

<b>DISTRICT COURT, GARFIELD COUNTY, COLORADO</b> 109 8th Street, Suite 104 Glenwood Springs, CO 81601		DATE FILED: October 27, 2023 4:22 PM CASE NUMBER: 2006CV317
<b>Plaintiffs:</b> IVO LINDAUER, <i>et al.</i>  v.  <b>Defendant:</b> 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		<b>▲ COURT USE ONLY ▲</b>  Case Number: 2006 CV 317  Div.: B                      Ctrm.:
<b>ORDER PRELIMINARILY APPROVING CLASS ACTION STIPULATION          APPROVING FORM OF NOTICE, AND SCHEDULING FAIRNESS HEARING</b>		

On this 27th day of October, 2023, this case comes before the Court on the parties' Joint Motion to Enter Order Preliminarily Approving Class Action Stipulation, Approving Form of Notice, and Scheduling Fairness Hearing (the "Joint Motion"), in which the parties request that the Court: (1) preliminarily approve their proposed class action stipulation in furtherance of the Settlement Agreement approved by the Court on March 20, 2009; (2) approve the form of notice of the stipulation for mailing to Class members; and (3) schedule a final fairness hearing to approve the parties' stipulation and Class Counsel's request for an award of fees and reimbursements.

WHEREUPON, 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 finds that the Joint Motion should be granted and, in so doing, specifically finds:

**A. FINDINGS AND CONCLUSIONS WITH RESPECT TO CLASS CERTIFICATION.**

1. This Court previously approved a class action settlement agreement in this case by Order dated March 20, 2009 (the “*Lindauer Settlement Agreement*”). In that Order, the Court certified a class of plaintiffs who own royalty and overriding royalty interests in wells operated by Defendant TEP Rocky Mountain LLC (“TEP”).

2. In connection with a factual investigation underlying a related lawsuit, Class Counsel and TEP conferred on the calculation of processing costs allocated to Class members from July 2016 to October 2020. The parties determined that, for the period July 2016 to March 2020, TEP used 50 percent of the invoiced amount of processing costs for gas processed at plants owned by Williams Field Services, LLC (“WFS”), instead of 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. For the period April 2020 to October 2020, TEP inadvertently did not allocate any processing costs to the Class members for gas processed at plants owned by WFS.

3. The parties conferred on these issues concerning processing costs pursuant to paragraph 5 of the parties’ settlement agreement entered on March 25, 2019, and approved by this Court on June 27, 2019. In connection with their conferral, the parties have agreed to an adjustment of processing costs from July 2016 to October 2020 in order to resolve issues concerning compliance with the *Lindauer Settlement Agreement* (the “Processing Adjustment”).

4. Pursuant to the Order dated March 20, 2009, and pursuant to its Order dated June 27, 2019, the Court retained continuing jurisdiction to interpret and enforce the

*Lindauer* Settlement Agreement. Under C.R.C.P. 23, therefore, the class remains certified for purposes of the claims arising from the alleged breach of the *Lindauer* Settlement Agreement. *See, e.g., Miller v. EnCana Oil & Gas (USA), Inc.*, 405 P.3d 488, 493 (Colo. App. 2017).

5. Nathan A. Keever of Dufford Waldeck Law, 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, remain designated as Class Counsel. *See Miller*, 405 P.3d at 493.

**B. FINDINGS WITH RESPECT TO THE PROPOSED FIRST AMENDMENT TO THE *LINDAUER* SETTLEMENT AGREEMENT.**

1. In order to resolve any claims arising from the Processing Adjustment, the parties have submitted a stipulated agreement set forth in paragraph 4 of the Joint Motion.

2. The parties' stipulated agreement appears, upon preliminary review, to be within the range of reasonableness and, accordingly, shall be submitted to the members of the Plaintiff Class for their consideration and shall be further considered by the Court at a hearing under C.R.C.P. 23(e).

**C. FINDINGS WITH RESPECT TO THE FAIRNESS HEARING.**

1. A Fairness Hearing should be held on the 28th day of December, 2023, at 9:00 a.m., via WebEx, at which hearing:

- a. Plaintiffs and Defendant will present evidence and arguments in support of their stipulated agreement;
- b. The Court may consider any proper and timely objections to the stipulated agreement;
- c. The Court may make further findings concerning whether the stipulated agreement is fair, reasonable and adequate to the members of the Plaintiff Class, and whether it should therefore be finally approved by the Court;

- d. The Court shall consider Class Counsel's request for payment of attorneys' fees and litigation costs; and
- e. The Court shall consider any other matters properly brought before the Court concerning this action and the proposed stipulated agreement.

**D. FINDINGS WITH RESPECT TO THE NOTICE OF THE FAIRNESS HEARING.**

1. On or before **October 30, 2023**, Defendant shall deliver to Class Counsel a **list of the names**, most current owner numbers, and current or last known addresses of members of the Class, as reflected in Defendant's royalty accounting records.

2. The Court approves the Notice attached to the Joint Motion as Exhibit B. On or before **November 3, 2023**, Class Counsel shall mail a copy of the Notice to those persons and entities appearing on the list described in paragraph D.1. above.

3. Within **fifteen (15) days of mailing the Notice**, Class Counsel shall file **with the clerk an affidavit identifying the persons to whom the Notice has been mailed**.

4. Mailing as set forth herein constitutes the best notice practicable under the circumstances, including individual notice to all Plaintiff Class members who can be identified through reasonable effort, and is sufficient notice of the matters set forth in the Notice to all members of Plaintiff Class. The Notice together with the mailing and publication set forth herein fully satisfy the requirements of due process as required under C.R.C.P. 23.

**E. OTHER MATTERS PREPARATORY TO THE FAIRNESS HEARING.**

1. **On or before November 20, 2023**, Class Counsel shall file their **application for attorneys' fees and expenses**.

**IT IS THEREFORE ORDERED:**

- (1) The Joint Motion is GRANTED.
- (2) The findings set forth above shall be the Order of the Court.

DATED this 27<sup>th</sup> day of October, 2023.

  
\_\_\_\_\_  
JUDGE DENISE K. LYNCH

30788681