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In the Arbitration of:

Kenneth & Vanda Vaughters and David & Sandra Conner, as Co-Trustees of the Sandra K. Conner Trust and as Co-Trustees of the David C. Conner Trust, on behalf of themselves and the defined Class,
Claimants

v.

Crestone Peak Resources Holdings, LLC,
Respondents.

JAG No.: 2018-0067

Arbitrator – Anne B. Frick

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Before me is Claimants Kenneth and Vanda Vaughters and David and Sandra Conner, as Co-Trustees of the Sandra K. Conner Trust and the David K. Conner Trust (the "Claimants"), on behalf of themselves and the certified class of royalty owners, and Crestone Peak Resources Holdings, LLC'S Joint Motion for Approval of Class Settlement Agreement (the "Joint Motion"). I have reviewed the parties' Joint Motion and the supporting exhibits including the Class Settlement Agreement entered into between the parties. Following a hearing on the parties' Joint Motion, I make the following findings of fact and conclusions of law:

1. Barton and Burrows, LLC ("Class Counsel") have represented the Claimants and the class members in this class action litigation for more than five years since the Claimants original arbitration demand was filed in January 2018. The Claimants and the class members diligently pursued their breach of contract and declaratory judgment claim against Crestone for its breach of

a 2008 class settlement agreement between a certified class of royalty owners and EnCana Oil and Gas (USA) Inc. (the "Miller Settlement Agreement"). The Claimants and a subset of the previously certified class of royalty owners claimed Crestone breached the Miller Settlement Agreement by failing to pay the full amount of royalties owed under the future royalty accounting methodology outlined in Paragraph 10(f) of the Miller Settlement Agreement.

2. On July 20, 2023, after more than four years of litigation, which include the parties' extensive discovery, which was taken of both the respondent, Crestone, but also of the third-party operator of the non-operated wells, Kerr-McGee Oil and Gas Onshore, LP ("KMG"), and an arbitration hearing, which was conducted at the JAG offices in Denver, Colrado from January 9-13, 2023, I issued a Final Award.

3. Consistent with my Final Award, on July 24, 2023, I entered the Declaratory Judgment, which is being amended by agreement of the parties.

4. In my Final Award, I determined that: (1) there are 241 oil and gas leases at issue (the "Class Leases"); (2) Claimants have properly identified the class members who have been underpaid royalties they are owed and, thus, are entitled to damages; and (3) 10(f) of the Miller Settlement Agreement applies to the royalty underpayment claims at issue in this arbitration.

5. Based on my determinations, I awarded the Claimants and the class members damages in the amount of $5,359,697.08.

6. After my Final Award was issued, Claimants and Crestone entered into settlement negotiations in order to fully resolve the Claimants and the class members' claims for royalty payments through the date of my order approving the Class Settlement Agreement. On August 25, 2023, Claimants and Crestone entered into the Class Settlement Agreement, wherein the parties agreed that Crestone would pay the Claimants and the class members a total of five million one

hundred thousand dollars ($5,100,000.00) (the "Settlement Fund") in order to resolve the claims of the Claimants and the class members and the Final Award they had received. The parties also agreed to amend the Declaratory Judgment Order to provide more clarification.

7. Even though I issued my Final Award in the arbitration on July 20, 2023, and I would typically no long have jurisdiction over the parties' dispute, here, the parties have stipulated that I would continue to have jurisdiction over the dispute in order to resolve the matter through the parties' proposed Class Settlement Agreement.

8. Also in my Final Award, I awarded Class Counsel their award of attorneys' fees in the amount of forty percent (40%) of the $5,389,697.08 awarded to the Claimants and the class members.

9. Consistent with my Final Award and the Class Settlement Agreement, Class Counsel seek an order awarding them two million forty thousand dollars ($2,040,000), which is forty percent of the Settlement Fund.

10. There is no doubt that Class Counsel engaged in extensive legal and investigative work to initiate this case and properly prosecute this class action through the arbitration hearing. Class counsel began working on this case in December 2017 by reviewing royalty statements sent by KMG to the Claimants and made a written demand on KMG regarding KMG's royalty payment methodology. From there, Class Counsel initiated this class arbitration proceeding originally against KMG and later against EnCana and Crestone as the proper respondents.

11. Once Crestone was added to this proceeding the parties participated in a scheduling conference where I ordered that the parties prepare a subpoena duces tecum to be served on KMG. The process of conferring with KMG regarding the content of the subpoena duces tecum, and compelling KMG to provide responsive documents proved to be a monumental task for the

Claimants. In fact, it took well over a year, multiple motions to enforce, and countless conferrals to obtain fully responsive documents from KMG. Even after KMG provided responses to the subpoena duces tecum, it did so in a manner which forced Class Counsel to spend hundreds of hours analyzing those documents and comparing the information contained therein with public records to identify the 241 Class Leases and 444 class members in this arbitration. This undoubtedly delayed the progress of this arbitration and unnecessarily increased the workload of Class Counsel to push this matter forward.

12. Even after the issues with KMG's obstinate tactics were overcome, Claimants were still required to prosecute their case against the Crestone and EnCana, which included responding to dispositive motions, propounding, and reviewing voluminous discovery produced by Respondents, engaging a royalty accounting and title examination expert; briefing other issues raised by Respondents; and participating in other telephonic hearing with myself and the Respondents.

13. I found an award to Class Counsel based on a percentage of the Settlement Fund was an appropriate method for awarding attorneys' fees to Class Counsel and is favored under Colorado law. *Brody v. Hellman*, 167 P.3d 192, 205-207 (Colo. App. 2007). The rationale for awarding a percentage of the fund to attorneys in a common fund case is the same as the rationale for permitting contingent fee arrangements in general. *Id.* The size of the contingent fee seeks to be greater than the reasonable value of the services or the hours worked multiplied by the hourly rate to recognize the fact attorneys will realize no return for their investment of time and expenses in cases they lose. Because payment turns on receiving a favorable result for the class, attorneys should be compensated for services rendered and the risks of loss or nonpayment. *Id.* at 201.

14. Class Counsel also requested an order for the reimbursement of the litigation expenses they had incurred through the arbitration hearing and will incur through the distribution of the Final

Award in the amount of one hundred thirty thousand one hundred eighteen dollars and fifty cents ($130,118.50). In my Final Award, I found that Class Counsel had properly provided detailed and adequate supporting documentation for their requested litigation expenses. I found Class Counsels' supporting affidavit established the litigation expenses they incurred and would incur throughout the distribution of the award were reasonable in amount and were necessarily incurred by Class Counsel in the prosecution of this class action arbitration. All litigation expenses for which Class Counsel seek reimbursement are the type of expenses typically billed by attorneys to paying clients in the marketplace. I, therefore, found Class Counsels' request for reimbursement of litigation expenses was reasonable and approved the same.

15. Class Counsel also requested I approve two incentive award payments to the named Claimants Kenneth and Vanda Vaughters, and David and Sandra Conner as Co-Trustees of the Sandra K. Conner Trust. Courts have recognized incentive awards are an efficient and productive way of encouraging class members to become class representatives and award individual efforts taken on behalf of the class. *Ryskamp v. Loony*, 2012 WL 3397362, *6 (D. Colo. 2012); *Hadix v. Johnson*, 322 F.3d 895-97 (6th Cir. 2003); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2003). The factors which I should consider in determining an incentive award include: (1) the actions the named plaintiff has taken to protect the interests of the class; (2) how much the class has benefited from those actions; and (3) the time and effort the named plaintiff expended in pursuing the litigation. *Ryskamp*, 2012 WL 3397362, at *6; *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 250 (S.D. Ohio 1991); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995).

16. In my Final Award, I found the proposed incentive award for named Claimants Kenneth and Vanda Vaughters in the amount of $500 and an incentive award for the named Claimants

David and Sandra Conner as Co-Trustees of the Sandra K. Conner Trust and the David C. Conner Trust in the amount of $5,000 were reasonable and awarded the same.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. Based on the evidence presented, I find that the Class Settlement Agreement is fair, reasonable, and adequate.

2. Within twenty-one days (21) days of the date of this order approving the Class Settlement Agreement, Crestone is to deposit into the trust account of Barton and Burrows, LLC ("Class Counsel") a total of five million one hundred thousand dollars ($5,100,000.00). The Settlement Fund represents payment to the Claimants and the class in order to resolve all claims asserted against Crestone in this arbitration, including the damages awarded in the Final Award, through the date of this Order, all as more particularly set forth in the Parties' Class Settlement Agreement.

3. Within three (3) days of their receipt of the payment of the Settlement Fund into their trust account, Class Counsel shall file a satisfaction of award in this Arbitration. s

4. Pursuant to the Colorado Court of Appeals decision in *EnCana Oil and Gas (USA), Inc. v. Miller*, 405 P.3d 488 (Colo. App. 2017) and the Arbitrator's prior orders in this arbitration, Claimants assert, and Crestone does not contest, that no additional notice of the Class Settlement Agreement will be sent to the Class Members. I find, consistent with the 2017 Court of Appeals decision and my prior orders in this arbitration, that the class was provided notice of the Miller Settlement Agreement and given the opportunity to opt-out of the Miller Settlement Agreement. (Colorado Court of Appeal Case No. 08CA231). I also understand that the 2008 Miller Settlement Agreement was intended to effectively bind all successors in interest to the Class Leases for the life of the Class Leases. *Miller*, 405 P.3d 493-94. Accordingly, I find that no additional notice of

this Class Settlement Agreement is necessary or required because the Class Settlement Agreement simply seeks to enforce existing rights under the Miller Settlement Agreement.

5. In accordance with the Class Settlement Agreement, Crestone shall bear its own fees and costs. Crestone will have no obligation to bear the fees, costs, or expenses of the class or Class Counsel.

6. Consistent with my Final Award, Class Counsel are awarded attorneys' fees in the amount two million forty thousand dollars ($2,040,000.00) to be distributed from the Settlement Funds.

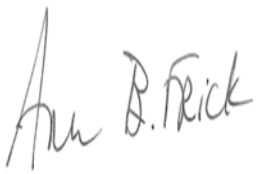
7. Class Counsel are awarded the sum of one hundred thirty thousand one hundred eighteen dollars and fifty cents ($130,118.50) in litigation expenses which Class Counsel have advanced or will incur throughout the conclusion of this Arbitration, including the distribution of the net Settlement Funds.

8. A $500 incentive award to Claimants Kenneth and Vanda Vaughters is hereby approved.

9. A $5,000 incentive award to Claimants David and Sandra Conner as Co-Trustees of the Sandra K. Conner Trust.

10. The Declaratory Judgement Order is amended consistent with the parties' request and Crestone is ordered within thirty (30) days to file the same with the Clerk and Recorder's office of Weld County, consistent with the Class Settlement Agreement.

IT IS SO ORDERED.



Dated: September 5, 2023.

Ann B. Frick
Arbitrator