in the well, you know,
20 piece of mineral interest and each had signed separate leases,
21 there would be an overlap. You would have a half interest in
22 the minerals, sibling would have half interest.

23 THE COURT: So for the same well is it possible for a
24 50 percent owner to negotiate one deal and a different 50
25 percent owner to negotiate a completely different deal as to

1 that one well?

2 THE WITNESS: Very much so. In fact, in many cases
3 where there are lots of smaller blocks of acreage, the lease
4 may actually be, the lessee may be different parties. Three
5 different parties might be out doing leases and have different
6 terms. They might knock on one neighbor's door and present a
7 lease. Might not. Someone else might knock on another
8 neighbor's door and present an entirely different lease and
9 they end up in the same well.

10 Q (By Mr. Barton) So did you actually work with Mr.
11 Simpson in trying to determine the processing cost and the
12 gathering cost, fuel cost for this subclass 4 group of royalty
13 owners?

14 A Yes.

15 Q Okay. And you came up with some numbers about what
16 those deductions were for those particular class members,
17 subclass 4 class members that you coordinated with with Mr.
18 Simpson on?

19 A Yes, yes.

20 Q Did you reach agreement with Mr. Simpson as to what
21 the deduction amounts were --

22 A Yes.

23 Q -- for those persons?

24 A Very quickly, we became 100 percent in agreement,
25 independently reached results --

1 Q Okay.

2 A -- with 100 percent in agreement.

3 Q We've talked today about sort of all the work that
4 you're doing here and there's one subject that I know you were
5 involved in and I don't think we've touched upon yet and which
6 is sort of the subject of excessive processing cost deductions.

7 A Yes.

8 Q And in connection with that, there was a paragraph in
9 the Lindauer class settlement agreement that sort of talks
10 about processing cost deductions that were applicable perhaps
11 to at least some of the, some of the category of leases in the
12 Lindauer settlement.

13 A Yes.

14 Q And did you look at that provision?

15 A I did look at it, yes.

16 Q Okay. I just want -- I want to --

17 MR. BARTON: May I approach, Your Honor? I don't
18 think you have this exhibit but this a copy of the future
19 royalty payment, Mr. Phend, from the Lindauer class settlement
20 agreement.

21 THE COURT: What exhibit number is it?

22 Q (By Mr. Barton) It's Exhibit 5, Your Honor, and I'm
23 actually turning to I believe it's page -- it's actually marked
24 as page 15 but at the top it says section 4 so I think as to
25 the Exhibit 5, it's actually the second page of the exhibit and

1 do you have that in front of you, the second page of the
2 exhibit and if you look down at the bottom, there was a
3 paragraph 4.4. Do you see that, Mr. Phend?

4 A I do.

5 Q And that says that with respect to all royalty
6 instruments, Williams will account for the value of NGLs
7 extracted from the gas and then it goes on to say that with
8 respect to all royalty instruments except for those in certain
9 categories, there's a method that's going to be applied for the
10 deduction of processing costs, correct?

11 A Yes.

12 Q And I don't want to read the whole provision in
13 because it's quite lengthy but if you in just your own
14 understanding can explain generally what the limitation was on
15 processing that was imposed by this section 4.4.

16 A For the leases that would be under this category, it
17 specifies a benchmark, the amount of processing costs allowed
18 by the MMS, Minerals Management Service, the federal agency
19 that manages the U.S. Government's minerals.

20 In general, there is a rule that says that the royalty to
21 the federal government may have a deduction of two-thirds, and
22 I'm paraphrasing this, two-thirds the value of the natural gas
23 liquids for providing the service of processing to get those
24 natural gas liquids, so for example, if the natural gas
25 liquid's revenue was \$100, it would allow up to a \$66 deduction

1 for processing services to result in a net payment of \$33 to
2 the Minerals Management Service.

3 This particular agreement says one-half of the amount
4 allowable to the Minerals Management Service which would equate
5 to one-third the value of the natural gas liquids, so in that
6 example if there was \$100 of natural gas revenue, regardless of
7 how much processing costs were incurred, the payor of the
8 royalties would be limited to no more than \$33 so if it was
9 less than \$33, the way I read it is they could take what it
10 actually was. If it was more than \$33 they would be limited to
11 \$33 and no more.

12 Q So did you at least for categories 2, 3 and 5, did
13 you examine that subject to see if either WPX or TEP had taken
14 any what you would describe as excessive processing deductions
15 under this paragraph 4.4?

16 A Yes, I developed a routine where, and this became a
17 fairly involved calculation just because of the volume of data
18 here again where I looked at each line item, each well owner
19 and month line item in accounting detail and looked at the
20 natural gas liquids revenue and the processing cost and put a
21 limitation factor on it that basically said if this number is
22 more than one-third of gross revenue, then put one-third there
23 and recalculate with that one-third.

24 Q Let me break it down for you. Maybe this will
25 simplify a little bit.

1 When you look at the WPX data as opposed to TEP with
2 respect to this subject of excessive processing deductions, did
3 WPX and your analysis take any excessive processing deductions
4 for the time period?

5 A They apparently did not. I didn't see the
6 calculation that they made but they didn't, didn't exceed the
7 limitation whereas TEP in many cases did exceed it.

8 Q Okay.

9 THE COURT: Hold on a second. Let me ask you this.
10 You said you've dealt with hundreds of cases so you deal with
11 this kind of provision all the time. How does this compare
12 with other provisions at other lessees (indiscernible)?

13 THE WITNESS: Well, this really isn't a lease
14 provision because it's a provision in a settlement agreement.

15 In a federal lease, I don't know if it's actually in
16 the language or if it's in a CFR cite or something but it is a
17 known calculation that is made. I haven't really seen and I
18 don't do a lot of direct lease analysis. I haven't really seen
19 a lease that said limited to one-third of or one-half of what
20 the MMS would allow.

21 THE COURT: So what's typical then?

22 THE WITNESS: It's not, it's not atypical, no. I
23 mean --

24 THE COURT: No, what is typical?

25 THE WITNESS: What is typical? Again, you know, we

1 get into either a lease that specifically allows or
2 specifically prohibits deductions or is silent. I think under
3 the Rogers case that Mr. Barton tried a number of years ago, if
4 it is silent, my opinion as an accountant is to assume that it
5 does not allow deductions. If it's --

6 THE COURT: So it's silent, isn't it? TEP couldn't
7 take any deduction.

8 MR. BARTON: Well, it's a little more complicated.

9 THE WITNESS: I think that's a legal conclusion --

10 MR. BARTON: Yeah.

11 THE WITNESS: -- but I think that's the answer, yes.

12 MR. BARTON: That's the contention. The issue under
13 the Colorado Supreme Court decision in Rogers, it's an issue of
14 fact that's dependent upon the location of the first commercial
15 market. If the first commercial market is located beyond where
16 the processing plant is, then, you know, ordinarily the
17 processing cost deductions are not, not allowed.

18 THE COURT: Okay. When processing cost deductions
19 are allowed, what is the typical percentage?

20 THE WITNESS: Well, if they were allowed in what I
21 would call an express deduction lease, it would say if there
22 was a typical percentage. The express deduction leases that I
23 have seen, again, I don't necessarily do a legal interpretation
24 of them but the ones I have seen basically says they can deduct
25 processing costs. It just gives that, gives that right.

1 THE COURT: Even 100 percent of processing costs?

2 THE WITNESS: I would assume that would mean 100
3 percent if it didn't limit it.

4 THE COURT: So in your view, if you have an opinion
5 is allowing only one-third good for the, the (indiscernible)?

6 THE WITNESS: Well, that was the term of the Lindauer
7 settlement that these lessors are now under the governance of
8 so that's what they decided 10 years ago, that they would be
9 allowed to take one-half of what the MMS allows or effectively
10 one-third.

11 Would that be better than nothing? No, it wouldn't
12 but that was what was decided 10 years ago in the Lindauer
13 settlement as to my understanding.

14 THE COURT: But my question is, is it about average
15 or better than average or worse than average? I know how it
16 compares to the U.S. Government but the U.S. Government doesn't
17 always cut the best deals.

18 THE WITNESS: True. Typically the ones I've seen
19 either don't allow it, allow it 100 percent or is silent and if
20 it is silent and there is litigation on it, usually there's a
21 compromise, so that I think is what happened in this case
22 without having been involved in the Lindauer case. I think the
23 rules right now are that they can deduct one-third.

24 THE COURT: Was your understanding before the
25 Lindauer settlement that they were silent?

1 THE WITNESS: I didn't do a lease analysis so I don't
2 know.

3 Q (By Mr. Barton) Mr. Phend, I think you were saying
4 that you did find for, and again, category 5, category 2,
5 category 3 leases because under this 4.4, the category 11
6 leases were exempted?

7 A Yes.

8 Q Right.

9 A Completely.

10 Q So it was a different processing cost deduction
11 analysis for category 11, correct?

12 A Yes. In a nutshell, categories 2, 3 and 5, and
13 correct me if I'm missing this up, allowed --

14 Q Well, it was debatable under 2 and 3.

15 A Under 2 and 3 it was debatable.

16 Q Clearly, clearly under 5, 4.4 applied, right?

17 A Correct which meant that one-third of the processing
18 costs could be done and anything above that was what I called
19 excess processing. That was my damage calculation just in the
20 excess processing on category 5.

21 Q Okay.

22 A And category 11, it was none whatsoever, therefore
23 all processing costs would technically be excess processing
24 costs.

25 Q And then I asked you to do an excessive processing

1 deduction calculation for category 2 and 3 as well as it
2 relates to TEP.

3 A I did.

4 Q And again, WPX as far as you were able to evaluate,
5 there were no excessive processing cost deductions but there
6 were by TEP?

7 A When I ran the numbers for WPX, I never exceeded
8 them. For TEP, I quite often did find in excess.

9 Q Okay. Now, I want to turn to -- you did all this
10 work and I think this work extended all the way through the
11 summer of 2018; is that correct?

12 A That is correct. I think we wrapped this up in July
13 of 2018.

14 Q Okay. And so I want to turn to sort of the, the
15 calculations of these numbers through this work that you did
16 and I want to go back if you will to your declaration, Mr.
17 Phend, which is Exhibit 1 and so I'd like to turn to the part
18 of your calculations that sort of relate to what we call
19 subclass 1 in this case, which is the category 2 and 3 leases,
20 correct?

21 A Yes.

22 Q And so if you look at paragraph 7(a) of your
23 declaration, Exhibit 1 which starts on page 8.

24 A Yes.

25 Q Do you have that in front of you?

1 A I do.

2 Q Okay. And so does that paragraph 7(a) and to some
3 extent subparagraph or 7(b) as well, does that provide a
4 description of the calculations that you made as it relates to
5 these category 2 and 3 leases for various deductions as to
6 gathering fuel and excessive processing?

7 A It does, yes.

8 Q Okay. And so you analyzed those. Those were made at
9 my request so we'd know what the numbers were for each of those
10 types of deductions, correct?

11 A Yes, I had done this analysis already and these were
12 some of my numbers that you asked me to include in this, yes.

13 Q Okay. And again, you weren't being asked to express
14 any opinions about the validity of any of these deductions or
15 the legitimacy of any of those deductions, correct?

16 A No, I like to think that what I do is I identify and
17 quantify the deductions and then I let the parties to
18 litigation take those and decide what they want to do with
19 them.

20 Q Okay. And if you look at paragraph 7(a), did you
21 come up with a total amount of, we'll start with the gathering
22 deductions. What does that come out to for the entire time
23 period, both category 2 and 3, both WPX and TEP?

24 A \$1,646,951.11.

25 Q Okay.

1 THE COURT: But those, you're testifying that those
2 are proper, because --

3 THE WITNESS: That is not my opinion --

4 MR. BARTON: No, no. He's not testifying that
5 they're proper. He's just testifying that's what he
6 calculated.

7 THE COURT: Right but he did say WPX did not take any
8 excess deductions.

9 MR. BARTON: No, we're talking about gathering, not
10 excessive processing right here.

11 THE COURT: Okay. Go ahead.

12 MR. BARTON: Okay. Yeah.

13 Q (By Mr. Barton) So let's, let's make sure we got
14 these numbers right. So you calculated if you combine them
15 all, it was about \$3,070,000, correct?

16 A Correct.

17 Q And so the first, the gathering cost deductions, I
18 guess, are on the line after the fuel so I guess I'll start
19 with the fuel. WPX took deductions of fuel in the amount of
20 \$574,986.99, correct?

21 A Correct.

22 Q And on the fuel, what did TEP take, if you can tell
23 me? I think it's 162,553, isn't it?

24 A Yeah.

25 Q Okay. And then if we turn to the gathering, the

1 gathering cost deductions that were taken by WPX, right, were
2 \$1,646,951.11; is that correct?

3 A That is correct.

4 Q And for the gathering costs for TEP, that was in the
5 amount of \$508,100, correct?

6 A I'm having trouble -- yeah, there it is. Yes,
7 correct.

8 Q Okay. So we've got on gathering something in the
9 neighborhood of about \$2,150,000, something like that?

10 A Rough range, yes.

11 Q Okay. And then if we are looking at just the fuel if
12 we combine the two, we're looking at a combination of 574,986
13 and 162,553; is that correct?

14 A Right.

15 Q All right. And then there was also an excessive
16 processing deduction calculation but that you found was only
17 done by TEP, correct?

18 A That was only done by TEP and that is just the excess
19 processing amount, not the entire processing amount.

20 Q Right. And that excessive processing cost as set
21 forth in paragraph 7 of your declaration is 177,951.94?

22 A That is correct.

23 Q Okay. So ultimately did you gain an understanding of
24 what the parties agreed to settle for in connection with this,
25 this case, in the amount of \$454,845. Do you see that?

1 A Yes, I do.

2 Q Okay. And I think you have in front of you, Mr.
3 Phend, do you have what we've not marked as an exhibit but it's
4 sort of a demonstrative exhibit --

5 A Yes.

6 Q -- that relates to how that settlement amount of
7 \$454,000 for this subclass 1, how it sort of breaks down in
8 terms of the excessive processing cost deductions and the fuel
9 cost deduction?

10 A Yes, I wasn't involved in the negotiation of this but
11 I do understand the mechanics that were involved in getting to
12 that.

13 Q Okay. So the original settlement before the opt-outs
14 of subclasses 2 and 3 was \$454,845, correct?

15 A That was the amount that had been agreed to, yes.

16 Q All right. And so --

17 MR. BARTON: And Your Honor, I don't know if you have
18 this or not. May I approach? Do you have this in front of
19 you? Okay.

20 Q (By Mr. Barton) And with respect to this, if you
21 look down at the bottom right-hand part of this demonstrative
22 exhibit, Mr. Phend, it shows the \$54,845 settlement amount,
23 right?

24 THE COURT: Does Mr. Keever have that?

25 MR. BARTON: Yes.

1 MR. KEEVER: I have it, Your Honor.

2 THE COURT: Thank you.

3 Q (By Mr. Barton) Do you -- and can you give me sort
4 of a description of what this breakdown or how it breaks down
5 in terms of the excessive processing of TEP and thereabouts?

6 A Well, my understanding is the parties agreed to
7 settle for the entire amount of excess processing, the amount
8 that exceeded the third.

9 Q That was taken by TEP?

10 A That was taken by TEP.

11 Q From these category 2 and category 3 royalty owners?

12 A Right.

13 Q And then also on the fuel, they have agreed to settle
14 for about 38 percent of the total, correct?

15 A I think they said about 40. It turned out to be
16 about 38 but that was I think the general intent, yes.

17 Q Okay. And so of all these calculations you made,
18 that's kind of how the settlement amount broke out, correct?

19 A Yeah and again, I did not make that agreement but
20 that was explained to me how they got to it so that is what I
21 considered here is how they got to it.

22 Q All right. And you understood, did you not, in the
23 course of these discussions, that TEP's position was that they
24 had the right under the express terms of these category 2 and 3
25 lease agreements to take the gathering cost deduction?

1 A Yes, I'm very aware of that. It isn't something I
2 would form an opinion on but I was certainly aware that that
3 issue was out there and it was significant.

4 Q Okay. And did you also understand that there were
5 provisions in these leases that allowed certain fuel costs to
6 be deducted?

7 A I understand that yes, it could be also an issue.

8 Q Okay. All right. So --

9 THE COURT: So in other words, there's no settlement
10 on the gathering cost?

11 MR. BARTON: Well, there was a settlement, Your
12 Honor, on all of it, you know, but in terms of reaching a
13 resolution, you know, we had to deal with the reality of the
14 express language of the lease --

15 THE COURT: No, I understand but you're not
16 apportioning any of the settlement to (indiscernible)?

17 MR. BARTON: No. Well, we didn't in the sense of
18 trying to say what's the reality of this settlement? It
19 represents on the claims where we thought there was, you know,
20 a chance of getting a recovery, that these are the numbers. In
21 other words, we felt very strongly on the excessive processing
22 cost deduction we had a good claim.

23 THE COURT: But explicitly you think that TEP has a
24 good claim on the gathering cost?

25 MR. BARTON: Yes. I thought TEP had a very good

1 position and I think that we would have faced an extremely
2 difficult uphill battle on that because I believe when it says
3 well head to point of sale, that that basically covers the
4 gathering because you don't get the gas from the mouth of the
5 well to the point of sale unless you take it through the
6 gathering system. You know, that's how the gas moves from the
7 mouth of the well to the point of sale, through a gathering
8 system. There's no other way that gas gets there. I mean, it
9 doesn't go in a truck or, you know, a separate pipeline. It
10 goes through the gathering lines to get from the mouth of the
11 well to the point of sale. There's no other way it gets there,
12 so I understand what was said in opening statement but I can't
13 tell you how much I think that's wrong, so I'll leave it at
14 that. So, I mean, the other, the objector's opening statement
15 so okay.

16 Q (By Mr. Barton) So from that point, Mr. Phend, did
17 you also take a look at just for informational purposes in
18 paragraph 7(b), did you make a calculation of what the effect
19 of the persons that opted out who were members of this subclass
20 1 who elected to opt out, how did that affect the net amount of
21 the settlement?

22 A Well, obviously it reduced it because it was reducing
23 the amount of individuals that were going to be receiving
24 payment so yes, it did reduce it by \$27,057.69.

25 Q All right. So that was sort of an opt-out credit so

1 it takes the amount of that settlement down just by the amount
2 that would be attributable to the people that opted out?

3 A Yes.

4 Q So that the actual settlement amount then becomes
5 \$427,787?

6 A Yes and it doesn't affect the remaining members in
7 that class. It just removed the ones that decided not to go
8 forward, so the amount that was essentially reserved for a
9 remaining class member in that category was not (indiscernible)
10 at all.

11 Q Okay. So that was about five percent of the total
12 amount or something of that nature?

13 A Yeah.

14 Q Okay. All right. So I now want to turn, Mr. Phend,
15 to the other three subclasses that for which you did work and
16 did calculations and this second subclass is subclass 2,
17 correct?

18 A Correct.

19 Q You understand that subclass 2 is the royalty owners
20 that had these category 5 lease agreements, correct?

21 A Same thing, just a different definition but yes, the
22 same.

23 Q All right. So subclass 2 is category 5 and can you
24 -- you made sort of a summary of your category 5 or subclass 2
25 calculations in your declaration in what I believe is paragraph

1 7(c) which is at page 10 of your declaration. Do you see that,
2 which is Exhibit 1?

3 A I do.

4 Q And can you just generally describe what, what you,
5 you know, what your calculations were and how that got
6 summarized.

7 First of all, you've got references to the Lindauer
8 settlement agreement, right?

9 A Yes.

10 Q And then you made some calculations for these
11 category 5 royalty owners and I think just to cut to the chase
12 here, you found that there was a total of \$5,787,730 or so in
13 total deductions, right?

14 A In total deductions including the excess processing
15 cost, not the total processing cost, but yes, that was the
16 intent.

17 Q All right. So the fuel costs were in the amount of
18 1,130,085 --

19 A Yes.

20 Q -- correct? The gathering costs were in the amount
21 of 3,269,255?

22 A Yes.

23 Q And the excessive processing cost, the amounts over
24 and above what's allowed under paragraph 4.4, correct?

25 A Yes.

1 Q That is in the amount of 1,388,392, correct?

2 A Correct.

3 Q So that's what adds up to, if you take all those
4 three together, that's, that's what adds up to the \$5,787,730,
5 right?

6 A Yes.

7 Q And do you have an understanding that that's the
8 amount of the settlement, of the gross settlement for the
9 subclass 2 royalty owner?

10 A Again, I understand that's what the intent was was
11 to give full fuel, full gathering and full excess processing
12 costs --

13 Q Okay.

14 A -- as the settlement amount.

15 Q Okay. And then -- okay. So did you also make a
16 calculation as you did for category 2 and 3 of what the opt-out
17 credit was for category 5?

18 A Yes, I did it in the same manner.

19 Q Okay. And you ended up with an opt-out credit of
20 about 1,176,475, correct?

21 A Yes.

22 Q And that's in paragraph 7(d) of your report at pages
23 10 and 11?

24 A Correct.

25 Q So that the category 5 settlement after the opt-out

1 credit for the persons that are remaining in the class, in the
2 subclass 2, is 4,611,256; is that correct?

3 A That is correct.

4 Q All right. And then I want to turn to the same
5 analysis or your calculations as it related to category 11 and
6 that's the subclass 3 and that's summarized, is it not, Mr.
7 Phend, in paragraph 7(e) of your declaration?

8 A Correct.

9 Q Okay. Can you tell us as to these category 11
10 leases, sort of give me a summary of or give the Court a
11 summary of what calculations you made as it related to these
12 category 11, category 11 royalty owners?

13 A Well, I basically analyzed and extracted the
14 gathering, processing and fuel deductions from the data by
15 owner in the same manner that I did with the other categories
16 and the other data. The only difference is that in terms of
17 the processing amount, I did not make the calculations limited
18 to one-third of the revenue. It was considered to be 100
19 percent so in this case here, the excess processing costs are
20 all the processing costs.

21 Q So in other words, if you look at paragraph 4.4 which
22 is the limitation on processing cost deductions, that
23 provision, paragraph 4, the category 11 owners are expressly
24 excepted, E-X-C-E-P-T-E-D, they're excepted from that paragraph
25 4.4, right?

1 A It is my understanding and I did it at the request of
2 counsel based on their legal interpretation of it that that is
3 my understanding of what it was.

4 Q Okay. So in the middle of paragraph 7(e), you
5 summarized total deductions of 1,157,145. That includes fuel
6 costs, 147,7 30, gathering costs of in excess of 610,000 and,
7 well, you call it excessive processing costs but I think that
8 may be a typographical error.

9 A Well, it is and it isn't. In this case excessive is
10 all of them --

11 Q Right.

12 A -- so I can probably have eliminated that word and it
13 wouldn't really change the meaning of it.

14 Q Okay. But that's, in other words, any processing
15 costs that were taken was, the total amount was 398,996,
16 correct?

17 A Yes.

18 Q Now, if I understand it correctly, Mr. Phend, I want
19 you to correct me if I'm wrong, but these deduction amounts
20 that we're talking about under category 11, it was primarily
21 the TEP era where these deductions showed up?

22 A Yes.

23 Q Not WPX?

24 A Right.

25 THE COURT: Primarily or exclusively?

1 MR. BARTON: What?

2 THE COURT: You said primarily but the paragraph
3 doesn't mention WPX so you mean exclusively?

4 MR. BARTON: I do mean exclusively. I appreciate
5 that, Your Honor. It is exclusively.

6 THE WITNESS: I analyzed both WPX and TEP data. If
7 there were instances of WPX having something that would be an
8 issue that would be included, I don't think there was much if
9 anything, so you know, I didn't look at it exactly the way
10 you're asking that. It's certainly determinable. If I was
11 asked that question, I could give you an answer.

12 Q (By Mr. Barton) Okay. But as far as you know,
13 virtually all of this was TEP and you don't remember any of it
14 being WPX?

15 A Very little if any.

16 Q All right. Thank you. And so ultimately did you
17 understand that the settlement that was reached as a category
18 11 was equivalent to the full 1,157,145?

19 A Yes.

20 Q All right. Then I think you did the opt-out credit
21 analysis in paragraph 7(f) as it relates to the subclass 3,
22 which is category 11?

23 A Yes.

24 Q All right. And that's, ultimately there was an opt-
25 out credit if you will of \$313,331, right?

1 A Yes.

2 Q And that ended up so that there was a net or a
3 settlement after the opt-out credits of 843,813?

4 A Correct.

5 Q So for the royalty owners that remained in the class
6 that were under this subclass 3, it was the full amount of the
7 deductions that you added up?

8 A Yes, they would remain unchanged after any opt-outs.
9 They just had their number assigned and would not change.

10 Q Okay. Now, I want to turn to subclass 4 which is
11 this sort of hybrid as I describe it subclass, correct?

12 A Correct.

13 Q And so did you in cooperation with Mr. Alan Simpson,
14 did you analyze the deductions for the persons that were
15 designated subclass 4 royalty owners?

16 A Yes.

17 Q Okay. And is that reflected in your declaration in
18 paragraph 7(g) at page 12 of Exhibit 1?

19 A Yes.

20 Q And carrying over to Exhibit 13, so if you look at
21 that, sort of towards the bottom of page 12 you say based on
22 your analysis and review of the accounting information provided
23 by TEP, you calculated the amount of the subclass 4 royalty
24 owners royalty underpayments resulting from TEP's deduction of
25 post-production costs and as if all of the subclass 4 royalty

1 owners were category 11 royalty owners, correct?

2 A Yes.

3 Q So that's the method you approached. In other words,
4 you didn't take the category 5 methodology and factor that in
5 even though some of these royalty owners were undoubtedly under
6 category 5, you treated them all as more favorable category 11
7 royalty owners, correct?

8 A Yes. So any of these, if there was any doubt as to
9 whether they were in 5 or 11, they were put into this hybrid
10 class and given technically the best possible option.

11 Q Okay. And so those deductions ended up to be your
12 total calculation was \$2,625,587, correct?

13 A Yes, yes.

14 Q And that was broken down including fuel costs of
15 389,722, gathering costs of 1,286,299 and excessive processing
16 costs in the amount of 949,567, correct?

17 A Yes.

18 Q But when you say excessive there, that's really just
19 all of the processing costs?

20 A Again, under the category 11 method of calculating
21 it, all processing costs are excessive processing costs, so
22 yes, I could eliminate that word excessive because it's kind of
23 redundant but it is all processing costs.

24 Q Okay. And then for the -- did you understand that
25 ultimately what the subclass 4 settlement was, was 2,625,587,

1 correct?

2 A Yes.

3 Q Okay. And then you also did this opt-out credit
4 analysis for this subclass 4 which came out to be 516,000,
5 correct?

6 A Correct.

7 Q And some change and then so that the settlement
8 amount for the class members that remain in the class for
9 subclass 4 is \$2,108,648.57?

10 A Yes.

11 Q Okay. And I want to make one correction to the
12 declaration that you and I came across that's in subparagraph
13 4(d) I believe it is and it's on page 4 of your declaration,
14 Mr. Phend.

15 A Yes.

16 Q And if you go down in that section, that paragraph
17 and that's sort of a description of some of the electronic data
18 that you were provided, but if you go down one, two, three,
19 four, five, six. Do you see that?

20 A Are we on 4(d)?

21 Q Yes, 4(d).

22 A Okay.

23 Q If you go down six lines, the first word in that
24 sentence is prohibited. Do you see that?

25 A Yes.

1 Q And I believe when you and I were preparing for this
2 hearing, we looked at that and realized that that word was an
3 error.

4 A It should have been permitted, not prohibited.

5 Q Okay. So just to amend that part of your
6 declaration, it should now read that you identified certain
7 transportation and (indiscernible) post-production costs that
8 TEP had deducted from the class member royalties which are
9 permitted is the correct word instead of prohibited?

10 A Yes.

11 Q Under paragraph 4.6 of the Lindauer class settlement.

12 A And my numeric results are consistent with the word
13 permitted being in there.

14 Q Okay. Thank you.

15 I want to turn, Mr. Phend, to the, to the allocation to
16 the class members in this case which is Exhibit 17. Do you have
17 that in front of you?

18 A I do.

19 Q And were you involved, Mr. Phend, in actually
20 preparing the allocation to the 608 class members that remain
21 in this class in this case?

22 A Yes, I was.

23 Q Okay. And if you look at the top page of Exhibit 17
24 which is in front of you, is that sort of a breakdown of how
25 you reached the allocation to each of these 608 members of the

1 settlement class in this case?

2 A Yes, that basically takes the numbers we just got
3 done talking about and aggregates them into basically one, one
4 row of numbers but it's the same numbers we just got done
5 talking about.

6 Q Okay. So if we start at the top of this page, there
7 is, there is a word that says gross and then across from that
8 it's \$10,025,309, correct?

9 A Correct.

10 Q So that's the combination of the amounts that
11 subclasses 1, 2, 3 and 4 of the settlements before any opt-out
12 consideration, correct?

13 A Yes, in fact if you take those numbers and add them
14 up, it comes up to exactly that.

15 Q Okay. The numbers we've been discussing --

16 A Yes.

17 Q -- in your testimony here today?

18 A the amounts agreed to for subclass 1, 2, 3 and 4
19 added together equal 10 million 025.

20 Q And I'll represent to you, that's the number we
21 presented to the Court in the motion for preliminary approval
22 of the class settlement, right?

23 A Correct.

24 Q Okay. So then the next number below that it says
25 less opt-out. Is that the opt-out credit amount for all of the

1 class members that opted out?

2 A For all four of the categories, yes.

3 Q All right. All four of the subclasses.

4 A Subclasses.

5 Q Right. So that's 2,033,803 and some change and so
6 the gross settlement after the opt-out which we talked about
7 earlier today was \$7,991,505.33, correct?

8 A Correct.

9 Q And then in determining the net amount that would be
10 available for distribution to the class members, did you at my
11 instruction subtract four categories of expenses that are, were
12 subtraction amounts that are subtractions from the seven
13 million 991, correct?

14 A Yes.

15 Q And that includes the litigation expenses for which
16 my firm's asked for reimbursement which is 104,915.95, correct?

17 A Correct.

18 Q And then the escrow fee for the \$10 million that was
19 charged by the escrow agent, correct?

20 A I understand so, yes.

21 Q That's 3,000 and then our fee request of \$2,627,600,
22 correct?

23 A Yes.

24 Q And then finally the incentive award request that
25 we're making for the three class representatives.

1 A Correct.

2 Q That adds up to 15,000?

3 A Correct.

4 Q And so if you subtract those four expense items or
5 subtraction items, that takes you down to an amount of
6 5,240,989.38 that's being distributed to the 608 members of the
7 class, settlement class that remain in the class?

8 A That is correct.

9 Q And then how did you approach with respect -- if you
10 look on the far right-hand column of Exhibit 17 below the
11 5,240,989.38, does that describe the settlement check that will
12 be mailed to them if this settlement is approved?

13 A My understanding is that is exactly the amounts they
14 will receive.

15 Q Okay. And how did you determine, just -- and I
16 understand it's a long process but as best you can describe it,
17 how did you determine the allocation to those class members, if
18 you can describe for the Court what the process was.

19 A Well, I first looked to each category and looked to
20 the owners in each of these four subclasses and I took the
21 total amount of the deductions at issue that we were working
22 with and took a fraction for that particular owner's share
23 divided by the total share times the amount to be allocated.
24 Now, actually I did it on the gross and then I ultimately ended
25 up with the net number and I'll go through how I did that, so

1 for category or for subclass 1, I took individual owners' fuel
2 and approximately 40 percent of the process and deductions I
3 believe was the number --

4 Q You meant 40 percent of the fuel and the excessive
5 process.

6 A Excessive -- sorry, yes, and compared that with the
7 total of the 40 percent of fuel and excess processing to get a
8 fraction for that owner for that category. Then I allocated
9 that gross amount down to see how much each owner would get in
10 terms of that, then I went on to the next category, did the
11 same thing with the items at issue in that category and then
12 the final two categories as well.

13 Turned out that many owners were in two or three different
14 categories of different leases, must have them categorized as
15 different --

16 Q They had more than one lease so they could be in
17 category 11 and category 5 --

18 A Yes.

19 Q -- for example?

20 A And actually a good majority, a good piece of them
21 actually were in 2 or 3 and some may have even been in all
22 four.

23 So then I made what I called a matrix where I laid those
24 out and given owner John Smith might have had nothing in
25 subclass 1, something in 2, something in 3 and nothing in 4. I

1 got the total and did that for everybody and got apportionate
2 ratio when all categories were aggregated, so I wouldn't be
3 paying the same person four different times for four different
4 categories if they were in four different categories, so
5 they're allocated separately but then combined.

6 Once I have those ratios which you can see in the second
7 to last column on this Exhibit 17, that is their share of that
8 total. I multiplied that decimal times the 5.240 million to
9 get each of their shares of allocation, so that would be the
10 initial allocation to their share in the category and all of
11 those added up to get a decimal that gives them a relative
12 ratio of the entire settlement so they're getting fairly
13 allocated for each of the categories that they may happen to be
14 a part of.

15 Q In your opinion, Mr. Phend, as an expert in this
16 royalty accounting area and having been involved in other
17 royalty underpayment cases, is this a fair and reasonable
18 allocation of the \$5,240,989.38?

19 A I certainly think it is. It's probably one of the
20 more reasonable ones I've seen because we had some really good
21 solid numbers that we were able to use for an allocation base
22 that actually were the numbers that were being settled.

23 I think it stands probably a lot stronger than any other
24 way that this could be done.

25 Q Okay. And did you consult with Mr. Simpson to some

1 extent on this allocation?

2 A I did. In fact, we worked on little variations. I
3 mean, we had issues like eliminating owners that had less than
4 \$2, for example. It was something I was asked to do,
5 eliminating owners that for some reason were allocated nothing
6 that maybe just didn't have any deductions at all.

7 We went through a number of iterations of this.
8 Ultimately I think we unanimously concluded that that was the
9 final result and it stood well and effectively allocated the
10 owners based on the portion of what they really had deducted
11 from them.

12 Q So both you and Mr. Simpson agreed that this
13 allocation reflected in Exhibit 17 is a fair allocation, a fair
14 and reasonable allocation to the members of this settlement
15 class?

16 A You know, I agreed with them and when we did that
17 I'll let him speak to that, too, but yes, we did agree to that
18 verbally.

19 Q Okay.

20 MR. BARTON: Your Honor, may I have just a minute?

21 THE COURT: Yeah. I'm going to ask you a question,
22 Mr. Phend.

23 I guess I need to know whether to I guess the term we
24 use here is a reasonable degree of scientific and mathematical
25 certainty, the calculations you made in paragraph 7 of your

1 declaration are true and accurate concerning the deductions
2 made by either WPX or TEP?

3 THE WITNESS: Can I look at that declaration to see?

4 THE COURT: Yeah.

5 THE WITNESS: Paragraph 7?

6 THE COURT: Paragraph 7, what we went through in
7 detail for the last half hour, starting on page 8.

8 THE WITNESS: Okay, so this is the routine where we
9 went through every category and how we got to it?

10 THE COURT: Yes.

11 THE WITNESS: Those numbers are exactly to the penny
12 extracted from their records.

13 THE COURT: Right. And you believe they're accurate
14 to a reasonable degree of scientific and mathematical
15 certainty?

16 THE WITNESS: To the extent that their records are
17 correct, they are what their records are.

18 THE COURT: So did you do anything to assure that the
19 records were correct --

20 THE WITNESS: I --

21 THE COURT: -- or did you just accept the records
22 that you received?

23 THE WITNESS: For what this is worth, I would have
24 had to accept this. I mean, I'm not doing a full revenue audit
25 of the company where I am actually verifying production prices

1 and tying into leases, however, I did gain a full understanding
2 of the process they're using. I did go through examples of
3 pricing and allocations of costs in their, what I call their
4 plan allocation statements and I was able to tie it to exactly
5 what they did so based on that sampling of some example months,
6 I believed that they were bringing these numbers in correctly.
7 They may have been deducting something maybe they weren't
8 entitled to but that was what they calculated in gross and net
9 and those were the deductions that they actually took so --

10 THE COURT: Okay. And you deal with these records on
11 a regular basis in your work, so did these records appear
12 normal, regular to you compared with the other records you
13 reviewed in your career?

14 THE WITNESS: Yes, yes, the appearance of them is
15 quite typical. Sometimes they look a little bit differently
16 but there really isn't anything new in revenue accounting over
17 the last 70 years or so. It's sometimes the way it looks on
18 the surface but they still have all the same things in them and
19 they're doing the same stuff that everyone's always done.

20 THE COURT: Thank you. Did you have any more
21 questions?

22 MR. BARTON: I do not. (Indiscernible).

23 MR. CHRISMAN: Your Honor, may I ask Mr. Phend a
24 couple of questions? It won't take long.

25 THE COURT: Yes and Mr. Keever, are you going to have

1 any questions?

2 MR. KEEVER: I will, Your Honor.

3 THE COURT: Do you know how long you'll take?

4 MR. KEEVER: Substantial.

5 THE COURT: Okay, we'll do you then we'll take a
6 five-minute break.

7 MR. CHRISMAN: That'd be fine, Your Honor.

8 **CROSS-EXAMINATION**

9 BY MR. CHRISMAN:

10 Q Good afternoon, Mr. Phend.

11 A Good afternoon.

12 Q Just one line of inquiry that I just wanted to go in
13 for a couple of minutes with you and it deals with I understand
14 you saw differences between the deductions in what I'm calling
15 the WPX era which would have been July 2011 through I think
16 August of 2016 and in deductions that you saw in the TEP era.
17 Is that a fair way to describe that?

18 A Yes. There were two different accounting systems and
19 the deductions were done differently in those time periods with
20 those two different accounting systems.

21 Q So focusing on deductions associated with the
22 category 2 and 3 owners, so the members of subclass 1 and
23 specific to gathering and fuel deductions.

24 During the WPX era, did you see WPX deducting gathering
25 and fuel costs from those subclass 1 owners?

1 A Again, that's a specific question. I believe that
2 WPX may have deducted some fuel but no gathering.

3 THE COURT: We're talking about subclass 1.

4 Q (By Mr. Chrisman) Category 2 and 3 owners.

5 A I'm sorry. Let me refer to something here.

6 Q If it would be useful, Mr. Phend, I think if you look
7 at your declaration which I believe has been marked as Exhibit
8 4 and turn to paragraph 7(a).

9 THE COURT: Exhibit 1.

10 Q (By Mr. Chrisman) Oh, I'm sorry.

11 A Exhibit 1.

12 Q Exhibit 1. Pardon me, Your Honor.

13 A I -- I'm going to correct something I said because I
14 didn't think that I was talking about that category.

15 There was some fuel deduction. WPX did deduct gathering.
16 I did not include that in my summary at counsel's request
17 because they believed that it was a non-issue or something they
18 didn't want me to consider.

19 Q And Mr. Phend, I understand why you wouldn't have
20 included it. I just want to just nail down this fact that in
21 fact from July 2011 through August of 2016 when WPX was paying
22 these royalties to subclass 1 owners, they were deducting
23 gathering and fuel costs, right?

24 A Yes, they were.

25 Q Okay. And were they deducting that for the entire

1 time period, Mr. Phend?

2 A I didn't look at it in that term but I could easily
3 do a schedule and see if every month had some. It wouldn't be
4 difficult to do if I had the data in front of me.

5 Q When gathering and fuel costs are deducted from WPX
6 owners, do those deductions appear on the monthly royalty
7 payment statements that owners receive?

8 A I believe they did. I'd have to look at one of the
9 royalty statements in that time period to tell. Quite often
10 the detail that I get, the accounting detail I get is greater
11 than what might be summarized onto a royalty check but I
12 believe they did.

13 Q It'd be easy to check by looking at one of those
14 royalty statements?

15 A Just look at -- just look at a royalty check and see
16 if it says gathering, yes.

17 MR. CHRISMAN: Thank you, Mr. Phend.

18 Thank you, Your Honor.

19 THE COURT: How much total direct do you think you
20 have remaining after this witness?

21 MR. BARTON: I have two other witnesses, Your Honor,
22 Susan Jerman who will be a much shorter direct than Mr. Phend
23 and then (indiscernible).

24 THE COURT: So maybe another half an hour of direct
25 between the two?

1 MR. BARTON: I would say a half an hour to 40
2 minutes.

3 THE COURT: Okay.

4 MR. BARTON: Forty-five minutes.

5 THE COURT: Okay. So I can give you maybe 25
6 minutes, okay? So organize your thoughts.

7 We'll be in recess.

8 THE CLERK: All rise. Court is in recess.

9 (Recess taken from 3:14:11 p.m. to 3:22:20 p.m.)

10 THE COURT: 17-cv-1990. Mr. Kever, your witness.

11 MR. KEEVER: Thank you, Your Honor.

12 **CROSS-EXAMINATION**

13 BY MR. KEEVER:

14 Q Mr. Phend, you indicated you were able to look at the
15 contracts that the operator, both WPX and during the TEP period
16 had with third party providers or other providers?

17 A Yes.

18 Q And those contracts can basically be split up into
19 three different portions, right? You got your gathering, you
20 have your processing and you have your transportation, correct?

21 A Well, you have your gathering, your processing. I
22 think there probably were some contracts and base contracts for
23 sale of products as well and transportation contracts if they
24 were reserved spaces on the pipeline, yes, those would be
25 there, too.

1 Q Yeah. So maybe four -- gathering, processing,
2 transportation, sales contracts?

3 A I agree, yes.

4 Q The processing -- what are we talking about when
5 we're talking about that processing aspect of it?

6 A My understanding of processing is that the raw gas
7 enters a gas plant, whether it be a refrigeration plant or a
8 turbo-cryogenic lab or whatever the technology is, where the
9 gas is super cooled, liquids such as ethane, propane, butane
10 and pentanes fall out into a liquid form. Possibly some other
11 purification processes are involved and the resulting products
12 are a processed residue gas which hopefully is pipeline spec
13 gas and various liquids which probably in this case are still
14 in a mixed form. There's ethane, butanes, propanes and
15 pentanes all mixed together and the residue gas exits the gas
16 plant into some type of a pipeline and the liquids are either
17 pipelined or trucked away.

18 Q And then that residue gas after processing, after it
19 meets those pipeline specs, can be transported through your
20 interstate pipelines downstream?

21 A Presumably so, yes. The point of doing it is to get
22 it to pipeline spec, I think, so if it didn't then there'd be
23 issues but, you know, the intent is to get gas that is not
24 pipeline spec into a pipeline spec condition and to extract
25 natural gas liquids which actually enhance the value of the

1 total product mix.

2 Q Right. And so you might take out even more natural
3 gas liquids if you wanted to try to get a better price for some
4 of those natural gas liquids as fractionated products?

5 A Well, this is an issue we have addressed a number of
6 times. The natural gas liquid mix that comes out of a plant I
7 typically call wide grade or raw mix sometimes is a term that
8 is used.

9 As I recall, the contract in this case gave an index price
10 for each of the component liquids minus transportation and
11 fractionation cost. At some point if there is not a
12 fractionator available at the plant that the gas is processed
13 at, the wide grade mix liquids has to be transported to a
14 fractionation facility where they are separated into the so-
15 called purity products of ethane, propane, butane and pentane.

16 Q Right. And sticking just to the processing aspect of
17 it, in the Lindauer settlement, are you aware that that split
18 was, was cut based on the idea that some of these natural gas
19 liquids had to be pulled out to meet the pipeline specs and
20 some of what Williams was doing at the time was pulling out
21 extra NGLs to try to play that fractionation market?

22 A Well, certainly my understanding, not being a
23 processing engineer, my understanding is that the gas is not
24 pipeline spec and we've had experts in other cases on this
25 issue testify and I'm just basing on what they've, you know,

1 said. There are BTU limits, there are hydrocarbon dew point
2 limits and their opinion has been that this west slope gas does
3 not meet pipeline specs because of at least those reasons.

4 Q Right and in fact in the Lindauer settlement, that
5 was the point of marketability that was reached was after it
6 met pipeline specs so that the gas could go into the interstate
7 pipeline, the tailgate of the processing plant?

8 A That is my general understanding. I don't really
9 form an opinion on it --

10 Q Right.

11 A -- but if I'm asked to value gas at that point,
12 that's where I value the gas. I understand the concept. I'm
13 not an expert in that area.

14 Q And here really to cut to the chase on the processing
15 issue, all you were doing was looking at the Lindauer
16 settlement and saying whether or not TEP had applied it, right,
17 had applied that methodology correct when it was taking
18 processing deduction.

19 A The thing I was looking for was basically the strict
20 terms of half of what was allowed by the MMS, which is 66
21 percent in this case and it was a simple mathematical
22 calculation.

23 Q Yeah, it was just what was set out in the Lindauer
24 agreement and you were just applying and seeing whether or not
25 WPX or TEP had done that, correct?

1 A Correct.

2 Q And then where you found that they hadn't, you're
3 calling excess processing?

4 A Correct.

5 Q And but basically that was just TEP and Williams or
6 WPX not sticking to the agreement?

7 A Or not making the calculation correctly --

8 Q Yeah.

9 A -- which resulted in something that exceeded the
10 amount.

11 Q Right. And it's not really a disputed issue. I
12 mean, TEP didn't come back and say no, we're entitled to do
13 this, right?

14 A Well, again, that's not my opinion. I try to use
15 this term a lot but identify and quantify, I don't really take
16 an opinion as to whether it's appropriate or not but I
17 identified and quantified the excess processing costs and
18 provided them to counsel.

19 Q Right but you were talking with them weekly. I mean,
20 this was just trying to figure out how much over the Lindauer
21 settlement they were.

22 A Yes, I think that's what this whole case was about,
23 yes.

24 Q Yeah and so if whenever we look at how much was
25 excess processing and the amount that's being paid back under

1 this settlement, how much is from excess processing of that 10
2 million or of the five million that's going to the class
3 itself?

4 A I would have to add up those numbers but they're in
5 my declaration.

6 Q Well, what percentage was the excess processing of
7 this --

8 MR. BARTON: Your Honor, I'm going to object only in
9 the sense that it's different for category 11 than it is for --

10 THE COURT: Well, sir, if he hasn't done the
11 calculation, he doesn't know but he said he'll do it for you if
12 you'd like.

13 MR. KEEVER: Fair enough.

14 Q (By Mr. Kever) It would be the total of all those
15 excess processing; is that fair, from your declaration?

16 A It would be the total of the processing amounts --

17 Q Okay.

18 A -- the excess processing in each of the categories
19 including 11.

20 Q And if we looked at subclass 3 for example, this will
21 only -- these occurred during the TEP period?

22 A That is what I found, yes.

23 Q And what also occurred during the TEP period for
24 those subclass 3 were TEP wasn't abiding by the Lindauer
25 settlement with regard to the gathering deductions?

1 A You know, my opinion I think I would have to limit
2 to, I made the calculation and they exceeded the allowable
3 amount that was pretty clearly defined in the limit, so if that
4 was to be interpreted as not following the agreement, that
5 probably would be a legal conclusion.

6 Q Well, what's -- what's the limit? None, right? It
7 says no.

8 A In category, in category, in subclass 3?

9 Q Yeah.

10 A It is not, yes.

11 Q Yeah, so if they took any, you know, if there wasn't
12 any dispute, they took them when the agreement says no.

13 MR. BARTON: Your Honor, I'm going to object again
14 because we're talking about different categories.

15 THE COURT: Well, also --

16 MR. BARTON: There is no agreement in Lindauer about
17 any category 2 or 3 deductions. The parties agreed to disagree
18 under the plain language of the agreement.

19 THE COURT: I think the question is appropriate.
20 It's just that you're asking me, you make a judgment call they
21 were doing something wrong. All he's telling you is they
22 didn't have any of those excess processing costs or I guess,
23 yeah, and I, well, gathering costs and I contemplate all the
24 (indiscernible) costs. That's how he did. He's not making
25 value judgments, he's just doing calculations.

1 MR. KEEVER: Well, he's making -- he's using his
2 judgment to make a calculation that the Lindauer agreement says
3 no deductions and he's look at the information and finding
4 that --

5 MR. BARTON: I object again. It's not -- that
6 misstates the witness' testimony. It's not true.

7 THE COURT: Yeah, I don't think it's -- I don't think
8 it's consistent with his testimony either.

9 MR. KEEVER: Okay. I'll slow down.

10 MR. BARTON: It's wrong.

11 MR. KEEVER: I'll slow down then.

12 We were talking about subclass 3 --

13 THE COURT: Right.

14 MR. KEEVER: -- which is category 11 leases.

15 THE COURT: Right.

16 MR. KEEVER: We're not talking about 2 and 3 at this
17 moment.

18 THE COURT: Right.

19 MR. KEEVER: This is during the TEP time period when
20 TEP was taking gathering deductions even though there's really
21 no dispute the agreement says no deductions, correct?

22 MR. BARTON: Again, I'm going to object again because
23 the witness was already saying he wasn't testifying as to the
24 validity or invalidity. He was testifying as to the amount of
25 (indiscernible) across the board.

1 THE COURT: I'll overrule. You can answer the
2 question.

3 THE WITNESS: I looked at the amount that was in
4 excess of the way I read the agreement. I provided that to
5 class counsel with an explanation of what it was. I think I
6 can say in non-attorney laymen's terms that we did not fit the
7 definition of the way that the royalty should have been
8 calculated but that is still a legal issue to be negotiated
9 between the parties to the litigation. I've provided them that
10 number.

11 Q (By Mr. Keever) And during your course of this
12 litigation, was there any push-back from TEP's accountants to
13 you who you were talking to on a weekly basis about saying oh,
14 no, we are entitled to take these?

15 MR. BARTON: Your Honor, I object for lack of
16 foundation because he didn't have that discussion with Mr.
17 Simpson.

18 THE COURT: Well, he knows what conversations he had
19 so did you have that conversation?

20 THE WITNESS: Well, we made our separate calculations
21 and they turned out to be essentially the same for the
22 different category items in each subclass.

23 MR. KEEVER: Yeah, wasn't --

24 THE COURT: Let me ask a question. Did you -- did
25 you perceive that their accountant was trying to influence you

1 on what conclusion you should come to?

2 THE WITNESS: Not at all because honestly it's not my
3 conclusion. It's really a number that I provided. I provided
4 numbers that weren't, weren't considered as well. The
5 litigants, class counsel, defense counsel, class reps all
6 decided what they thought was an issue and they went forward
7 with that. I wasn't encouraging or discouraging that a certain
8 item be considered or not considered. I just quantified and
9 identified.

10 Q (By Mr. Keever) Let me go to subclass 2. Subclass 2
11 is category 5 leases and you found under the Lindauer
12 settlement -- back up -- category 5 leases say no deductions
13 for gathering, correct?

14 A I believe so, yes.

15 Q And you found deductions under subclass 2 which are
16 category 5?

17 A Yes.

18 Q And these -- there wasn't, there really isn't a
19 dispute between the parties about whether or not TEP had taken
20 deductions that did not comply with the Lindauer settlement,
21 right?

22 MR. BARTON: Your Honor, I object for the same
23 reason. He's asking this broad-based question about the
24 Lindauer settlement. The question as phrased applies to every
25 single category the way he asked the question. That's the way

1 he asked the question.

2 THE COURT: Well --

3 MR. BARTON: I object to it. It's improper.

4 THE COURT: We'll limit it to the subclass 2 because
5 that's what he started down the road on so subclass 2.

6 THE WITNESS: I was not involved -- I think I can
7 answer it this way. I was not involved in any of the internal
8 negotiations as between the parties. I think I probably had a
9 feeling of what the parties' opinions were but that wasn't
10 something that I encouraged or discouraged. I just provided
11 the number.

12 Q (By Mr. Keever) Let's go to subclass 1. Subclass 1
13 deductions, these are the category 2 and 3, these are made up
14 of excess processing which we've talked about which is just
15 processing that exceeds the amount of the Lindauer settlement.

16 A Correct.

17 Q And then what seems to be the only real disputed
18 issue is gathering under category 2 and 3 leases. Do you agree
19 with that?

20 MR. BARTON: Your Honor, I'm going to object because
21 it misstates the witness' prior testimony and he --

22 THE COURT: Well, I agree.

23 MR. BARTON: Yeah.

24 THE COURT: Because there's a 38 percent factor for
25 fuel WPX and fuel TEP and no accommodation for gathering, I

1 accept that those three were at issue. It's clearly at issue.
2 There's a dispute.

3 MR. KEEVER: I'm saying that.

4 THE COURT: Yeah. That's the evidence I heard.

5 MR. KEEVER: Yeah, I'm agreeing with that.

6 THE COURT: Okay.

7 MR. BARTON: Well, he just asked a question. The
8 question that Mr. Keever asked was whether, that there was no
9 dispute about the fuel and the excess processing.

10 MR. KEEVER: No.

11 THE COURT: I think he just said there were -- his
12 question was gathering cost was the only thing there was a
13 dispute about in all this whole thing but I think adding in the
14 fuel for TEP and WPX, amending your question is accurate.

15 MR. KEEVER: Maybe I could be more clear.

16 Q (By Mr. Keever) Fuel is actually a gathering charge,
17 correct?

18 A In the way that this works it is either the value of
19 the fuel that is used to run field and plant operations or a
20 certain percentage that might have been allowed in a contract
21 but it is treated as a deduction.

22 Q Under a gathering contract, it's basically a volume
23 amount that goes with your flat dollar amount for the
24 gathering?

25 A Typically that is, and I recall the contracts here.

1 I believe that was what they did, too. I don't remember if it
2 was the actual use or if it was a specified percentage --

3 Q Right.

4 A -- but it was an allowance that was provided by in
5 this case WPX, TEP to the gatherers or processors to do what
6 they were doing.

7 Q And so what we're talking about here is the dispute
8 is over these gathering charges, be they as gathering fuel or
9 as a gathering feat, correct?

10 A I understand they are disputing those, yes.

11 Q And the gathering charges is the lion's share when
12 you're talking about gathering cost as a whole, correct?

13 A In this case, yes. I've seen some other situations
14 that I wouldn't answer it that way but so I can't say it's
15 always that way but in this case here, the gathering charge
16 probably was significantly larger than the fuel charge.

17 Q And, well, we know what it is but you didn't, you
18 didn't put the gathering amount on your demonstrative, correct,
19 the gathering fee amount?

20 A I did not. I did put it on my declaration though.

21 Q And how much would the gathering fee amount be if we
22 had put it on this demonstrative?

23 A It's in my declaration. I don't have it here in
24 front of me but it's --

25 Q You don't have your declaration in front of you?

1 A Didn't bring it back up to my podium.

2 MR. BARTON: Do you want me to get -- Don, where'd
3 you --

4 THE WITNESS: I think I left it back there. It's in
5 an orange folder.

6 THE COURT: Well, it's 1646951.11 plus 508,150, so
7 approximately 2.154.

8 Q (By Mr. Keever) Does that sound correct, 2.154?

9 A It sounds correct. I'll verify it if you want me to.

10 Q So what, what this demonstrative would show if we
11 included gathering fees on here would be another line, another
12 row that says gathering fees, 2.1 million, right?

13 A Correct.

14 Q And would that be, some of that would be during WPX,
15 some of it would be during TEP, correct?

16 A Presumably so, yes.

17 Q Okay. And it looks like about five times the amount,
18 four times the amount is during the TEP period for fuel. Would
19 that be the same for the cost?

20 A I don't know if there's a direct relation because one
21 is price based and one is volume based and prices drop
22 sometimes.

23 Q Well, did you look at that? I mean, do you know?

24 A I could.

25 Q No, did you?

1 A Not with -- well, I presented both of those numbers
2 to counsel. They negotiated with them with me absent and came
3 to a conclusion as to how they would settle it.

4 Q And the conclusion is you times that by zero, right?
5 TEP gets to keep all of that 2.1 million?

6 A If I was asked to include that, I could do that. My
7 understanding was we were just trying to work out to a bottom
8 line number and those are the ones that hit the bottom line
9 number. I don't disagree that if I was asked to put \$2 million
10 times zero, that that would not, I mean, that would be correct,
11 yes.

12 Q Okay. That would accurately be reflected on this?

13 Now, there was a change -- are you aware there was a
14 change in the amount that WPX was charging for gathering in
15 June of 2016 compared to what TEP was charging for gathering in
16 July of 2016?

17 A I could make a calculation to see if it was on a per
18 unit basis and if it changed, I was concerned more with what
19 was deducted than how they got to that number.

20 Q Well, are you aware that there was a change?

21 A I don't know that there was a change in rate. You
22 stipulated that there was. I could investigate --

23 Q So you didn't look at whether or not how much TEP was
24 charging was reasonable?

25 A I don't know what reasonable is. All I know is what

1 they charged.

2 Q Well, what if they doubled the amount the next month?
3 Would that be reasonable?

4 A I don't know if they --

5 Q So you didn't look at that question?

6 A I --

7 Q Fair enough?

8 A I'm not attempting to quantify that, no, so I didn't
9 look at that.

10 THE COURT: So Mr. Kever, most of what you're doing
11 is not helpful. You're making argument which I understand
12 through this witness but it's just irrelevant.

13 Like, for example, the fact that he didn't include
14 the 2.1, those are things you can argue to me. I already
15 understand it but you don't need to prove it through him. It's
16 already of record. You know what I'm saying?

17 MR. KEEVER: I agree, Your Honor.

18 THE COURT: Okay.

19 MR. KEEVER: And I didn't know if he -- I know the
20 answer to the question I'm asking him but there have been no
21 depositions or anything so I don't really know if he knows the
22 answer --

23 THE COURT: Sure.

24 MR. KEEVER: -- to the change that occurred from June
25 of 2016 to July of 2016, so I can argue that to you and tell

1 you but then it's just me giving you evidence rather than me
2 getting it --

3 THE COURT: Sure, I'll accept your (indiscernible).

4 MR. KEEVER: -- from him. Okay.

5 THE COURT: -- attorney's proffer all the time.

6 MR. KEEVER: Fair enough.

7 Q (By Mr. Keever) Did you make any calculations as to
8 what the amount that TEP considers overpayment for category 1
9 or subclass 1 leases under 9(b) of the settlement agreement?

10 A Sorry. You said overpayment?

11 Q Yeah, under 9(b) it says TEP shall be entitled to
12 recoup any overpayments made to class members prior to the
13 effective date as a result of not deducting allowable post-
14 production costs.

15 A That is not a calculation that I was asked to make
16 and I did not make that calculation.

17 Q So we don't even know what that amount is or you
18 don't know what that amount is?

19 A I don't.

20 Q Okay. Did you make a calculation as to how much this
21 means to the category or subclass 1 members going forward?

22 A I don't know.

23 MR. KEEVER: No further questions, Your Honor.

24 THE COURT: Anything from the parties?

25 MR. BARTON: No, Your Honor.

1 THE COURT: You may step down. Call your next
2 witness.

3 MR. BARTON: Your Honor, I call Ms. Susan Jerman.

4 THE COURT: Okay. (Indiscernible) from your firm?
5 Your firm is (phonetic)? Is that any of the Duffords that are
6 over here in Denver?

7 MR. KEEVER: Brother.

8 THE COURT: Brother? Really?

9 MR. KEEVER: Ken Dufford was the founder of my firm
10 (indiscernible).

11 THE COURT: Okay.

12 MR. KEEVER: His brother was --

13 THE COURT: Dufford Brown and (Indiscernible)? Okay.
14 Thank you.

15 MR. KEEVER: I did not --

16 THE COURT: Pardon?

17 MR. KEEVER: I did not meet either one.

18 THE COURT: You know Judge Shaffer (phonetic) worked
19 for that firm?

20 MR. KEEVER: Who did?

21 THE COURT: Judge Shaffer, the judge who passed away
22 recently. He worked for Dufford Brown.

23 THE CLERK: If you could state your name and spell
24 it, please.

25 THE WITNESS: Susan Jerman, S-U-S-A-N, Jerman is

1 spelled with a J, not a G, J-E-R-M-A-N.

2 SUSAN JERMAN, PLAINTIFF'S WITNESS, SWORN

3 **DIRECT EXAMINATION**

4 BY MR. BARTON:

5 Q Good afternoon, Ms. Jerman. You understand that you
6 are one of the two class representatives for what's described
7 in this case as subclass 1, correct?

8 A Yes.

9 Q And when I say you, I actually misspoke. The entity
10 that is actually the, one of the two class representatives, is
11 an LLC that you own named White River Royalties, LLC; is that
12 correct?

13 A That's correct. I'm the manager.

14 Q And you are the primary owner of White River
15 Royalties, LLC, correct?

16 A Yeah.

17 Q And just generally can you describe for the Court
18 what White River Royalties is?

19 A It's a royalty holding company. I have not made any
20 new acquisitions into that company since its formation so it's
21 just holding acquisitions that I previously had.

22 Q Okay. And do you have your, do you live here in the
23 Denver area?

24 A I do.

25 Q And the office of White River Royalties has been here

1 in the Denver area from its inception?

2 A Yes.

3 Q And your experience is as a land man; is it not?

4 A Yes, I've been a land man for 40 years.

5 Q Can you describe for the Court what your
6 responsibilities and duties and experience has been as a land
7 man very briefly?

8 A Well, I have mostly been involved in title, contracts
9 and federal lands and federal units and primarily for companies
10 that are operators. I've never been a company man, though. I
11 am an independent and I have always done contract work.

12 Q So you've actually done work for oil and gas
13 companies --

14 A Yes.

15 Q -- throughout your career?

16 And in connection with all of the work that you did as a
17 land man, part of what occurred is that as part of your work,
18 that you ended up acquiring or White River Royalties did,
19 interest in a lot of different leases, correct?

20 A Yes.

21 Q And you also acquired interest in overriding
22 royalties?

23 A Yes.

24 Q And I think you told me as we were meeting that you
25 actually have royalty interests from 80 different oil and gas

1 producers?

2 A About 60.

3 Q Sixty, okay, and one of those, of course, is the
4 lease agreement that's at issue in this case?

5 A Yes.

6 Q And you have in front of you what is Plaintiff's
7 Exhibit 3.

8 A I do.

9 Q And is that, is it your understanding that that is
10 one of the leases that was subject to what's, you heard the
11 testimony about the Lindauer class settlement agreement?

12 A It is.

13 Q And you understand that that's what's described in
14 the Lindauer class settlement agreement as a category 2 lease,
15 correct?

16 A Yes, I do.

17 Q And if you look down, and I know it's not easy to
18 read, but if you look down in the middle of the top page of
19 Exhibit 3, it's got a reference to what the royalty provision
20 is for the payment of royalties to White Rivers from whoever
21 the lessee is. In this case it started out with Winds
22 Production RNT (phonetic) and eventually of course that
23 succeeded to TEP, correct?

24 A Yes, uh-huh.

25 Q And if you look at paragraph 3(b), that's the

1 provision, is it not, that talks about what the obligations are
2 of the lessee to pay royalties to White Rivers, for White River
3 Royalties, on natural gas, correct?

4 A Yes.

5 Q And it talks about -- I'm paraphrasing here -- but it
6 says when sold by lessee, 19 percent -- this is the royalty
7 you're going to be paid -- 19 percent of the net proceeds
8 derived from such sale or when used by lessee off said land or
9 in the manufacture of gasoline or other products, the market
10 value at the mouth of the well of 19 percent of such gas and
11 casing head gas.

12 Did I read that correctly?

13 A Yes.

14 Q Then it says, then it's got a provision right after
15 that, lessor's interest -- of course, White Rivers is the
16 lessor, correct?

17 A Yeah.

18 Q Lessor's interest, comma, in either case, to bear 19
19 percent of the cost of transporting such gas and casing head
20 gas from the mouth of the well to the point of sale or use.

21 A That's correct.

22 Q Okay. And so that was a provision. Did you
23 understand that to be a provision that allowed the lessee to
24 make certain deductions from the sale price, correct?

25 A Yes. This provision contains the phrase net proceeds

1 and it talks about transporting and I believe there's a
2 distinction between transporting and transportation. This
3 lease says transporting gas from the mouth of the well to the
4 point of sale.

5 As far as getting -- you've been involved in this oil and
6 gas industry for 40 years so you've become familiar with sort
7 of how gas is treated, correct?

8 A Yes.

9 Q And how it's sometimes processed. We heard a little
10 testimony about that today.

11 A Correct.

12 Q Are you aware of any means by which gas would get
13 from the point, from the mouth of the well to a processing
14 plant other than through a gathering system?

15 A No.

16 Q Okay.

17 A There's no way and the various pipelines, really the
18 only difference between them is the diameter and the pressure.
19 A gathering line is typically two inches to six inches in
20 diameter.

21 Q And the gas has to go through that line to get to the
22 plant?

23 A Right it goes through that line and typically
24 connects to a trunk line or a lateral line which is maybe eight
25 inches to 16 inches in diameter and then that takes it to the

1 plant.

2 Q So all of that is part of transporting the gas from
3 the mouth of the well to the point of sale?

4 A I believe it is.

5 Q Yes. All right. And then if you look down in
6 paragraph 6, Ms. Jerman, there's another provision there that
7 says and I'm just going to read it to make it a little faster.
8 Lessee shall have the right to use free of cost gas, oil and
9 water produced on said land for lessee's operation thereon,
10 correct?

11 A Uh-huh.

12 Q Have you heard this sometimes referred to as a free
13 fuel provision?

14 A Yes.

15 Q All right. And to your knowledge just based on what
16 you've looked at from the Lindauer settlement, are these
17 royalty provisions in this free fuel provision? I mean, I
18 realize you didn't look at every lease from the Lindauer
19 settlement, but as it relates to category 2 and 3 leases, is
20 this a typical royalty provision that allows this transporting
21 of the gas from the mouth of the well to the point of sale?

22 A Yes, it is.

23 Q All right. Now, did you understand after you met
24 with me, and I think it's Exhibit 5. I mean, you understood
25 when we met originally and talked about this case and you're

1 getting involved, I think there was a discussion about the
2 provisions that relate to these category 2 and 3 leases as it
3 related to the Lindauer settlement agreement, correct?

4 A Yes, uh-huh.

5 Q There's a paragraph 4.2 and it's part of Exhibit 5
6 that's in front of you, Ms. Jerman, and in paragraph, there was
7 a paragraph 4.2. Do you see that?

8 A I do.

9 Q I'm just going to read it. It says with respect to
10 royalty instruments in categories 2 and 3 on Exhibit A, nothing
11 herein prohibits Williams from taking any deductions it claims
12 it is entitled to take under the terms of such royalty
13 instruments and nothing herein prohibits any settlement class
14 member from challenging such deductions.

15 Do you see that?

16 A I do.

17 Q That was part of the agreement that was made in the
18 Lindauer class settlement. It was sort of an agreement not to
19 agree, right?

20 A Yes, the royalty provision in my lease is a weak
21 royalty provision.

22 Q And you understood that because of that, this
23 provision, 4.2, was applicable to category 2 and 3 class
24 members?

25 A Yes.

1 Q To contrast that with category 5 which is addressed
2 up in 4.1 --

3 A Right.

4 Q -- where certain deductions were specifically
5 prohibited?

6 A They're prohibited and in some instances those, other
7 leases use the phrase gross proceeds, and there is a
8 distinction to be made between net proceeds and gross proceeds.

9 Q So you had an understanding of this, as you described
10 it, this is a weaker royalty provision because of the allowance
11 of the transporting of the gas from the mouth of the well to
12 the point of sale?

13 A Yes and the use of the word net proceeds.

14 Q Okay. So when we talked about this case in general
15 and you became involved in this case and you became, you know,
16 aware of the settlement amount for the subclass 2 and 3 class
17 members and we've discussed that, have we not?

18 A Yes.

19 Q We've discussed the risk factors that apply including
20 the plain language of this lease, correct?

21 A Correct.

22 Q Did we also discuss the fact that TEP in this case
23 has asserted a counterclaim for, to have a setoff from any
24 amount that might be recovered for certain ad valorem taxes,
25 correct?

1 A Correct.

2 THE COURT: Hold on a second. Are you just waiving
3 the attorney-client privilege with regard to this witness?

4 MR. BARTON: Well, I'm not waiving it but I mean, I'm
5 just, I'm trying to -- here's what I'll do, Your Honor. I'll
6 withdraw the question.

7 THE COURT: Obviously you know that if you ask her
8 what you did discuss, he gets to ask other things that you did
9 discuss or didn't discuss.

10 MR. BARTON: Right. No, I understand. I will put it
11 this way. Did I -- I will waive it to this extent.

12 Q (By Mr. Barton) Did I hand to you and show you what
13 is marked as Exhibit 7, and that's a copy of a pleading in this
14 case?

15 A Yes.

16 Q And did I show that to you? At some point in this
17 case did you get a chance to see that?

18 A Yes, I did.

19 Q Okay. And if you turn to page 13, was page 13 of
20 that -- and that, by the way, for the record is Exhibit 7.
21 It's TEP's answer to the second amended class action complaint
22 in this case after you became one of the parties or after White
23 River did?

24 A Correct.

25 Q If you look at page 13, at the top of it does it say

1 counterclaim?

2 A Yes, it does.

3 Q And TEP asserted a counterclaim --

4 A Yes.

5 Q -- having to do with its claim if you will or its
6 counterclaim that if there was any recovery for royalty
7 underpayments, that TEP got an offset for certain ad valorem
8 taxes, correct?

9 A Yes, uh-huh.

10 Q And you have a certain understanding, do you not, of
11 ad valorem taxes?

12 A Yes, I do.

13 Q So what was your understanding of the counterclaim
14 that was being made by TEP?

15 A Well, for instance, if I have \$100 worth of royalty
16 and \$10 of ad valorem tax against that, on my tax return I will
17 be able to deduct that \$10, so if my \$100 of royalty is reduced
18 to say I'm going to have 75 and they're going to get back 25,
19 then they would want 25 percent of the ad valorem because they
20 would want to be able to use that on their tax return. That's
21 the way that I view it.

22 Q All right. And did you, do you consider that to be a
23 risk factor as it applies to the claims of the category 2 and
24 category 3 royalty owners in this case?

25 A Yes because there would be a loss of -- you might

1 even have to correct your tax returns if you had taken it off
2 your tax returns, if you had taken the ad valorem deduction, so
3 yes, there would be, there would be a risk for that.

4 Q And did you also have a chance to look at what was
5 marked for identification as Exhibits 8 through 12, Ms. Jerman,
6 which are certain pleadings in some other natural gas royalty
7 underpayment cases?

8 A Right, right, the bankruptcies.

9 Q Yes. In other words, just trying to move through
10 this as quickly as I can, Exhibit 8 is a class action complaint
11 that was actually filed by my firm representing the Plaintiffs
12 in state court in Denver against a company called Vanguard
13 Premium (phonetic), LLC, correct?

14 A Right. Actually, White River has interests with
15 Vanguard.

16 Q Okay. And did you also see that subsequent to the
17 filing of that complaint, that complaint was filed in December
18 of 2015, if you look at paragraph 9 --

19 MR. KEEVER: Your Honor, in the interest of
20 (indiscernible) --

21 THE COURT: Well, I'm going to ask Mr. Chrisman a
22 question.

23 As an officer of the court, was there a legitimate
24 concern, good faith concern about bankruptcy ever raised in
25 this case?

1 MR. CHRISMAN: Not specific as to TEP.

2 THE COURT: Okay.

3 MR. CHRISMAN: (Indiscernible) has no financial
4 interest.

5 THE COURT: Well, WPX obviously would be irrelevant
6 because TEP was a defendant always in this case, right?

7 How is this relevant -- yeah, these bankruptcies do
8 happen but if there was no possibility it would ever happen
9 here, why is this relevant?

10 MR. BARTON: It's relevant because, Your Honor, no
11 one knows whether two years from now or if this case continued
12 and had it not be settled, you know, these cases typically take
13 three, four, five years. That's average in any natural gas
14 royalty underpayment case. No one had any concern about
15 Vanguard either until one day on December 10th, 2015, or excuse
16 me, I've got the wrong date -- February 2nd, 2017 after the
17 case had been pending for more than a year, they filed in the
18 Denver case a notice of bankruptcy and automatic stay. They're
19 a bigger company than TEP.

20 THE COURT: Right.

21 MR. BARTON: And all of a sudden, you know, they're
22 filing for bankruptcy.

23 THE COURT: And so the risk is I guess, I think what
24 you said earlier maybe in your opening is if for some reason if
25 we can't anticipate the bottom falls out of natural gas prices,

1 then everybody goes belly up. Is that what you're saying?

2 MR. BARTON: Yes. Well, even more than that, I mean,
3 it can happen for all kinds of reasons. These are -- these are
4 people that were in the same size as TEP or bigger and they,
5 you know, were operating in, you know, Colorado was one of
6 their primary states of operation and all of a sudden they go
7 bankrupt, they file for Chapter 11, it wipes out completely the
8 claims of these class members in these natural gas royalty
9 underpayment cases. It happened with Vanguard and then it
10 happened again and this case that Judge Mix has, and what Ms.
11 Jerman will tell you is she gets, you know, royalties from I
12 believe you told me 60 oil and gas producers. She's had about
13 eight bankruptcies from those companies. So it's a legitimate
14 risk in cases that take five, six years to prosecute.

15 THE COURT: I understand that. I just want to -- you
16 never raised the prospect of bankruptcy in your negotiations.

17 MR. CHRISMAN: Nothing with respect to TEP, Your
18 Honor. The only time it did come up was in the contracts with
19 Mr. Horton (phonetic) as a point of negotiation, one, the
20 promise of the escrow as opposed to TEP handling it.

21 THE COURT: I understand. Okay.

22 MR. CHRISMAN: That was the only (indiscernible).

23 THE COURT: So with that explanation, you can finish
24 that line of questioning if you want to, one or two more
25 questions.

1 MR. BARTON: Yeah, I will.

2 Q (By Mr. Barton) The point is, Ms. Jerman, you became
3 aware of two bankruptcies that were filed out of the six cases
4 I had total in Colorado?

5 A Correct.

6 Q Two of the companies went bankrupt and those
7 companies are Augustus Resource, yeah, it's Augustus and then,
8 it's called Augustus Energy Resources and then also Vanguard
9 Premium --

10 A Right.

11 Q -- that those companies went bankrupt?

12 A Correct.

13 Q And the class member's claims got wiped out?

14 A Right.

15 Q Right? And you've also become aware just in your own
16 experience as a royalty owner of that of White Rivers, that you
17 had -- have you had situations just in your own experience
18 where bankruptcies have happened separate and apart from
19 Augustus --

20 A Yes.

21 Q -- and Vanguard?

22 A I've received approximately six notices in the last
23 24 to 36 months, one a particularly large company, Samson,
24 which was kind of unexpected --

25 Q Right.

1 A -- filed for bankruptcy.

2 Q And Samson was a very large natural gas producer?

3 A Yes, it was.

4 Q All right. Publicly traded down in Oklahoma, I
5 believe?

6 A Yes.

7 Q Okay. So talking about just risk factors in general,
8 I want you to take a look at Exhibits 14 and 15.

9 A These are the reserved claims.

10 Q From the Lindauer case?

11 A From the Lindauer case.

12 Q Correct?

13 A And both of these claims were litigated and lost.

14 Q Okay. And one of them I think is, the first case was
15 Exhibit 14. It's the Court of Appeals decision for the first
16 reserved claim, correct?

17 A Correct.

18 Q And these were litigated, I mean, in front of the
19 Garfield County District Court in this first case. Well, the
20 bottom line is in both cases, the claims were lost in their
21 entirety that were litigated by Mr. Keever on behalf of the
22 Lindauer class, correct?

23 A Right.

24 Q Did you perceive that to be indicative of litigation
25 risks generally?

1 A Yes.

2 Q Okay. And then I just want to -- there's one other
3 exhibit that I want to ask you about, Ms. Jerman, just to give
4 a little bit of background here.

5 This is not the first case that you've actually, that
6 White River Royalties has been a named plaintiff in a class
7 action, correct?

8 A That's correct.

9 Q And so White River Royalties was one of the named
10 plaintiffs in this Miller versus Encana case that you heard me
11 mention in opening statement, correct?

12 A Yes.

13 Q And you were one of the persons who actually
14 testified at the final fairness hearing in front of Judge
15 Haglund over in Denver District Court, correct?

16 A Yes.

17 Q You remember Mr. Keever was there?

18 A Yes.

19 Q And you remember that you were cross-examined by Mr.
20 Keever at that proceeding, correct?

21 A I was.

22 Q And that case, that settlement, was a \$40 million
23 settlement with Encana for members of that class, correct?

24 A Yes.

25 Q And you understood that there were a whole bunch of

1 objections that Mr. Keever was making on behalf of certain
2 objectors?

3 A Yes.

4 Q Correct? And is this document here, the appeal or
5 the decision on the appeal that was taken by Mr. Keever and his
6 clients from the final approval of that class settlement?

7 A Yes. I believe this was, this was about using
8 decimal interests --

9 Q Okay.

10 A -- to calculate --

11 Q That was one of their objections that they made?

12 A Right.

13 Q And ultimately the Court of Appeals affirmed the
14 district court's order rejecting, you know, the objections that
15 have been made by Mr. Keever?

16 A Yes.

17 Q And one of the objections as you realized was the
18 scope of the settling party's release agreement, correct?

19 A Yes.

20 Q That was an objection they made in that settlement
21 also?

22 A Yes, it was.

23 Q Okay.

24 MR. BARTON: Your Honor, can I have just a minute?

25 THE COURT: Yes.

1 MR. BARTON: I don't have anything else right now,
2 Your Honor.

3 THE COURT: Any direct?

4 MR. CHRISMAN: No, Your Honor.

5 THE COURT: Okay. Any cross?

6 **CROSS-EXAMINATION**

7 BY MR. KEEVER:

8 Q You said there's a difference between transporting
9 and transportation. What's that difference to you?

10 A Well, to me -- well, transporting from the mouth of
11 the well head, it has to move from that point to another point.

12 Q And transportation --

13 A Transportation often is thought of in the main line
14 and going all the way to that, to the plant, but gas from the
15 well head has to move, it has to move from the well head in
16 order to get to the plant. Just because --

17 Q So generally you agree --

18 A -- it's a smaller line doesn't mean that it's not
19 being transported.

20 Q But generally you agree with me there's a difference
21 between gathering and transportation?

22 A Transportation in a main line.

23 Q Right.

24 A Yes.

25 Q And category 2 leases, are you aware, include other

1 language that uses the term transportation rather than
2 transporting?

3 A My lease has transporting.

4 Q Right. So you're only aware of your lease?

5 A No, I looked at a schedule of some of the other
6 leases. Let me find it. I believe your clients have
7 transporting, the word transporting from the mouth of the well
8 to the point of sale.

9 Q But category 2 is larger than even that word? It
10 includes leases that include customary transportation costs,
11 all transportation charges and category 3 is third party
12 transportation cost?

13 A Uh-huh.

14 Q And transportation generally as we talk about it in
15 the industry occurs after the point of marketability, correct?

16 A Well, for main line transportation.

17 Q Right. And you could have a situation where gas is
18 marketable at the well head?

19 A That would be highly unlikely.

20 Q Well, the industry has argued that -- are you aware
21 of the Savage case?

22 A Yes. Well, just a little bit I am.

23 Q That was their predecessor. They argued this same
24 gas was marketable at the well head. Judge said no. Clow
25 (phonetic) case?

1 A I'm not familiar with that one.

2 Q Same thing, same argument, marketable at the well
3 head. Jury said no.

4 A There's a lot of impurities at the well.

5 Q So that's the difference. Let me ask you about --

6 THE COURT: Do you want to ask her the impact --
7 you're testifying but --

8 MR. KEEVER: I know.

9 THE COURT: -- but do you want to ask her the impact
10 of all these cases on her right now in her mindset? You would
11 have changed your mind, ma'am, about the settlement given what
12 he just said?

13 THE WITNESS: I don't understand the question.

14 THE COURT: Do you want to change your mind about
15 whether this is a fair settlement based on the statements that
16 this attorney just said?

17 THE WITNESS: I think this is a fair settlement.

18 THE COURT: Okay. Please proceed.

19 Q (By Mr. Keever) And what I'm -- do you realize that
20 under the Lindauer settlement or at the time of the Lindauer
21 settlement, these under category 2 and 3 leases, the gathering
22 charges were paid back to the royalty owners?

23 A Yes.

24 Q But at this time you think that was incorrect?

25 A Well, it's not a question so much that it's

1 incorrect. It's that we have, we have a settlement now and we
2 have a number of risk factors that this, this particular
3 royalty provision in my lease and your client's lease, it could
4 be litigated and -- but I don't think that it would be able to
5 withstand the scrutiny of some of the other provisions that
6 don't say anything about transportation and that use the word
7 gross proceeds.

8 Q So --

9 A I think this is a much weaker provision compared to
10 the, the provisions of some of the other leases.

11 Q But do you understand if you lost that issue, you
12 would be in the position that you're in now, which is TEP gets
13 to deduct?

14 A Yes.

15 Q You've given up on it?

16 A Well, I think that there's a risk that if you
17 litigate it, you would probably end up in a worse position.

18 Q What could be worse than they can deduct all that
19 they want to deduct? There's not even a cap.

20 MR. BARTON: I object to that being argumentative.

21 THE COURT: You can be argumentative on cross so --

22 MR. BARTON: All right.

23 THE COURT: -- overruled.

24 Q (By Mr. Keever) Right? It means you're giving them
25 what they want, which is to deduct the gathering under this

1 settlement agreement.

2 A Well, like I said, I think that this is a weak
3 provision and I don't think that you would be, that it would
4 stand up to the scrutiny of being litigated and having it turn
5 out to be something better than it is.

6 Q Well, when we litigated it last time in Lindauer,
7 they paid this back.

8 A They paid it back but they didn't actually say what
9 they were, what -- they didn't actually say what the provision
10 meant. They just said we're going to leave it like this and we
11 will deduct the things that we think we can take out and the
12 parties can challenge it if they so desire.

13 Q And now it would be they can deduct and nobody can
14 challenge it?

15 A Right.

16 Q That's a worse position than you were just in.

17 A I don't think that's a worse position.

18 Q They're allowed to deduct, are you aware, under 9(b)
19 of the settlement agreement for overpayment of post-production
20 costs?

21 A What -- what exhibit is that in?

22 Q That's Exhibit 6, I believe. It's 9(b).

23 A 9(b)?

24 Q Section 9(b). It's on page 6.

25 A Right. Except shall be entitled to recoup

1 overpayments made to the class members prior to the effective
2 date.

3 Q For allowable post-production costs.

4 A Right.

5 Q That doesn't say ad valorem taxes, correct? It says
6 post-production costs.

7 A It says post-production costs, yes.

8 Q That's different than ad valorem taxes.

9 A It is.

10 Q And how much do they get to recoup from you for those
11 post-production costs?

12 A I haven't seen the schedule that says what that, what
13 the amount will be.

14 Q So how do you know it isn't more than what you're
15 getting here?

16 A Well, I don't know that it's, that it's more. What I
17 think is as a class representative, I have to think of the
18 whole class. My provision, my royalty provision is much weaker
19 than the other people's, the other party's royalty provision
20 and because of that, my royalty provision is not going to
21 receive the same share that the other parties receive but
22 thinking as the parties as a whole, I think it's a good
23 settlement for the entire party, the entire class.

24 Q So you're willing to sacrifice yourself as a class 2
25 or category 2 lease because you think everyone else getting

1 paid back under the Lindauer settlement is appropriate?

2 A Well, I wouldn't really say it like that. I just
3 believe that my provision is much weaker and I can't think of
4 only myself. I'm thinking of the settlement as a whole. I
5 can't only think of myself. I have to think of the settlement
6 based on the whole class.

7 Q Okay. But think of the category 3 members who say
8 they can only deduct for third party transportation and now
9 they can deduct for gathering and they can recoup for
10 gathering. Have you thought of them?

11 A No, I haven't. I don't -- I don't know that I'm
12 familiar with the category 3 lease. I don't know if I read
13 that one.

14 Q How about --

15 A I have several schedules that I did read.

16 Q How about in the future? Do you know how much this
17 is going to cost you next year?

18 A I don't think that this provision can be litigated in
19 one and have it change what it says.

20 Q I understand but you're, you're settling to say they
21 can take it all. So do you know how much that cost you?

22 A No.

23 MR. KEEVER: I have nothing further, Your Honor.

24 THE COURT: I have a couple questions, Ms. Jerman.

25 Were you -- were you involved in the negotiation of

1 the Lindauer settlement at all?

2 THE WITNESS: No, I was not.

3 THE COURT: Okay. You were a beneficiary --

4 THE WITNESS: I was a beneficiary.

5 THE COURT: But you didn't participate and weren't
6 kept apprised of how that was going?

7 THE WITNESS: No.

8 THE COURT: And how many different lawsuits have you
9 been involved in involving any royalty interests that you
10 owned, either through yourself or through a company?

11 THE WITNESS: As a class representative?

12 THE COURT: No, just overall first.

13 THE WITNESS: Oh, many.

14 THE COURT: Like dozens?

15 THE WITNESS: Probably 20.

16 THE COURT: Twenty lawsuits? And as a
17 representative?

18 THE WITNESS: Three.

19 THE COURT: Okay. And the process that you're seeing
20 happening here, is that typical with the cases that you've --

21 THE WITNESS: Yes, it is.

22 THE COURT: -- been involved in?

23 Now I'm going to ask you a couple questions that I
24 would ask a criminal defendant before they agree to plead
25 guilty. I'm going to ask you before you agree to the

1 settlement agreement.

2 Do you believe that you have had adequate
3 representation --

4 THE WITNESS: I do.

5 THE COURT: -- by this law firm?

6 THE WITNESS: I do.

7 THE COURT: Do you believe they've adequately
8 informed you of all the risks and potential benefits of the
9 settlement?

10 THE WITNESS: I do.

11 THE COURT: And do you believe that you understand
12 exactly what's going on even in light of Mr. Keever's
13 questions?

14 THE WITNESS: Yes, I do. As I've said more than
15 once, this is an extremely weak royalty provision and if it
16 were litigated, I don't think it could stand up to the same
17 scrutiny as the other category of leases, the ones that say
18 gross proceeds, the ones that don't mention transportation at
19 all. It's just a very weak provision and if, if they were to
20 litigate it further, I don't think that it would stand up.

21 THE COURT: Other than the potential incentive award,
22 I guess, is anybody making you any promises other than what
23 you'll receive under this settlement?

24 THE WITNESS: I'm not a party of the incentive award.

25 THE COURT: Oh, you -- okay. So is anybody

1 threatening you to accept this settlement?

2 THE WITNESS: No.

3 THE COURT: Is anybody pressuring you to accept this
4 settlement?

5 THE WITNESS: No.

6 THE COURT: Okay. And do you think you've had enough
7 time to consider all of your options?

8 THE WITNESS: In what way do you mean that?

9 THE COURT: Well, options of whether to join with the
10 opt-outs or time pressure? Do you think you're under some time
11 pressure to do this?

12 THE WITNESS: No.

13 THE COURT: Okay. You guys can ask any follow-up
14 questions based on my questions.

15 MR. BARTON: I don't have any, Your Honor.

16 THE COURT: Anything, Mr. Keever?

17 MR. KEEVER: Wouldn't you like to know how this is
18 going to actually affect you and the other people in category 2
19 and category 3 members?

20 THE WITNESS: In dollars and cents?

21 MR. KEEVER: Yeah, in terms of how much of an offset
22 is going to occur right after you receive this settlement?

23 THE WITNESS: Well, I don't really think that that's
24 known at the moment.

25 MR. KEEVER: I know but don't you think that it's a

1 piece of information you have to have to understand how the
2 settlement is going to affect you?

3 THE WITNESS: I suppose.

4 MR. KEEVER: How much they can take right away from
5 you back to 2011?

6 THE WITNESS: I suppose.

7 THE COURT: Anything further from the Plaintiff or
8 the Defendant?

9 MR. BARTON: No, Your Honor.

10 MR. KEEVER: Nothing, Your Honor.

11 THE COURT: Okay. You may step down. Thank you for
12 your testimony and next witness.

13 MR. BARTON: Your Honor, we call Steve Juhan.

14 THE COURT: Okay.

15 THE CLERK: Raise your right hand.

16 Do you solemnly swear or affirm the testimony you
17 give in this case will be the truth, the whole truth and
18 nothing but the truth?

19 THE WITNESS: I do.

20 STEVEN JUHAN, PLAINTIFF'S WITNESS, SWORN

21 THE CLERK: State your name and spell it, please.

22 THE WITNESS: Steven Juhan, S-T-E-V-E-N, last name
23 Juhan, J-U-H-A-N, middle initial D.
24
25

DIRECT EXAMINATION

BY MR. BARTON:

Q Good afternoon, Mr. Juhan.

A Good afternoon.

Q Are you here today as the representative of Juhan, LP?

A I am.

Q And as you know, Juhan, LP has been a plaintiff in this case from the day that this case was filed?

A I'm aware, yes.

Q And you've been actively involved in this case as the representative of Juhan, LP, really the only representative of Juhan, LP that's been involved in this litigation, correct?

A Correct.

Q And Juhan, LP is a limited partnership that has its principal place of business in Tucson, Arizona?

A Correct.

Q And you live in Tucson, Arizona as well, correct?

A I do, yes.

Q And during the course of this litigation, you've actually had prior to yesterday, you had, you've had numerous conversations with both myself and another lawyer in my office named Rob Titus with respect to the issues in this case?

A Correct.

Q You've cooperated with us in providing to us all

1 kinds of information in terms of the royalty statements that
2 you got from WPX and from TEP during the relevant time period
3 for this case, correct?

4 A Correct.

5 Q And you understand and have understood that Juhan, LP
6 in this case really has, plays three roles and those roles
7 include that you are the class representative for subclass 2
8 and you're a class representative for subclass 3 and for what I
9 call the hybrid subclass, subclass 4, correct?

10 A Correct.

11 Q And we've kept you informed about the progress of
12 this litigation throughout?

13 A Correct.

14 Q And you've been made aware of some of the information
15 that Mr. Phend has testified to today well before today,
16 correct?

17 A Correct.

18 Q And you have in front of you, Mr. Juhan, what's
19 marked as Plaintiff's Exhibit 19?

20 A Yes.

21 Q You see that?

22 A I do.

23 Q And that's a lease where the lessor -- that was
24 actually executed back in 1955?

25 A By my grandfather, correct.

1 Q Okay. And your grandfather was Joe T. Juhan,
2 correct?

3 A Yes, sir.

4 Q And the lessee at that time was Southern Union Gas
5 Company?

6 A Yes, I see that.

7 Q Do you have an understanding that that is one of the
8 lease agreements which was ultimately transferred over to WPX
9 Energy, correct?

10 A Correct.

11 Q And the lessor's interest, your grandfather's
12 interest, was ultimately transferred to Juhan, LP, correct?

13 A That is correct.

14 Q And so Juhan, LP was actually a, one of the class
15 members in the Lindauer class settlement?

16 A Yes.

17 Q And do you have an understanding that this lease that
18 you have in front of you, this Plaintiff's Exhibit 19, is
19 actually a category 5 lease under that settlement, correct?

20 A Correct.

21 Q And you also in connection with this settlement or in
22 connection with the Lindauer settlement, Juhan, LP was also,
23 had a category 11 lease, correct?

24 A Yes.

25 Q And if you look at Plaintiff's Exhibit 20, that's a

1 lease agreement that was actually, where the lessor was a lady
2 named Katherine Chopan (phonetic) who was the personal
3 representative of the estate of your father, correct?

4 A Yes.

5 Q And the lessee is Barrett Energy Company, correct?

6 A Yes.

7 Q And the lessor's interest under this Exhibit 20 was
8 ultimately transferred to Juhan, LP, correct?

9 A Yes, my father died and we formed a limited
10 partnership thereafter.

11 Q Okay. And then the lessee's interest, you
12 understood, ultimately was transferred to or assigned to WPX
13 Energy?

14 A Correct.

15 Q So this lease, too, this Exhibit 20, was also part of
16 the Lindauer settlement, correct?

17 A Yes, correct.

18 Q But it was a category 11 lease because it's got a
19 gross proceeds royalty provision?

20 A Correct.

21 Q All right. And so you ultimately have been kept
22 apprised of sort of the settlement amounts for both subclass 2,
23 subclass 3 and subclass 4 which are the three subclasses for
24 which you are a class representative, correct?

25 A Correct.

1 Q And you've heard the testimony from Mr. Phend today
2 and you understand the amounts of those settlements, correct?

3 A I do.

4 Q And you understand that the amounts of those
5 settlements are equal to the amounts of the deductions that Mr.
6 Phend added up for gathering and for excess process --
7 excessive processing under category 5, processing under
8 category 11 and for the fuel deductions, correct?

9 A Correct.

10 Q And do you have an opinion, Mr. Juhan, as a
11 representative of Juhan, LP, as to the fairness and adequacy of
12 the class settlement for subclass 2, which is the category 5
13 lease?

14 A Yes, I think it's fair.

15 Q Okay. And do you also -- do you have an opinion as
16 to the fairness and adequacy of the settlement for subclass 3
17 which is the category 11 leases?

18 A Yes, I think it's fair.

19 Q Okay.

20 A More than fair actually according to Mr. Phend.

21 Q And do you -- and do you think -- what about the
22 hybrid subclass, subclass 4? Do you have an opinion as to the
23 fairness and adequacy and reasonableness of that sub?

24 A Yes, that's correct. I --

25 Q Do you think it's fair?

1 A I do think that's fair, yes.

2 Q All right. And do you feel that you've been provided
3 an adequate amount of information to understand the terms of
4 this settlement and what, and its reasonableness as it relates
5 to a resolution of the claims of the subclass 2 members and the
6 subclass 3 members and the subclass 4 members?

7 A I mean, it's very detailed but yes, I'm getting up to
8 speed.

9 Q Okay. You understand that, because I shared it with
10 you and I don't know, do you have Exhibit 17 in front of you?

11 A I think so. Here we go.

12 Q If you look at, and it's actually in alphabetical
13 order, but you heard Mr. Phend's testimony because you were
14 here in the courtroom, correct?

15 A Yes.

16 Q Juhan, LP under this settlement is, is a relatively,
17 one of the relatively larger royalty owners, correct?

18 A Correct.

19 Q And so the amount that's being paid to Juhan, LP is
20 approximately \$111,909?

21 A That's correct, 27 cents.

22 Q Okay. And so -- and then you have, there's some
23 other interests that the Juhan, the bigger Juhan family has
24 that are also, where they're also, they're slated to receive
25 significant sums also. I think --

1 A Yes, I have, I have cousins that are also going to
2 receive, Hunter Family Limited Partnership and Juhan Ray and
3 they're very sophisticated, intelligent members of our group
4 and they have not objected to any of, any of this.

5 Q Okay. And have you heard any objection from any
6 member, any person that you believe to be a member of subclass
7 2, subclass 3 or subclass 4 about the fairness and adequacy of
8 the settlements for those three subclasses?

9 A Yeah, nobody's contacted me. I'm, you know, very
10 visible, you know. You can get my phone number. It's ringing
11 in my pocket as we speak.

12 THE COURT: But you just don't know anything?

13 THE WITNESS: I'm sorry?

14 THE COURT: You don't know either way? All you know
15 is that they aren't objecting?

16 THE WITNESS: No, I don't know either way but they're
17 not objecting. They're not contacting me.

18 THE COURT: All right. That's not helpful.

19 MR. BARTON: Right. No, I agree. I agree.

20 THE WITNESS: Yeah.

21 MR. BARTON: Okay.

22 THE WITNESS: I mean, there's a lot of people here
23 so, I mean, my receipts -- I'm a warehouse landlord in Tucson
24 so I have a lot of storage and so I stored all the receipts for
25 many years and so I was the one that was picked based on my, my

1 volume of paper going back years, 20 years.

2 Q (By Mr. Barton) And are you asking the Court to
3 grant final approval of this class settlement?

4 A I am, yes.

5 Q All right.

6 MR. BARTON: That's all I have.

7 THE COURT: Were you involved at all in the original
8 Lindauer?

9 THE WITNESS: No, I was not.

10 THE COURT: Were you a beneficiary of that?

11 THE WITNESS: Yes, I think so, yes.

12 THE COURT: Okay. And do you feel like you've been
13 provided adequate representation by Mr. Barton?

14 THE WITNESS: I do.

15 THE COURT: Have you been involved in litigation
16 before?

17 THE WITNESS: No.

18 THE COURT: This is your first time in court?

19 THE WITNESS: Well, second time, second litigation.
20 I'm a commercial landlord in Tucson and that was the first
21 time. It was a real estate case in Arizona.

22 THE COURT: Okay. And anybody pressure you to try
23 and get you to settle this case?

24 THE WITNESS: No, not at all. Nobody's contacted me.

25 THE COURT: Okay. Or offering you anything -- are

1 you one of the beneficiaries of the incentive agreement?

2 THE WITNESS: I think I get a bonus for plaintiff if
3 that's what you're asking.

4 THE COURT: Yeah. Beyond that potential for a little
5 bit of a bonus --

6 THE WITNESS: No.

7 THE COURT: -- is anybody offering you anything other
8 than what's listed on the schedule --

9 THE WITNESS: No.

10 THE COURT: -- or the settlement?

11 THE WITNESS: No, sir.

12 THE COURT: Okay. Mr. Keever.

13 **CROSS-EXAMINATION**

14 BY MR. KEEVER:

15 Q You said you were getting up to speed. What do you
16 mean you're getting up to speed on the settlement?

17 A Well, it's a lot of information to digest. I'm
18 primarily a commercial landlord and so, you know, the
19 terminology, I'm not a land man in the terms of oil and gas and
20 so, you know, catching up on your arguments and, you know,
21 understanding them, you know, as we speak.

22 Q And so do you understand the effect it'll have to the
23 people that are outside of the categories you're in because
24 you're not in the subclass 1 which is category 2 and 3? Do you
25 understand how this will affect them?

1 A Yes, I do.

2 Q And how will it affect them?

3 A Well, you were talking about language from the well
4 head to the point of sale --

5 Q So let me interrupt you. So I've been educating you
6 on how it's going to affect them?

7 A No.

8 Q You had no --

9 A I've also --

10 Q -- understanding before that?

11 A I mean, I'm also part of some oil and gas groups that
12 have educated me in the past and so I'm kind of familiar with
13 some of the arguments but I'm not, I haven't been, I've never
14 signed an oil and gas lease before so I don't know the
15 negotiations of the oil and gas lease but I do know --

16 Q I'm talking more about the settlement here and how it
17 affects the subclass 1. Prior to walking into this court, did
18 you have an understanding of how it negatively affects that
19 subclass 1?

20 A No, I did not.

21 MR. KEEVER: No further questions.

22 THE COURT: Okay. Anything further?

23 MR. BARTON: No, Your Honor.

24 THE COURT: You may step down. Thank you so much.

25 Are you done with your witnesses and evidence?

1 MR. BARTON: Yes.

2 THE COURT: Okay. Do you want to call anything,
3 anybody to the stand? Oh, sorry.

4 MR. CHRISMAN: Oh, no. Your Honor, may I briefly
5 call Alan Simpson, our accountant, for probably --

6 THE COURT: Oh, sure. Of course.

7 MR. CHRISMAN: That might make more sense before we
8 pass over.

9 THE COURT: Okay.

10 MR. CHRISMAN: We call Alan.

11 MR. CHRISMAN: And Your Honor, do you mind if I hand
12 out -- I'm sorry.

13 THE CLERK: Do you solemnly swear or affirm the
14 testimony you give in this case is the truth, the whole truth
15 and nothing but the truth?

16 (Indiscernible).

17 ALAN SIMPSON, DEFENDANT'S WITNESS, SWORN

18 MR. CHRISMAN: Your Honor, do you mind if I
19 circulate, approach to give you some additional exhibits.

20 THE COURT: Go ahead. Please. Thank you.

21 Remember there's no jury so you can make some
22 assumptions here. I understand clearly.

23 MR. CHRISMAN: I think I'll start, Your Honor, by
24 going briefly through Mr. Simpson's history before endorsing
25 him but we can go quick, I think, with the expectation that

1 there won't be an objection.

2 **DIRECT EXAMINATION**

3 BY MR. CHRISMAN:

4 Q Mr. Simpson, could you introduce yourself to the
5 Court, please.

6 A Yes, my name is Alan Simpson. I'm an accountant. I
7 work for a company called Zeeb (phonetic) and Company. The
8 spelling is A-L-A-N, my first name, and S-I-M-P-S-O-N my last
9 name.

10 UNIDENTIFIED SPEAKER: (Indiscernible).

11 THE WITNESS: Sure.

12 THE COURT: It sounds like you're not from Alabama.

13 THE WITNESS: I am from England originally so not
14 from Alabama.

15 Q (By Mr. Chrisman) Mr. Simpson, how many years have
16 you been an accountant?

17 A North of 30 years, I think about 32.

18 Q Have you worked with oil and gas royalty accounting
19 during that period?

20 A I have.

21 Q How many years have you worked as an oil and gas
22 royalty accountant?

23 A More than 20 years.

24 Q Do you know how many disputes and (indiscernible),
25 the calculation and payment of royalties you've been involved

1 with?

2 A A goodly number, probably 30 or more maybe.

3 Q In those, in those disputes, Mr. Simpson, have you
4 ever been asked to prepare expert reports?

5 A I have.

6 Q And have you ever testified as an expert in those
7 cases?

8 A I have.

9 Q Have you spent any time in those years reviewing
10 royalty accounting payment history like Mr. Phend described
11 earlier today?

12 A I have.

13 Q Have you ever reviewed any of that specific to WPX's
14 payment history?

15 A Yes, I have.

16 Q How many years are you familiar with WPX's paid
17 history and royalty accounting data?

18 A Probably more than 15 years at this point.

19 Q And how about TEP? Have you had the opportunity to
20 review their royalty accounting data?

21 A I have.

22 Q And have you reviewed those in multiple cases?

23 A Yes, I have.

24 Q Did you work on the Lindauer settlement, Mr. Simpson?

25 A Yes, I was not an expert on that but I did work on

1 that case, yes.

2 Q What kind of work did you do on the Lindauer
3 settlement?

4 A I performed a number of calculations related to
5 gathering and fuel. There were also calculations -- if I
6 recall; it's a long time ago -- related to BTU factors. I
7 think there was some ad valorem adjustments and there was some
8 sundry accounting adjustments related to having some
9 transportation and pricing issues, then I did interest
10 calculations in that case.

11 Q Is the work that you were asked to do in this case,
12 Mr. Simpson, similar to the work that you've done when you've
13 been designated as an expert witness in other oil and gas
14 cases?

15 A Yes, it is.

16 MR. CHRISMAN: Your Honor, I would endorse Mr.
17 Simpson as an expert in oil and gas royalty accounting.

18 MR. KEEVER: No objection.

19 THE COURT: He'll be received and be permitted to
20 render opinions in that field.

21 Q (By Mr. Chrisman) Mr. Simpson, to move us forward a
22 little more quickly than I had anticipated, you heard Mr. Phend
23 testify earlier today; did you not?

24 A I did.

25 Q And he described the scope of his assignments in this

1 case; did he not?

2 A Yes.

3 Q Were your assignments in this case in terms of
4 reviewing the underlying royalty data, were they similar to Mr.
5 Phend's assignment?

6 A Yes, looking at the underlying what I would call paid
7 history data, the information that records the amounts of
8 payments to the royalty owners.

9 Q In terms of the royalty payment data that you
10 reviewed in this case, was there anything unique or different
11 about this case from the typical royalty case that you've dealt
12 with?

13 A No, very similar.

14 Q How about the quantity of data? Did it stand out in
15 any way to you?

16 A It was on the probably the larger side of cases that
17 I've worked on. There were many gigabytes of data and I think
18 probably about 35 million records of data which require putting
19 this information into databases. It was as large data set.

20 Q Despite the size of the data, did you have any
21 difficulty putting the information into the database in a way
22 that you could determine what the royalty owners were paid and
23 what costs were deducted here?

24 A No, it was straightforward in that manner.

25 Q Mr. Simpson, I want to cover a few discrete areas

1 that have come up in the course of the argument and the
2 testimony this morning or this afternoon but the first deals
3 with gathering and fuel deductions for subclass 1 owners and
4 you understand those to be the category 2 and 3 owners under
5 Lindauer; is that right?

6 A Yes, I understand that.

7 Q Did you analyze WPX's paid history to determine
8 whether during the period that WPX owned the company and was
9 paying the royalties, whether or not WPX deducted gathering and
10 fuel costs from subclass 1 owners?

11 A I did review that, yes.

12 Q What did you determine?

13 A During the WPX era, there were deductions to the
14 subclass 1 owners for both gathering transportation and for
15 fuel.

16 Q Was that for the entire time period every month from
17 July 2011, which I think is the start date, through June of
18 2016?

19 A That is correct.

20 Q Did you have the occasion to sum the total amounts of
21 gathering and fuel deducted during the WPX era?

22 THE COURT: Mr. Simpson, you said the word gathering
23 transportation. So you've been in the courtroom and you know
24 that the parties don't all agree on what these things mean, so
25 what did you mean by gathering transportation because he asked

1 about gathering and then you included the word transportation.

2 THE WITNESS: Well, sir, I consider there to be three
3 legs of transportation in the natural gas industry. The first
4 of those legs would move gas from the mouth of the well
5 typically to the inlet of the gas plant but sometimes just to
6 the connection with another pipeline.

7 The second leg of transportation moves the gas over a
8 much greater distance, typically starting from the tailgate of
9 a processing plant, can be from within the state or can be to
10 adjacent states or much further away across the entire country.

11 THE COURT: From Russia to Germany?

12 THE WITNESS: From Russia to Germany? Absolutely
13 with the Northstream Pipeline but also from Colorado moving gas
14 up to the Pacific Northwest, into the Midwest, out to
15 California. I would call that mainline transportation or
16 interstate transportation or mainline transmission
17 transportation.

18 The final leg of transportation basically it's at
19 your house and my house and I would call that the distribution
20 system. That would be the third and final leg of gas
21 transportation.

22 THE COURT: But when you say, when you just used the
23 term gathering and transportation, you included all three of
24 those legs?

25 THE WITNESS: I was specifically talking about the

1 first leg, the gathering transportation.

2 THE COURT: Thank you.

3 Q (By Mr. Chrisman) With respect to that first leg,
4 Mr. Simpson, gathering, were you able to sum the total
5 deductions that WPX took for gathering and for fuel during the
6 period that it owned the company?

7 A Yes.

8 Q If you could take a look at what I've marked as
9 Exhibit 23. Is this a schedule that you prepared in the course
10 of settlement negotiations in this case?

11 A Yes, it is.

12 Q Could you explain to the Court what the purpose of
13 this schedule was, generally speaking?

14 A Yes, we had received numbers from Mr. Barton's office
15 that had calculated totals for the different categories of
16 deductions in the different categories of leases. I performed
17 a calculation here to remove what had been designated as
18 excluded owners, so owners who were not part of this particular
19 lawsuit and then calculating therefore the bottom line
20 difference which was the owners remaining in this lawsuit.

21 Q So the excluded owners here, just for clarity
22 purposes, those are not the parties who opted out? These were
23 parties who were never in the lawsuit to begin?

24 A That is correct.

25 Q Okay. And then when we're left with your third table

1 on here that's titled total included owners, are those the
2 gathering and fuel costs deducted, that are highlighted, that
3 were deducted by WPX during the period that they owned the
4 company for the original (indiscernible) class?

5 A That is correct.

6 Q Where did you get this data from, Mr. Simpson? Where
7 did you find it?

8 A This data was accumulated from the paid history data.

9 Q And so, Mr. Simpson, if you could take a look at what
10 I've marked as Exhibit 24.

11 A I'm glad I brought my glasses.

12 Q Is this an excerpt, Mr. Simpson, of the paid history
13 data that you're describing?

14 A It is, yes.

15 Q And is this specific to Ms. Jerman's company, White
16 River Royalties?

17 A That is correct.

18 Q And there's a line that's highlighted on Exhibit 24
19 that references an activity date of December 31st, 2014 and
20 then two columns over it references RWF 21-5. What does that
21 mean?

22 A So the activity date would be the same as the
23 production date or the sales date. The RC name, RWF 21-5 is
24 the name of an individual well.

25 Q And the dollars, Mr. Simpson, are the sums that we're

1 seeing to the right in those columns. What are those?

2 A In the paid history data, there are individual
3 expense components for, under the fuel columns, you got F-U-E
4 and L-U, summing together to come to a total for this one of 44
5 cents and then also in the paid history data, there are expense
6 components BGTHRI and MKRGT3 totaling to 65 cents.

7 Q Mr. Phend said earlier this afternoon that the paid
8 history gives a little bit more detailed or granularity than
9 what you might see on a royalty payment statement. Is this
10 that detail that he was describing? Do you know?

11 A Yes, there is a greater level of detail in the paid
12 history data.

13 Q In terms of these costs for fuel and gathering, do
14 you know whether or not those were reflected on the check stub
15 that was sent to White River Royalties for the payment of
16 royalties on this well for this month?

17 A Yes, I do.

18 Q If you could take a look at Exhibit 26, Mr. Simpson.
19 Did you prepare this exhibit?

20 A I did.

21 Q What is it showing?

22 A I've shown the two fuel components and the two
23 gathering components that were in the paid history data and
24 show how those reconcile to the amounts that are reflected on
25 the check stub.

1 Q And what did you find in terms of the reconciliation?

2 A The amounts stay.

3 Q So the amounts that you're seeing for fuel and
4 gathering and paid history are showing up on White River's
5 check stub?

6 A Correct.

7 Q Is that your understanding of how these deductions
8 would have shown up for any royalty owner by WPX?

9 A Yes.

10 Q Or any WPX royalty owner?

11 A Yes.

12 Q Did you have the opportunity, Mr. Simpson, to look at
13 the same pay history for the objectors in this case?

14 A I did.

15 Q And did you find the same fuel and gathering costs?

16 A I did.

17 Q I'm going to ask you to take a look at Exhibit 27.

18 A I'm there.

19 Q What is this, Mr. Simpson, if we're looking at
20 Exhibit 27?

21 A This is a similar extract of the paid history data
22 for Charles and Susanna Gonzales by activity date and it is
23 showing the expense components from the paid history data and
24 the amount that I would expect to appear on the check stubs.

25 Q And what is the activity date that's reflected in

1 this period?

2 A Everything from July 2011 through June of 2016.

3 Q So these amounts of fuel and gathering would have
4 been deducted from the Gonzales' royalty payments and appear on
5 their check stubs? Is that your understanding?

6 A That is correct.

7 Q How about for the other set of objectors in this
8 case, Ted and Hilda Vaughn? Did you have the opportunity to
9 examine whether or not WPX deducted gathering and fuel costs
10 for this period from their royalty payments?

11 A I did review the Vaughn's payments, yes.

12 Q And looking at Exhibit 28, Mr. Simpson, is this the
13 data that you reviewed?

14 A It is.

15 Q And did you find that as with the Gonzalezes, WPX
16 deducted gathering and fuel costs for royalties paid to them as
17 subclass 1 owners?

18 A I observed the exact same expense components for fuel
19 and gathering, yes.

20 Q Let me switch gears now, Mr. Simpson, to the issue of
21 the settlement as it relates to subclass 1 owners.

22 In the trial brief that was filed yesterday afternoon by
23 the objectors, on page 3 there's a statement that gathering and
24 fuel cost deducted by WPX prior to July 2016 and it goes on to
25 say that the Sefcovic representatives sacrificed those as

1 uncompensated claims.

2 Do you agree that there was no compensation to subclass 1
3 owners for gathering and fuel costs deducted by WPX prior to
4 July 2016?

5 A I don't agree with that, no.

6 Q Why not?

7 A There was an amount included in the settlement for
8 fuel from that period.

9 Q Mr. Phend I think on the demonstrative, we saw
10 earlier this afternoon had that number at 38 percent.

11 Do you think that that number is generally inconsistent
12 with your calculation of the compensation for that period?

13 A Yes.

14 Q In terms of the issue of the settlement, I think
15 we've heard a little bit about that specific to paragraph 9(b)
16 of the Sefcovic settlement agreement. Were you here for that
17 testimony earlier this afternoon?

18 A Yes, I was.

19 Q Describe if you would based on your review of the
20 royalty payment data, Mr. Simpson, were there categories of
21 post-production costs that TEP could have deducted from
22 Sefcovic class members but did not deduct?

23 A For certain individuals, maybe for certain wells and
24 certain time periods, there were categories of expenses that I
25 believe were not deducted by TEP, yes.

1 Q Do you know, Mr. Simpson, what categories of expenses
2 those were?

3 A I believe that included liquids transportation and
4 fractionation.

5 Q Have you had the opportunity in preparing for today's
6 hearing to evaluate any data that would identify for you how
7 much TEP would be recouping for the time period covered by the
8 settlement for all owners in connection with these NGL
9 transportation and fractionation costs?

10 A I have seen the results of an analysis of that, yes.

11 Q How much is it?

12 A It amounted to \$275,000 or thereabouts.

13 Q And is that specific to one subclass or is that for
14 all owners, all 608 owners in the Seftcovic settlement class?

15 A That was across all categories of leases in the
16 Seftcovic case.

17 Q Now, with respect to just subclass 1, do you know how
18 much of that total \$275,000 is associated with potential
19 recoupment of overpayments to subclass 1 owners?

20 A What I saw was less than a thousand dollars related
21 to subclass 1.

22 Q Mr. Simpson, one of the issues that has been raised
23 in connection with approval of the settlement is how the costs
24 at issue in this case compare to the costs at issue in the
25 Lindauer case as to all owners who were subject to the Lindauer

1 settlement? Are you familiar with that generally?

2 A Yes.

3 Q Have you had the opportunity to determine how the
4 costs at issue in this case compare to that overall amount?

5 A I have.

6 Q Let me ask you to take a look at Exhibit 29.

7 Mr. Simpson, does this pie chart of a breakdown of the
8 total amount at issue in, among the Lindauer owners and that
9 portion that would remain if this settlement were approved,
10 does this reflect your understanding?

11 A This does reflect my understanding, yes.

12 Q In other words, of the total \$10.8 million reflected
13 on this chart that's at issue among all of these owners in this
14 case and outside of this case, is it your understanding that 72
15 percent of that amount is resolved if the Court approves the
16 settlement agreement here?

17 A Yes, about 7.7 million.

18 MR. CHRISMAN: Your Honor, I don't have any further
19 questions. Thank you.

20 THE COURT: Okay. Mr. Barton.

21 MR. BARTON: Your Honor, I don't have any questions.

22 THE COURT: Okay. Mr. Kever.

23 **CROSS-EXAMINATION**

24 BY MR. KEEVER:

25 Q Let me direct your attention to Exhibit 23, the first

1 page and down at the bottom you've indicated these totals
2 including the owners that are left in this case, correct?

3 A That is correct.

4 Q And what we're looking at in category 5, 7.8 million
5 of processing deductions that were taken; is that correct?

6 A Yes.

7 Q And these are what have been referred to as the
8 excess processing deductions or just processing deductions that
9 were not in line with the Lindauer settlement dealing with
10 processing?

11 A I'm not sure that's correct. I think this would mean
12 the, this may be the amount that was originally deducted as
13 opposed to what Mr. Phend has calculated as excess for category
14 5.

15 Q Is this the amount that's being refunded?

16 A I would have to refresh my recollection on this as to
17 whether this is the amount that was in the paid history or
18 whether this is the amount that ultimately is in the
19 settlement.

20 Q I thought it was 100 percent was getting paid back?

21 A Category 5?

22 Q Yes.

23 A For processing? Are you talking about -- I'm looking
24 at a processing number here.

25 Q What does that number represent?

1 A The 7.8 --

2 Q Category 5 processing, the \$7.8 million?

3 A That's what I would need to check, Mr. Keever, as to
4 whether that is the amount of paid history deductions or the
5 amount that was subject to the settlement.

6 Q What's the ratio of the gathering cost versus
7 gathering fuel where you have category 2 plus 3, gathering/fuel
8 \$1.4 million?

9 A It's a little less than two to one for gathering
10 versus fuel.

11 Q So the one being fuel and the two being the fees?

12 A Correct.

13 Q The gathering fees. And the gathering fees under
14 this proposed settlement, TEP is keeping completely?

15 A TEP would be continuing to deduct those from the
16 (indiscernible).

17 Q Right, they're keeping what they deducted here, which
18 would be two-thirds of that number, correct?

19 A I believe that is correct.

20 Q And then, yes, they'd be able to keep deducting as
21 well and then they'd be refunding approximately 38 percent of
22 the other one-third?

23 A Correct.

24 Q So basically 10 percent?

25 A I could run that calculation for you but --

1 Q It's roughly 10 percent, correct?

2 A Where are you getting --

3 Q Thirty-eight percent of one-third --

4 A Okay.

5 Q -- so it's one-third of one-third?

6 A Okay.

7 Q Let me direct your attention to Exhibit 26. You
8 pointed to the gathering charge on the statement and you see
9 there's two gathering charges there, correct, where they could
10 take two gathering deductions?

11 A Are you talking about the two individual expense
12 components?

13 Q I am, where it's highlighted. You have one of them
14 highlighted. GTH stands for gathering, correct?

15 A You can see that from the legend here, yes.

16 Q Yes. And that's, for here, that's deductions prior
17 to the processing?

18 A Correct.

19 Q And transportation as indicated on this is another
20 deduction but that occurs after processing?

21 A That would be the main line transmission, yes.

22 Q Which is identified on your statement as
23 transportation?

24 A Correct.

25 Q And there's two gathering charges here. You see

1 that, or potential slots for charges?

2 A I do see those two numbers, yes.

3 Q And what's the difference between those two gathering
4 possibilities there?

5 A I would have to review that. It's not something I
6 have looked at.

7 Q Well, you've been working with WPX for 15 years.
8 This is just the remittance statement.

9 A Correct.

10 Q Okay. Look over on the left. Maybe that'll help.
11 You see on the left where we're talking about the owner or
12 the gross amount? You see how there's a deduction under both
13 of those or a cost associated with gathering under both of
14 those?

15 A Are you referring to the columns in the middle?

16 Q Yes.

17 A I see two gathering entries there, yes.

18 Q Yes and the deductions, the amount of those
19 deductions are to the left of that?

20 A Correct.

21 Q Gross deductions?

22 A Yes, at a --

23 Q Do you know what those are for, those gathering
24 deductions?

25 A Again, I'd have to check as to what the difference

1 between those two entries, as one of them is applicable to this
2 owner.

3 Q For that month?

4 A For this month, yes.

5 Q All right. And there was a zero placed in for the
6 other one?

7 A Correct and if we look at the monthly numbers, we
8 will see these same BTTHRI and MKRGT3 entries month in, month
9 out for this royalty owner.

10 Q And should that have been something else that could
11 have been attributed to this royalty owner?

12 A Are you talking about the second category of
13 gathering?

14 Q No, where there was a zero there.

15 A This may be an alternate value which might be for
16 other purposes such as federal reporting which would not be
17 applicable to this owner.

18 Q Okay. You mentioned a schedule about the
19 overpayments. Did you bring that schedule?

20 A I do not have that schedule.

21 Q How much per unit is WPX deducting in let's say June
22 of 2016 for gathering?

23 A June of 2016?

24 Q Do you know? Do you know how much they were charging
25 for gathering?

1 A See if I've got volume -- I've got volume information
2 on this one for December 2014. I'm not sure I can help you
3 with --

4 Q So the only way you'll know how much they were
5 charging per unit for gathering prior to the transfer over to
6 TEP is to do the math off the remittance statement or do you
7 know that --

8 A I --

9 Q -- from dealing with this company on all these
10 issues?

11 A I do not know the numbers off the top of my head. I
12 would have to do a calculation, yes, or review the documents to
13 see what the amount was.

14 Q Would you agree with me it's roughly 21 cents per
15 unit prior to TEP taking over?

16 A I certainly recall from Lindauer I think that it was
17 about maybe 22 cents, something like that.

18 Q Okay. And I said 21, so it's -- and it may fluctuate
19 a penny here and there month to month, correct?

20 A Certainly on an MCF basis I wouldn't expect it to
21 stay constant.

22 Q And when TEP took over, the numbers for gathering are
23 more like 45 cents to 50 cents? You're aware of that, correct?

24 A I am not aware of that.

25 Q How much do you believe they are per unit?

1 A I do not know.

2 Q You don't --

3 A I'd have to look at that.

4 Q You don't know how much TEP charges per unit for
5 gathering after doing all of this?

6 A I have not looked at it on a per unit of production
7 basis, no.

8 MR. KEEVER: Nothing further, Your Honor.

9 THE COURT: Okay. Any redirect?

10 MR. CHRISMAN: No, Your Honor. Thanks.

11 THE COURT: Okay. You may step down. Thank you so
12 much.

13 Now are you completed?

14 MR. BARTON: Yes.

15 THE COURT: Do you want to call your witnesses?

16 MR. KEEVER: I would have liked to, Your Honor. I
17 realize it's 5:00. Would you prefer I --

18 THE COURT: No.

19 MR. KEEVER: -- do an offer?

20 THE COURT: You choose whatever you want to. I mean,
21 I like to get work done and the courthouse is open till 6.
22 They want us out by 5:30 generally so I have time. It's your
23 call.

24 MR. KEEVER: I would prefer to call a witness and I
25 would keep it short.

1 THE COURT: Go ahead.

2 MR. KEEVER: And I would call Mary Ellen Denomy.

3 THE COURT: Very good. Please come forward.

4 THE CLERK: Raise your right hand.

5 Do you solemnly swear or affirm the testimony you
6 give in this case will be the truth, the whole truth and
7 nothing but the truth?

8 THE WITNESS: I do.

9 MARY ELLEN DENOMY, OBJECTOR'S WITNESS, SWORN

10 THE COURT: Please proceed.

11 **DIRECT EXAMINATION**

12 BY MR. KEEVER:

13 Q Ms. Denomy --

14 A Do I need to spell my name? Okay. Mary Ellen,
15 E-L-L-E-N, it's two words, Denomy, D-E-N-O-M-Y.

16 Q How long have you been looking as an oil and gas
17 accountant at TEP and their predecessors' remittance statements
18 and royalty payments?

19 A Twenty-three years.

20 Q In those 23 years, have you been employed as an oil
21 and gas accountant on lots of matters?

22 A Yes.

23 Q You've been admitted as an expert lots of times?

24 A Yes.

25 Q Does practically everyone in this courtroom know you?

1 Maybe not the judge.

2 THE COURT: I feel like a complete stranger in this
3 room. You all know each other but I don't know any of you
4 except (indiscernible).

5 THE WITNESS: I think so.

6 MR. KEEVER: Your Honor, I'd move for the admission
7 of Mary Ellen Denomy as an oil and gas accountant and to the
8 extent I need to flush out her resume, I'm happy to do that as
9 we move along.

10 THE COURT: If she as an oil and gas accounting
11 expert.

12 MR. KEEVER: Thank you.

13 Q (By Mr. Keever) You reviewed the distribution sheets
14 in the Lindauer matter, correct?

15 A I did.

16 Q For category 2 and 3, did they receive back gathering
17 and gathering fuel deductions?

18 A They did.

19 Q Under the settlement agreement that's proposed today,
20 how much of these gathering and gathering fuel deductions that
21 they've already taken, WPX and TEP, for category 2 and 3, are
22 they entitled to retain?

23 A They meaning who?

24 Q They meaning WPX and TEP.

25 A They are retaining about \$2.6 million.

1 Q So as to let's say Dean Gonzales, how much do they
2 get to retain right now of those gathering and gathering fees,
3 that they've already taken, they get to retain under this
4 proposed settlement?

5 A \$28,300.

6 Q And how much are they paying him under this proposal
7 for those same two items?

8 A 3,000 -- the same two items?

9 Q Just the two items.

10 A Just the two items? About \$2800.

11 Q So 10 percent?

12 A Ten percent.

13 Q And did you do a calculation as to how much the
14 allowance of these deductions for gathering and gathering fuel
15 would total for this subclass 1 going forward say per year?

16 A Per year? About a million two per year.

17 Q And did you look at this question of overpayment for
18 post-production deductions that under 9(b) under this proposed
19 settlement agreement, they're allowed to take right now?

20 A Yes.

21 Q And what did you determine?

22 A Well, I determined that because there were two
23 gathering fees listed in June of 2016 and only one of those two
24 were deducted from the client that I was looking at, which is
25 Dean Gonzales and several other ones that I also do accounting

1 work for, the potential for them to collect that second
2 gathering fee is there.

3 THE COURT: Wait a second. So the one that says
4 zero, you think they can collect it?

5 THE WITNESS: There is no stipulation in 9, is it (e)
6 or (b) --

7 MR. KEEVER: 9(b).

8 THE WITNESS: -- (b) that says that they cannot.

9 Q (By Mr. Keever) And let's talk about the basis of
10 that presumption under the way WPX was doing.

11 How much was WPX taking for gathering fees in June of
12 2016?

13 A Twenty cents.

14 Q How much for gathering fuel?

15 A One cent.

16 Q The next month when TEP took over, how much for
17 gathering fees?

18 A Forty-six cents.

19 Q And how much for gathering fuel?

20 A Fifteen cents.

21 Q So it went from 21 cents to how much?

22 A Fifty-nine cents total actually.

23 Q And does that reflect the difference between
24 accounting for both of those gathering?

25 A It does.

1 Q So how much could they take since this new amount is
2 authorized under this proposed settlement going back from class
3 2 and class 3?

4 A About \$4 million.

5 THE COURT: So when did this start, this increase
6 from 21 to 59?

7 THE WITNESS: It started June of 2016 was the very
8 last month that WPX did the accounting for the royalty checks.
9 In July of 2016, TEP took over doing the accounting for the
10 royalty checks. It is the difference between June and July.

11 THE COURT: Okay. And did you know that at the time?

12 THE WITNESS: I did.

13 THE COURT: What did you do about it?

14 THE WITNESS: I talked to Mr. Keever about my clients
15 having that kind of situation happen. Their checks were
16 reduced substantially so I had several clients that came to me
17 and said what can we do about this? Why is my check so much
18 less than it was last month? And actually, I had several
19 clients because of that additional sum being charged, they
20 didn't get a check for several months.

21 THE COURT: So again, what did you do about it
22 besides talking to Mr. Keever?

23 THE WITNESS: I don't have the legal authority to
24 make those decisions.

25 THE COURT: Okay.

1 Q (By Mr. Keever) And let's talk about that transition
2 because that first month, we know in hindsight this is kind of
3 what happened, right, but those first three months when TEP
4 took over, what did the checks look like?

5 A They actually were, the only thing that they withheld
6 from those checks originally were the taxes that were due to
7 the state.

8 Q They were taking no deductions from anybody for three
9 months?

10 A That is correct.

11 Q And then they started this process of figuring it out
12 and deciding what they were going to do and that just kept
13 going on and on, right?

14 A That is correct. They did send out a letter saying
15 we have to look at our accounting system in order to figure out
16 how to make the deductions so be prepared.

17 Q But no one knew what they were going to be, how they
18 were going to be calculated, correct?

19 A That is correct.

20 THE COURT: Well, let me ask you this. That fact
21 alone is not relevant if, for example, WPX was doing it wrong,
22 so how do you know why that change happened? Was WPX doing it
23 right and TEP did it wrong or they're both doing it wrong? Do
24 you have an educated belief on that?

25 THE WITNESS: I -- the only belief that I can say,

1 Your Honor, is that for 60 months, WPX was doing roughly around
2 20 cents, for 60 months.

3 THE COURT: Six zero?

4 THE WITNESS: Six zero.

5 THE COURT: Okay.

6 THE WITNESS: July of 2011 through June of 2016. I
7 have audited WPX numerous times. They are a sophisticated
8 company and have sophisticated accounting practices. They have
9 a large number of in-house attorneys and I don't have the
10 belief that they would have done this for five years
11 incorrectly.

12 THE COURT: But that's just based on your perception
13 of them as a company, not any analysis of that?

14 THE WITNESS: That is correct.

15 THE COURT: Okay. Go ahead.

16 Q (By Mr. Keever) And you mean that they wouldn't have
17 done it, they wouldn't have shorted it if they could have done
18 it? You're not expressing an opinion on the legal opinion
19 whether they could do it at all?

20 A That is correct.

21 Q But let's talk about the question, and you're
22 familiar with the Lindauer settlement, correct?

23 A Yes.

24 Q And the processing issues, this excessive processing,
25 is there any question at all that TEP was doing this wrong when

1 they took over?

2 A Not -- no, because I was double-checking their
3 numbers as well as they were paying certain individual clients.

4 Q So that -- but when you see the numbers and you then
5 have to figure out whether or not it matches up with the caps,
6 you know, the MMS one-third and caps, once you see those
7 numbers, you know that it's not in compliance?

8 A That is correct.

9 Q From the remittance statement, you don't necessarily
10 know on the processing whether or not it's compliant?

11 A That is correct.

12 MR. KEEVER: I have nothing further, Your Honor.

13 THE COURT: Okay. Any cross?

14 MR. CHRISMAN: Your Honor, just briefly.

15 THE COURT: Very dangerous thing for a lawyer to say
16 that. It's like saying just one or two questions and it ends
17 up being 20.

18 MR. CHRISMAN: I never limit myself to one or two. I
19 feel briefly is vaguely.

20 THE COURT: (Indiscernible).

21 **CROSS-EXAMINATION**

22 BY MR. CHRISMAN:

23 Q Good afternoon, Ms. Denomy.

24 A Good afternoon, Mr. Chrisman.

25 Q I just wanted to make sure I understand the \$28,000

1 that you mentioned in connection with Mr. and Mrs. Gonzales.

2 Is that \$28,000 your calculation of the gathering cost and
3 the fuel costs that were deducted from their royalty payments
4 during the time period relevant in this case?

5 A July 2011 through June 2016.

6 Q Okay, so that's limited to just the period when WPX
7 was paying the royalty?

8 A That is correct.

9 Q Got you. Okay. And you understand, not to ask if
10 you agree with it, but you understand that my client's position
11 is that it could deduct 100 percent of that amount? You
12 understand that that's our view of what we can do with those
13 costs?

14 A Only from the discussions that were -- I actually
15 haven't heard anybody actually say that at this hearing either.

16 Q Okay.

17 A So I don't know.

18 Q Okay. But assuming that it is, do you agree with me
19 that WPX was deducting those costs month in and month out from
20 July 2011 through June of 2016?

21 A I do know that they were deducting around 20 cents
22 July 2011 through June 2016 for the clients that I looked at.

23 Q Okay. And did you, did you have the opportunity to
24 look at remittance statements sent to the -- remittance
25 statements sent to those clients that indicated those

1 deductions?

2 A Yes, I did.

3 Q Okay. And do you know whether or not either the
4 Lindauers or the Gonzaleses or anybody prior to the filing of
5 this lawsuit ever challenged the deduction of those gathering
6 and fuel costs?

7 A The Lindauers were not charged those gathering fees.

8 Q I mean, but do you know whether or not any party to
9 the Lindauer settlement including Mr. and Mrs. Gonzales ever
10 challenged the deduction of those gathering and fuel costs by
11 filing a lawsuit prior to this case?

12 A I am not aware.

13 MR. CHRISMAN: No further questions, Your Honor.
14 Thank you.

15 THE COURT: All right.

16 **REDIRECT EXAMINATION**

17 BY MR. KEEVER:

18 Q So the representative plaintiffs in the Lindauer
19 matter were not charged these gathering fees during the WPX
20 time period?

21 A They were not.

22 MR. KEEVER: Nothing further.

23 THE COURT: Okay.

24 THE COURT: Okay. You may step down. Thank you.

25 Is that the end of the evidence?

1 MR. KEEVER: Yes.

2 THE COURT: Okay. So what I'm hearing, and you guys
3 can remain seated, is I don't have necessarily a big problem
4 with what I've heard and what I've received with what's
5 happened historically in your settlement of historical issues,
6 but what Mr. Kever's raising and caused some concern in Ms.
7 Jerman, at least at the end, was that there is a lot of
8 uncertainty about what the company can do going forward as far
9 as charging, reducing people's royalties based on these costs.

10 How do you respond to that, either of you?

11 MR. BARTON: Well, I think -- you're talking about
12 the issue of the overpayments? Is that what we're talking
13 about?

14 THE COURT: Well, I guess my question is, and I'll
15 let Mr. Kever respond, too, does this settlement that I'm
16 being asked to approve create more uncertainty than already
17 exists with regard to Lindauer because Lindauer governs your
18 relationship right now and this settlement at least to a
19 limited number of people in certain areas will govern it from
20 here forward, but does the settlement cause, give TEP
21 additional authority to make charges beyond that that Lindauer
22 might have contained?

23 MR. BARTON: Well, my answer to that is pretty
24 simple, Your Honor. What the parties agreed to in Lindauer as
25 it relates, and I'm going to talk about subclass 1, because

1 subclass 1 is the primary subclass that has the future royalty
2 payment methodology.

3 In the Lindauer settlement, and this was read into
4 the record, the parties agreed with respect to those category 2
5 and 3 leases of the subclass 1, that nothing herein prohibits
6 Williams from taking any deductions it claims it is entitled to
7 take under the terms of those royalty instruments and nothing
8 prohibits any settlement class member from challenging those
9 deductions.

10 So the parties didn't have any, you know, specified,
11 they didn't have a specific agreement as to which deductions
12 could be taken or which couldn't.

13 THE COURT: So nothing binds anybody with regard to,
14 if I approve this tonight, nothing binds anybody --

15 MR. BARTON: No.

16 THE COURT: - with regard to a deduction taken
17 tomorrow?

18 MR. BARTON: It does. The Sefcovic changes that and
19 it makes it more specific. It says, you know, they have to,
20 they have to pay under 4.4, you know, that they have to limit
21 their processing deductions but they are allowed to take the
22 gathering deductions and the fuel deductions and that's stated
23 in the future royalty payment provision for subclass 1, the
24 category 2 and 3 and, you know, that's nothing different --

25 THE COURT: But you believe that already is the case?

1 You believe that is, that's the status quo at the moment?

2 MR. BARTON: That's the status quo. They've been
3 deducting gathering and fuel since July of 2011 under category
4 2 and 3 instruments. That's been going on from, and WPX was
5 doing it and disclosing it on the royalty checks, the gathering
6 charges. They were disclosing the fuel cost deductions on the
7 checks that got sent to the category 2 and 3 class members and
8 so did TEP and we agreed that that's an appropriate method
9 going forward because of this, you know, provision that says
10 that they can deduct all costs from the mouth of the well,
11 transporting the gas from the mouth of the well to the point of
12 sale.

13 THE COURT: But you don't disagree that something
14 happened in I guess, between June and July of 2016 with regard
15 to the amount that was being deducted?

16 MR. BARTON: Well, there was -- there's been
17 testimony that there was a shift in the amount of the gathering
18 deduction.

19 THE COURT: Right.

20 MR. BARTON: Right and --

21 THE COURT: But you believe that's factually
22 accurate?

23 MR. BARTON: I don't know if that's factually
24 accurate or not because I think you have to look, I mean, you
25 know, you can't go from one month to the next and I don't know

1 what, you know, TEP as I understand it, they were having their
2 gathering, primarily it's done by another party. It's done by
3 a third party so their gathering charges were such, whatever
4 they were being charged by the third party is what they're
5 charging for the gathering as I understand it.

6 THE COURT: But TEP just took over the rights of WPX?

7 MR. BARTON: That's right, Your Honor.

8 THE COURT: And do you agree that TEP altered in that
9 month the amount that it was deducting?

10 MR. BARTON: Honestly, Your Honor, I really don't
11 know. I don't know that that -- I accept that representation
12 that that happened. I really don't know.

13 The other thing I don't know is why that would have
14 happened. I think one of the assumptions that TEP is now
15 being, that the third party is now charging them or are passing
16 along (indiscernible). It could have been as much an
17 accounting function and the issue with their accounting system
18 as it was with that amount. That I really don't know.

19 But you're right. They did take over those contracts
20 for gathering and processing that WPX --

21 THE COURT: Well, one of the things I need to make
22 certain is that everybody knows what their rights are and under
23 this agreement, it has enough definition that they know what
24 they should be receiving.

25 MR. BARTON: And Your Honor, I think on that point it

1 really comes down to paragraph (indiscernible) and I think that
2 this is more clarity than what we have under Lindauer,
3 particularly as to category 2 and 3 owners. It would resolve
4 the issue that was left unresolved by Lindauer as to gathering
5 and fuel costs.

6 That issue was left open in Lindauer. We now have a
7 resolution of that going forward that will allow TEP to
8 allocate the (indiscernible) share of (indiscernible), and so
9 that gives us some resolution.

10 THE COURT: You believe this actually had certainty?

11 MR. BARTON: Absolutely.

12 MR. CHRISMAN: It absolutely does.

13 MR. BARTON: It doesn't (indiscernible). It voids
14 the possibility of a lawsuit between the parties that could go
15 either way. Certainly it voids the cost of certainly
16 litigation.

17 And I would just point out. (Indiscernible) this
18 goes beyond the testimony, Your Honor, so I won't belabor it
19 but there have been (indiscernible) days that have passed since
20 the effective date of the Lindauer settlement till now and
21 other than the Sefcovic plaintiffs, prior to two class actions
22 that were filed in TEP by Mr. Keever's clients last night,
23 there's been no challenge to the deduction of these costs under
24 the terms of these leases, the overwhelming majority of which
25 have the same language as the White River Royalty claim that

1 doesn't refer to transportation. It refers to transporting the
2 gas from the mouth of the well to the point of sale.

3 But I think there's a reason there hasn't been a
4 challenge as to that going forward and I think (indiscernible)
5 fairly well. So I think on that issue I think there is more
6 certainty.

7 On this issue of 9(b) which allows TEP to go back and
8 recover any --

9 THE COURT: (Indiscernible) the microphone, Mr.
10 Barton.

11 MR. BARTON: Oh, I'm sorry.

12 THE COURT: You could sit --

13 MR. BARTON: Do you want me to stand up, Your Honor?

14 THE COURT: No, you could sit. You just need to have
15 a microphone. That's the only way we record things and there
16 just might be an appeal so we need to have a good record.

17 MR. BARTON: The issue as to 9(b) of the settlement
18 agreement which allows TEP to go back and recover any of these
19 transportation or fractionation costs that they didn't deduct
20 from owners that they were entitled to deduct them from, I
21 think that there is a back stop on this that the objectors
22 haven't acknowledged.

23 The provision in 9(b) says that TEP shall be entitled
24 to recoup any overpayments made to class members prior to the
25 effective date as a result of not deducting allowable post-

1 production costs.

2 THE COURT: But you believe that creates an
3 entitlement that did not already exist before this settlement?

4 MR. BARTON: I don't think so, Your Honor. I think
5 it's part and parcel of 9(c) which allows TEP like any operator
6 to make adjustments in the ordinary course of business.

7 THE COURT: So it's your position it's only a
8 recognition of what the status of the contracts are
9 (indiscernible) the leases?

10 MR. BARTON: Absolutely, Your Honor. It was designed
11 to give TEP the opportunity to go back and re-allocate
12 royalties to owners who were overpaid which I think they have
13 the right to do in the ordinary course of business just as a
14 matter of oil and gas accounting.

15 THE COURT: Well, I don't think anybody could argue
16 with the premise that if somebody overpays under a contract,
17 they have a right to offset or recoup. That's just the general
18 principle of contract law.

19 MR. BARTON: Uh-huh.

20 THE COURT: I guess (indiscernible) the details.
21 Okay. Anything else from you guys?

22 MR. BARTON: Nothing from us, Your Honor.

23 THE COURT: Okay. Go ahead.

24 MR. KEEVER: I'd like to respond to that, Your Honor.
25 First off, they pretend like this has always been the

1 case but even in the second amended complaint, Mr. Barton
2 argued that these deductions were improper, you know, so it has
3 been disputed that these, the appropriateness of --

4 THE COURT: You mean the 59 cents instead of the 21
5 cents?

6 MR. KEEVER: Or taking them at all as gathering
7 deductions as opposed to this transportation idea where now
8 transportation suddenly engulfs gathering so that the word
9 gathering has no meaning. You know, that was not the, how the
10 Lindauer settlement was drafted up and there's clearly a
11 distinction there between them. It's not even how they do
12 their own remittance statements. I mean, they're just making
13 it up to say that, oh, let's go back to the leases and say --
14 and even their own witness said transportation, well, that's
15 different than transporting. Well category 2 involves a lot of
16 transportation leases. They use that terminology and third
17 party transportation under category 3 is even stronger. So
18 this, this does change the status quo and they say, well, it
19 provides clarity. Well, yeah, if we just say you can deduct
20 whatever you think is allowable, that's what this settlement
21 says, whatever you think is allowable, however much you think,
22 no cap, no parameters, nothing.

23 THE COURT: Are you talking about 9(b)?

24 MR. KEEVER: Yeah.

25 THE COURT: So let's say they recoup the --

1 MR. KEEVER: And going forward. Sorry.

2 THE COURT: Let's say they recouped an overpayment,
3 recouped an overpayment. They sent a notice out saying hey, by
4 the way, we had determined we've overpaid and here's what we're
5 going to recoup. Okay? Let's say they do that.

6 That paragraph typically acknowledges they have the
7 right to recoup an overpayment but it doesn't give them carte
8 blanche because couldn't any lessor then challenge whether
9 there was in fact an overpayment --

10 MR. KEEVER: Well --

11 THE COURT: -- whether they have actually invoked
12 that in good faith?

13 MR. KEEVER: They would point to 9(a)(1) which says
14 we can deduct all the gathering and gathering fuel we want.

15 THE COURT: But it says they can gather, members
16 gathering any fuel costs, but again, if there's a dispute as to
17 what a gathering cost is, then somebody could challenge?

18 MR. KEEVER: Well, now there wouldn't be a dispute.
19 Notice they use the term gathering when they want to have it so
20 that they can deduct it, but yet they point to the lease and
21 say transportation is allowable.

22 THE COURT: Right. But this, for example, this
23 hearing won't serve as legislative history but that's meat to
24 these bones. If there's a settlement approved, these are the
25 terms of the settlement and that's what any future court would

1 look at is determining what parties' rights are.

2 MR. KEEVER: It wouldn't. It would say 9(a)(1)
3 specifically says they can deduct gathering from leases that
4 say you can only deduct transportation.

5 THE COURT: Right but are you saying that there is no
6 dispute as to what gathering means? I thought you were casting
7 doubt on what that term even means. It means one thing to some
8 people and another thing to others.

9 MR. KEEVER: Their idea that this will clarify it by
10 simply saying, okay, you've come up with this clever argument
11 now, yeah, we agree with it. You know, does it provide
12 clarity? Well, you know, I suppose it provides clarity in the
13 sense of they can do whatever they want. If they call it
14 gathering, they can deduct under a transportation only lease,
15 only a third party transportation lease and when they sit here
16 and they tell you that it's a third party that is doing the
17 gathering, that's because WPX spun off another entity and then
18 they sell and so it wasn't always a third party. It was an
19 affiliate and now because of the way the transfers work, we
20 believe it's still an affiliate, so it's not a true third
21 party.

22 THE COURT: 9(a)(2) and (3) you don't disagree with
23 because they incorporate Lindauer, right?

24 MR. BARTON: Yeah, it says we'll deduct pursuant to
25 Lindauer.

1 THE COURT: Right, right.

2 MR. KEEVER: I mean, there's no dispute that they're
3 supposed to abide by Lindauer. The bulk of the payout here is
4 just complying with Lindauer. I mean, you haven't heard Mr.
5 Chrisman stand up and say we didn't have to comply with
6 Lindauer. They just said, hey, we screwed up this accounting,
7 we didn't comply with Lindauer, we'll pay that back but in
8 exchange we want to trade all of these category 2 leases, 2 and
9 3 leases. We want to keep that money we deducted and we want
10 to keep deducting from these people in the future and that's
11 improper.

12 THE COURT: Okay.

13 MR. KEEVER: Thank you.

14 THE COURT: Well, I have to obviously go through in
15 detail what Mr. Keever filed because he filed it and I have an
16 obligation to do that, so it could be a while before I'm able
17 to issue a decision. I can't tell you how long because it's
18 important and it's complex.

19 Any final comments from either the Plaintiff or the
20 Defendant?

21 MR. BARTON: Your Honor, I think that with respect to
22 the issues in this case, the three subclasses, subclasses 2, 3
23 and 4 (indiscernible) specific provisions in the Lindauer
24 settlement that prohibited deductions. I still think they had
25 arguments on the fuel costs because under the Lindauer

1 settlement, WPX had arguments on the fuel costs but ultimately,
2 you know, they, you know, if we look at the whole picture, they
3 agreed to pay almost 100 percent of the costs.

4 On subclass 1, you know, the category 2 and 3 leases,
5 it was a completely different thing and the Lindauer settlement
6 itself recognized it because there was no agreement by WPX at
7 that time to agree going forward they -- they had a specific
8 provision that related to category 2 and 3 where they, they
9 were not prohibited from taking any deductions they claimed
10 they were entitled to take going forward starting in 2009, any
11 deductions they wanted to take in direct contrast to what the
12 category 5, and the reason for that was because of this
13 language that says that the lessor has to bear their
14 proportionate share of the cost of transporting the gas from
15 the mouth of the well, the well head, to the point of sale.
16 That provision's not in the category 5 leases. It's not in the
17 category 11 leases. That's the difference and that's why as
18 Ms. Jerman explained as well as I could, it's a weak provision.
19 You know, it allows them to take the deduction and when you are
20 moving gas from the mouth of the well to the point of sale,
21 you're doing it (indiscernible). It's a (indiscernible).

22 And so they proceeded down the road from that point
23 forward they could deduct gathering and fuel and showed it on
24 the class member's royalty check from 2009 all the way through
25 2016 and nobody filed any cases. Sure, we included it in our

1 initial complaint but you know, after we started looking at it
2 and we were negotiating, I mean, it just, it wasn't going to
3 pass muster and, you know, nobody had filed any lawsuits about
4 it and there was no category 2 or 3 class member that filed any
5 lawsuit about it from 2009 to 2017 to 2018. First time it
6 became an issue was when these objectors showed up. They made
7 an issue about it but nobody, none of their clients, none of
8 their objectors did anything about it between those periods of
9 time when they were getting month after month after month
10 royalty statements that said we're deducting gathering, we're
11 deducting fuel, which I'm not surprised in the least that they
12 were doing it. I'm not surprised nobody challenged it.
13 Because when you look at this royalty provision that Ms. Jerman
14 testified about that expressly permits them to deduct the cost
15 of transporting gas from the mouth of the well to the point of
16 sale, just it's not going to work.

17 THE COURT: I understand. Mr. Kever, I have a
18 question for you.

19 Have you been Plaintiff's class counsel in a lawsuit
20 of this nature in the past?

21 MR. KEEVER: In a lawsuit of this nature?

22 THE COURT: Yeah.

23 MR. KEEVER: I was lead trial counsel in Lindauer.

24 THE COURT: Okay. Is your -- you've commented on the
25 fee in your brief and is the fee that Mr. Barton wants if the

1 settlement is fair, just presume that and I know you're not
2 waiving any objection, but if the settlement is fair is the fee
3 that he's asking for out of line with fees that you've
4 requested in similar cases?

5 MR. KEEVER: We've never gone over 25 percent when a
6 settlement's been reached --

7 THE COURT: Okay.

8 MR. KEEVER: -- in a case.

9 THE COURT: Twenty-five percent of the gross?

10 MR. KEEVER: No, 25 percent of the actual amount that
11 the royalty owners would receive.

12 THE COURT: That's what I mean, the gross amount that
13 they receive?

14 MR. KEEVER: Yes.

15 THE COURT: Before deductions of attorney's costs and
16 other deductions?

17 MR. KEEVER: No, it would be after the cost --

18 THE COURT: After the cost?

19 MR. KEEVER: -- as well.

20 THE COURT: Okay.

21 MR. KEEVER: So and it would never include, if they
22 were entitled to a setoff of some sort and we wouldn't take a
23 fee on that amount and in Lindauer, there just wasn't any
24 settlement, I mean, there wasn't any setoff aspect to it.

25 THE COURT: Okay. But that was a 25 percent fee

1 then?

2 MR. KEEVER: Yeah, so it's not a gross. I would call
3 it out of the net.

4 THE COURT: Okay. Understood. All right.

5 MR. KEEVER: You know, to us the real issue isn't the
6 difference. I mean, there is a difference between 25 percent
7 and one-third obviously and part of it is just how I feel these
8 cases should be handled. If you reach a settlement, I don't
9 believe you're entitled to as much than if you have to actually
10 go and fight for it and the real question here is have they
11 created anything, any kind of common fund here because the
12 amounts, the bulk of the amount that they were, that we're
13 dealing with here is just the amount that was supposed to be
14 refunded anyway. You know, there would have been push to get
15 refunded under the enforcement action. You know, they don't
16 even push back and say we're somehow allowed to keep it and it
17 should have been refunded with interest. You know, the little
18 teeny bit that's in dispute is this question of transportation
19 or gathering.

20 You know, one thing Mr. Barton said was, well, it was
21 disputed then. They paid. We left the question open but they
22 paid everything prior to the settlement back for those
23 gathering under that category. You know, basically the way we
24 left it was if you start doing this again, then you're probably
25 going to get sued over it, you know, and obviously from the

1 testimony, they weren't doing it from Lindauer in which are the
2 class representatives and you know, so the real issue on fees
3 is the question of have they created anything here? When you
4 take into consideration what would have already been paid back
5 to everybody, what they've given up, instantly, I mean
6 instantly, the 2 and 3 category people are in the hole.

7 THE COURT: All right. Thank you.

8 MR. KEEVER: Thank you.

9 MR. CHRISMAN: Your Honor, could I be heard on just a
10 couple of points?

11 THE COURT: Of course.

12 MR. CHRISMAN: And, look, we haven't gone into TEP's
13 defenses on this but, I mean --

14 THE COURT: A little bit we have.

15 MR. CHRISMAN: But we've gone into a sum and but, you
16 know, there is a provision in the Lindauer settlement that
17 allows TEP to make deductions. I think it's corrections to his
18 royalty payments. I think it's section 6.2, so the fact that
19 for some period of time there may have been an issue about
20 costs that were deducted that arguably couldn't be deducted
21 until Lindauer, there was a remedy in Lindauer rather than
22 going to court and suing for breach of contract, that they
23 could just make these corrections in the ordinary course of
24 business, but in any event, we did get sued. We did see, with
25 the litigation filed, we proceeded to deal with these issues in

1 the context of litigation. That made perfect sense to do it
2 then, makes perfect sense to do it as a part of this settlement
3 now.

4 One point on the issue of the category 2 and 3
5 leases. AS much as I'd like to flatter myself for coming up
6 with a clever argument, Mr. Barton laid it out. There is no
7 clever argument here. The language of the leases themselves
8 say that any cost, that cost incurred to transport the gas from
9 the mouth of the well to a point of sale are deductible.
10 They're shared between the parties and not only was that the
11 legal premise upon which WPX and then later TEP proceeded after
12 Lindauer. They did it. They did it every single month and
13 there doesn't seem to be any dispute that these costs were
14 deducted.

15 The reason the costs were not deducted from the
16 Lindauers is I don't believe the Lindauers are category 2 and 3
17 owners I believe the Lindauers had a provision that didn't
18 allow for those costs to be deducted. Here's what we've -- the
19 evidence we've seen so far is whether it's White River
20 Royalties or the Gonzaleses, one set of the objectors here or
21 the Vaughns, a second set of objectors, those amounts were
22 deducted from them and they appeared on their checks and so
23 they knew or should have known about that amount for years and
24 years and years and there was a reason that there was never a
25 lawsuit brought until the Sefcovics filed, filed their lawsuit

1 and so I think that context shows, speaks volumes about the
2 strength of that claim.

3 One last thing, Your Honor. In connection with the
4 trial brief that you received last night, because it has
5 (indiscernible) that's come up directly, you'll see that Mr.
6 Kever on behalf of one of his clients and one of the opt-outs
7 of this case has filed not one but two class action complaints
8 against TEP yesterday, one in state court, one in federal
9 court, trying to raise some of these issues that they claim
10 ought to be a part of this lawsuit.

11 We see, without going into it, an enormous amount of
12 procedural and substantive problems with this litigation and
13 how it's been filed and how it can possibly proceed and so we
14 don't think there's anything resulting from this latest filing
15 -- it's not, or just now it's 24 hours old -- that's going to
16 change whether or not this settlement is fair or ought to be
17 approved.

18 THE COURT: Yeah, I don't think I can consider that.
19 That'll be for another and another judge. Who'd you draw, do
20 you remember?

21 MR. KEEVER: You know, Your Honor, I've been busy
22 getting ready for this hearing so I didn't even look.

23 THE COURT: Do you have a case number? 19 CV --

24 MR. KEEVER: We all agree --

25 MR. CHRISMAN: Oh, I'm sorry. Sorry.

1 MR. KEEVER: Go ahead.

2 MR. CHRISMAN: Okay, 00495, Your Honor.

3 THE COURT: 495. Yeah, Judge Daniel, although he's a
4 -- and Judge Mix. He's a senior judge and if he thinks it's
5 too messy, he can just enter an order recusing. It'll be drawn
6 again potentially so --

7 MR. KEEVER: Your Honor, the purpose of that was
8 really that we all agree that there are people that are outside
9 of this, this litigation, that, you know, at least 30 percent
10 of the original --

11 THE COURT: Oh, sure.

12 MR. KEEVER: -- Lindauers that aren't covered by this
13 and if this case goes away either through your finished ruling
14 or one of the jurisdictional issues, then we wanted a place --

15 THE COURT: Of course.

16 MR. KEEVER: -- that everyone would have to handle
17 this issue.

18 THE COURT: Yeah. I understand. It happens all the
19 time. I wouldn't have a job if you didn't file lawsuits.

20 MR. KEEVER: Glad I can help.

21 THE COURT: All right. But there's plenty of work.
22 All right. Anything else?

23 MR. BARTON: Your Honor, I just want to respond very
24 quickly on Mr. Keever's request.

25 I've been doing these class action cases in Colorado

1 over the last 15 years. Every case that I've been in that the
2 Court has approved the fee of at least a third because some
3 cases, including the Merit Energy class action that the fee
4 that was awarded was considerably higher and I cited to these
5 cases I believe it's 7 and 8 --

6 THE COURT: No, no, you're right. (Indiscernible)
7 fees even a lot higher --

8 MR. BARTON: No.

9 THE COURT: -- but I do want to, I mean, and that's
10 fair. I mean, probably fair. I'd have to look at it. I don't
11 want to tell you right now but in general that's fair. It's
12 substandard as a matter of fact. But I do want to commend Mr.
13 KEEVER at the same time, that if he's -- I believed him when he
14 says 25 percent. That is admirable so that's good but I'm not
15 saying you're a cad for charging 33 percent. I'm just saying
16 he's, he's a different breed. That's all.

17 MR. BARTON: Fair enough.

18 THE COURT: Okay. All right. Thank you guys. We'll
19 be in recess.

20 MR. KEEVER: Thank you, Your Honor.

21 THE CLERK: All rise. Court's in recess.

22 (Proceeding concluded at 5:41 p.m.)
23
24
25

CERTIFICATE

I, LESLEY FUJARCZYK, court-approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.



March 18, 2019

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App. 552

19-1120

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

ELNA SEFCOVIC, LLC, *et al.*,

Plaintiffs/Appellees

vs.

TEP ROCKY MOUNTAIN LLC,

Defendant/Appellee

CHARLES DEAN GONZALEZ SUSANNAH GONZALES,
TED L. VAUGHAN, and HILDA VAUGHAN,

Objectors/Appellants.

*Appeal from the United States District Court for the District of Colorado
Hon. Michael E. Hegarty, U.S. Magistrate Judge
District Court Case No. 17-cv-1990-MEH*

**JOINT ANSWER BRIEF OF PLAINTIFFS/APPELLEES
ELNA SEFCOVIC, LLC, WHITE RIVER ROYALTIES, LLC, JUHAN, LP,
ROY ROYALTY, INC., AND DEFENDANT/APPELLEE
TEP ROCKY MOUNTAIN LLC**

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CORPORATE DISCLOSURE STATEMENT

Elna Sefcovic, LLC does not have a parent corporation. No publicly held corporation owns 10% or more of Elna Sefcovic, LLC's stock.

White River Royalties, LLC does not have a parent corporation. No publicly held corporation owns 10% or more of White River Royalties, LLC's stock.

Roy Royalty, Inc. does not have a parent corporation. No publicly held corporation owns 10% or more of Roy Royalty, Inc.'s stock.

TEP Rocky Mountain LLC is a wholly owned subsidiary of Terra Energy Partners LLC, which is privately held. No publicly held corporation owns 10% or more of TEP Rocky Mountain LLC's stock.

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STATEMENT OF PRIOR OR RELATED APPEALS

A related appeal is pending in the case styled *Elna Sefcovic, LLC, et al. v. TEP Rocky Mountain LLC et al.*, Appeal No. 19-1121 (Docketed April 4, 2019).

INTRODUCTION¹

This appeal concerns the District Court’s approval of a class action settlement resolving claims brought by Appellees Elna Sefcovic, LLC, White River Royalties, LLC, Juhan, LP, and Roy Royalty, Inc. (the “*Sefcovic Class*”). The *Sefcovic Class* alleged that Appellee TEP Rocky Mountain LLC (“TEP”) underpaid royalties on the production and sale of natural gas and associated liquids (“NGLs”). (Aplt. App. Vol. I at 0210-0229.) A central issue was whether TEP breached a previous class action settlement agreement approved by a Colorado state court in 2009 (the “*Lindauer Settlement*”). (Aplt. App. Vol. I at 0210-0229.)

After extensive discovery, a comprehensive review of royalty accounting data, and months of negotiations, the parties reached a multimillion-dollar settlement agreement whereby the *Sefcovic Class*’ underpayment claims were completely resolved. (Aplt. App. Vol. V at 1468-1482.) The parties also agreed to clarify the appropriate method for calculating royalties paid to members of Subclass 1 of the *Sefcovic Class*. (Aplt. App. Vol. V at 1473-1474.)

¹ For ease of reference and consistency, Appellees’ Supplemental Appendix is identical to the Supplemental Appendix submitted with Appellees’ Joint Answer Brief in the related appeal *Elna Sefcovic, et al. v. TEP Rocky Mountain LLC et al.*, Appeal No. 19-1121.

Of the 607 owners in the *Sefcovic* Class, only the four Appellants objected to the reasonableness of the settlement. (Aplt. App. Vol. IV at 1022-1036, Vol. V at 1185-1186.) Their objections were heard by the District Court both in briefing and at a final fairness hearing.² (Aplt. App. Vol. IV at 1022-1036, Vol. V at 1379-1400, Vol. VI at 1485-1668.) The District Court overruled their objections, and held the settlement was fair and reasonable. (Aplt. App. Vol. V at 1456-1466.)

The District Court's approval of the settlement agreement was well within the boundaries of its discretion, and its judgment should be affirmed. *See, e.g., In re Integra Realty Res., Inc.*, 354 F.3d 1246, 1266 (10th Cir. 2004) (holding district court's approval of class settlement agreement, as well as its factual findings, are reviewed for abuse of discretion).

STATEMENT OF JURISDICTION

The District Court had jurisdiction pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2) ("CAFA"). The *Sefcovic* plaintiffs originally filed their class action complaint in Colorado state court, and TEP timely removed the action to the federal district court. *See* 28 U.S.C. §§ 1441, 1446. (Aplt. App. Vol. I at 0040-0046.) Jurisdiction was appropriate under CAFA because: (a) this is a

² The parties consented to the jurisdiction of a magistrate judge pursuant to 28 U.S.C. § 636(c)(1) and D.C.COLO.LCivR 72.2(d) and (e). (Aplt. App. Vol. II at 0379-0382.)

class action involving more than 100 persons; (b) there were multiple members of the proposed class who were citizens of a state different from that of TEP; and (c) the aggregate amount in controversy exceeded \$5,000,000, exclusive of interest and costs. (Aplt. App. Vol. I at 0041-0044, 0210-0211.)

Appellants did not dispute the federal court's subject matter jurisdiction below. (Aplt. App. Vol. IV at 1022-1036.) In their Opening Brief, however, Appellants claim that the District Court did not have subject matter jurisdiction for the reasons stated by the appellants in the related appeal styled *Elna Sefcovic, et al. v. TEP Rocky Mountain LLC et al.*, Appeal No. 19-1121. (Op. Br. at 1.) For the reasons explained by the *Sefcovic* Class and TEP in their Joint Answer Brief filed in the related appeal, the District Court had subject matter jurisdiction pursuant to CAFA, and properly exercised its jurisdiction.

This Court has appellate jurisdiction pursuant to 28 U.S.C. § 1291. Appellants' notice of appeal was filed within 30 days of the District Court's entry of final judgment. (Aplt. App. Vol. VI. at 1456-1466, 1672-1674.)

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Whether the District Court abused its discretion in approving a class action settlement agreement that conferred significant monetary benefits on the

class members, including those class members in Subclass 1, and where the class members overwhelmingly supported the settlement.

2. Whether Subclass 1 was adequately represented by a class member with three decades of experience acquiring and managing royalty interests.

3. Whether the class members received reasonable notice of the settlement, where the notice described in detail the parties' claims and defenses, described the terms of the settlement, directed the class members to a copy of the full settlement agreement, and invited class members to contact class counsel with questions.

4. Whether the District Court abused its discretion when approving a class action settlement agreement over the objection of four class members, each of whom were represented by counsel and had a full and fair opportunity to present argument and evidence at a final fairness hearing.

5. Whether the District Court abused its discretion in approving a class action settlement agreement that contains a release that resolves all claims for royalty underpayment pleaded in the lawsuit, and that does not release claims beyond the calculation and payment of royalties to the class members.

STATEMENT OF THE CASE

A. Factual Background.

1. TEP's Royalty Payments and the *Lindauer* Settlement.

TEP owns and operates wells producing natural gas and natural gas liquids (“NGLs”) in northwestern Colorado. (Aplt. App. Vol. IV at 0852.) TEP arranges with third parties to gather and process the gas, then sells the natural gas and NGLs. (Aplt. App. Vol. IV at 0852.) TEP receives revenues from the sales of these products and incurs costs for the gathering and processing services. (See Aplt. App. Vol. IV at 0852.)

“Gathering” is the process of transporting gas through pipelines connected to the wells to deliver the production to a processing plant. (Aplt. App. Vol. VI at 1582-1583, 1622.) Because the gas is compressed in the process of transporting it through the gathering system, a portion of the gas is used as fuel for compressors. See *ConocoPhillips Co. v. Lyons*, 299 P.3d 844, 855 (D.N.M. 2012) (“Field fuel is consumed in powering compressors located on the field gathering system.”). Gathering is necessary to transport the gas downstream from the wells. (Aplt. App. Vol. VI at 1622-1623.)

TEP's wells are subject to leases under which owners are paid royalties on a proportionate share of the revenues received from the sale of production. (See

Aplt. App. Vol. I at 0230-073, Vol. IV at 950-984.) The wells also are subject to assignments or other instruments creating “overriding royalty” interests in the production. (Aplt. App. Vol. I at 0212.) For purposes of this Answer Brief, both types of instruments are referred to as “royalties.”

In 2006, TEP was sued in a Colorado state court for the alleged underpayment of royalties. (Aplt. App. Vol. I at 0211, Vol. IV at 0951.) The lawsuit was brought on behalf of the plaintiffs and a class of similarly situated royalty owners (the “*Lindauer*” action). (Aplt. App. Vol. I at 0211, Vol. IV at 0951-0984.) Two years later, the parties entered into a class action settlement agreement that resolved all allegations of underpayment of royalties arising prior to June 2006 (with the exception of two reserved claims) (the “*Lindauer* Settlement”). (Aplt. App. Vol. IV at 0951-0984.)

The *Lindauer* Settlement also established methodologies for the calculation of royalties paid after June 2006 to class members with certain types of royalty instruments. (Aplt. App. Vol. IV at 0951-0984.) Because different instruments have different royalty language, the *Lindauer* Settlement organized the class members’ instruments into thirteen different “categories.” (Aplt. App. Vol. IV at 0983.) The agreed-upon royalty calculation method differed depending upon the owner’s “category” of royalty instrument. (Aplt. App. Vol. IV at 0951-0984.)

For example, for “Category 5” instruments, the *Lindauer* Settlement provided that TEP was permitted to allocate to owners a portion of the cost of processing the natural gas, but is prohibited from deducting gathering costs. (Aplt. App. Vol. IV at 0983.) For “Category 11” instruments, TEP was not permitted to deduct any costs associated with gathering or processing after the effective date of the *Lindauer* Settlement. (Aplt. App. Vol. IV at 0983.)

In contrast to the other eleven categories of royalty instruments subject to the *Lindauer* Settlement, with respect to royalties paid to owners under “Category 2” and “Category 3” instruments, the *Lindauer* Settlement did not establish a future payment methodology. Instead, it stated that “[w]ith respect to Royalty Instruments in categories 2 and 3 ..., nothing herein prohibits [TEP] from taking any Deductions it claims it is entitled to take under the terms of such Royalty Instruments, and nothing herein prohibits any Settlement Class Member from challenging such deductions.” (Aplt. App. Vol. IV at 0965.)

Unlike the royalty instruments in Categories 5 and 11, the leases in Categories 2 and 3 of the *Lindauer* Settlement expressly provide that TEP is entitled to deduct the cost of transporting gas “from the mouth of the well to the point of sale,” or “customary transportation costs,” or “all transportation charges.” (Aplt. App. Vol. I at 0230-0255, Vol. IV at 0983.) Consistent with the terms of

these leases, after entering into the *Lindauer* Settlement in 2008, TEP deducted gathering and fuel costs, which are part of the transportation costs, from royalties paid to Categories 2 and 3 owners. (Aplt. App. Vol. V at 1187-1191, Vol. VI at 1558, 1582-1583.)

2. The *Sefcovic* Settlement.

The current action now on appeal was filed in July 2017. (Aplt. App. Vol. I at 0140-0192.) The plaintiffs are royalty owners with interests subject to the *Lindauer* Settlement. (Aplt. App. Vol. I at 0212.) The plaintiffs pursued claims on their own behalf, as well as on behalf of the *Sefcovic* Class. (Aplt. App. Vol. I at 0210-0229.) The *Sefcovic* Class is composed of owners whose instruments are categorized as “Category 2,” “Category 3,” “Category 5,” and “Category 11” in the *Lindauer* Settlement. (Aplt. App. Vol. I at 0212-0223.) These owners account for approximately 70% of the royalties paid by TEP under the *Lindauer* Settlement during the class period. (Aplt. App. Vol. VI at 1496.)

The *Sefcovic* Class is divided into four subclasses: Subclass 1 is composed of owners with Categories 2 and 3 instruments; Subclass 2 is composed of owners with Category 5 instruments; Subclass 3 is composed of owners with Category 11 instruments; and Subclass 4 is composed of owners whose interests are categorized

as either Category 5 or 11, but whose interests could not be classified as one or the other at the time of the settlement. (Aplt. App. Vol. I at 0210-0229.)

The *Sefcovic* Class alleged that TEP underpaid royalties over a six-year period by not following the terms of various leases and royalty instruments that were part of the *Lindauer* Settlement. (Aplt. App. Vol. I at 0210-0229.)

The parties undertook extensive discovery, which required the production and review of services contracts, sales contracts, royalty revenue data indicating payments made to the *Sefcovic* Class, and detailed accounting information. (See Aplt. App. Vol. II at 0384-0385.) The parties retained outside accounting experts to assist with the data review, primarily to evaluate TEP's royalty calculations and to quantify the volumes, revenue, and costs associated with those payments. (Aplt. App. Vol. II at 0290, Vol. IV at 0935-0949, 0985-0990.)

After a year of discovery and accounting analysis, the parties engaged in settlement discussions, which resulted in an agreement pursuant to which TEP agreed to pay the *Sefcovic* Class \$10,025,308 (prior to parties opting out of the settlement) in exchange for a release of royalty underpayment claims through June 1, 2018. (Aplt. App. Vol. II at 0308-0360.) The settlement agreement also established the appropriate method for calculating royalties paid to Categories 2 and 3 owners on production after June 2018. (Aplt. App. Vol. II at 0314.)

B. Procedural History.

1. Preliminary Approval and Appellants' Objections.

The parties filed a joint motion for preliminary approval of the settlement agreement on August 13, 2018. (Aplt. App. Vol. II at 0289-0306.) After a hearing, the District Court entered an order preliminarily approving the settlement agreement as fair and reasonable, provisionally certifying the *Sefcovic* Class, and ordering class notice to be mailed. (Aplt. App. Vol. II at 0383-0392.)

Forty-eight owners opted out of the *Sefcovic* Class, leaving 607 class members subject to the settlement agreement and receiving a total of \$7,991,505.33 (before attorneys' fees and costs). (Aplt. App. Vol. IV at 0985-0990, Vol. VI at 1550.) Of those owners, only the four Appellants objected to the reasonableness of the settlement, fewer than 1% of the *Sefcovic* Class. (Aplt. App. Vol. IV at 1022-1036, Vol. V at 1185-1186.)

Appellants' objections centered on the settlement of the claims of Subclass 1 owners (*i.e.*, owners with interests in Categories 2 and 3 leases under the *Lindauer* Settlement). (Aplt. App. Vol. IV at 1023-1025.) In opposition to the fairness of the settlement as to Subclass 1, Appellants presented three arguments. Those arguments, and the responses of the *Sefcovic* Class and TEP, are as follows:

First, Appellants alleged that Subclass 1 owners received a smaller share of recovery than owners in other subclasses, and that the *Sefcovic* Settlement unfairly created a new method for calculating their royalties on future production. (Aplt. App. Vol. IV at 1023-1025.) Appellants claimed—incorrectly—that TEP did not deduct gathering or gathering fuel costs after it entered into the *Lindauer* Settlement. (Aplt. App. Vol. IV at 1023-1025.) In reality, TEP consistently deducted gathering and fuel costs from royalties paid to Subclass 1 owners, as authorized by the express terms of the underlying leases and not prohibited by the *Lindauer* Settlement. (See Aplt. App. Vol. I at 0230-0255, Vol. IV at 0950-0984, Vol. V at 1188-1190.) The *Sefcovic* Settlement clarifies that TEP is entitled to deduct gathering and gathering fuel costs, and also limits the amount of processing costs that TEP can deduct from royalties on future production. (Aplt. App. Vol. V at 1467-1482.)

Second, Appellants alleged that the class notice approved by the District Court inadequately informed Subclass 1 owners of the settlement's terms. (Aplt. App. Vol. IV at 1025-1026.) Appellants ignored the language of the notice, which described in detail the terms of the parties' settlement, including the claims being released, and also explained that the complete settlement agreement was available on Class Counsel's website. (Aplt. App. Vol. II at 0887-0893.)

Third, Appellants challenged the scope of the parties' release of their claims (Aplt. App. Vol. IV at 1029-1032), which resolves any disputes over the underpayment of royalties, and acknowledges TEP's ability to adjust royalties (positively or negatively) based on subsequent information arising in the normal course of business. (Aplt. App. Vol. IV at 1472.) Appellants did not consider the fact that the release conforms to the scope of the *Sefcovic* Class' claims against TEP and, in fact, is nearly identical to the release negotiated and approved in the *Lindauer* Settlement. (Aplt. App. Vol. I at 0210-0229, Vol. IV at 0959, Vol V at 1185-1196.)

2. The Final Fairness Hearing and the District Court's Order.

At the final fairness hearing held on February 20, 2019, the District Court heard both argument and testimony from the parties and Appellants. (Aplt. App. Vol. VI at 1485-1668.) At the hearing, Appellants' accounting expert conceded that TEP consistently deducted gathering and fuel costs from royalties paid to Subclass 1 owners after the *Lindauer* Settlement was approved, and that she was long aware of such deductions. (Aplt. App. Vol. VI at 1645-1646.) This is consistent with the undisputed testimony that no member of Subclass 1 challenged the deduction of gathering and fuel costs until the *Sefcovic* case was filed. (Aplt. App. Vol. VI at 1647.)

The District Court also heard testimony from the class representative of Subclass 1, Susan Jerman (the owner of Plaintiff White River Royalties), who testified that the settlement was reasonable, particularly given the language of the underlying leases in Categories 2 and 3 of the *Lindauer* Settlement. (Aplt. App. Vol. VI at 1578-1596.) Ms. Jerman has been in the oil and gas industry for 40 years, and receives royalties from 60 different oil and gas producers under multiple leases. (Aplt. App. Vol. VI at 1579-80.) Ms. Jerman testified that, relative to other leases, the Categories 2 and 3 leases contained “a weak royalty provision” as to gathering and fuel costs. (Aplt. App. Vol. VI at 1584.) Considering this language, Ms. Jerman testified that, when “thinking as the parties as a whole, I think it’s a good settlement for the entire party, the entire class.” (Aplt. App. Vol. VI at 1600.) And “if you litigate it, you would probably end up in a worse position.” (Aplt. App. Vol. VI at 1598.)

The evidence presented at the hearing underscored the substantial monetary compensation received by all of the class members, including owners in Subclass 1. (Aplt. App. Vol. VI at 1485-1668.) Subclass 1 owners received \$427,787.31 (before attorneys’ fees and costs), which represented (a) 50 percent of the processing costs deducted from their royalties during the class period, and (b) over 40 percent of the fuel costs deducted during the class period. (Aplt. App. Vol. IV

at 0987-0988, Vol. VI at 1539.) In addition, the settlement resolved the method for calculating royalties on future production for Subclass 1 owners, which permits TEP to deduct gathering and fuel costs, but limits the permissible deduction of processing costs to 50 percent of the total cost. (Aplt. App. Vol. IV at 0987-0988, Vol. V at 1473-1474.) By limiting processing costs, and repaying 50 percent of those processing costs deducted prior to June 2018, Subclass 1 received the same monetary compensation for processing costs that was received by members of Subclass 2. (Aplt. App. Vol. IV at 0987-0988.)

On March 15, 2019, the District Court entered a final judgment approving the terms of the settlement as fair, adequate, and reasonable. (Aplt. App. Vol. V at 1456-1466.) The court determined that the settlement was fair to all class members, including those in Subclass 1, because it offered substantial and immediate monetary compensation in exchange for a release of all claims. (Aplt. App. Vol. V at 1460-14611.) The court further determined that the notice sent to class members adequately described the terms of the settlement. (Aplt. App. Vol. V at 1460.) The court also addressed, and rejected, Appellants' challenge to the scope of the release, holding that it was appropriate given the breadth of the *Sefcovic* Class' claims against TEP. (See Aplt. App. Vol. V at 1460-1464.)

On April 9, 2019, Class Counsel distributed the settlement payments to members of the *Sefcovic* Class, including Subclass 1. (See Aplee. Supp. App. at 003-005.)

Appellants now appeal the District Court’s order approving the *Sefcovic* settlement agreement. (Op. Br. at 14.)

SUMMARY OF THE ARGUMENT

“Public policy strongly favors the pretrial settlement of class action lawsuits.” *In re U.S. Oil & Gas Litig.*, 967 F.2d 489, 493 (11th Cir. 1992); *accord Trujillo v. State of Colo.*, 649 F.2d 823, 826 (10th Cir. 1981) (noting “important public policy concerns that support voluntary settlements”). “In the class action context in particular, there is an overriding public interest in favor of settlement,” because it “minimizes the litigation expenses of both parties and also reduces the strain such litigation imposes upon already scarce judicial resources.” *Armstrong v. Bd. of Sch. Dirs.*, 616 F.2d 305, 313 (7th Cir. 1980) (citations and internal quotations omitted).

Here, the parties’ settlement was a fair and reasonable resolution that provided millions of dollars to the *Sefcovic* Class. (Aplt. App. Vol. V at 1458-1462.) This substantial monetary compensation included Subclass 1, which received payments equal to 50% of the disputed processing costs (Aplt. App. Vol.

IV at 0987-0988, 1539, Vol. V at 1190), even though the language of Subclass 1 leases and the *Lindauer* Settlement are unclear as to the deduction of these processing costs. (See Aplt. App. Vol. I at 0230-0255, Vol. IV at 0950-0984.) TEP also agreed to pay Subclass 1 over 40% of all fuel costs deducted from royalties since 2011, despite the express language in the subclass members' leases that permitted the deduction of these costs. (See Aplt. App. Vol. I at 0230-0255, Vol. IV at 0846, 0983, Vol. V at 1190-1191.) The class members' support for the settlement speaks for itself: of the 607 owners in the settlement class, only the four Appellants objected. (Aplt. App. Vol. IV at 1022-1036, Vol. V at 1185-1186.)

Appellants raise several objections to the *Sefcovic* Settlement, none of which is availing:

First, Appellants claim that the interests of Subclass 1 have been “sacrificed” (Op. Br. at 14-15), but their arguments fail in light of the relevant facts. The settlement for Subclass 1 owners was just as reasonable as the settlement for the other class members. (Aplt. App. Vol. IV at 0987-0988, Vol. V at 1469-1477.) Indeed, Subclass 1 owners received monetary compensation for their claims associated with the deduction of gathering and fuel costs, which TEP has deducted—and was permitted to deduct—ever since the *Lindauer* Settlement was approved. (Aplt. App. Vol. II at 0308-0360, Vol. IV at 0987-0988, Vol. V at

1188-1190.) This is a reasonable resolution of Subclass 1's claims. (Aplt. App. Vol. V at 1456-1466.) Appellants also question the adequacy of the class representatives for Subclass 1, and inexplicably claim a conflict of interest (Op. Br. at 18), but their arguments have no factual basis.

Second, Appellants offer procedural arguments against the settlement, claiming that class notice was inadequate and that the District Court failed to conduct a "rigorous analysis." (Op. Br. at 24-27, 35.) To the contrary, as explained below, the class notice described the settlement for Subclass 1 owners, and encouraged class members to review the settlement and contact Class Counsel with questions. (Aplt. App. Vol. IV at 0887-0893.) The notice was reasonable, as was the District Court's evaluation of the settlement. (Aplt. App. Vol. IV at 0887-0893, Vol. V at 1456-1466.)

After hearing extensive argument, receiving evidence and testimony, including testimony at the final fairness hearing by Appellants' accounting expert, the District Court determined that the settlement was fair, adequate, and reasonable. (Aplt. App. Vol. V at 1456-1466, Vol. VI at 1485-1668.) This determination was well within the court's discretion and should be affirmed. See *Integra Realty*, 354 F.3d at 1266 (holding that district court's approval of settlement agreement and factual findings are reviewed for abuse of discretion).

Third, Appellants challenge the scope of the release in the settlement agreement. (Op. Br. at 28-29.) As explained below, the release is appropriate given the breadth of the *Sefcovic* Class’ claims, the monetary consideration paid by TEP, and the settlement’s purpose to resolve the parties’ dispute and provide repose. (Aplt. App. Vol. I at 210-229, Vol. V at 1456-1466, 1472-1474.) The release was reasonable under these circumstances. *See Fager v. CenturyLink Commc’ns*, 854 F.3d 1167, 1176 (10th Cir. 2016) (holding release is proper where the claims are based on the same underlying factual predicate as the settled conduct).

STANDARD OF REVIEW

The District Court’s approval of the parties’ settlement agreement, as well as its factual findings, are reviewed for abuse of discretion. *See, e.g., Integra Realty*, 354 F.3d at 1266. The Court “will not disturb the district court’s approval ‘absent a distinct showing it was based on a clearly erroneous finding of fact or an erroneous conclusion of law or manifests a clear error of judgment.’” *Id.* (quoting *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1187 (10th Cir. 2002)).

The Court will affirm the District Court’s decision on any grounds for which there is a record sufficient to permit conclusions of law, even grounds not relied upon by the District Court. *Wells v. City & Cty. of Denver*, 257 F.3d 1132, 1149-

50 (10th Cir. 2001). This Court has a “preference for affirmance,” and it is “ready to affirm whenever the record allows it.” *Richison v. Ernest Grp., Inc.*, 634 F.3d 1123, 1130 (10th Cir. 2011). “So it is that appellants must always shoulder a heavy burden—they must come ready both to show the district court’s error and, when necessary, to explain why no other grounds can support affirmance of the district court’s decision.” *Id.*

ARGUMENT

A district court considering approval of a class action settlement agreement evaluates whether (1) “the settlement was fairly and honestly negotiated,” (2) “serious legal and factual questions placed the litigation’s outcome in doubt,” (3) “the immediate recovery was more valuable than the mere possibility of a more favorable outcome after further litigation,” and (4) the parties “believed the settlement was fair and reasonable.” *Tennille v. W. Union Co.*, 785 F.3d 422, 434 (10th Cir. 2015) (citation and internal quotations omitted). At bottom, a settlement is reasonable if it takes into account “the costs, risks, and delay of trial and appeal.” Fed. R. Civ. P. 23(e)(2)(C).

Appellants do not address, much less dispute, that the *Sefcovic* Settlement satisfies these factors. (See Op. Br. at 14-18.) The *Sefcovic* Settlement was the product of good faith, arm’s-length negotiations based on a comprehensive review

of voluminous royalty accounting data, aided by outside accounting experts. (Aplt. App. Vol. II at 289-307, Vol. IV at 0833- 1002, Vol. VI at 1485-1466.) The inherent risks of litigation, coupled with the immediate value of recovery, also support the settlement. (Aplt. App. Vol. IV at 0844-0855, Vol. VI at 1578-1604.)

As for the parties' belief that the settlement was fair and reasonable, Class Counsel has extensive experience litigating and settling complex royalty underpayment class actions, and concluded that the settlement offered substantial and immediate monetary compensation to the class members. (Aplt. App. Vol. IV at 0846-0848.) This is true both as a matter of dollars, as well as a percentage of the disputed costs deducted from the class members' royalties. (Aplt. App. Vol. IV at 0833-0850.)

Perhaps more importantly, Appellants also do not account for the fact that, out of a class of over 600 members, they are the only objectors to the settlement. (Aplt. App. Vol. III at 0843, Vol. IV at 1022-1036, Vol. V at 1185-1186.) They stand to recover about \$18,000, which represents only 4% of the \$427,787.31 that Subclass 1 received in the settlement. (Aplt. App. Vol. IV at 0987, Vol. V at 1187); *see also Wal-Mart Stores, Inc. v. Visa USA, Inc.*, 396 F.3d 96, 118 (2d Cir. 2005) ("If only a small number of objections are received, that fact can be viewed

as indicative of the adequacy of the settlement.”) (citation and internal quotations omitted).

Appellants ignore these legal and factual considerations, and instead argue that the settlement is unfair to owners in Subclass 1. (Op. Br. at 14-18.) Their arguments, however, fail to account for (i) the compensation received by Subclass 1 owners, (ii) the risks associated with Subclass 1’s claims as compared to that compensation, (iii) the contents of the class notice, and (iv) the extensiveness of the final fairness hearing and the support for the lower court’s findings. (Aplt. App. Vol. Vol. IV at 0846, 0983, 0987-0988, Vol. V at 1190-1191, Vol. VI at 1485-1668.)

As for the scope of the release, Appellants’ opposition neglects the scope of the *Sefcovic* Class’ claims, the underlying purpose of the settlement, and indeed, the scope of the release in the *Lindauer* Settlement itself. (Aplt. App. Vol. I at 0210-0229, Vol. IV at 0959, Vol. V at 1185-1196.)

When all of these factors are taken into account, the District Court’s judgment approving the *Sefcovic* Settlement should be affirmed. (Aplt. App. Vol. V at 1456-1466.)

I. The Settlement of the Subclass 1 Owners' Claims Was Reasonable.

A. Subclass 1 Received Fair Monetary Compensation Based on the Strengths and Risks of Its Claims Against TEP.

Appellants claim that Subclass 1 was “sacrificed,” and that the settlement was “disastrous,” supposedly forcing these class members to *pay* money and give up tens of millions of dollars. (Op. Br. 15-18). There is simply no evidence that Subclass 1 received a different deal than the rest of the class, or that something was taken from Subclass 1 in order to benefit the other subclasses.

Rather, the facts show the contrary. For Subclass 1 (Categories 2 and 3) owners, the *Lindauer* Settlement stated that “nothing herein prohibits [TEP] from taking *any* Deductions it claims it is entitled to take under the terms of the [Royalty Instruments].” (Aplt. App. Vol. Iv at 0965) (emphasis added.) Based on this language, the *Sefcovic* Class took the position that the *Lindauer* Settlement did not address the deduction of *any* post-production costs, and therefore challenged TEP’s deduction of gathering, fuel, and processing costs. (Aplt. App. Vol. II at 0210-0229.) TEP, in turn, asserted an affirmative defense seeking to offset the *overpayment* of royalties against any alleged underpayments recovered by the *Sefcovic* Class. (Aplt. App. Vol. II at 0283.)

Because the *Lindauer* Settlement did not establish a methodology for calculating royalties paid to Subclass 1 owners, the appropriate calculation was

based on the terms of the parties' leases. (See Aplt. App. Vol. I at 230-255, Vol. IV at 0950-0984.) Subclass 1 leases expressly require the class members "to bear" their proportionate share of the cost of transporting gas "from the mouth of the well to the point of sale or use," or similarly "the cost of transporting such gas" or "all transportation charges." (Aplt. App. Vol. I at 230-255.) These costs include gathering and fuel costs incurred to transport gas from the well to the processing plant. (Aplt. App. Vol. IV, 0837-0838, Vol. V at 1188, Vol. VI at 1582-1583.)

Rather than undertaking the cost and risk of litigating the deduction of gathering, fuel, and processing costs, TEP and Subclass 1 reached a compromise through the *Sefcovic* Settlement. (Aplt. App. Vol. IV at 0851-0910.) This compromise provided the subclass with monetary compensation and established a fair method for calculating royalties on future production. (Aplt. App. Vol. IV at 0851-0910, Vol. V at 1185-1199, 1467-1482.) With respect to processing costs, TEP agreed to pay Subclass 1 an amount equal to 50% of processing costs deducted during the class period. (Aplt. App. Vol. IV at 0987-0988, Vol. V at 1190.) This is the same amount of processing costs that TEP agreed to pay to members of Subclass 2. (Aplt. App. Vol. IV at 0987-0988.) TEP also agreed to limit the deduction of processing costs from royalties paid on future production to 50% of the amount allowed to be deducted from royalties paid to the federal

government, which is the same limitation in the *Lindauer* Settlement applicable to members of Subclass 2. (Aplt. App. Vol. IV at 0950-0984, 0987-0988, 1190, Vol. V at 1473-1474.) To the extent other subclasses received a different amount of monetary compensation, that is due to the different provisions of the *Lindauer* Settlement applicable to various categories of leases. (Aplt. App. Vol. V at 1468-1482.)

TEP also provided Subclass 1 with monetary compensation to resolve their claims based on the deduction of gathering and fuel costs. (Aplt. App. Vol. IV at 0950-0984, 0987, 1190-1191.) In addition to compensation paid for the deduction of processing costs, TEP compensated Subclass 1 in an amount equal to over 40% of the fuel costs deducted during the six-year class period. (Aplt. App. Vol. IV at 0987, 1190-1191.)³

Both the facts and the law support the settlement. Factually, Subclass 1 received substantial monetary recovery for their claims, despite the “weak royalty

³ Appellants claim that Subclass 1 was required to pay TEP “more money than they received under the settlement.” (Op. Br. at 15-16.) This argument presumes that TEP is not permitted to deduct gathering and fuel costs from Subclass 1 owners, which as explained below, is incorrect. (Aplt. App. Vol. VI at 1621, 1626-1627, 1646-1647.) Moreover, nothing in the record supports Appellants’ assertion that TEP “recouped” \$4,000,000 from Subclass 1 members. See *In re EuroGas, Inc.*, 755 F. App’x 825, 833 (10th Cir. 2019) (noting arguments of counsel are not evidence).

provision” relating to gathering and fuel costs. (Aplt. App. Vol. VI at 1584.) As a Subclass 1 representative herself testified, this was “a good settlement for the entire party, the entire class” (Aplt. App. Vol. VI at 1600), because “if you litigate it, you would probably end up in a worse position.” (Aplt. App. Vol. VI at 1598.)

The law supports the Subclass 1 representative’s view of the settlement, particularly given the unpredictability, risk, and expense associated with protracted litigation. *See Tennille*, 785 F.3d at 434 (to determine the reasonableness of a settlement, courts consider whether “immediate recovery was more valuable than the mere possibility of a more favorable outcome after further litigation”). For this reason, courts consistently approve class action settlements where the class members receive monetary recovery for claims that were disputed and uncertain. *See, e.g., Jones v. Nuclear Pharm., Inc.*, 741 F.2d 322, 324 (10th Cir. 1984) (whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation is a factor in determining the reasonableness of settlement); *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 595 (3d Cir. 2010) (noting strong policy in favor of the finality of judgments and the termination of litigation); NEWBERG ON CLASS ACTIONS (“NEWBERG”) § 13:44 (5th ed.) (“Settlement is generally favored because it represents a compromise

reached between the parties to the suit and relieves them, as well as the judicial system, of the costs and burdens of further litigation.”).

In addition, the benefit of immediate recovery is apparent in this case. (See Aplt. App. Vol. IV at 0842-0845.) In the briefing below, Class Counsel noted that in two of the five other royalty underpayment suits that Class Counsel had handled in the last three years, the defendants filed for bankruptcy, precluding the class members from obtaining any recovery. (Aplt. App. Vol. IV at 0844.) These circumstances also support the class settlement here, which the District Court found to be reasonable. (Aplt. App. Vol. V at 1456-1466); *see also Tennille*, 785 F.3d at 434 (listing factors necessary for a reasonable settlement).

B. Subclass 1’s Support for the *Sefcovic* Settlement, and the Value of Immediate Recovery, Underscore Its Reasonableness.

The overwhelming support for the settlement from the *Sefcovic* Class, including members of Subclass 1, demonstrates the settlement’s fairness. Out of a class of over 600 members, only four have objected to the settlement agreement. (Aplt. App. Vol. IV at 1022-1036, Vol. V at 1185-1186.) Appellants also have a very small stake in the settlement. Collectively, they account for only \$18,000 of the close to \$8 million TEP paid to the *Sefcovic* Class. (Aplt. App. Vol. V at 1187.) Even among Subclass 1 members, Appellants recovered only 4% of the

\$427,787.31 that TEP paid to Subclass 1. (Aplt. App. Vol. IV at 0987, Vol. V at 1187.)

Where, as here, fewer than one percent of class members contest the fairness of the settlement, courts consider this strong evidence that the settlement is reasonable. *See, e.g., Wal-Mart*, 396 F.3d at 118 (“If only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement.” (quoting NEWBERG (4th ed.) at § 11:41)); *Stoetznner v. U.S. Steel Corp.*, 897 F.2d 115, 118 (3d Cir. 1990) (holding 10% objection rate “strongly favors” approval); *Weiss v. Mercedes-Benz of N.A., Inc.*, 899 F. Supp. 1297, 1301 (D.N.J. 1995) (“[a] substantial silent consent” supports settlement).

C. Appellants’ Legal Authority Is Inapposite.

Appellants cite a single case, *National Super Spuds, Inc. v. New York Mercantile Exchange*, 660 F.2d 9, 19 (2d Cir. 1981), in opposition to the settlement’s reasonableness. (See Op. Br. at 16.) *Super Spuds* is distinguishable, because it merely held that a class action settlement cannot compensate *some* class members while releasing the claims of *all* class members. 660 F.2d at 18. In other words, all members of the class must receive at least some benefit in exchange for releasing their claims. *See id.* Here, Subclass 1 members, including the four Appellants, received hundreds of thousands of dollars as compensation for

releasing their claims of royalty underpayment during the class period. (Applt. App. Vol. V at 1190-1191, 1467-1482.)

Considering the strong policy favoring the settlement of class actions and the negligible fraction of class members who have challenged the *Sefcovic* Settlement's fairness, the District Court's approval of the settlement was well within its discretion and should be affirmed. (Applt. App. Vol. V at 1456-1466.) *See Rutter*, 314 F.3d at 1187 (decision to approve or reject a settlement is committed to the sound discretion of the trial judge because he is exposed to the litigants, and their strategies, positions, and proof) (citation omitted).

II. Subclass 1 Owners Were Adequately Represented.

Appellants argue that Subclass 1 was inadequately represented. (Op. Br. at 18-23.) Specifically, they claim that the class representative did not have the same interests as Subclass 1 class members. (Op. Br. at 18-23.) Appellants' argument is meritless.

At the outset, Appellants never raised the issue of a "conflict of interest" in the District Court. The Court need not consider this new argument on appeal. *See Tele-Comm's, Inc. v. Comm'r*, 104 F.3d 1229, 1233 (10th Cir. 1997) (holding appellate court will not consider an issue raised for the first time on appeal).

Nor is there evidence of a conflict of interest. The representatives of Subclass 1, White River Royalties and Elna Sefcovic, own interests in the same types of leases as Appellants. (Aplt. App. Vol. VI at 1578, 1607.) Those leases provide that TEP is entitled to deduct the cost of transporting gas “from the mouth of the well to the point of sale.” (Aplt. App. Vol. I at 230-255, Vol. IV at 0983.) Similarly, Category 3 leases provide that TEP is entitled to deduct “the cost of transporting such gas from the mouth of the well to the point of sale[.]” (Aplt. App. Vol. I at 230-255, Vol. IV at 0983.) The interests of the Subclass 1 representatives and Appellants, therefore, were aligned. *See Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 625-26 (1997) (holding class representative is adequate where it has the same interest and alleged injury as absent class members); *Cummings v. Connell*, 316 F.3d 886, 896 (9th Cir. 2003) (noting that denial of class certification on the basis of speculative conflicts is not favored).

Appellants rely on *Super Spuds*, 660 F.2d at 17 n.6, to argue that the class representatives, along with Class Counsel, represented diverging class interests. (Op. Br. at 22.) *Super Spuds* is inapposite. There, the court noted that “[a]t no point did plaintiffs seek authority to represent members of the class with respect to claims based on unliquidated contracts.” 660 F.2d at 17. Here, by contrast, the

Subclass 1 class representatives sought and received authority to represent both Category 2 and Category 3 owners. (Aplt. App. Vol. II at 0385.)

Similarly, Appellants claim that the “financial interest of the class representatives were adverse to the interests of Subclass 1 members.” (Op. Br. at 22.) Appellants cite no authority to support this argument. *Cf. Bronson v. Swensen*, 500 F.3d 1099, 1104 (10th Cir. 2007) (holding this Court routinely declines to consider inadequately briefed arguments). Appellants also claim that the \$5,000 incentive fee award “undermin[ed] the adequacy of the class representatives.” (Op. Br. at 22 (citing *Radcliffe v. Experian Info. Sols., Inc.*, 715 F.3d 1157, 1164 (9th Cir. 2013)).) In *Radcliffe*, the Ninth Circuit determined a \$5,000 incentive fee was disproportionate compared to the class members’ recovery. *See* 715 F.3d at 1164. Here, the \$5,000 incentive award comprised of less than one third of what Appellants alone received from the settlement (\$18,000) before the deduction for attorneys’ fees and costs. (Aplt. App. Vol. V at 1187.)

Appellants also cannot show that the District Court abused its discretion in finding the Subclass 1 representatives to be adequate. *Fymbo v. State Farm Fire & Cas. Co.*, 213 F.3d 1320, 1321 (10th Cir. 2000) (reviewing determination of adequacy for abuse of discretion). Unlike Appellants, who did not appear at the final fairness hearing other than through counsel, Subclass 1 had an actual class

representative appear at the hearing. (Aplt. App. Vol. VI at 1578, 1605-1606.) As described above, Ms. Jerman testified that the settlement was reasonable for Subclass 1 members, particularly given the language of the underlying leases and her experience with other royalty provisions. (Aplt. App. Vol. VI at 1578, 1597.) As she explained, the provisions permitting the deduction of transportation costs from the mouth of the well to the point of sale meant the Subclass 1 leases had an “extremely weak royalty provision.” (Aplt. App. Vol. VI at 1603.) Challenging the deduction of gathering and fuel costs, if litigated, “could [not] stand up to the same scrutiny as the other category of leases.” (Aplt. App. Vol. VI at 1603.)

The facts support Ms. Jerman’s interpretation of the Subclass 1 royalty provision and that the settlement is in the best interest of all Subclass 1 members. (Aplt. App. Vol. VI at 1584, 1600.) TEP consistently, and appropriately, deducted gathering and gathering fuel costs from 2009 to 2016. (Aplt. App. Vol. V at 1188, 1206.) Prior to the *Sefcovic* action, no party to the *Lindauer* Settlement, including Appellants, challenged the validity of TEP’s deductions based on the express language of these leases. (Aplt. App. Vol. VI at 1646-1647.)

Subclass 1 was adequately represented by a highly sophisticated royalty owner who understood the implications of the Subclass 1 leases, and the parties reached a reasonable compromise. *See Amchem*, 521 U.S. at 625-26 (noting that a

class representative must be part of the class and possess the same interest and suffer the same injury as the class members); *see also Rutter*, 314 F.3d at 1188 (listing factors necessary for a reasonable settlement). The District Court’s approval of the settlement, therefore, should be affirmed. *Fymbo*, 213 F.3d at 1320.

III. Subclass 1 Owners Received Adequate Notice.

Appellants contend that the notice of the class settlement approved by the court was inadequate, because it did not describe the “sacrifice” of Subclass 1. (Op. Br. at 35-37.) For the reasons explained above (*supra* at 22-26), Appellants’ notion of a “sacrifice” incorrectly presumes that Subclass 1 owners are treated unfavorably by the settlement. (See Op. Br. at 15-18.)

The facts are otherwise: Subclass 1 received substantial monetary compensation, including for costs that TEP consistently deducted after entering into the *Lindauer* Settlement, that were never challenged until the *Sefcovic* action was filed, and that are expressly permitted by the terms of Subclass 1’s leases. (Aplt App. Vol. I at 0211-0212, Vol. III at 0652-0653, Vol. V at 1188-1191, 1206, Vol. VI at 1646-1647.)

In addition, the contents of the class notice (Aplt. App. Vol. IV at 0887-0893) were more than adequate. Pursuant to Fed. R. Civ. P. 23(c)(2)(B), a class settlement notice:

must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

Fed. R. Civ. P. 23(c)(2)(B).

The notice sent to the *Sefcovic* Class included each of these seven items. (See Aplt. App. Vol. IV at 0887-0893.) The notice described the *Sefcovic* Class' claims and TEP's defenses, and provided a detailed description of the terms of the agreement, including information regarding the resolution of costs from Subclass 1 owners. (Aplt. App. Vol. IV at 0887-0893.)

Appellants claim the notice was deficient because it supposedly did not reference gathering costs or disclose the scope of the parties' releases. (Op. Br. at 36-37.) To the contrary, the notice specifically addressed TEP's calculation of royalties paid to Subclass 1 on future production, including the deduction of gathering and fuel costs. (Aplt. App. Vol. IV at 0889.) As for the settlement's

release, the notice clearly stated, “Should you remain in the TEP Settlement Class, and the TEP Settlement is approved, you will: ... 2) Release all Settled Claims.” (Aplt. App. Vol. IV at 0890.) “Settled Claims” were defined in the notice as “any claim against TEP related to royalty calculations.” (Aplt. App. Vol. IV at 0890.)

The notice also informed the class members of their right to obtain a copy of the settlement agreement from Class Counsel, and to access the agreement online at www.georgebartonlaw.com. (Aplt. App. Vol. IV at 0890.) See *Tennille*, 785 F.3d at 436-37 (class settlement notice satisfied “due process baseline” by informing the settlement class members how to obtain a copy of the class settlement agreement) (citation omitted); see also *Gooch v. Life Inv’rs Ins. Co. of Am.*, 672 F.3d 402, 423 (6th Cir. 2012) (stating that, in order to satisfy due process, “[a]ll that the notice must do is fairly apprise prospective members of the class of the terms of the proposed settlement so that class members may come to their own conclusions about whether the settlement serves their interests”) (citations and internal quotations omitted).

The notice achieved its intended goal of clear communication to all class members, since multiple members contacted Class Counsel and were supportive of the class settlement. See 7AA Wright & Miller, *Federal Practice & Procedure* § 1787 (3d ed.) (stating that Rule 23’s notice requirements are satisfied if the

notice gives Rule 23(b)(3) class members “sufficient information about the specific lawsuit to allow a class member to assess whether to exercise the right either to appear or to opt out”). No class member expressed concern or confusion about the settlement. (Aplt. App. Vol. IV at 0839-0840.)

The notice sent to the *Sefcovic* Class fully complied with the requirements of Fed. R. Civ. P. 23(c)(2)(B), and more than satisfied the “due process baseline” under Tenth Circuit law. *Tennille*, 785 F.3d at 436-37 (citation omitted).

Appellants’ challenge to the notice should be rejected, and the District Court’s approval of the settlement should be affirmed. (Aplt. App. Vol. V at 1456-1466.)

IV. The District Court Conducted a Rigorous Analysis of the *Sefcovic* Settlement After a Full and Fair Hearing.

Appellants claim that the District Court failed to conduct a “rigorous analysis” before approving the *Sefcovic* Settlement and that the court failed to address their objections. (Op. Br. at 24.) Both the record below and the District Court’s order show otherwise.

A. The District Court Heard Extensive Evidence.

The *Sefcovic* Class, TEP, and Appellants presented extensive argument and evidence, prior to and during the fairness hearing. (See Aplt. App. Vol. IV at 0833-0850, 1022-1036, Vol. V at 1185-1199, 1379-1400.) Appellants specifically challenged the fairness of the settlement to Subclass 1 members, the adequacy of

the class notice, and the scope of the release in the *Sefcovic* Settlement. (Aplt. App. Vol. IV at 1022-1036; Vol. V at 1379-1400; Vol. VI at 1485-1668.) Each of these issues was fully briefed to the District Court, thereby allowing an adequate explanation of the parties' settlement. (Aplt. App. Vol. IV at 0833-0850, 1022-1036; Vol. V at 1185-1199, 1379-1400); *see also Rutter*, 314 F.3d at 1188-89 (affirming class action settlement as fair, adequate, and reasonable where the district court considered all of the objectors' arguments, and objectors and their counsel "argued strenuously" against the settlement).

The District Court held an extensive, five-hour fairness hearing, during which it heard argument and testimony from the parties and Appellants, including testimony from Appellants' accounting expert. (See Aplt. App. Vol. VI at 1504-1647, 1638-1647.) At the hearing, Appellants' expert confirmed that TEP consistently deducted gathering and fuel costs from Subclass 1 members after entering into the *Lindauer* Settlement, that she was aware of such deductions, and that no class member challenged those deductions until the *Sefcovic* action was filed. (Aplt. App. Vol. VI at 1646-1647.) Appellants also chide the District Court for inadequately questioning the class representatives at the fairness hearing. (Op. Br. at 25-26.) Appellants, however, cross-examined the class representatives (Aplt. App. Vol. VI at 1595-1605, 1614-1615), and cite no authority to suggest that

the District Court's questioning of the class representatives was insufficient or improper.

The District Court also heard oral argument from the parties on the fairness of the settlement. (Aplt. App. Vol. VI at 1488-1503, 1648-1667.) The arguments primarily focused on the fairness of the settlement as to Subclass 1 members and the scope of the release. (Aplt. App. Vol. VI at 1648-1667.)

The District Court's rigorous analysis satisfied the requirements of Fed. R. Civ. P. 23 and fulfilled the court's obligation to act as the fiduciary of absent class members. *See, e.g., Integra Realty*, 354 F.3d at 1268-69 (affirming the district court's approval of class settlement based on underlying record) (citing *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 437 (1968)). Its judgment, therefore, should be affirmed.

B. The Evidence Supported the District Court's Finding That the Settlement Was Fair and Reasonable.

Appellants argue that "the Magistrate merely parroted the Requirements of Rule 23 without discussion, or fact findings, or any analysis at all." (Op. Br. at 25.) In reality, the District Court's Order includes specific findings of fact regarding the fairness and reasonableness of the settlement. (See Aplt. App. Vol. V at 1460-1461.) Appellants cite no authority to suggest that the District Court's assessment was insufficient or unsupported by the evidence.

As explained above, in assessing whether a proposed settlement is fair, courts consider: (1) “whether the proposed settlement was fairly and honestly negotiated”; (2) “whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt”; (3) “whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation”; and (4) “the judgment of the parties that the settlement is fair and reasonable.” *Jones*, 741 F.2d at 324. The District Court made factual findings for each of these factors, and also identified additional reasons supporting the fairness of the settlement. (See Aplt. App. Vol. V at 1460-1461); *see also Rutter*, 314 F.3d at 1188-89 (finding the district court properly assessed whether the proposed settlement was fair, adequate, and reasonable where the court went through each of the *Jones* factors and considered all of the objectors’ arguments). The record supports the District Court’s findings, as explained above. *See supra* at 35-37.

Appellants also argue that the District Court unreasonably approved TEP’s right to recoup any inadvertent overpayment of royalties, suggesting that recoupment somehow punishes Subclass 1 owners. (Op. Br. at 14-15.) This right of recoupment, however, extends to all owners; it is not limited to owners in Subclass 1. (See Aplt. App. Vol. VI at 1629.) Importantly, Appellants’ accounting

expert conceded that TEP had the right to recoup inadvertent overpayments in the normal course of business. (See Aplt. App. Vol. VI at 1640-1641.) The District Court independently arrived at the same conclusion. (See Aplt. App. Vol. VI at 1654 (“THE COURT: Well, I don’t think anybody could argue with the premise that if somebody overpays under a contract, they have a right to offset or recoup. That’s just the general principle of contract law.”).) The District Court, therefore, properly approved TEP’s right to recoupment under the *Sefcovic* Settlement.

Contrary to Appellant’s argument, the District Court made sufficient findings of fact during the fairness hearing to conclude that the settlement was fair and reasonable. See *Gottlieb v. Wiles*, 11 F.3d 1004, 1015 (10th Cir. 1993), *abrogated on other grounds by Devlin v. Scardelletti*, 536 U.S. 1 (2002).

C. The District Court Considered—and Rejected—Appellants’ Arguments Against the Settlement.

The District Court properly recognized that Appellants’ “principal argument” concerned “the uncertainty of future obligations by the Settlement Class to incur deductions from their royalty payments based on post-production costs.” (Aplt. App. Vol. V at 1460.) At the fairness hearing, Appellants primarily focused on the calculation of royalties on future production. (Aplt. App. Vol. VI at 1643 (“Q: But no one knew what [the deductions] were going to be, how they were going to be calculated, correct? A: That is correct.”); Vol. VI at 1645 (“Q: From the

remittance statement, you don't necessarily know on the processing whether or not it's compliant? A: That is correct."); Vol. VI at 1655 ("MR. KEEVER: [T]hat's what this settlement says, whatever you think is allowable, however much you think, no cap, no parameters, nothing").)

Rejecting these arguments, the District Court explained that "those uncertainties have always been present even since the decade-old *Lindauer* settlement that preceded this case; the royalty holders are aware of those uncertainties and still believe this Settlement Agreement is in their best interests." (Aplt. App. Vol. V at 1460.) The Court additionally noted that the *Sefcovic* Settlement "does not preclude future legal action based on alleged wrongful conduct of TEP in calculating future royalty payments," i.e., if TEP were to calculate royalties contrary to the terms of the *Lindauer* Settlement. (Aplt. App. Vol. V at 1460-1461.)

In fact, both the District Court and Appellants' counsel acknowledged that the *Sefcovic* Settlement does not preclude "future legal action based on alleged wrongful conduct of TEP in calculating future royalty payments" under the *Sefcovic* Settlement or the *Lindauer* Settlement. (Aplt. App. Vol. V at 1460-1461, Vol. VI at 1656-1657 ("THE COURT: ... If there's a settlement approved, these are the terms of the settlement and that's what any future court would look at i[n]

determining what parties' rights are."); Vol. VI at 1658 ("MR. KEEVER: [T]here's no dispute that they're supposed to abide by *Lindauer* I mean, you haven't heard [TEP's Counsel] stand up and say we didn't have to comply with *Lindauer*.").)

Appellants argue that the District Court failed to address their concerns regarding "new negative 'certainties' created by the *Sefcovic* Settlement." (Op. Br. at 26.) This is simply not the case. Despite Appellants' assertion that the *Sefcovic* Settlement requires Subclass 1 members to "abandon[] ... their previously-reserved gathering and fuel cost deduction claims" (Op. Br. at 26), the evidence considered by the District Court shows that Subclass 1 members were adequately compensated for their claims. (See Aplt. App. Vol. VI at 1553-1554.) Subclass 1 hardly "abandoned" any claim. It settled its claims for reasonable compensation. See *Grady v. De Ville Motor Hotel, Inc.*, 415 F.2d 449, 451 (10th Cir. 1969) ("It is well settled, as a matter of sound policy, that the law should favor the settlement of controversies.").

Similarly, Appellants claim that the settlement agreement imposes "massive new gathering and fuel cost deductions in the future." (Op. Br. at 26.) The evidence, however, demonstrated that TEP has *always* deducted gathering and fuel costs from royalties paid to owners in Subclass 1, as permitted by the terms of the

underlying leases. (See Aplt. App. Vol. VI at 1621, 1626-1627, 1646-47); *see also supra* at 7-8.

Appellants claim, without support, that the District Court failed to address that the settlement authorized TEP to recoup “an additional \$4,000,000 from Subclass 1 class members.” (Op. Br. at 26.) In fact, the evidence presented at the fairness hearing demonstrated that, under the settlement, TEP would recoup \$275,000 from *all* owners, and less than \$1,000 from Subclass 1 members. (Aplt. App. Vol. VI at 1629.) Appellants’ reference to “\$4,000,000” comes from the unsupported testimony of their expert and has no foundation in the record. (Aplt. App. Vol. VI at 1642); *see also Gottlieb*, 11 F.3d at 1015 (“Independent analysis does not mean, however, that the district court must conduct a foray into the wilderness in search of evidence that might undermine the conclusion that the settlement is fair. Rather ... the district court must independently analyze the evidence *before* it in making its determination[.]”).

Appellants also claim that the District Court’s review of the settlement was hampered by Class Counsel’s alleged failure to disclose the conflict of interest between the class representatives and the members of Subclass 1. (Op. Br. at 27.) As discussed previously, there was no conflict of interest. *See supra* at 28-32.

Instead, the record supports the District Court’s approval of the settlement and its rejection of Appellants’ objections. *See Evans v. Jeff D.*, 475 U.S. 717, 742 (1986) (courts have considerable discretion to approve class action settlements and fashion relief “on a case-by-case basis, in the light of all the relevant circumstances”); *In re Integra Realty Res. Inc.*, 262 F.3d 1089, 1100 (10th Cir. 2001), (district court properly exercised its discretion in approving a class settlement for which an extremely small percentage of class members opted out). The District Court’s judgment, therefore, should be affirmed.

V. The Parties’ Release Is Reasonable.

Appellants challenge the scope of the release in the *Sefcovic* Settlement, claiming that it is improperly overbroad. (Op. Br. at 28-34.) Their challenge is inconsistent with the relevant standard, and the scope of the claims in the *Sefcovic* action, and should be rejected.

A. The Parties’ Release Arises Out Of The Same Factual Predicate As The Settled Claims.

“[I]nherent in the nature of a class-action settlement is the release of the claims of every class member (except those who opt out).” *Fager*, 854 F.3d at 1176. Given the purpose of the release, its scope naturally can be broad, and thus “may include claims not presented and even those which could not have been presented as long as the released conduct arises out of the ‘identical factual

predicate’ as the settled conduct.” *Wal-Mart*, 396 F.3d at 107 (citation omitted). Based on this standard, “a court may release not only those claims alleged in the complaint and before the court, but also claims which ‘could have been alleged by reason of or in connection with any matter or fact set forth or referred to in’ the complaint.” *In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 221 (5th Cir. 1981) (citation omitted); *see also In re Gen. Am. Life Ins. Co. Sales Practices Litig.*, 357 F.3d 800, 805 (8th Cir. 2004) (“There is no impropriety in including in a settlement a description of claims that is somewhat broader than those that have been specifically pleaded. In fact, most settling defendants insist on this.”); *In re Prudential Ins. Co. of Am. Sales Practice Litig.*, 261 F.3d 355, 366-67 (3d Cir. 2001) (supporting broad releases of class claims); *City P’ship Co. v. Atl. Acquisition Ltd. P’ship*, 100 F.3d 1041, 1044 (1st Cir. 1996) (discussing the identical factual predicate doctrine); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1287-88 (9th Cir. 1992) (same).

The scope of the release in the *Sefcovic* Settlement is consistent with the standard followed in *Wal-Mart*, 396 F.3d at 107. The settlement provides for the release of:

any and all liabilities, rights, claims, demands, obligations, damages (including claims for an award of costs and/or expenses, court costs and attorneys’ fees), losses, causes of action in law or in equity arising from the calculation

and/or payment of royalties and/or overriding royalties to Plaintiffs and the Class on the sale of natural gas, natural gas liquids, and associated hydrocarbons prior to the Effective Date....

(Aplt. App. Vol. V at 1472.) As summarized in the class notice, the release settles “any claim against TEP related to royalty calculations.” (Aplt. App. Vol. IV at 0890.)

These are the claims asserted by the *Sefcovic* Class against TEP. In their complaint, the *Sefcovic* Class challenged TEP’s calculation of royalties, including whether TEP “failed to pay royalties based upon first commercial market prices” or took “improper post-production deductions from the selling price of residue gas and marketable natural gas liquid products,” such as “processing, gathering, and fuel costs.” (Aplt. App. Vol. V at 1162.) These are claims directed to TEP’s calculation of royalties, and they are the claims that were resolved by the *Sefcovic* Settlement and therefore appropriately released. *See In re Gen. Am. Life Ins. Co. Sales Practices Litig.*, 357 F.3d at 805; *In re Corrugated Container Antitrust Litig.*, 643 F.2d at 221. Put otherwise, the “released conduct” under the *Sefcovic* Settlement “arises out of the ‘identical factual predicate’ as the settled conduct,” which is proper. *Wal-Mart*, 396 F.3d at 107 (citation omitted).

The cases cited by Appellants (Op. Br. at 30-31), do not hold otherwise. In *Gonzalez v. CoreCivic of Tennessee, LLC*, 2018 WL 4388425, at *12 (E.D. Cal.

Sept. 13, 2018), and *Boyd v. Avanquest North America Inc.*, 2015 WL 4396137, at *5-6 (N.D. Cal. July 17, 2015), the district courts refused to approve releases that extended to claims that were never pleaded by the plaintiffs. In *Boyd*, for example, the underlying action concerned fraudulent inducement against a software developer, but the overbroad release conceivably extended to claims for security and privacy breaches. See 2015 WL 4396137, at *5-6. Here, by contrast, the *Sefcovic* Settlement releases only claims relating to royalty payments, and does not extend to any dispute between the parties, such as surface damage resulting from well operations or title disputes. (Aplt. App. Vol. V at 1472.)

Appellants fare no better by relying on *Super Spuds*, 660 F.2d at 18, and *Oladapo v. Smart One Energy, LLC*, 2017 WL 5956907, at *14 (S.D.N.Y. Nov. 9, 2017), both of which merely held that a class action settlement cannot release claims arising from facts not alleged in the operative complaint. See 660 F.2d at 18; 2017 WL 5956907, at *15. That is not what happened here. In this case, the class members' claims arise out of TEP's calculation of royalties, which unquestionably was challenged in the operative complaint. (Aplt. App. Vol. I at 0210-0229, Vol. V at 1162-1174.)

Indeed, the release in the *Sefcovic* Settlement is virtually identical to the release in the *Lindauer* Settlement Agreement, which resolved claims "arising

from payment of royalty or overriding royalty by [TEP].” (Aplt. App. Vol. IV at 0959.) As in *Lindauer*, the *Sefcovic* Settlement fully released claims arising from the payment of royalties, but goes no further. The release is fair, adequate, and reasonable, and thus the settlement should be affirmed. See, e.g., *Tennille*, 785 F.3d at 435 (affirming settlement that required class members to release all claims arising from the settled conduct).

B. The *Jolley Potter* Action Does Not Undermine the *Sefcovic* Settlement or Its Release.

The day before the final fairness hearing, Appellants’ counsel filed a putative class action in federal court styled *Jolley Potter Ranches Energy Co, LLC v. TEP Rocky Mountain, LLC*, Case No. 1:19-cv-00495-DDD-GPG (D. Colo. filed Feb. 19, 2019) (“*Jolley Potter*”). (Op. Br. at 33); (Aplt. App. Vol. V at 1417-1449.) *Jolley Potter* alleges claims for royalty underpayment, none of which had been pursued as a class action against TEP prior to the *Sefcovic* action.⁴ (See Aplt. App. Vol. VI at 1742-1774.)

⁴ Appellants claim that the estimated damages in *Jolley Potter* “exceed[] \$78 million.” (Op. Br. at 13.) This number comes from the plaintiff’s self-serving statement of damages in the Scheduling Order, which states that the claims “potentially exceed \$78 million.” (Aplt. App. Vol. VI at 1780) (emphasis added.) The plaintiff in *Jolley Potter* has yet to present any evidence supporting this amount of potential damages.

The belated claims in *Jolley Potter*, however, do not undermine the release in the *Sefcovic* Settlement, because those claims are based on the same factual predicate as the *Sefcovic* action: the calculation and payment of royalties.

(Compare Aplt. App. Vol. VI at 1742-1774 with Aplt. App. Vol. I at 140-192.)

Regardless, had Appellants wanted to continue to litigate their royalty underpayment claims in a separate action, they could have opted out of the *Sefcovic* Settlement, as the plaintiff in *Jolley Potter* did. See *Fager*, 854 F.3d at 1176 (class members who opt out do not release their claims).

Moreover, the *Jolley Potter* class action underscores the importance of the release in the *Sefcovic* Settlement. The release forecloses the possibility that TEP might be sued in the future on claims arising from calculations and payments of royalties—except under the settlement, which contains comprehensive, agreed-upon methods for calculating royalties. See *Fager*, 854 F.3d at 1175 (holding class action settlement properly released claims against non-party railroads where without release, railroads would likely be sued for trespass on communication company’s property that crossed railroads’ right of way). Releases in class action settlements are proper because they “foreclose th[e] possibility [of being sued later] and thus ensure[] final resolution so critical to Defendants’ agreeing to settle.” *Id.*

The release of claims in the *Sefcovic* Settlement is not overly broad and Appellant's challenge to the release should be rejected.

CONCLUSION

The *Sefcovic* Settlement is fair, adequate, and reasonable. The notice provided to the class was more than adequate. The District Court appropriately exercised its jurisdiction to conclude this case by approving the parties' settlement agreement. For the reasons set forth above, the District Court's judgment should be affirmed.

STATEMENT CONCERNING ORAL ARGUMENT

The *Sefcovic* Class and TEP respectfully request oral argument in order to assist in explaining any important points that remain unclear after briefing.

DATED: October 18, 2019

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Pursuant to Fed. R. App. P. 32(g), I hereby certify as follows:

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2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6). It has been prepared in a proportionally spaced typeface using Microsoft Word in 14 pt. Times New Roman (with the exception of the cover page, which was reduced in font size in order to accommodate the case caption).

s/ Christopher A. Chrisman

Christopher A. Chrisman

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I certify that on October 18, 2019, a true and correct copy of the foregoing **JOINT ANSWER BRIEF OF PLAINTIFFS/APPELLEES ELNA SEFCOVIC, LLC, WHITE RIVER ROYALTIES, LLC, JUHAN, LP, ROY ROYALTY, INC., AND DEFENDANT/APPELLEE TEP ROCKY MOUNTAIN LLC** was served through the court's ECF system on the following:

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I further certify that on October 21, 2019, I caused to be delivered for filing via hand delivery 7 paper copies of the foregoing to the Court at the following address:

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13683731_v6

No. 19-1120

IN THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

ELNA SEFCOVIC, LLC, WHITE RIVER ROYALTIES, LLC, JUHAN, LP,
ROY ROYALTY, INC., individually and on behalf of the certified class,

Plaintiffs/Appellees,

vs.

TEP ROCKY MOUNTAIN,

Defendant/Appellee.

CHARLES DEAN GONZALEZ and SUSANNAH GONZALES,

Objectors/Appellants,

and

IVO LINDAUER, SIDNEY LINDAUER, RUTH LINDAUER,
and DIAMOND MINERALS, LLC,

Intervenors,

and

THE LAW OFFICES OF GEORGE A. BARTON, PC,

Movant/Appellee.

Appeal From the United States District Court for the District of Colorado
Hon. Michael E. Hegarty, U.S. Magistrate Judge
District Court Case No. 17-cv-1990-MEH

APPELLANTS' PETITION FOR REHEARING
AND REHEARING EN BANC

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**APPELLANTS’ PETITION FOR PANEL REHEARING
OR REHEARING EN BANC**

Objectors/Appellants respectfully petition the Court, pursuant to Fed. R. App. P. 35 and 40, for Panel Rehearing and/or Rehearing En Banc. The Panel decision in this matter is reported as *Elna Sefcovic, LLC v. TEP Rocky Mountain, LLC*, —Fed. Appx.—, 2020 WL 1285849 (10th Cir. Mar. 18, 2020), and a copy of the decision is attached hereto. (“slip op.”).

As discussed below, the Panel’s decision conflicts with a decision of the United States Supreme Court and involves other legal questions of exceptional importance.

STATEMENT OF ISSUES WARRANTING REHEARING

1. Whether this Court’s continuing use of the standard for judicial review for class action settlements described in *Tennille v. Western Union Co.* conflicts with the Supreme Court’s 2018 amendment of Fed. R. Civ. P. 23(e)(2).

2. Whether a district court, when simultaneously (a) certifying a settlement-only class and (b) approving a class action settlement, must conduct a rigorous analysis, exercise heightened scrutiny, and make written findings and conclusions addressing adequacy of representation.

3. Whether the filing of written objections and briefing arguing that the interests of a subclass had been “sacrificed,” was sufficient to raise and preserve the issue of adequacy of representation.

4. Whether the presentation at a fairness hearing of testimony regarding inadequacy of representation (including conflict of interest), without objection, was sufficient to raise and preserve the issue of adequacy of representation.

INTRODUCTION

This complex royalty-owner class action involves a settlement-only class and its relation to a previous settlement in state court.¹ Objectors objected to the proposed settlement and asserted that the class representatives had “sacrificed” the interests of Subclass I and thus failed to adequately represent them. Although adequacy of representation is a mandatory consideration under both Fed. R. Civ. P. 23(a)(4) and 23(e)(2)(A), the District Court did not address these objections and did not conduct a rigorous analysis or the heightened scrutiny required by *Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997). The Panel, misconstruing Appellants’ objections and applying a standard that pre-dates the 2018 amendments adopting Rule 23(e)(2)(A) and (D), held that no rigorous analysis was required and found no error.

¹ *Lindauer v. Williams Production RMT Co.*, Case No. 2006 CV 317 (Garfield County, Colo. Dist. Ct.).

ARGUMENTS AND AUTHORITIES FOR REHEARING

I.

THE PANEL MISTAKENLY APPLIED A LEGAL STANDARD THAT PRE-DATES THE 2018 AMENDMENT TO RULE 23(e)(2)

Fed. R. Civ. P. Rule 23(e)(2) was amended in 2018 to permit approval of a class settlement:

only on finding that it is fair, reasonable, and adequate *after considering whether: (A) the class representatives and class counsel have adequately represented the class. . . ; and (D) the [settlement] treats class members equitably relative to each other.*

(emphasis added). Rather than following the current directive of Rule 23(e)(2), the Panel based its review of whether the settlement was “fair, reasonable and adequate” using wholly different and lesser criteria set out in *Tennille v. Western Union Co.*, 785 F.3d 422, 434 (10th Cir. 2015), *cert. denied*, 136 S. Ct. 835 (2016):

[O]ur review focuses on whether “(1) the settlement was fairly and honestly negotiated, (2) serious legal and factual questions placed the litigation’s outcome in doubt, (3) the immediate recovery was more valuable than the mere possibility of a more favorable outcome after further litigation, and (4) [the parties] believed the settlement was favorable and reasonable.”

(slip. op. at 8 [quoting *Tennille*]). The Panel did not mention the current requirements of Rule 23(e)(2)(A) or (D) and acted contrary to those provisions.

The purpose of the 2018 amendment was “to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision

whether to approve the proposal.” FED. R. CIV. P. 23 2018 advisory committee’s note. Instead of applying the standards of Rule 23(e)(2), the Panel unfairly criticized Objectors for focusing on the core concerns enumerated in Rule 23, and for failing to abide by the now-obsolete rubric of *Tennille*. (slip op. at 8-9).

The Objector’s objections properly focused on the Rule 23(e)(2)(A) and (D) considerations: whether the absent Subclass I class members were adequately represented and whether the settlement treats class members equitably relative to each other, together with Rule 23(a)(4) adequacy of representation. But neither the Panel nor the District Court examined these factors. Instead, they mistakenly focused solely on the *Tennille* factors.

II.

THE PANEL MISTAKENLY CONCLUDED THE DISTRICT COURT WAS NOT REQUIRED TO PERFORM A RIGOROUS ANALYSIS

The Panel concluded that “rigorous analysis” and fact findings regarding “adequacy of representation” were not required because “rigorous analysis” is only required when the district court certifies a class under Rule 23(a), and is therefore “inapposite” here. (slip op. at p. 7, n. 4).

The Panel overlooked the fact that the District Court’s order also simultaneously certified the *Sefcovic* Class pursuant to Rule 23(a) and (b). (Aplt. App. Vol. V at 1459). The advisory committee’s note to the 2018 amendment to Rule

23(e)(2) links approval of a settlement with class certification: “In addition to evaluating the proposal itself, [the court] must determine whether it can certify the class under the standards of Rule 23(a) and (b) for purposes of judgment based on the proposal.”

It is well-established that Rule 23(a) and (b) require the district court to conduct a “rigorous analysis” and make actual findings of fact when certifying a class. *General Telephone Co. of the Southwest v. Falcon*, 457 U.S. 147, 161 (1982); *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 351 (2011). When approving class action settlements, all Rule 23(a) requirements for class certification must be satisfied (except for manageability) and settlement class certification is not entitled to deference or relaxed standards, but demands heightened scrutiny to protect absent class members. *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1997) (holding that certification “demand[s] undiluted, even heightened, attention in the settlement context,” which “is of vital importance”); *Cf. Weinman v. Fidelity Capital Appreciation Fund (In re Integra Realty Resources, Inc.)*, 354 F.3d 1246, 1262 (10th Cir. 2004) (acknowledging “the heightened scrutiny dictated by *Amchem* . . . for settlement-only certifications”).

Notably, adequacy of representation is an essential element for approval of a class action settlement under both Rule 23(a) and (e)(2), particularly when the

representatives and defendant stipulate to class certification. “The adequacy inquiry . . . serves to uncover conflicts of interest between named parties and the class they seek to represent.” *Amchem*, 521 U.S. at 625. To satisfy critically important due process requirements, Rule 23(a)(4) and (e)(2) both expressly require the district court to determine whether the absent class members are adequately represented.

Here, the District Court’s final order contains only one perfunctory paragraph mentioning the Rule 23(a) requirements for class certification. (Aplt. App. Vol. V at 1461-1462). There was no rigorous analysis and no mention of adequacy of representation under Rule 23(e)(2)(A) or of equitable treatment of class members relative to each other under Rule 23(e)(2)(D) in the orders of either the District Court or the Panel.

Contrary to this cursory analysis, *Amchem* teaches that certification of a settlement-only class is subject to even stricter scrutiny than the rigorous analysis Rule 23(a) generally requires. And rigorous analysis and heightened scrutiny cannot be satisfied by pro forma recitals.

Brevity may be the soul of wit, but it isn’t the soul of rigorous analysis. Such a short discussion of class certification is incompatible with the district court’s obligation for thorough examination. . . . We can’t determine whether the district court abused its discretion when the district court didn’t explain how or why it exercised its discretion.

Harper v. C.R. England, Inc., 746 Fed. Appx. 712, 721 (10th Cir. 2018).

This Court has also cautioned against district court orders using “mere boilerplate approval phrased in appropriate language but unsupported by evaluation of the facts or analysis of the law.” *Integra Realty*, 354 F.3d at 1268. Here, the District Court failed to make written findings evidencing a rigorous analysis of the prerequisites for approval. Rather, the Panel undertook to do the lower court’s job for it, by writing six pages of its own fact-finding and evidence-weighting. (slip. op. at 12-18; *see also* 26-27). But where a district court fails to conduct the analysis required by Rule 23, the remedy is not for the appellate court to assume the role of factfinder to fill in the district court’s gaps. Rather, the proper course is to remand to the district court with instructions to make adequate findings. *See, e.g., Harper*, 746 Fed. Appx. at 722; *New England Health Care Employees Pension Fund v. Woodruff*, 512 F.3d 1283, 1290-91 (10th Cir. 2008).

Instead of addressing the objections, the District Court dismissively mischaracterized them by reducing them to a single erroneous sentence: “The principal argument advanced by the settlement objectors is the uncertainty of future obligations by the Settlement Class to incur deductions from their royalty payments based on post-production costs.” (Aplt. App. Vol. V at 1460). To the contrary, Objectors raised no concerns about “future uncertainties,” but rather objected to the *certainty* that the settlement sacrificed the interests of Subclass I by allowing TEP to

deduct previously disputed costs from Subclass I—a subclass in which the class representatives own virtually no interest. These objections and the supporting evidence elicited at the fairness hearing required rigorous analysis, factfinding, and heightened scrutiny by the District Court, which were entirely absent. *See In Re Google Inc. Cookie Placement Consumer Privacy Litig.*, 934 F.3d 316, 330-331 (3d Cir. 2019) (mischaracterizing objections and dismissing the issue with a single sentence is not “the scrupulous examination required of a court acting as a fiduciary for absent class members”).

In *Harper*, this Court examined class certification and settlement much more closely, held the lower court to account, and found the required rigorous analysis lacking:

As we have cautioned, “the appropriateness of class certification lies at the heart of” class actions. *Integra Realty II*, 354 F.3d at 1261. “Class action settlements are premised upon the validity of the underlying class certification.” *Id.*; *see also Falcon*, 457 U.S. at 161, 102 S. Ct. 2364 (Class actions “may only be certified if the trial court is satisfied, after a rigorous analysis, that the prerequisites of Rule 23(a) have been satisfied.”). ***Thus we vacate and remand for the district court to more meaningfully explain its bases for class certification.***

746 Fed. Appx. at 721-22 (emphasis added). In a footnote following this passage, the Court emphasized the fundamental import of certification to approval of a class action settlement: “Because we conclude that the district court’s analysis regarding class certification was insufficient, we needn’t address the Objectors’ other challenges to

the settlement. Without a class to reference, we can't review whether the settlement is fair." *Id.* at 722 n. 8.

Rigorous analysis is absolutely necessary at the final approval/final certification stage. That did not occur here. When rigorous analysis is not performed and required findings are not made, then certification of a settlement-only class becomes simply a "rubber-stamp" procedure that deprives all class members of due process as prohibited by *Amchem*.

III.

THE PANEL OVERLOOKED REPEATED OBJECTIONS THAT THE INTERESTS OF SUBCLASS I WERE "SACRIFICED" BY THE CLASS REPRESENTATIVES, AND MISTAKENLY CONCLUDED THAT OBJECTORS WAIVED THE ISSUE OF ADEQUACY OF REPRESENTATION

The Panel compounded the District Court's error by refusing to even consider the issue of adequacy of representation, in the mistaken belief that the issue had been waived. (slip op. at 19, 21).

In reaching this erroneous conclusion, the Panel overlooked the substance of Objectors' evidence and arguments, as well as the fact that adequacy of representation was squarely before the District Court as required by Rule 23(a)(4) and 23(e)(2), and that the District Court purported to rule on the issue, at least in the context of class certification. The Panel also did not explain how Objectors could have challenged the defects in the District Court's purported ruling regarding adequacy of representation

before that court had issued that ruling. *See* FED. R. APP. P. 46 (“Failing to object does not prejudice a party who had no opportunity to do so when the ruling or order was made.”); *City of Waco, Texas v. Bridges*, 710 F.2d 220, 228 (5th Cir. 1983) (issue can be raised for first time on appeal where “there was no opportunity to object to an order upon its issuance”), *cert. denied*, 465 U.S. 1066 (1984).

In any event, the Panel’s finding of waiver is clearly contrary to the record. In their written objections (Aplt. App. Vol. IV at 1023-1025) and fairness hearing brief (Aplt. App. Vol. V at 1380-1383), Objectors repeatedly asserted that the interests of Subclass I members had been “sacrificed,” i.e., not adequately represented, by the proponents of the settlement. *See Nelson v. Adams, USA, Inc.*, 529 U.S. 460, 469 (2000) (preservation of an issue “does not demand the incantation of particular words; rather, it requires that the lower court be fairly put on notice as to the substance of the issue”).

For example, Objectors stated as follows:

A. The Sefcovic Settlement sacrifices Subclass I members.

(Aplt. App. Vol. IV at 1023 [original font]).

Here the interests of Subclass I royalty owners are being *disproportionately sacrificed* to achieve a settlement satisfactory to TEP. Because the proposed Sefcovic Settlement *does not adequately protect the interests of the absent Subclass I royalty owners*, and as such, the Settlement cannot be approved.

(Aplt. App. Vol. IV. at 1025 [emphasis added]).

[T]here is *no reason why some class members should be forced to give up something of value to enable other class members to benefit* from a settlement made richer at their expense. (Citations omitted).” *Karvaly v. Ebay, Inc.*, 245 F.R.D. 71, 90 (E.D.N.Y. 2007). See also, 4 NEWBERG, ON CLASS ACTIONS §13.60; *Nat’l Super Spuds v. N.Y. Merch. Exch.*, 660 F.2d 9, 18 (2nd Cir. 1981) (*Sacrifice of uncompensated claims of putative class members indicates inadequate representation.*)” (*Id.*, at pp. 3-4) (emphasis added).

(Aplt. App. Vol. IV at 1024-1025 [emphasis added]).

A. THE SEFCOVIC SETTLEMENT IMPROPERLY SACRIFICES THE INTERESTS OF *LINDAUER* CATEGORY 2 & 3 CLASS MEMBERS

(Aplt. App. Vol. V at 1380 [original font]).

The lawsuit reflected in Exhibit 1, also seeks to recover gathering and fuel costs deducted by WPX prior to July 2016, *which the Sefcovic representatives sacrificed* as uncompensated claims (in excess of \$2M) of the *Lindauer* Category 2 & 3 class members.

(Aplt. App. Vol. V at 1381 [emphasis added]).

3. The Proponents’ Sacrifice of Category 2 & 3 Royalty Owners Is Improper.

(Aplt. App. Vol. V at 1383 [original font]).

Objectors could hardly have been clearer in their protest that the *Sefcovic* class representatives were not adequately protecting the interests of all class members in seeking approval of the settlement.

Moreover, Rule 23(e)(2) mandates that a class settlement cannot be approved unless the court fully considers and affirmatively rules on each of four issues, the first

being adequacy of representation and the fourth addressing conflicts among subgroups. FED. R. CIV. P. 23(e)(2)(A) & (D). Likewise, Rule 23(a)(4) plainly requires a ruling that absent class members have been adequately represented in order to certify the settlement class. The district court must conduct rigorous analysis, exercise heightened scrutiny, and consider all evidence concerning whether the absent class members were actually adequately represented. The court must examine this question “independently of the general fairness review of the settlement,” even absent an objection, and especially when the evidence and settlement itself displays conflicts between the interests of subgroups within the class. *See In Re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, 827 F.3d 223, 232-36 (2d Cir. 2016), *cert. denied*, 137 S.Ct. 1374 (2017).

IV. OBJECTORS ELICITED EVIDENCE OF INADEQUATE REPRESENTATION

Because it ruled that the issue of adequate representation had been waived, the Panel did not examine the evidence produced by Objectors at the fairness hearing. But that evidence itself demonstrates that the issue was raised, and also shows that the class representatives did not adequately represent the interests of certain absent class members, leaving those members unprotected from a settlement that treated them unfairly.

A. The Fairness Hearing Evidence and District Court’s Ruling Show that the Inadequate Representation Issue was Raised Below.

Objectors elicited testimony at the fairness hearing regarding the inadequacy of the class representatives, largely from the mouths of the representatives themselves through cross-examination. This was new, live, testimony that could not be presented in pre-hearing briefs (at least not by Objectors).

The evidence elicited at the fairness hearing, which was received without objection, establishes the existence of an issue that is properly “before the court for determination” on appeal. *Hopkins v. Metcalf*, 435 F.2d 123, 124 (10th Cir. 1970); *see also, e.g., Palacios Seafood, Inc. v. Piling, Inc.*, 888 F.2d 1509, 1512 (5th Cir. 1989). Issues tried by consent (whether express or implied) at the fairness hearing must be are treated as if they were raised by the Objectors in their pleading, i.e., in the objection itself. See FED. R. CIV. P. 15(b); *Johnson Waste Materials v. Marshall*, 611 F.2d 593, 600, n. 13 (5th Cir. 1980) (issues raised by admitted evidence are preserved for appeal). Evidence of lack of adequate representation was admitted at the fairness hearing, without objection, and thereby preserved that issue for appeal.

Further, in an apparent attempt to satisfy Rule 23(a) while ignoring the requirements of Rule 23(e)(2), the District Court issued a brief paragraph of boilerplate conclusions purporting to rule that the class should be certified, including a pro forma statement that the class representatives adequately represented absent

class members. (Aplt. App. Vol. V at 1461-1462). It is axiomatic that when the district court rules on an issue, that issue is preserved on appeal. *Volvo Const. Equip. North America, Inc. v. CLM Equip. Co., Inc.*, 386 F.3d 581, 604 (4th Cir. 2004); *see also Ace American Ins. Co. v. Wattles Co.*, 930 F.3d 1240, 1250, n.14 (11th Cir. 2019); *Burnette v. Dresser Indus., Inc.*, 849 F.2d 1277, 1282 (10th Cir. 1988).

B. Evidence That Category 3 Owners Were Not Represented.

Without conducting a rigorous examination of the fairness hearing evidence, the District Court merely concluded that representation was adequate for purposes of certification. (Aplt. App. Vol. V at 1461-1462). The Panel refused to address the District Court's lack of substance by mistakenly finding the issue waived. If the evidence is properly considered, the inadequacy of representation is made apparent.

Subclass I consists of owners of two quite different oil and gas leases: *Lindauer* Category 2 Leases, which specifically allow deduction of "costs of transporting gas" or "all transportation costs;" and *Lindauer* Category 3 Leases, which allow only deduction of "third party transportation costs" incurred on a pipeline owned by a non-affiliated third party. This difference is significant since TEP does, in fact, use an affiliated gathering system. (Appellants' Opening Brief at 3). Thus, the claims of Category 2 owners are not common with, nor typical of, those of Category 3 owners. Indeed, that is why they were assigned separate categories in *Lindauer*.

No *Sefcovic* class representative owns an interest in a Category 3 Lease; therefore, no class representative has claims which are in common with or typical of Category 3 claims. The purported Subclass I class representative, Ms. Jerman, who owns a Category 2 Lease, but not a Category 3 Lease, testified that the interests of Category 3 class members were not considered by the class representatives. (Aplt. App. Vol. VI at 1601). Further, Ms. Jerman testified that she had not even thought of Category 3 class members and was not familiar with, and had not even read, a Category 3 lease. (Aplt. App. Vol. VI at 1601).²

Subclasses II and III's representative, Mr. Juhan, testified he had not considered the interests of Category 3 owners and had no understanding of how the Category 3 owners were negatively affected by the *Sefcovic* settlement. (Aplt. App. Vol. VI at 1615). Thus, no class representative owns any interest in a Category 3 lease and they were admittedly uninformed regarding the rights and interests of Subclass I members holding Category 3 Leases.

C. Evidence That Category 2 Owners Were Not Adequately Represented.

Although Ms. Jerman owns a Category 2 Lease, she cannot adequately represent Category 2 lease owners in Subclass I because she also owns significantly

² No testimony was offered on behalf of the other Subclass I representative, Elna Sefcovic, LLC and there is no evidence it adequately represented Subclass I. *See Integra Realty*, 262 F.3d at 1112 (“A party seeking to certify a class is required to show under a strict burden of proof, that all the requirements of Fed.R.Civ.P. 23(a) are clearly met,” including that the class is adequately represented by a named party.” [citation omitted]).

greater interests under leases falling within Subclasses II and III. In *Amchem*, the Supreme Court agreed that even if the class representatives “thought the Settlement serves the aggregate interests of the entire class[,] . . . the adversity among subgroups requires that members of each subgroup cannot be bound to a settlement except by the consents given by [representatives] who understand their role is to represent solely the members of their respective subgroups.” 521 U.S. at 626 (citation omitted); *see also Payment Card*, 827 F.3d at 233-36.

Ms. Jerman conceded that Subclass I members forfeited their gathering deduction claims as if they entirely lost them at trial³ (Aplt. App. Vol. VI at 1598-1599), that she did not know how much TEP could deduct from Subclass I class members for gathering costs after the settlement (Aplt. App. Vol. VI at 1600-1601), and that she thought this outcome was fair because “I am thinking of the settlement as a whole. I can’t think only of myself [or my subgroup]. I have to think of the settlement based on the whole class.” (Aplt. App. Vol. VI at 1601). Although her willingness to “take one for the team” might be commendable in other contexts, it has no place in the thoughts of a subclass representative.

³ The *Sefcovic* settlement authorizes TEP to deduct all gathering costs—past, present and future—from both Category 2 & 3 owners, as if they lost completely at trial on a claim challenging those deductions. That claim had been expressly preserved in the *Lindauer* settlement and was inserted into *Sefcovic* through a Second Amended Complaint nearly six weeks after the settlement agreement was finalized.

On this record, as in *Amchem*, there is “no assurance here—either in the terms of the settlement or in the structure of the negotiations—that the named plaintiffs operated under a proper understanding of their representational responsibilities.” 521 U.S. at 627.

CONCLUSION

Both the Panel and the District Court overlooked the requirements of the current Rules 23(a) and (e)(2). They failed to heed *Amchem*’s mandate to perform a rigorous analysis using heightened scrutiny. Instead, the District Court brushed aside the issues (and evidence) of inadequate representation and inequitable treatment, and the Panel avoided the issue by erroneously concluding that it could be, and was, waived. Panel Rehearing or Rehearing En Banc should be granted, and this case should be reversed and remanded, with instructions, so that the District Court might perform its duties.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), I hereby certify as follow:

- (1) This brief complies with the type-volume limit of Fed. R. App. P. 35(b)(2)(a) and 40(b)(1). Excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and 10th Cir. R. 32(B), the brief contains 3,900 words.
- (2) This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6). It has been prepared in a proportionally spaced typeface using WordPerfect X6 in 14 pt. Times New Roman with footnotes is 13 pt.

/s/ Nathan A. Keever

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**CERTIFICATE REGARDING PRIVACY REDACTIONS
AND DIGITAL SUBMISSION**

Pursuant to CM/ECF User's Manual Part II, Section J, I hereby certify as follows:

- (1) That all privacy redactions required by 10th Cir. R. 25.5 have been made.
- (2) That the document submitted herewith in digital form to the clerk and counsel is an exact copy of the hard copy documents filed with the Clerk.
- (3) That the digital submission has been scanned for viruses using the following programs:

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/s/ Nathan A. Keever

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CERTIFICATE OF SERVICE

I certify that on this May 1, 2020, I electronically filed the foregoing Appellants' Opening Brief with the Clerk of the Court using the CM/ECF system, which will provide electronic notice of filing to:

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RULE 23. CLASS ACTIONS

(a) Prerequisites. One or more members of a class may sue or be sued as representative parties on behalf of all members only if:

- (1)** the class is so numerous that joinder of all members is impracticable;
- (2)** there are questions of law or fact common to the class;
- (3)** the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- (4)** the representative parties will fairly and adequately protect the interests of the class.

(b) Types of Class Actions. A class action may be maintained if Rule 23(a) is satisfied and if:

- (1)** prosecuting separate actions by or against individual class members would create a risk of:
 - (A)** inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or
 - (B)** adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests;
- (2)** the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; or
- (3)** the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:
 - (A)** the class members' interests in individually controlling the prosecution or defense of separate actions;
 - (B)** the extent and nature of any litigation concerning the controversy already begun by or against class members;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(D) the likely difficulties in managing a class action.

(c) Certification Order; Notice to Class Members; Judgment; Issues Classes; Subclasses.

(1) *Certification Order.*

(A) *Time to Issue.* At an early practicable time after a person sues or is sued as a class representative, the court must determine by order whether to certify the action as a class action.

(B) *Defining the Class; Appointing Class Counsel.* An order that certifies a class action must define the class and the class claims, issues, or defenses, and must appoint class counsel under Rule 23(g).

(C) *Altering or Amending the Order.* An order that grants or denies class certification may be altered or amended before final judgment.

(2) *Notice.*

(A) *For (b)(1) or (b)(2) Classes.* For any class certified under Rule 23(b)(1) or (b)(2), the court may direct appropriate notice to the class.

(B) *For (b)(3) Classes.* For any class certified under Rule 23(b)(3)—or upon ordering notice under Rule 23(e)(1) to a class proposed to be certified for purposes of settlement under Rule 23(b)(3)—the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice may be by one or more of the following: United States mail, electronic means, or other appropriate means. The notice must clearly and concisely state in plain, easily understood language:

(i) the nature of the action;

(ii) the definition of the class certified;

(iii) the class claims, issues, or defenses;

(iv) that a class member may enter an appearance through an attorney if the member so desires;

(v) that the court will exclude from the class any member who requests exclusion;

(vi) the time and manner for requesting exclusion; and

(vii) the binding effect of a class judgment on members under Rule 23(c)(3).

(3) *Judgment.* Whether or not favorable to the class, the judgment in a class action must:

(A) for any class certified under Rule 23(b)(1) or (b)(2), include and describe those whom the court finds to be class members; and

(B) for any class certified under Rule 23(b)(3), include and specify or describe those to whom the Rule 23(c)(2) notice was directed, who have not requested exclusion, and whom the court finds to be class members.

(4) *Particular Issues.* When appropriate, an action may be brought or maintained as a class action with respect to particular issues.

(5) *Subclasses.* When appropriate, a class may be divided into subclasses that are each treated as a class under this rule.

(d) Conducting the Action.

(1) *In General.* In conducting an action under this rule, the court may issue orders that:

(A) determine the course of proceedings or prescribe measures to prevent undue repetition or complication in presenting evidence or argument;

(B) require—to protect class members and fairly conduct the action—giving appropriate notice to some or all class members of:

(i) any step in the action;

(ii) the proposed extent of the judgment; or

(iii) the members' opportunity to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or to otherwise come into the action;

(C) impose conditions on the representative parties or on intervenors;

(D) require that the pleadings be amended to eliminate allegations about representation of absent persons and that the action proceed accordingly; or

(E) deal with similar procedural matters.

(2) ***Combining and Amending Orders.*** An order under Rule 23(d)(1) may be altered or amended from time to time and may be combined with an order under Rule 16.

(e) **Settlement, Voluntary Dismissal, or Compromise.** The claims, issues, or defenses of a certified class--or a class proposed to be certified for purposes of settlement--may be settled, voluntarily dismissed, or compromised only with the court's approval. The following procedures apply to a proposed settlement, voluntary dismissal, or compromise:

(1) ***Notice to the Class.***

(A) **Information That Parties Must Provide to the Court.** The parties must provide the court with information sufficient to enable it to determine whether to give notice of the proposal to the class.

(B) **Grounds for a Decision to Give Notice.** The court must direct notice in a reasonable manner to all class members who would be bound by the proposal if giving notice is justified by the parties' showing that the court will likely be able to:

- (i) approve the proposal under Rule 23(e)(2); and
- (ii) certify the class for purposes of judgment on the proposal.

(2) ***Approval of the Proposal.*** If the proposal would bind class members, the court may approve it only after a hearing and only on finding that it is fair, reasonable, and adequate after considering whether:

(A) the class representatives and class counsel have adequately represented the class;

(B) the proposal was negotiated at arm's length;

(C) the relief provided for the class is adequate, taking into account:

- (i) the costs, risks, and delay of trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

(iii) the terms of any proposed award of attorney's fees, including timing of payment; and

(iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the proposal treats class members equitably relative to each other.

(3) ***Identifying Agreements.*** The parties seeking approval must file a statement identifying any agreement made in connection with the proposal.

(4) ***New Opportunity to be Excluded.*** If the class action was previously certified under Rule 23(b)(3), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.

(5) ***Class-Member Objections.***

(A) *In General.* Any class member may object to the proposal if it requires court approval under this subdivision (e). The objection must state whether it applies only to the objector, to a specific subset of the class, or to the entire class, and also state with specificity the grounds for the objection.

(B) *Court Approval Required for Payment in Connection with an Objection.* Unless approved by the court after a hearing, no payment or other consideration may be provided in connection with:

(i) forgoing or withdrawing an objection, or

(ii) forgoing, dismissing, or abandoning an appeal from a judgment approving the proposal.

(C) *Procedure for Approval After an Appeal.* If approval under Rule 23(e)(5)(B) has not been obtained before an appeal is docketed in the court of appeals, the procedure of Rule 62.1 applies while the appeal remains pending.

(f) **Appeals.** A court of appeals may permit an appeal from an order granting or denying class-action certification under this rule, but not from an order under Rule 23(e)(1). A party must file a petition for permission to appeal with the circuit clerk within 14 days after the order is entered, or within 45 days after the order is entered

if any party is the United States, a United States agency, or a United States officer or employee sued for an act or omission occurring in connection with duties performed on the United States' behalf. An appeal does not stay proceedings in the district court unless the district judge or the court of appeals so orders.

(g) Class Counsel.

(1) *Appointing Class Counsel.* Unless a statute provides otherwise, a court that certifies a class must appoint class counsel. In appointing class counsel, the court:

(A) must consider:

(i) the work counsel has done in identifying or investigating potential claims in the action;

(ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;

(iii) counsel's knowledge of the applicable law; and

(iv) the resources that counsel will commit to representing the class;

(B) may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class;

(C) may order potential class counsel to provide information on any subject pertinent to the appointment and to propose terms for attorney's fees and nontaxable costs;

(D) may include in the appointing order provisions about the award of attorney's fees or nontaxable costs under Rule 23(h); and

(E) may make further orders in connection with the appointment.

(2) *Standard for Appointing Class Counsel.* When one applicant seeks appointment as class counsel, the court may appoint that applicant only if the applicant is adequate under Rule 23(g)(1) and (4). If more than one adequate applicant seeks appointment, the court must appoint the applicant best able to represent the interests of the class.

(3) *Interim Counsel.* The court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.

(4) ***Duty of Class Counsel.*** Class counsel must fairly and adequately represent the interests of the class.

(h) **Attorney's Fees and Nontaxable Costs.** In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement. The following procedures apply:

(1) A claim for an award must be made by motion under Rule 54(d)(2), subject to the provisions of this subdivision (h), at a time the court sets. Notice of the motion must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.

(2) A class member, or a party from whom payment is sought, may object to the motion.

(3) The court may hold a hearing and must find the facts and state its legal conclusions under Rule 52(a).

(4) The court may refer issues related to the amount of the award to a special master or a magistrate judge, as provided in Rule 54(d)(2)(d).

(Amended February 28, 1966, effective July 1, 1966; March 2, 1987, effective August 1, 1987; April 24, 1998, effective December 1, 1998; March 27, 2003, effective December 1, 2003; April 30, 2007, effective December 1, 2007; March 26, 2009, effective December 1, 2009; April 26, 2018, effective December 1, 2018.)