

DISTRICT COURT, COUNTY OF GARFIELD, COLORADO 109 8th Street, Suite 104 Glenwood Springs, CO 81601	DATE FILED: May 1, 2023 3:47 PM CASE NUMBER: 2022CV30079 <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Plaintiffs: LANA SCOTT, <i>et al.</i> v. Defendant: TEP ROCKY MOUNTAIN LLC	Case Number: 2022-CV-30079 Div.: B Ctrm.:
ORDER PRELIMINARILY APPROVING THE PARTIES' PROPOSED CLASS SETTLEMENT AGREEMENT	

This matter comes before the Court on the Plaintiffs' and Defendant TEP Rocky Mountain LLC's ("TEP") Joint Motion for an order preliminarily approving the Parties' proposed class-action settlement. The Court, having reviewed and considered the Parties' Joint Motion, the proposed Settlement Agreement, and the proposed Notice to be mailed to each of the Class members, finds as follows:

1. On June 22, 2022, Plaintiff Lana Scott, individually and on behalf of all others similarly situated, filed her class action complaint against TEP in this Court. Subsequently, on April 18, 2023, Plaintiffs filed a First Amended Complaint adding Dwight Cook as an additional named Plaintiff.

2. Plaintiffs, individually and on behalf of themselves and the Class of similarly situated royalty owners, assert claims for alleged royalty underpayments related to TEP's production and sale of natural gas and natural gas liquids from August 1, 2020, to December 31, 2022.

3. On June 29, 2022, the Parties filed a joint motion requesting that the Court stay the proceedings of this case for ninety days pending settlement negotiations. The Parties made similar joint requests for a ninety-day stay and sixty-day stay, for settlement negotiation purposes, on October 7, 2022, and December 23, 2022, respectively. The Court granted each of these requests.

4. After an extensive settlement negotiation process, the Parties have reached a class settlement on the terms set forth in the Settlement Agreement, attached as Exhibit A to the Joint Motion.

5. The definitions set forth in the Settlement Agreement are incorporated by reference. The Settlement Agreement resolves the Class members' breach-of-contract claims against TEP.

6. The Settlement Agreement defines the C.R.C.P. 23(b)(3) Class as follows:

THE CLASS

Lana Scott and Dwight Cook, and all persons and entities, including their respective successors and assigns, to whom TEP or its affiliates, have paid royalties since August 1, 2020, on natural gas, including natural gas liquids, produced from wells located in the State of Colorado, under the oil and gas leases identified on Table 1 of the Settlement Agreement.

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

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

(d) the Parties and their attorneys, who have extensive experience in class-action royalty underpayment litigation, believe that the Settlement Agreement is fair and adequate, and are requesting that the Settlement Agreement be preliminarily approved.

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

10. The benefits provided to the Class under the Settlement Agreement provide a reasonable resolution of the claims of the Class, considering the risks of litigation, the likelihood of protracted and expensive litigation in the absence of the Settlement Agreement, and the Parties' various claims and defenses. The counsel involved are very experienced in complex commercial litigation, especially in oil and gas royalty underpayment actions.

11. 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.

12. The Court also provisionally determines that each of the requirements for certification of the C.R.C.P. 23(b)(3) settlement Class is satisfied, as set forth below.

13. Because there are more than one hundred members of the defined settlement Class, the numerosity requirement of C.R.C.P. 23(a)(1) is satisfied for settlement purposes.

14. Because there is at least one question of law and fact common to the claims of each of the Class members, the commonality requirement of C.R.C.P. 23(a)(2) is satisfied for settlement purposes.

15. Because the claims of the named plaintiffs are typical of the claims of the other members in the Class, the typicality requirement of C.R.C.P. 23(a)(3) is satisfied for settlement purposes.

16. Because Plaintiffs acting as the Class Representatives and Class Counsel have vigorously prosecuted this litigation on behalf of 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 C.R.C.P. 23(a)(4) is satisfied for settlement purposes.

17. Common questions of law and fact predominate over individual questions related to the Class members' claims against TEP.

18. A class action is superior to other available methods for fairly and efficiently adjudicating the Class members' claims against TEP. The Court makes no finding whether this case, if litigated as a class action, would present intractable case management problems because the evaluation of the manageability factor is unnecessary when certification is sought only for settlement classes.

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

20. The Notice of the Settlement Agreement to be mailed to the members of the Class, which is attached to the Settlement Agreement as Exhibit B, adequately informs the Class members of the following: (1) the nature of this class-action lawsuit; (2) the definition of the proposed Class; (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 Settlement Agreement, 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 Settlement Agreement, Class Counsels' request for attorneys' fees, reimbursement of expenses, or the request for incentive awards for the Class Representatives, and the deadline for any such objections; and (8) the binding effect of the Settlement Agreement 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:

1. The Settlement Agreement is preliminarily approved as fair, adequate and reasonable.
2. The two named plaintiffs are appointed as the Class Representatives for the Class.
3. Plaintiffs' counsel, Stacy Burrows and George Barton, are appointed as Class Counsel for the Class.
4. The Court provisionally determines that each of the requirements for certification of the C.R.C.P. 23(b)(3) settlement class are satisfied.

5. The Court approves the form and content of the Notice attached to the Settlement Agreement as Exhibit B.

6. Class Counsel will be responsible for mailing the Notice, by First-Class United States mail, to the Settlement Class members, within fourteen (14) days after the date of this order preliminarily approving the Settlement Agreement.

7. Any member of the Class who wishes to request exclusion (to opt-out) from the Class must submit a written opt-out election, which must be postmarked on or before the date which is thirty (30) days after the postmark date on which Class Counsel mails the Notice to the proposed Class members by First-Class United States mail, which date must be specified in the Notice. In accordance with the procedures set forth in the Notice, any such opt-out election must be in writing and must be mailed to Class Counsel at the address provided in the Notice.

8. On or before the date which is twenty-one (21) days before the scheduled date for the final fairness hearing, the Parties must file motions in support of final approval of the Settlement Agreement, and Class Counsel must file their request for attorneys' fees and expense reimbursements, and for Class Representative incentive awards.

9. Any member of the Class who wishes to object to, or comment on, the proposed Settlement Agreement, Class Counsels' request for attorney's fees and expenses reimbursements, or the request for Class Representative incentive awards, must postmark and mail such objections or comments on or before the date which is forty (40) days after the postmark date on which Class Counsel mails the Notice to the proposed Class members by First-Class United States mail, which date must be specified in the Notice. In accordance with the procedures set forth in the Notice, any such objections or comments must be mailed to Class Counsel, TEP's counsel, and the Court.

10. 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 seven (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.

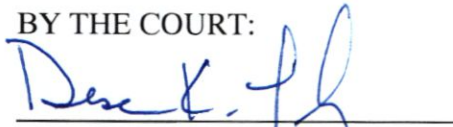
11. At least seven (7) days before the scheduled date for the final fairness hearing, Class Counsel and TEP may file a response to any Class member's objections or comments. A copy of such a response must be mailed to all Class members who have submitted timely objections or comments.

12. The Court will conduct a telephonic hearing to consider final approval of the proposed Settlement Agreement, Class Counsels' request for attorneys' fees and expense reimbursements, and the request for Class Representative incentive awards, beginning at 12:00 p.m. on July 19, 2023, in Courtroom B of this Court.

IT IS SO ORDERED.

Dated this 1st day of May, 2023.

BY THE COURT:



DENISE K. LYNCH
DISTRICT COURT JUDGE