

DISTRICT COURT, GARFIELD COUNTY, COLORADO
109 8th Street, Suite 104
Glenwood Springs, CO 81601

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CASE NUMBER: 2006CV317

Plaintiffs:
IVO LINDAUER, *et al.*

v.

Defendant:
TEP ROCKY MOUNTAIN LLC, f/k/a WPX Energy Rocky
Mountain LLC, f/k/a Williams Production RMT LLC, and f/k/a
Williams Production RMT Company

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Case Number: 2006 CV 317

Div.: B Ctrm.:

**JOINT MOTION TO ENTER ORDER PRELIMINARILY APPROVING
CLASS ACTION STIPULATION, APPROVING FORM OF NOTICE, AND
SCHEDULING FAIRNESS HEARING**

Plaintiffs and the Plaintiff Class (the “Class”) and Defendant TEP Rocky Mountain LLC (“TEP”) jointly move the Court to enter an Order (1) preliminarily approving the parties’

proposed class action stipulation in furtherance of the Settlement Agreement approved by this Court on March 20, 2009, (2) approving the form of notice of the stipulation to be sent to Class members, and (3) scheduling a final fairness hearing to approve the parties' stipulation and Class Counsel's request for an award of fees and reimbursement of costs.

In support of this Joint Motion, the parties state:

1. On March 20, 2009, this Court gave final approval to a class action settlement agreement (the "*Lindauer* Settlement Agreement"). Section 4.4 of the *Lindauer* Settlement Agreement contains limits on the amount of processing costs that can be allocated to certain members of the Class.
2. On April 1, 2020, Class Counsel sent notice to TEP concerning a retroactive adjustment made to royalty payments in on TEP's June 2019 royalty checks deducting additional processing costs for the production months of January 2015 through December 2015 (the "2019 Processing Adjustment"). The adjustment resulted in an additional processing deduction from Class members in the amount of approximately \$800,000.
3. In its notice, the Class contended that, based on its investigation, the 2019 Processing Adjustment exceeded the limit on deductible processing costs set forth in Section 4.4 of the *Lindauer* Settlement Agreement. The Class provided notice of its claim to TEP pursuant to paragraph 5 of the parties' settlement agreement entered on March 25, 2019, and approved by this Court on June 27, 2019.
4. TEP investigated the issues surrounding the 2019 Processing Adjustment and, without admitting to any liability, is reversing the adjustment based on the following terms agreed upon by the parties:

a. On or before May 14, 2020, TEP will refund to the Class a total of 80% of the 2019 Processing Adjustment through a special royalty payment check run to the Class (the “Refund”). TEP will distribute the Refund in the same manner that it pays monthly royalties to the Class, *i.e.*, through either electronic deposit or by printed check. The remaining 20% of the 2019 Processing Adjustment will be held by TEP until further order of the Court, as more fully explained in paragraph 5 below. None of the 2019 Processing Adjustment will be retained by TEP.

b. Upon processing the Refund, the Class members who receive additional royalty as a result of TEP’s reversal of the 2019 Processing Adjustment release TEP and its predecessors, successors, assigns, and its past, present and future officers, directors, parents, affiliates, employees, agents, servants, and representatives (collectively, the “TEP Released Parties”) from any and all claims and related damages (including claims for or award of costs and/or expenses, court costs and attorneys’ fees) that the 2019 Processing Adjustment was improper. Such Class members covenant and agree that they will not commence, participate in, prosecute, or cause to be commenced or prosecuted against the TEP Released Parties, any action or other proceeding based upon the alleged impropriety of TEP’s 2019 Processing Adjustment.

c. The parties’ agreement does not preclude TEP from subsequently adjusting the deduction of processing costs attributable to royalties paid to the Class in 2015, nor does it preclude the Class from challenging any subsequent adjustment to processing costs as inconsistent with the *Lindauer* Settlement Agreement or on other grounds.

d. The Parties represent and warrant to one another that their attorneys have the right and legal authority to enter into this stipulated agreement resolving their dispute over the 2019 Processing Adjustment.

5. Class Counsel will request an award of attorneys' fees and reimbursement of expenses in the amount of 20% of the 2019 Processing Adjustment, as compensation for their investigation and pursuing with TEP the Class' claim and as a result of the additional recovery by the Class. TEP takes no position on this request, but has agreed to withhold 20% of the amount of the 2019 Processing Adjustment until further order of the Court related to Class Counsels' request for attorney fees and expenses, and for payment of any such award. Any portion of the 20% withheld not awarded to Class Counsel would be paid to the Class. The parties' stipulated agreement set forth in paragraph 3 above is not dependent on the Court's award of fees and costs.

6. The parties' agreement set forth in paragraph 4 is subject to the Court's approval under C.R.C.P. 23(e), and also requires notice to be sent to the Class.

7. The Class and TEP request that the Court enter the Order, attached as Exhibit A to this Joint Motion, that:

a. preliminarily approves the parties' stipulated agreement set forth in this Joint Motion;

b. approves a form of Notice to the members of the Class, attached as Exhibit B to this Joint Motion, which describes the parties' agreement and provides Class members with an opportunity to object to its fairness; and

c. schedules a final fairness hearing approving the parties' agreement and Class Counsel's request for an award of attorneys' fees and reimbursement of expenses.

8. The parties further request that the Court schedule a hearing to consider entry of the Order described in paragraph 7.

Dated: May 12, 2020.

Respectfully submitted,

s/ Nathan A. Keever

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