

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into effective April 21, 2023 (“Effective Date”), by and between LANA SCOTT and DWIGHT COOK (“Plaintiffs”), on behalf of themselves and a class of similarly situated royalty owners (defined as the “Class” in Section 1 below), and TEP ROCKY MOUNTAIN LLC (“TEP”), a Delaware corporation. Plaintiffs and TEP may be referred to as “Party” or collectively as “the Parties.”

RECITALS

A. Plaintiffs, the Class, and TEP own interests in oil and natural gas produced in Garfield County, Colorado. Plaintiffs and the Class own royalty interests in certain oil and gas leases acquired by TEP effective August 1, 2020 (“the TEP Acquisition”).

B. On June 22, 2022, Plaintiff Scott sued TEP in the District Court of Garfield County, Colorado (the “District Court”) (Case No. 2022-CV-30079) (the “Civil Action”), for allegedly underpaying royalties under her lease since the TEP Acquisition. Plaintiff Scott brought her claims individually and on behalf of a class of similarly situated royalty owners. On April 18, 2023, Plaintiff filed a First Amended Complaint, adding Plaintiff Cook as a named Plaintiff. TEP denies that it underpaid royalties to Plaintiffs or the Class.

C. Plaintiffs and TEP have been engaged in extensive information discovery and data production relevant to TEP’s calculation and payment of royalties. Class Counsel and TEP also have engaged in extensive discussions 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 Preliminary Approval: Within seven (7) days of executing this Agreement, Plaintiffs and TEP will file the Joint Motion for 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”):

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 this Agreement.

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 approval of this Agreement.

2. Settlement Amount: Fourteen (14) days after the Approval Event, as defined in paragraph 7(b) below, TEP shall pay a total of One Hundred Ninety-Seven Thousand Two Hundred Sixty-One Dollars and Zero Cents (\$197,261.00) (the “Settlement Amount”), less their proportionate share of fees and costs described in paragraph 11 below, via wire transfer to the trust account of Class Counsel. The total shall represent payment to the Class in order to resolve all claims through the Effective Date of this Agreement.

3. Agreement Regarding Future Royalty Payments: Upon the Effective Date, TEP shall pay royalties to the Class as follows:

a. The Class: TEP shall pay the members of the Class based upon one hundred percent (100%) of the sales price actually received by TEP for the sale of natural gas and natural gas liquids from their leases, and will not deduct any costs of gathering, fuel, or fifty percent (50%) of processing costs. TEP shall be entitled to deduct fifty percent (50%) of processing costs, as well as one hundred percent (100%) of the costs of natural gas mainline transportation, and one hundred percent (100%) of the costs of transporting and fractionating natural gas liquids.

b. Notwithstanding the foregoing, if TEP is unable to implement the future payment methodology described in paragraph 3(a) for royalties paid in June 2023, it will implement the future payment methodology described in paragraph 3(a) as soon as possible thereafter. TEP will reimburse the Class members for the deduction of any post-production costs after the Effective Date that are not permitted by the future payment methodology described in paragraph 3(a) in the ordinary course of business.

4. Preliminary Approval Hearing:

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. At the Preliminary Approval Hearing, the Parties will request that the Court preliminarily approve this Agreement, certify the Class as a settlement class, and order notice be mailed 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.

5. Notice, Opt Out, and Objection:

a. Prior to the Preliminary Approval Hearing, the Parties will cooperate on the preparation of a distribution schedule identifying the distribution of the Settlement Amount to identified members of the Class (the “Preliminary Distribution Schedule”).

b. Within fourteen (14) days after the Court enters the Preliminary Approval Order, Class Counsel shall mail notice to identified members of the Class in the form attached as Exhibit B. The notice shall set a thirty (30) day deadline for parties to request to exclude themselves from the Class (the “Opt Out Deadline”), and a forty (40) day deadline to object to this

Agreement (the “Objection Deadline”). TEP will cooperate with Class Counsel to provide addresses for identified members of the Class to facilitate mailing the notice.

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

d. Within ten (10) days after the Opt Out Deadline, Class Counsel and TEP shall confer to adjust the Settlement Amount set forth in paragraph 2 to remove 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 and this Agreement, and TEP shall not be responsible for paying that portion of the Settlement Amount.

6. Final Approval:

a. Assuming the Agreement has not terminated for any other reason (as described in paragraph 12 below), the parties will prepare a joint motion for final approval of the Agreement and address any objections received prior to the Objection Deadline.

b. Plaintiffs and TEP will appear before the Court for a Final Fairness Hearing.

7. Distribution Procedure:

a. Along with the joint motion for final approval, Plaintiffs will prepare a final schedule for distributing the Settlement Amount (the “Final Distribution Schedule”) that (i) eliminates owners requesting to exclude themselves from the Class and the Agreement, (ii) includes those remaining owners identified on the Preliminary Distribution Schedule, and (iii) adjusts the distribution to account for incentive awards and attorneys’ fees and costs requested by Plaintiffs pursuant to paragraph 11 below. The parties will submit the Final Distribution Schedule along with the motion for final approval of the Agreement.

b. Provided that the Court enters an Order and Judgment approving 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”). TEP will provide information relating to the Class members’ interest that is reasonable and necessary for Class Counsel to perform the Final Distribution.

c. Class Counsel shall distribute all necessary tax documents for 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.

d. 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 ninety (90) days after the date Class Counsel resends the checks to the affected Class members shall be returned to TEP.

e. Plaintiffs and the 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, provided that such information is available in TEP's records. TEP shall have no liability or responsibility for paying any taxes with respect to amounts paid under this Agreement.

8. Release: Upon the Approval Event, Plaintiffs and the Class release TEP and its 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 payment, underpayment, or nonpayment of royalties to Plaintiffs and the Class under the leases subject to the Civil Action 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 payment, underpayment, or nonpayment of royalties to Plaintiffs and the Class under the leases subject to the Civil Action prior to the Effective Date (collectively, "TEP's Released Claims").

9. Covenants 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.

10. 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. The Parties and the Class expressly undertake and assume the risk that this Agreement was made on the basis of mistake, mutual or unilateral. The Parties and the Class 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 mistake in this Agreement.

11. 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; (iii) an award of attorneys' fees of one-third (1/3rd) of the gross Settlement Amount; and (iv) Seven Thousand Five Hundred Dollar (\$7,500) incentive award payments to each of the two Class Representatives. Such awards 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.

12. 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. For purposes of this Section, 20% shall be measured by twenty percent (20%) of the Settlement Amount attributable to owners requested to exclude themselves, as identified on the Preliminary Distribution Schedule.

b. Upon the occurrence of any of the events described in paragraph 12(a):

i. This Agreement shall terminate;

ii. 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

iii. This 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.

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.

l. The Parties hereby execute this Agreement this 21st day of April, 2023, effective as of the Effective Date.

Lana Scott

Lana Scott

TEP Rocky Mountain LLC

Dwight Cook

Dwight Cook

By: _____

Title: _____

APPROVED:

Counsel for Plaintiffs and Class

Counsel for TEP Rocky Mountain LLC

By: _____

By: _____

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l. The Parties hereby execute this Agreement this 21st day of April, 2023, effective as of the Effective Date.

Lana Scott

TEP Rocky Mountain LLC

Michael S. Land

Dwight Cook

By: Michael S. Land

Title: President and CEO

APPROVED:

Counsel for Plaintiffs and Class

George A Barton

By: George A. Barton

Counsel for TEP Rocky Mountain LLC

Christopher A. Chrisman

By: Christopher A. Chrisman

TABLE 1

Number	Document Date	Lessor	Lessee
1	4/8/2005	2Quiat, LLC	Antero Resources II Corporation
2	7/24/2000	2Quiat LLC	Park Hill Resources LLC
3	5/9/2002	2Quiat LLC	Calpine Natural Gas Company
4	5/12/1972	Alfred Patch a/k/a Alred L. Patch	John E. Dunn
5	12/13/2002	Alice Boulton, Attorney-In-Fact for John R. Boulton (Wife and Husband)	Calpine Corporation
6	3/5/2003	B.J.J. Partners	Calpine Corporation
7	1/23/2003	Barbara J. Stone	Calpine Corporation
8	1/2/1996	Barry Stout	Vessels Oil & Gas Company
9	4/12/2001	Bay Minerals, LLC	Calpine Natural Gas Company
10	3/5/2003	Bay Minerals, LLC	Calpine Corporation
11	9/15/1972	Bessie Natalie Meisner	John E. Dunn
12	9/29/1972	Bessie Natalie Meisner	John E. Dunn
13	3/29/2001	Betty Houseman, an Attorney in Fact for Esther Ukele	Park Hill Resources LLC
14	7/3/1972	Bobby McPherson a/k/a Bobby L. McPherson	John E. Dunn
15	8/5/1996	Calvin P. Alsbury and Jenifer L. Alsbury (Husband and Wife)	Vessels Oil & Gas Company
16	2/17/1972	Carl Hasselbush and Clara Hasselbush	John E. Dunn
17	7/15/1980	Carol Ann Willumsen	Exxon Corporation
18	10/18/1967	D.W. Yeakel and Mollie Yeakel (Husband and Wife)	Transcontinent Oil Company
19	6/11/2003	Debra K. Engelhardt	Calpine Corporation
20	4/3/1972	Dene A. Hangs	John E. Dunn
21	3/8/1996	Dennis Carey and Chris McGovern (Husband and Wife)	Vessels Oil & Gas Company
22	9/15/1972	Donald A. McPherson	John E. Dunn
23	4/30/2003	Donald L. Currie and Kathie Currie (Husband and Wife)	Calpine Corporation
24	11/19/2001	Edna Haselbush	Calpine Natural Gas Company
25	7/9/1990	Edward L. Kreimier, Jr. and Barbara Ann Kreimier, (Husband and Wife)	Kinney Oil Corporation
26	7/3/1972	Eileen G. Silverman a/k/a Eileen M. Silverman	John E. Dunn
27	7/3/1972	Eileen G. Silverman a/k/a Eileen M. Silverman,	John E. Dunn

TABLE 1

		conservatrix of the Estate of Mary E. Skelly	
28	3/28/2003	Emmie M. Landrum	Calpine Corporation
29	11/9/1972	Essie Fern Bagley	John E. Dunn
30	10/18/1967	Esther Ukele, an heir of E. A. Hasselbush, deceased, and Charles Hasselbush, deceased	Transcontinent Oil Company
31	5/12/1972	Ethel Hess	John E. Dunn
32	11/9/1972	Flora Pearl Raley	John E. Dunn
33	5/12/1972	Fred C. Alsbury and Pauline B. Alsbury (Husband and Wife)	John E. Dunn
34	11/29/2000	Frederick E. Alsbury III	Park Hill Resources LLC
35	2/24/2003	Gary Ray Gierhart, one of the heirs to the Estate of Jesse W. Gierhart	Calpine Corporation
36	11/9/1972	George C. Bagley, Charles A. Bagley, and George E. Bagley	John E. Dunn
37	3/17/2003	George Henry Boulton	Calpine Corporation
38	2/5/2004	George W. Ferguson and Judy L. Ferguson (Husband and Wife)	Calpine Corporation
39	5/12/1972	Gladys Hess	John E. Dunn
40	7/3/1972	Harold C. Carmack and Juanita A. Carmack (Husband and Wife)	Mountain Fuel Supply Company
41	10/18/1967	Harold E. Hangs	Transcontinent Oil Company
42	10/18/1967	Howard Robinson a/k/a Charles Howard Robinson and Clarice J. Robinson (Husband and Wife)	Transcontinent Oil Company
43	3/14/2001	Howard William Ukele and Lynn Ukele (Husband and Wife)	Park Hill Resources LLC
44	7/3/1972	J. Robb Robinson and Geneil S. Robinson (Husband and Wife)	John E. Dunn
45	7/3/1972	J. Robb Robinson and Geneil S. Robinson (Husband and Wife)	John E. Dunn
46	10/3/1967	J.H. Jackson and Virginia Isabelle Jackson (Husband and Wife)	Transcontinent Oil Company
47	7/3/1972	James F. Gorrell	John E. Dunn

TABLE 1

48	3/30/1990	John B. Boulton, Jr. and Shirley I. Boulton (Husband and Wife)	Kinney Oil Corporation
49	2/27/2001	John R. Anderson and Sharon Anderson (Husband and Wife)	Calpine Natural Gas Company
50	3/30/1990	John R. Boulton and Alice D. Boulton (Husband and Wife)	Kinney Oil Corporation
51	12/23/2002	John R. Boulton, Jr. a/k/a J.R. Boulton	Calpine Corporation
52	3/30/1990	Joseph Albert Wells and Darlene Ann Wells (Husband and Wife)	Kinney Oil Corporation
53	2/24/2003	Joyce Evelyn Walker, one of the heirs to the Estate of Jesse W. Gierhart	Calpine Corporation
54	6/12/2000	Joyce June Cerise	Park Hill Resources LLC
55	6/12/2000	Karl Wayne Benzel	Park Hill Resources LLC
56	6/6/2000	Karolyn Beth Deason, f/k/a Karol Beth Tyree	Park Hill Resources LLC
57	3/30/1990	Kay Bumguardner, a/k/a Kay Bumgardner, f/k/a Kay Steele (Also Custodian to Charles Lee)	Kinney Oil Corporation
58	3/5/2001	Kay Ukele	Park Hill Resources LLC
59	4/7/2003	Kelly R. Protz and Karen Protz (Husband and Wife)	Calpine Corporation
60	7/3/1972	Kenneth A. McPherson	John E. Dunn
61	Feb-93	Kenneth H. Stroder and Irland F. Stroder (Husband and Wife)	Timberline Energy, Inc.
62	6/12/2000	Korene E. Eichner	Park Hill Resources LLC
63	10/22/2003	Krys Moquin	Calpine Natural Gas, L.P.
64	2/24/2003	Laurence G. Gierhart a/k/a Laurence Grant Gierhart, one of the heirs to the Estate of Jesse W. Gierhart	Calpine Corporation
65	5/12/1972	Lawrence P. Skelly a/k/a Lawrence M. Skelly (single man) and Rose A. Skelly (single woman)	John E. Dunn
66	4/8/2005	Left Hand Resources, LLC	Antero Resources II Corporation
67	7/24/2000	Left Hand Resources, LLC	Park Hill Resources LLC
68	5/9/2002	Left Hand Resources, LLC	Calpine Natural Gas Company

TABLE 1

69	12/7/2001	Leora M. Hazelbush, as Trustee of the Leora M. Hazelbush Trust dated 1995	Calpine Natural Gas Company
70	4/30/1990	Lewis E. Hoy and Emma Jo Hoy (Husband and Wife)	Kinney Oil Corporation
71	4/2/1982	Linda S. Flower	John E. Dunn
72		Loreene Huggett Bauch, a widow - c/o Robert Baugh	Kinney Oil Corporation
73	7/9/1990	Loreene Huggett Bauch, a widow - c/o Robert Baugh	Kinney Oil Corporation
74	3/15/1982	M. J. Rubald and Ozella Rubald (husband and Wife)	Koch Exploration Company
75	7/3/1972	Mabel Dean Robinson	John E. Dunn
76	10/18/1967	Mabel Dean Robinson and Audrey Dean Stocker	Transcontinent Oil Company
77	4/12/2001	Magic M&R LLC	Calpine Natural Gas Company
78	12/9/2002	Marian Eileen Wooding	Calpine Corporation
79	4/12/2001	Marie Herzog	Calpine Natural Gas Company
80	Nov-93	Mark W. Linkenhoker and Cynthis S. Linkenhoker (Husband and Wife)	Timberline Energy, Inc.
81	8/23/2000	Marshall Quiat	Park Hill Resources LLC
82	6/20/2002	Marshall Quiat	Calpine Natural Gas Company
83	4/12/2001	Martin Herzog	Calpine Natural Gas Company
84	9/15/1972	Mary Goldena Raley	John E. Dunn
85	8/9/2000	May Kwok Keating	Park Hill Resources LLC
86	4/2/1982	Mercedes Van Fleet	Snyder Oil Company
87	7/3/1972	Milton Warren McPherson a/k/a Warren McPherson	John E. Dunn
88	4/25/2006	MIMONTE LLC, REGISTERED AGENT: MAY M. KWOK	Apollo Energy, LLC
89	4/3/1972	Neil S. Mincer	John E. Dunn
90	4/3/1972	Neil S. Mincer	John E. Dunn
91	3/17/1982	Otis Jacoby	Koch Exploration Company
92	3/30/1990	Owen E. Boulton and Josephine Boulton (Husband and Wife)	Kinney Oil Corporation
93	5/23/1990	Owen E. Boulton and Josephine Boulton (Husband and Wife)	Mobil Oil Corporation
94	10/30/1967	Pauline Hazelbush a/k/a Pauline Hasselbush, sole heir of Walter Hasselbush	Transcontinent Oil Company

TABLE 1

95	7/9/1990	Perry L. Will and Susan M. Will (Husband and Wife)	Kinney Oil Corporation
96	6/9/2000	Phyllis A. Joslin, as Personal Representative of Estate of Neil S. Mincer, deceased	Park Hill Resources LLC
97	1/8/1991	Ray L. Miller and Ruth Miller	Torch Energy Associates
98	8/24/2007	RDLJ LLC, REGISTERED AGENT - Dwight M. Whitehead	Apollo Energy, LLC
99	3/30/1990	Rene Barge	Kinney Oil Corporation
100	11/21/2001	Renee` Buzarde	Calpine Natural Gas Company
101	4/23/2003	Richard Altman & Company	Calpine Corporation
102	5/10/2004	Richard L. Williams and Kaethe Ellis-Williams (Husband and Wife)	Calpine Corporation
103	12/13/2002	Rifle Land & Cattle Company, a Partnership	Calpine Corporation
104	5/23/1990	Rifle Land & Cattle Company, a Partnership	Mobil Oil Corporation
105	4/3/1972	Robert C. Young and Dorothy B. Young (Husband and Wife)	John E. Dunn
106	5/22/2000	Robert C. Young and Jeris N. Young (Husband and Wife)	Park Hill Resources LLC
107	7/12/2000	Robert Keller, as Guarding of Robert Karl Keller, a minor <i>at that time</i>	Park Hill Resources LLC
108	3/15/2001	Robert L. Ukele	Park Hill Resources LLC
109	12/9/2002	Robert Owen Boulton a/k/a Robert O. Boulton	Calpine Corporation
110	5/23/1990	Robert Owen Boulton a/k/a Robert O. Boulton and Esther Boulton (Husband and Wife)	Mobil Oil Corporation
111	3/30/1990	Robert Owen Boulton and Esther Boulton (Husband and Wife)	Kinney Oil Corporation
112	3/19/1982	Robert R. Hasselbush and Carole A. Hasselbush (Husband and Wife)	Koch Exploration Company
113	3/30/1990	Roger L. Swanson	Kinney Oil Corporation
114	9/8/2000	Ronald W. Alsbury	Park Hill Resources LLC
115	12/10/2001	Ruby Lea Toles, executor of the estate of Pauline Hazelbush a/k/a Polly Hazelbush	Calpine Natural Gas Company

TABLE 1

116	4/30/2003	Sandra S. Lloyd and Thomas K. Lloyd (Wife and Husband)	Calpine Corporation
117	6/22/2000	Sharon A. Alsbury Cole	Park Hill Resources LLC
118	11/9/1972	Stella Caroline McClung	John E. Dunn
119	10/3/1967	Sweeny's Inc., a Colorado Corporation	Transcontinent Oil Company
120	3/30/1990	Terry L. Kubik and Sara B. Kubik (Husband and Wife)	Kinney Oil Corporation
121	7/15/1981	Thomas Boyd Rees	Exxon Corporation
122	2/10/2003	Vivian F. Stark	Calpine Corporation
123	11/13/1967	W. C. Haselbush and Muriel Haselbush, his wife and Robert L. Haselbush and Edna M. Haselbush, his wife, and heirs of Paul Haselbush	Transcontinent Oil Company
124	5/6/1996	William B. Jackson, Jr.	Vessels Oil & Gas Company

Exhibit A

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

Plaintiffs:
LANA SCOTT, *et al.*

v.

Defendant:
TEP ROCKY MOUNTAIN LLC

Stacy A. Burrows, Colo. Bar. No. 49199
George A. Barton
BARTON AND BURROWS, LLC
5201 Johnson Drive, Suite 110
Mission, Kansas 66205
Phone: (913) 563-6250
Facsimile: (913) 563-6259
george@bartonburrows.com
stacy@bartonburrows.com
***Attorneys for Plaintiffs and the
Proposed Class***

Christopher A. Chrisman, #33132
Michelle R. Seares, #54455
HOLLAND & HART LLP
555 17th Street, Suite 3200
P.O. Box 8749
Denver, CO 80201-8749
Telephone: (303) 295-8000
Facsimile: (303) 295-8261
cachrisman@hollandhart.com
mrseares@hollandhart.com
***Attorneys for Defendant TEP Rocky
Mountain LLC***

▲ COURT USE ONLY ▲

Case Number: 2022-CV-30079

Div.: B

Ctrlm.:

**JOINT MOTION FOR AN ORDER
PRELIMINARILY APPROVING PROPOSED
CLASS ACTION SETTLEMENT**

Plaintiffs Lana Scott (“Scott”) and Dwight Cook (“Cook”), individually and on behalf of those similarly situated royalty owners (collectively “Plaintiffs” or “Class Representatives”), and Defendant TEP Rocky Mountain LLC (“TEP”) (collectively, the “Parties”), move this Court, pursuant to C.R.C.P. 23(e), for its order preliminarily approving the Parties’ proposed class action settlement.

The Parties seek entry of an order: (1) preliminarily approving the class settlement agreement (“Settlement Agreement”) attached hereto as Exhibit A; (2) appointing Plaintiffs Scott and Cook as Class Representatives for the Class (as defined herein and in the Settlement Agreement); (3) appointing Plaintiffs’ attorneys as Class Counsel for the Class; (4) provisionally determining that the Class meets the requirements for certification of a C.R.C.P. 23(b)(3) class, for settlement purposes; (5) approving the proposed class settlement notice to be mailed to the Class members; (6) establishing the deadline and manner for members’ submission of any elections to opt out of the Class; (7) establishing the deadline and manner for the Class members to submit objections to the proposed Settlement Agreement, Class Counsels’ request for attorneys’ fees and expense reimbursements, and the request for \$7,500 incentive awards to each Class Representative; (8) establishing the deadline for the Parties’ submission of motions in support of final approval of the Settlement Agreement, Class Counsels’ request for an award of attorneys’ fees and expenses, and the request for \$7,500 incentive awards to each Class Representative; and (9) setting a hearing date to consider the motions for final approval of the proposed Settlement Agreement, Class Counsels’ attorneys’ fees and expenses, and \$7,500 incentive awards to each Class Representative.

As grounds for this Joint Motion, the Parties state as follows:

I. BACKGROUND

1. On June 22, 2022, Plaintiff Lana Scott filed her class action complaint against TEP in the District Court of Garfield County, Colorado. Subsequently, on April 18, 2023, Plaintiffs filed an amended class action complaint adding Dwight Cook as an additional Plaintiff.

2. Plaintiffs, individually and on behalf of themselves and other 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 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 this nearly seven-month settlement negotiation process, the Parties have reached a class settlement on the terms set forth in the Settlement Agreement, attached as Exhibit A.

5. The Parties and their counsel now request this Court enter an Order preliminarily approving the Settlement Agreement; provisionally certifying a C.R.C.P. 23(b)(3) settlement class; approving the proposed form of the notice to be mailed to the 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 proposed \$7,500 incentive awards to each Class Representative.

6. 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, the Court may preliminarily approve the Settlement Agreement, provisionally certify the proposed Class, approve the proposed notice to the Class members of the proposed class settlement (including their rights to opt-out or object), and set a date for a final fairness hearing.

II. THE PARTIES' SETTLEMENT AGREEMENT

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 which are subject to the oil and gas leases identified on Table 1 of the Settlement Agreement.

To resolve the claims of the Class for past royalty underpayments, TEP has agreed to pay \$197,261.00 to the members of the Class (the "Class Settlement Fund"). If one or more members elect to opt-out of the Settlement Agreement, TEP will be entitled to an opt-out credit against the \$197,261.00 settlement amount, which will be 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 and overriding royalty underpayment claims asserted by members of the Class based on TEP's sales of natural gas production, including natural gas liquids, from August 1, 2020, through December 31, 2022 (the "Relevant Time Period"). 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 amounts allegedly retained by TEP under the agreements at issue in this case during the Relevant Time Period. If more than twenty

percent (20%) of the Class members request to exclude themselves from the Settlement Agreement, it may terminate. 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.

Class Counsel will request an award of attorneys’ fees and reimbursement of expenses that have been or will be incurred by Class Counsel, and \$7,500 incentive awards to each of the two Class Representatives, which shall be paid from the Class Settlement Fund. Class Counsel will seek attorneys’ fees totaling one-third of the gross Class Settlement Fund in addition to reimbursement of approximately \$10,000 in expenses. TEP takes no position on such requests, and TEP is not responsible under the Settlement Agreement for any award of attorneys’ fees, expense reimbursements, or the Class Representative incentive awards.

As part of the Settlement Agreement, the Parties also agreed, upon the effective date, TEP will utilize revised future royalty payment methodologies in the calculation of royalty payments to the members of the Class. Specifically, TEP shall pay the members of the Class based upon one hundred percent (100%) of the sales price actually received by TEP for the sale of natural gas and natural gas liquids from their leases, and will not deduct any costs of gathering, fuel, or fifty percent (50%) of processing costs. TEP shall be entitled to deduct fifty percent (50%) of processing costs, as well as one hundred percent (100%) of the costs of natural gas mainline transportation, and one hundred percent (100%) of the costs of transporting and fractionating natural gas liquids.

All members who do not elect to exclude themselves from the Class shall be bound by the Settlement Agreement terms.

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

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.

III. THE REQUIREMENTS FOR PROVISIONAL CERTIFICATION OF THE C.R.C.P. 23(b)(3) SETTLEMENT CLASS ARE SATISFIED

Certification of a C.R.C.P. 23(b)(3) class has six requirements: (1) the class is so numerous that the joinder of all members is impracticable ("numerosity"); (2) there are questions of law or fact common to the class ("commonality"); (3) the claims of the representative plaintiffs are typical of the claims of the class ("typicality"); (4) the representative plaintiffs will fairly and adequately protect the interests of the class ("adequacy"); (5) the common questions of law or fact predominate over individual questions ("predominance"); and (6) the class action is superior to individual actions for resolving the class members' claims ("superiority"). C.R.C.P. 23(a) and 23(b)(3).

As demonstrated below, each of the requirements for certification of the C.R.C.P. 23(b)(3) Class are satisfied in this case. The Supreme Court of Colorado has confirmed that C.R.C.P. 23 should be liberally construed in light of its policy favoring the maintenance of class actions. *Jackson v. Unocal Corp.*, 262 P.3d 874, 883 (Colo. 2011) (citing *Farmers Ins. Exch. v. Benzing*, 206 P.3d 812, 818 (Colo. 2009)).

A. Numerosity

"The requirement of numerosity means that a class must be large enough to make joinder of all its members impractical." *Garcia v. Medved Chevrolet, Inc.*, 540 P.3d 371, 377 (Colo. App.

2009); *Cherry Hills Farms, Inc. v. City of Cherry Hills Vill.*, 670 P.2d 779, 783 (Colo. 1983) (92 class members satisfied the C.R.C.P. 23(a)(1) numerosity requirement). The Parties have identified more than 100 individuals in the putative class. The numerosity requirement is therefore satisfied.

B. Commonality

C.R.C.P. 23(a)(2) requires that questions of fact or law exist that are common to the proposed class as a whole. The commonality requirement does not demand that all questions of law or fact at issue be common but instead requires only that significant common issues of law or fact exist. *Queen Uno Ltd. P'ship v. Coeur D'Alene Mines Corp.*, 183 F.R.D. 687, 691 (D. Colo. 1998). Courts recognize that varying fact situations among individual class members may exist as long as the plaintiffs' claims and other class members are based on the same legal or remedial theory. *LaBrenz v. Am. Family Mut. Ins. Co.*, 181 P.3d 328, 338 (Colo. App. 2007).

In their first amended class action complaint, Plaintiffs assert a breach of contract claim against TEP for its alleged failure to pay royalties to the Plaintiffs and the Class members consistent with its obligations under certain oil and gas leases since August 1, 2020. Plaintiffs allege that TEP engaged in a common course of conduct regarding its royalty payment methodology that affected the Class royalty owners who were parties to certain oil and gas leases. Because the claims of the Class members arise out of the same operative facts and are based on the same legal theory as others in the Class, there are common questions of law and fact, for purposes of settlement, including: (1) whether TEP has a common contractual obligation to pay royalties to the Plaintiffs and the Class members based upon prices received at the location of the first commercial market for marketable residue gas and marketable natural gas liquid products; (2)

whether the location of the first commercial market for the residue gas sold by TEP was beyond the tailgate of the gas processing plant, and at the location where TEP sold the residue gas to third party purchasers; (3) whether the location of the first commercial market for the natural gas liquid products, which were produced from the gas wells at issue, was at the location where the natural gas liquid mix was fractionated into five marketable natural gas liquid products – ethane, propane, butane, isobutane and pentane – and then sold to third party purchasers; (4) whether TEP breached its contractual obligations by calculating and paying royalties to Plaintiffs and the Class members on the residue gas sales based on a dollar figure which was far less than the sales proceeds for the residue gas which TEP sold to third party purchasers; and (5) whether TEP breached its contractual obligations to Plaintiffs and the Class members by calculating and paying royalties for the marketable natural gas liquid products based upon a dollar figure which was less than the prices received by TEP on the sale of the five marketable natural gas liquid products to third party purchasers. These issues of law and fact are common to all putative Class members and are the central issues to be decided in this case. The commonality requirement is therefore satisfied.

C. Typicality

C.R.C.P. 23(a)(3) requires that the claims of the named plaintiff be typical of the claims of the class. The typicality requirement is satisfied if there is a nexus between the named plaintiff's claims and the common questions of fact or law that unite the class. *Patterson v. BP Am. Prod. Co.*, 240 P.3d 456, 462 (Colo. App. 2010), *aff'd sub nom., BP Am. Prod. Co. v. Patterson*, 263 P.3d 103 (Colo. 2011). The positions of the potential class members need not be identical; so long as there is a nexus between the Class Representatives' claims and common questions of fact or

law unite the class, the typicality requirement is satisfied. *Schwartz v. Celestial Seasonings, Inc.*, 178 F.R.D. 545, 551 (D. Colo. 1998).

Plaintiffs' claims are typical of the claims of the proposed Class members they represent. TEP utilized the same royalty payment methodology for the Plaintiffs Scott and Cook and the Class members when it calculated the amounts of royalties owed to royalty owners. The typicality requirement is therefore satisfied.

D. Adequacy of Representation

Finally, C.R.C.P. 23(a)(4) requires that the named plaintiff fairly and adequately protect the interests of the class. To satisfy this requirement, plaintiffs should have no conflicting interests with the class it seeks to represent and be represented by competent counsel. *Kuhn v. State Dept. of Revenue*, 817 P.2d 101, 106 (Colo. 1991). Criteria for assessing adequacy of representation include whether the plaintiffs have common interests with the class members and whether the representative will vigorously prosecute the interests of the class through qualified counsel. *Joseph v. Gen. Motors Corp.*, 109 F.R.D. 635, 652 (D. Colo. 1986); *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1187–88 (10th Cir. 2002). Absent evidence to the contrary, a presumption of adequate representation is invoked. *Joseph*, 109 F.R.D. at 652. Any doubt regarding the adequacy of representation should be resolved in favor of upholding the class, subject to later possible reconsideration or the creation of subclasses. *Id.*

Plaintiffs' counsel in this case have substantial experience in both class actions and royalty underpayment litigation, including the successful handling of several other class action royalty underpayment cases against gas producers in Colorado. Plaintiffs' attorneys are therefore well qualified to represent the Class in this case.

Plaintiffs have no conflicting interests with the Class they seek to represent. They have acted in the best interest of all the Class members throughout this litigation and will continue to do so. Thus, the adequacy of representation is satisfied.

E. Predominance

To certify the C.R.C.P. 23(b)(3) Class, this Court must also find that the questions of law or fact predominate over any questions affecting only individual class members. C.R.C.P. 23(b)(3). The predominance inquiry rests on “whether the plaintiff advances a theory by which to prove or disprove an element on a simultaneous, class-wide basis since such proof obviates the need to examine each class member’s individual position.” *BP Am. Prod. Co.*, 263 P.3d at 109 (quoting *Benzing*, 206 P.3d at 820). The predominance inquiry also focuses on “whether the proof at trial will be predominantly common to the class or primarily individualized.” *Jackson*, 262 P.3d at 889 (quoting *Medina v. Conseco Annuity Assur. Co.*, 121 P.3d 345, 348 (Colo. App. 2005)).

In this case, the Plaintiffs’ and the proposed Class members’ theory of royalty underpayments predominate over any individual issue for purposes of settlement.

In addition, the common issues in this case predominate over the individual issues because, as evidenced by the Settlement Agreement, the claims of the Class can be resolved on a uniform basis. The common questions of fact and law for the Class, therefore, predominate over any individual issues that might exist.

F. Superiority

Class certification under C.R.C.P. 23(b)(3) also requires a finding that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. A class action is generally considered superior to individual litigation where, as here, the claims of

many class members are too small to justify the time and expense of individual action, particularly where proof of their claims may depend upon obtaining substantial discovery, so long as the other requirements of Rule 23 are satisfied. *Jackson*, 231 P.3d at 28; *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 809 (1985) (superiority exists where claims would be “uneconomical to litigate individually” leaving most of the class with “no realistic day in court if a class action were not available”). For most Class members identified, the dollar amount of their royalty underpayment claim is below \$1,000, thus making it uneconomical for them to litigate their royalty underpayment claim against TEP individually.

The class action procedure is also the most efficient use of judicial resources to address TEP’s underpayment of royalties to Plaintiffs and the members of the Class. Given the nature of the claims in this case, requiring separate cases for individual royalty owners to assert royalty underpayment claims would be highly inefficient and would unduly burden this state’s judicial resources. By maintaining this case as a class action, uniform relief can be granted in a single proceeding that provides relief to all affected Colorado royalty holders.

C.R.C.P. 23(b)(3)(A)–(D) sets forth four factors that a court should consider in determining whether a class action is superior to individual lawsuits for the resolution of the claims at issue. An evaluation of those four factors further demonstrates that the superiority requirement is satisfied in this case for settlement purposes. Pursuant to C.R.C.P. 23(b)(3)(A), this Court should consider the interests of the class members in individually controlling the prosecution or defense of separate actions. The prosecution of separate royalty underpayment lawsuits would not further the interests of the class members in this case, particularly because most of them have relatively small claims. A class action is a superior method to adjudicate their claims because class-wide

litigation can be prosecuted much more efficiently and more economically than individual lawsuits. The Court should also consider, pursuant to C.R.C.P. 23(b)(3)(B), the extent and nature of any litigation concerning the controversy already commenced by or against members of the class.

Pursuant to C.R.C.P. 23(b)(3)(C), this Court should also consider the desirability of concentrating the litigation of these claims in this forum. In this case, all of TEP's natural gas production at issue occurred in the State of Colorado. The majority of the Class members also reside in Colorado. The claims at issue are governed by Colorado substantive law. Therefore, concentrating the litigation of these claims in this Court is the most efficient and economical method of resolving this royalty underpayment dispute.

The final factor that should be considered in evaluating the issue of superiority, as set forth in C.R.C.P. 23(b)(3)(D), is the difficulty likely to be encountered in the management of this class action. In this case, the issues of liability and damages can be resolved on a class-wide basis through this Settlement Agreement. Thus, there are unlikely any manageability issues that would prevent this Court from determining that the superiority requirement for certification of the C.R.C.P. 23(b)(3) settlement Class is satisfied.

For these reasons, C.R.C.P. 23(b)(3)'s six requirements are satisfied.

IV. THE PROPOSED SETTLEMENT AGREEMENT IS FAIR, REASONABLE, AND ADEQUATE

The standard for evaluating settlements of class actions under C.R.C.P. 23 is whether the proposed settlement agreement is fair, reasonable, and adequate. *Thomas v. Rahmani-Azar*, 217 P.3d 945, 947 (Colo. App. 2009). So long as the negotiated agreement appears fair, reasonable, and adequate, it should be approved in accordance with the strong public policy favoring the

settlement of complex litigation. *Helen G. Bonfils Found. v. Denver Post Emps. Stock Trust*, 674 P.2d 997, 998 (Colo. App. 1983); *Alvarado Partners, L.P. v. Mehta*, 723 F. Supp. 540, 551 (D. Colo. 1989). As a practical matter, courts typically presume that a class action settlement is fair and reasonable based on the parties' recommendation and counsel. Thus, "the overwhelming majority of settlements are approved when the court is satisfied that arms-length bargaining took place during settlement negotiations and experienced class counsel recommended approval of the settlement." NEWBERG ON CLASS ACTIONS, § 11.41 at 11-95 (3rd ed. 1992).

In evaluating class action settlements, courts agree on a nonexclusive list of factors that should be considered in assessing whether a settlement agreement is fair, adequate, and reasonable: the strength of the plaintiff's case; risk and expense of further litigation; the amount of the settlement; extent of discovery completed; experience and views of counsel; and the reaction of interested parties to the settlement. *Thomas*, 217 P.2d at 948.

The proposed Settlement Agreement meets all of the required elements for preliminary approval. First, if Plaintiffs and TEP were not able to resolve Plaintiffs' claims now, the Parties would have to conduct additional expensive and time-consuming liability and damages discovery, likely complete briefing on dispositive motions and a motion for class certification, prepare for trial, and ultimately try this case to a jury. Second, the proposed settlement amount, \$197,261.00, represents a significant portion of the alleged damages calculated by the Parties. Third, the proposed future royalty payment methodology substantially benefits members of the Class going forward. Fourth, the settlement amount was negotiated extensively by the Parties' counsel, who are very experienced in oil and gas royalty underpayment class action litigation.

Counsel believe that it is in the best interest of all parties to enter into the attached Settlement Agreement. The Parties and their attorneys have agreed to the Settlement Agreement terms with full knowledge of the critical factual and legal issues in this case and only after conducting extensive discovery and a comprehensive evaluation of voluminous royalty payment data. Based upon the information obtained throughout this litigation, the attorneys for Plaintiffs, who have extensive experience in royalty underpayment litigation, strongly recommend approval of this Settlement Agreement. Moreover, the proposed Settlement Agreement avoids the extensive risk, time, and expense of continuing this class-action litigation with an uncertain outcome. The Class members will receive substantial benefits from the proposed Settlement Agreement. Each Class member will receive a payment in compensation for the claim for royalty underpayments for production from August 1, 2020, through December 31, 2022, and benefit from a future royalty payment methodology. The Class members will benefit from a reasonable and fair resolution of this litigation, avoiding additional risk, expense, and delay.

V. THE COURT SHOULD APPROVE THE PROPOSED NOTICE TO THE CLASS AND THE PROPOSED PROCEDURE FOR A CLASS MEMBER TO OPT-OUT OR TO FILE OBJECTIONS

The Parties have agreed on the form and content of the Notice to Class members, attached as Exhibit B to the Settlement Agreement (the “Notice”). The Notice advises the Class members of: (a) the existence of this action; (b) the provisional certification of the Class pending final approval of the Settlement Agreement; (c) the monetary amount that TEP has agreed to pay to resolve the alleged past royalty underpayment claims of the Class; (d) Class Counsels’ anticipated request for payment of attorneys’ fees, litigation expense reimbursements, and the Class Representative 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; and (g) their right to opt-out of the proposed Settlement Agreement and the deadline by which such opt-out right must be exercised. The Court should therefore approve the form and content of the Notice.

Class Counsel has agreed to be responsible for mailing the Notice to the members of the Class. Therefore, the Court should order that Class Counsel send the Notice to all members of the Class whose addresses are available from TEP's accounting records within fourteen (14) days after the Court enters its Order granting preliminary approval of the Settlement Agreement.

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 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. The postmark deadline for Class members to mail their written opt-out requests to Class Counsel shall be reflected in the mailed Notice.

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 that 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, 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 that is seven (7) days before the scheduled date of the final fairness hearing.

The Parties will file their Motion for Final Approval of the Settlement Agreement and any papers in support at least twenty-one (21) days before the scheduled date of the final fairness hearing. Class Counsel will file their motion to award attorneys' fees, litigation expense reimbursements, and incentive awards to the Class Representatives at least twenty-one (21) days before the final fairness hearing. The Parties will file their response to any Class member objections to the Settlement Agreement at least seven (7) days before the final fairness hearing.

All costs and expenses 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.

CONCLUSION

For the foregoing reasons, the Parties request that the Court enter an Order:

- (1) preliminarily determining the Settlement Agreement is fair, reasonable, and adequate, and granting the Parties' joint motion for preliminary approval of the Settlement Agreement;
- (2) appointing named Plaintiffs Scott and Cook as the Class Representatives for the Class;
- (3) appointing Plaintiffs' attorneys Stacy Burrows and George Barton as Class Counsel for the Class;
- (4) provisionally determining that the Class meets the requirements for class certification under C.R.C.P. 23(b)(3);
- (5) scheduling a final fairness hearing date after the Court enters its Order preliminarily approving the proposed Class Settlement to consider final approval of the proposed Settlement

Agreement, Class Counsels' request for an award of attorneys' fees, and expense reimbursements, and the request for incentive awards for the Class Representatives;

(6) approving the form and content of the Notice that is attached to this joint motion for preliminary approval as Exhibit B to the Settlement Agreement;

(7) directing that Class Counsel be responsible for mailing the Notice to the members of the Class by First-Class U.S. Mail within fourteen (14) days after the Court enters its Order granting preliminary approval of the Settlement Agreement;

(8) establishing a deadline for any members of the Class to mail a written election to Class Counsel to be excluded from the Class, which deadline will be 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;

(9) establishing a deadline for any member of the Settlement Class to submit objections or comments regarding the proposed Settlement Agreement, Class Counsels' request for attorneys' fees and expense reimbursements, or Class Counsels' request for Class Representative incentive awards, which deadline will be 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;

(10) 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 seven (7) days before the scheduled date of the final fairness hearing;

(11) establishing a deadline for the Parties' attorneys to file motions and memoranda in support of final approval of the Settlement Agreement, for Class Counsels' motion for an award of attorneys' fees, expense reimbursements, and \$7,500 incentive awards to each Class

Representative which deadline should be twenty-one (21) days before the scheduled date for the final fairness hearing; and

(12) establishing a deadline for the Parties' attorneys to file responses, objections, or comments, if any, to: (a) the proposed Settlement Agreement; (b) Class Counsels' request for attorneys' fees and expenses; or (c) the request for Class Representative incentive awards, seven (7) days before the date of the final fairness hearing.

Dated: _____, 2023

/s/ Stacy A. Burrows

Stacy A. Burrows, CO Bar No. 49199
George A. Barton, Mo. Bar No. 26249
Barton Burrows, LLC
5201 Johnson Drive, Suite 110
Mission, KS 66208
Phone: (913) 563-6253
Fax: (913) 563-6259
Email: stacy@bartonburrows.com
george@bartonburrows.com

Attorneys for Plaintiffs and the Proposed Class

/s/ Christopher A. Chrisman

Christopher A. Chrisman (No. 33132)
Michelle R. Seares (No. 54455)
Holland & Hart LLP
555 Seventeenth Street, Suite 3200
PO Box 8749
Denver, CO 80201-8749
Phone: (303) 295-8000
E-mail: CAChrisman@hollandhart.com
MRSeares@hollandhart.com

Attorneys for Defendant TEP Rocky Mountain LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this ____ day of _____, 2023, a true and correct copy of the foregoing **Joint Motion for an Order Preliminarily Approving Proposed Class Action Settlement** was served on the following via the Colorado Courts E-Filing system:

- U.S. Mail, postage prepaid
- Hand Delivery
- Fax
- Electronic Service

Stacy A. Burrows
George A. Barton
Barton and Burrows, LLC
5201 Johnson Dr., Suite 110
Mission, KS 66205
stacy@bartonburrows.com
george@bartonburrows.com

/s/ Julia Cross Lingsang _____

Exhibit B

DISTRICT COURT OF GARFIELD COUNTY, 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 (the “TEP Settlement”) has been reached in this class action lawsuit against TEP Rocky Mountain LLC (“TEP”). The lawsuit is about the alleged underpayment of royalties on the production of natural gas in the State of 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 6 of this Notice.
EXCLUDE YOURSELF FROM THE PROPOSED TEP SETTLEMENT	If you are a Class Member, you can exclude yourself from (opt out of) the TEP Settlement and the Court’s rulings. You will not share in the distribution of Settlement monies. <i>See Section 7 of this Notice.</i>
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. <i>See Section 8 of this Notice.</i>

1. WHY YOU RECEIVED THIS NOTICE.

Records show that you have received a royalty payment from TEP since August 1, 2020, from wells located in the State of Colorado. This Notice is sent to you to inform you about a proposed settlement of a class action lawsuit, captioned *Lana Scott and Dwight Cook, individually and on behalf of all others similarly situated, Plaintiffs v. TEP Rocky Mountain, LLC, Defendant*, Case No. 2022-CV-30079, in the District Court of Garfield County, Colorado (the “Lawsuit”). It was brought on behalf of royalty owners who received payments from TEP for natural gas (“Gas”) produced in the State of Colorado under certain leases acquired by TEP effective August 1, 2020 (the “TEP Acquisition”). The settlement has been preliminarily approved by the Court as being fair, reasonable and adequate. As explained below, Class Members will receive money under this TEP Settlement if they 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 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, 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 which are subject to the oil and gas leases identified in the attached Table 1. The defined Class excludes: (1) agencies, departments, or instrumentalities of the United States of America; and (2) TEP or its affiliates.

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 _____, 2023, at _____.m., in Courtroom ____ of the District of Garfield County Courthouse, 109 8th St., Suite 104, Glenwood Springs, CO 81601.

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 Lana Scott and Dwight Cook, on behalf of themselves and all other similarly situated royalty payees, filed the Lawsuit against TEP on June 22, 2022, in the District Court of Garfield County, Colorado. This Lawsuit seeks monetary relief against TEP for a class of natural gas royalty payees. The Lawsuit has been pending before the Honorable Denise K. Lynch in the District Court of Garfield County, Colorado.

Plaintiffs have alleged that TEP underpaid royalties due to them under their leases since the TEP Acquisition. Specifically, Plaintiffs have asserted that TEP underpaid royalties on natural gas sales, including residue gas sales and

natural gas liquids sales, which have been obtained from wells located in the State of Colorado and which are subject to the Plaintiffs' leases. These alleged royalty underpayments are referred to in this Notice as "Disputed Deductions."

Class Counsel has 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 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 this matter 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 it 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 further proceedings, 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 \$197,261.00 in order to settle the Lawsuit (the "Settlement Fund"), to be paid via wire transfer to the trust account of Class Counsel upon final approval of the 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 proportionate share of Disputed Deductions.

The Court has preliminarily approved the TEP Settlement for the Class:

The Class is composed of 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 which are subject to certain leases identified in the Settlement Agreement, and which are attached to the Settlement Agreement as Table 1.

TEP has agreed to pay \$197,261.00 of the Settlement Fund to the members of the Class, representing 100% of all gathering, fuel, and compression costs, and 50% of all processing costs, deducted from royalties paid to the members of the Class from the TEP Acquisition through December 31, 2022.

Plaintiffs, the Class, and TEP have also agreed to a future royalty payment methodology:

For the Class, TEP shall pay the members' royalties based upon one hundred percent (100%) of the sales price actually received by TEP for the sale of natural gas and natural gas liquids from their leases, and will not deduct any costs of gathering, fuel, or fifty percent (50%) of processing costs. TEP shall be entitled to deduct fifty percent (50%) of processing costs, as well as one hundred percent (100%) of the costs of natural gas mainline transportation, and one hundred percent (100%) of the costs of transporting and fractionating natural gas liquids.

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 net amount to be distributed to the members of the TEP Settlement Class. Class Counsel will request that the Court award attorneys' fees in the amount of one-third of the Class Settlement Fund. Class Counsel will also request to be reimbursed for out-of-pocket expenses Class Counsel has expended in prosecuting this action; and for

future expenses Class Counsel will incur related to the notice and administration of the TEP Settlement Agreement. Class Counsel will also seek incentive award payments in the amount of \$7,500 for each class representative. 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.

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. 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 Fees and Expenses from the Settlement Fund that are approved by the Court. You may also choose to 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 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 for the Settlement Claims against TEP, its affiliates, and its predecessors.

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.

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 **Stacy A. Burrows & George A. Barton, Barton and Burrows, LLC, 5201 Johnson Dr., Suite 110, Mission, KS 66205**. The election must contain the full name, current address, telephone number, and signature of the person requesting exclusion. **The written election must be postmarked by the U.S. Mail on or before _____, 2023 [30 days after the postmarked date on the 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 **Stacy A. Burrows & George A. Barton, Barton and Burrows, LLC**, by _____, **2023 [30 days after the postmarked date on the 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 _____, 2023 [40 days after the postmarked date on the Class Notice]**, with the Court at the address of the County 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 by U.S. Mail on or before _____, 2023 **[40 days after the postmarked date on the Class Notice]**:

Class Counsel

Stacy A. Burrows
George A. Barton
Barton and Burrows, LLC
5201 Johnson Dr., Suite 110
Mission, KS 66205

Counsel for TEP

Christopher A. Chrisman
Michelle R. Seares
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 _____, 2023 [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 _____, 2023, at _____m. in Courtroom of the District Court of Garfield County, Colorado, located at 109 8th Street, Suite 104, Glenwood Springs, CO 81601. 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")

Stacy A. Burrows
George A. Barton
Barton and Burrows, LLC
5201 Johnson Dr., Suite 110
Mission, KS 66205
Phone: (913) 563-6250
stacy@bartonburrows.com
george@bartonburrows.com

Attorneys for TEP Rocky Mountain LLC

Christopher A. Chrisman,
Michelle R. Seares,
HOLLAND & HART LLP
555 Seventeenth Street, Suite 3200
Denver, CO 80201-8749
Phone: (303) 295-8000
Fax: (303) 291-8261
cachrisman@hollandhart.com
mrseares@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:

Lana Scott, et al. v. TEP Rocky Mountain LLC
Civil Action No. 2022-CV-30079

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:

District Court of Garfield County, Colorado
109 8th St.
Suite 104
Glenwood Springs, CO 81601

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

Exhibit C

DISTRICT COURT, COUNTY OF GARFIELD, COLORADO 109 8th Street, Suite 104 Glenwood Springs, CO 81601	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Plaintiffs: LANA SCOTT, <i>et al.</i> v. Defendant: TEP ROCKY MOUNTAIN LLC	
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 _____ .m, on _____, in Courtroom _____ of this Court.

IT IS SO ORDERED.

Dated this ___ day of _____, 2023.

BY THE COURT:

DENISE K. LYNCH
DISTRICT COURT JUDGE