

DISTRICT COURT, GARFIELD COUNTY, COLORADO 109 8th Street, Suite 104 Glenwood Springs, CO 81601		
Plaintiffs: IVO LINDAUER, <i>et al.</i> 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		
Nathan A. Keever, #24630 DUFFORD WALDECK LAW 744 Horizon Court, Suite 300 Grand Junction, CO 81506 Tel: (970) 241-5500 Fax: (970) 243-7738 dwmk@dwmk.com <i>Attorneys for Plaintiffs and Plaintiff Class</i> John F. Shepherd, P.C., #9956 Christopher A. Chrisman, #33132 HOLLAND & HART LLP 555 Seventeenth St., Suite 3200 Post Office Box 8749 Denver, CO 80201-8749 Tel: (303) 295-8000 Fax: (303) 295-8261 jshepherd@hollandhart.com cachrisman@hollandhart.com <i>Attorneys for Defendant TEP Rocky Mountain LLC</i>	<div style="text-align: center;"> JOINT MOTION TO ENTER ORDER PRELIMINARILY APPROVING CLASS ACTION STIPULATION, APPROVING FORM OF NOTICE, AND SCHEDULING FAIRNESS HEARING </div>	

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. TEP currently is a defendant in a royalty underpayment lawsuit filed by a member of the Class, Jolley Potter Ranches Energy Co., LLC ("JPR"), styled as *Jolley Potter Ranches Energy Co., LLC v. TEP Rocky Mountain LLC*, Case No. 19-CV-00495-DDD-NRN (United States District Court for the District of Colorado). JPR has alleged that TEP has underpaid royalties on the production and sale of natural gas, including by deducting unreasonable processing costs, and has certified its claims as a class action on behalf of itself and other royalty owners. Class Counsel represents JPR in this pending litigation.

3. In connection with the factual investigation underlying JPR's lawsuit, Class Counsel and TEP have determined that TEP must correct the amount of processing costs that were allocated to members of the Class from June 2016 to March 2020.

a. TEP represents that, for the period June 2016 to March 2020, it used 50 percent of the invoiced amount of processing costs for gas processed at plants owned by Williams Field Services, LLC ("WFS"), which it believed would be the amount allowed by Section 4.4. of the *Lindauer Settlement Agreement*, *i.e.*, 50 percent of the amount allowed as a

processing deduction under the regulations of the Office of Natural Resources Revenue (“ONRR”), not to exceed 1/3rd of the value of the natural gas liquids (“NGLs”) extracted through processing. In January 2020, ONRR determined that TEP must calculate costs incurred in processing plants owned by WFS by using the “cost-of-service” regulations rather than the invoiced amounts paid to WFS. TEP was awaiting the results of an audit of its federal royalties paid from 2016 to 2018 before adjusting the royalty paid to the Class and processing a refund to the Class members. That audit concluded on September 5, 2023. TEP also has identified additional adjustments to its processing costs required for gas processed at Enterprise’s Meeker Plant. The Class and Class Counsel take no position on TEP’s representation.

b. TEP further represents that, for the period April 2020 to November 2020, it inadvertently did not allocate any processing costs to the Class members for gas processed at plants owned by WFS. The Class and Class Counsel take no position on TEP’s representation.

c. TEP represents that after the Processing Adjustments are made pursuant to paragraphs 3(a) and 3(b), the amount of processing costs deducted from Class members is consistent with ¶4.4 of the *Lindauer* Settlement Agreement for the released period, subject to potential future adjustment pursuant to paragraph 4(d)(ii). The Class and Class Counsel take no position on TEP’s representation.

d. Prior to commencing any enforcement action, Class Counsel and TEP conferred on the foregoing processing issues, as provided in paragraph 5 of the parties’ settlement agreement entered on March 25, 2019, and approved by the Court on June 27, 2019.

4. TEP and the Class have agreed to resolve any dispute surrounding the processing costs described in paragraph 3 on the following terms:

a. The “Processing Adjustment” is defined as (i) the refund owed pursuant to paragraph 3(a) above, less the undeducted amounts described in paragraph 3(b) above, which is no less than \$2,221,826, plus (ii) an additional amount of \$905,308.12, representing an agreed-upon amount of interest.

b. On or before October 31, 2023, TEP will refund to the Class members a total of 75% of Processing Adjustment. TEP will distribute the Processing Adjustment in the same manner that it pays monthly royalties to the Class, *i.e.*, through either electronic deposit or by printed check.

c. The remaining 25% of the Processing Adjustment will be held by TEP until further order of the Court, as more fully explained in paragraph 5 below. None of the Processing Adjustment will be retained by TEP.

d. Upon receiving the Processing Adjustment, the Class members who receive additional royalty as a result of the 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 the claim and related damages (including any award of costs and/or expenses, court costs and attorneys’ fees) asserting that TEP deductions exceeded the amount of processing costs allowed in Section 4.4 of the *Lindauer* Settlement Agreement from June 1, 2016, through November 30, 2020 (the “Released Claim”). 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 Released Claim.

e. Notwithstanding the foregoing in paragraph 4(c), the Released Claim does not include (i) the claims asserted by JPR on behalf of itself and the Class described in paragraph 2 above, provided that any damages recovered for such claims will not include as deducted processing cost the \$2.2 million amount described in ¶4(a) above, nor (ii) any subsequent adjustment to processing rates for June 2016 to March 2020 required based on audits by ONRR and paid to TEP royalty owners, so that the amount of processing costs deducted from Class members is consistent with ¶4.4 of the *Lindauer* Settlement Agreement, nor (iii) any claim for breach by TEP of any representation or agreement included in this Joint Motion or the related Order.

f. 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 Released Claims and Processing Adjustment.

5. Class Counsel will request an award of attorneys' fees and reimbursement of expenses in the amount of 25% of the Processing Adjustment, as compensation for their investigation and pursuit of the Class's claim and as a result of the additional common fund recovery by the Class. TEP takes no position on this request, but has agreed to withhold 25% of the amount of the Processing Adjustment until further order of the Court related to Class Counsel's request for attorneys' fees and expenses, and for payment of any such award. Any portion of the 25% withheld and not awarded to Class Counsel would be paid to the Class. The parties' stipulated agreement set forth in paragraph 4 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: October 13, 2023.

Respectfully submitted,

s/ Nathan A. Keever

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