

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

CHIEFTAIN ROYALTY COMPANY,)

Plaintiff,)

v.)

Case No. 6:11-cv-00029-KEW

XTO ENERGY INC.,)

Defendant.)

INITIAL PLAN OF ALLOCATION ORDER

Having held a Final Fairness Hearing in this Action on March 26, 2018, in which the Court fulfilled its duties to consider objections and independently evaluate the fairness, reasonableness, and adequacy of the Settlement, and having thereafter finally approved the Settlement, the Court now enters this Initial Plan of Allocation Order to instruct the Parties and the Settlement Administrator on the manner in which the Net Settlement Fund shall be allocated and distributed to Class Members.¹ The Court finds, orders, and adjudges that the methodology set forth below (the “Allocation Methodology”) is fair, reasonable, and adequate and in the best interest of the Settlement Class. Accordingly, the Court hereby orders that, once the Judgment becomes final and non-appealable, the Parties and the Settlement Administrator are to promptly carry out the terms of this Order and submit a Final Plan of Allocation for distribution of the Net Settlement Fund as follows:

1. Subject to the jurisdiction of the Court, the Settlement Administrator shall administer the Settlement under Class Counsel’s supervision in accordance with this Initial Plan of Allocation Order and the Settlement Agreement. Class Counsel and Defendant shall cooperate

¹ All capitalized terms not otherwise defined in this Order shall have the same meanings ascribed to them in the Settlement Agreement.

in the administration of the Settlement to the extent reasonably necessary to effectuate its terms. The Net Settlement Fund shall be distributed to Class Members according to this Order. The Court reserves the right to modify this Plan of Allocation Order upon application of any Party hereto, without further notice to any Class Members who have not entered an appearance herein. The allocation of the Net Settlement Fund among Class Members and the Allocation Methodology is a matter separate and apart from the proposed Settlement between Plaintiff and Defendant, and any decision by the Court concerning allocation and distribution of the Net Settlement Fund among Class Members shall not affect the validity or finality of the Settlement or operate to terminate or cancel this Settlement.

2. At such time as the Judgment becomes final and non-appealable, Plaintiff and Class Counsel will, as promptly as reasonably possible, but no later than 60 days after the Effective Date, file a Final Plan of Allocation with the Court, which will reflect the proportionate amount of the Net Settlement Fund to be paid to each Class Member pursuant to the Allocation Methodology. Plaintiff and Class Counsel will obtain the Court's approval of a list of the names, addresses and tax identification numbers of Class Members who have not opted-out and to whom Distribution Checks are to be mailed, along with the amounts of the Distribution Check for each such Class Member. If necessary, such list of names may be provided in stages for purposes of efficiently distributing the Net Settlement Fund. To the extent distributions may be made to the current operator of a well not currently operated by Defendant, for further distribution by the current operator, the list may show the distribution amount for the entire well that will be paid to the current operator for distribution by it. The Court specifically approves this method of distribution for wells not operated by Defendant. To the extent any of the foregoing information is unknown for any Class Members, despite reasonable commercial efforts to obtain it, the list may show that

such information is unknown. The names, addresses and amounts to be paid will be determined as described herein.

3. Class Counsel has allocated the estimated Net Settlement Fund based on the amount of monthly royalty underpayment to each Class Well and when that underpayment occurred. Those calculations accounted for the time delay of payment by applying statutory twelve percent (12%) interest compounded annually beginning with the last day of the applicable production month. The calculations were made with due regard for the production marketed by Defendant on behalf of itself and/or others, the amount and date of claimed royalty underpayment to Class Members, the time period when the claimed underpayment occurred and with regard for the benefit that royalty owners with interests in Class Wells connected to the Ardmore Loop have received as a result of this Litigation from Defendant's implementation of new procedures and policies for calculating and paying royalty. Utilizing this methodology, a proportionate share of the estimated Net Settlement Fund was allocated to each Class Well. The preliminary allocation of the Net Settlement Fund among Class Wells is shown on Exhibit 1 to this Order and is approved by this Court. It is understood that Exhibit 1 will be updated when all opt-outs and excluded owners are known and identified. Thereafter, Plaintiff and Class Counsel, with the aid of the Settlement Administrator, will then further allocate the amount allocated to the Class Wells on updated Exhibit 1 proportionately to Class Members in those Wells who have not been excluded or opted-out. The Settlement Administrator or any Party may seek to have the Court require any current operators in wells not operated by Defendant to distribute such funds to the appropriate royalty owners in the well. All such distributions will be subject to review and approval by Class Counsel, which shall not be unreasonably withheld, and the Court.

4. If a Distribution Check is returned to the Settlement Administrator for incorrect or

insufficient address, the Settlement Administrator and/or consultants working with the Settlement Administrator will use commercially reasonable methods to locate an updated address and will re-issue and re-mail the Distribution Check within 10 days. If the second Distribution Check is returned and the Class Member cannot be located through commercially reasonable efforts, the portion of the Net Settlement Fund attributable to that Class Member will remain in the Escrow Account for 60 days after the date the second Distribution Check was returned and, thereafter, will be considered Residual Unclaimed Funds that shall be paid to Defendant to be used to reimburse Defendant as described in paragraph 1.1 of the Settlement Agreement. Any remaining Residual Unclaimed Funds after reimbursing Defendant under paragraph 1.1 shall be paid pursuant to the provisions of paragraph 6.18 of the Settlement Agreement.

5. Included with each Distribution Check shall be an enclosure that contains the following notice (or, if a change is required by the Court, a notice substantially the same as the following):

TO: Class Member or Designated Royalty Distributor: The enclosed check represents a share of the net settlement fund in the settlement of the Class Action *Chieftain Royalty Company v. XTO Energy Inc.*, Case No. CIV-11-29-KEW, in the United States District Court for the Eastern District of Oklahoma. You are receiving this notice and check because: (1) you have been identified as a Class Member in this action, or (2) you are the designated royalty distributor of a well in which Defendant or a predecessor or assignee of Defendant, currently and/or in prior periods, marketed their own gas. If you are not legally entitled to the proceeds identified on the check, the Court has entered an Order that requires you to pay these proceeds to persons legally entitled thereto or return this check uncashed to the sender. If you are a designated royalty distributor, you are required to pay these proceeds to the current royalty owners in each of the wells identified on the check detail, and a copy of this notice should be included with the payment to each of the royalty owners.

The distribution described above to Class Members is based on the assumption that very few sales of royalty interests have occurred. It has also been assumed that where sales did occur, it was the intent of the parties that the buyer was entitled to receive payment for past claims. Finally, it has been assumed that where royalty interests passed through inheritance, devise, or interfamily transfers, that it was the intent that the heir, devisee, or transferee also receive payment for past claims. To

the extent these assumptions are not correct in relation to particular transfers of interest, the Court has ordered that the Class Member who receives payment shall in turn make payment to the proper party or return this check uncashed to the remitter of it. The person to whom this check was originally made payable, and anyone to whom the check has been assigned by that person, has accepted this payment pursuant to the terms of the Settlement Agreement, Notice of Settlement, and Judgment related thereto, which releases, Defendant, and the other Released Parties (as defined in the Settlement Agreement) from any and all Released Claims (as defined in the Settlement Agreement). Pursuant to the Order of the Court, it is the duty of the payee of the check to ensure that the funds are paid to the Class Member(s) entitled to the funds, and the release by Class Member(s) entitled to the funds shall be effective regardless of whether such Class Member(s) receive some, all, or none of the proceeds paid to a payee of a settlement check. This check shall be null and void if not endorsed and negotiated within ninety (90) days of its date. The release of claims provided in the Settlement shall be effective regardless of whether this check is cashed.

6. The Settlement Administrator will make a diligent effort to mail the first Distribution Checks within 90 days after the Effective Date and, within the subsequent 90 days, will mail the Distribution Checks representing 95% of the Net Settlement Fund (such percentage to be calculated based upon the amount of payments shown in the Final Plan of Allocation). The remainder of the Net Settlement Fund will be distributed to Class Members within 6 months after the Effective Date. Any portion of the Net Settlement Fund remaining in the Escrow Account 120 days after the Settlement Administrator sends the final wave of Distribution Checks will be considered Residual Unclaimed Funds that will be distributed first to Defendant pursuant to paragraph 1.1 of the Settlement Agreement and then pursuant to paragraph 6.18 of same.

7. The Settlement Administrator will use commercially reasonable efforts, subject to review and approval by Plaintiff's Counsel, to distribute the Net Settlement Fund. If the information needed to send a Distribution Check cannot be obtained through such efforts, the portion of the Net Settlement Fund attributable to such Class Member will remain in the Escrow Account as Residual Unclaimed Funds and shall be distributed first to Defendant pursuant to paragraph 1.1 of the Settlement Agreement and then pursuant to paragraph 6.18 of same.

8. Distributions will only be made based on the Final Plan of Allocation approved by the Court. It is contemplated that distributions may be made in a series of waves so that payments to readily identifiable Class Members are not unduly delayed.

9. Defendant, Defendant's Counsel, the Settlement Administrator, Plaintiff, and Plaintiff's Counsel shall have no liability to any Class Member for mispayments, over-payments, or under-payments of the Net Settlement Fund.

10. If any Class Member has been paid any portion of the Net Settlement Fund for any period of time for which that Class Member was not entitled to receive that payment, and some other person or entity who owned or claims they owned the right to assert the Released Claims and asserts a claim against any of the Released Parties for payment of all or a portion of the Net Settlement Fund or any other Released Claim, then the Class Member who received an excess share shall be liable for any overpayment amount to the person who is determined to have been properly owed that amount, and that Class Member shall indemnify, defend, and hold harmless any of the Released Parties, Plaintiff's Counsel, or any other Class Member.

11. Upon completing all distributions of the Net Settlement Fund to Class Members (including any necessary supplemental distributions), complying with the Court's order(s) in furtherance of this Settlement, and distributing the Residual Unclaimed Funds to Defendant, the Settlement Administrator will have satisfied all obligations relating to the payment and distribution of the Net Settlement Fund.

12. To the extent not specifically addressed above, any other amount of the Net Settlement Fund that remains in the Escrow Account 100 days after the Settlement Administrator sends the final wave of Distribution Checks and for which further distribution is not economically reasonable, shall be considered Residual Unclaimed Funds.

13. Within 100 days after the Settlement Administrator sends the final wave of Distribution Checks, the Settlement Administrator shall send a reconciliation of the amount remaining in the Escrow Account to Defendant and Plaintiff's Counsel, and Plaintiff submit applications to the Court to distribute such funds pursuant to the terms of the Settlement Agreement. The reconciliation must include (i) a detail of each distribution made from the Escrow Account; (ii) the total Residual Unclaimed Funds and detail sufficient to verify that total; and (iii) detail showing the total amount of the Administration, Notice, and Distribution Costs paid from the Escrow Account. The Settlement Administrator must pay the Residual Unclaimed Funds due Defendant no later than 5 business days after receiving Court approval to do so. Any Residual Unclaimed Funds remaining in the Escrow Account after distribution has otherwise been completed, and after Defendant has been reimbursed for Administration, Notice, and Distribution Costs it paid to the Escrow Account as provided in paragraph 1.1 of the Settlement Agreement, shall be distributed by the Settlement Administrator in the following manner: one-half (1/2) of any remaining Residual Unclaimed Funds shall revert back to Defendant, and the remaining one-half (1/2) of any Residual Unclaimed Funds shall be deposited into a *cy pres* fund for distribution as determined by Plaintiff's Counsel upon Court approval.

14. The Court shall retain jurisdiction to determine any issues relating to the payment and distribution of the Net Settlement Fund, and any claims relating thereto shall be determined by the Court alone, and shall be limited to a determination of the claimant's entitlement to any portion of the Net Settlement Fund, and no consequential, punitive, or other damages; fees; interest; or costs shall be awarded in any proceeding regarding any such determination.

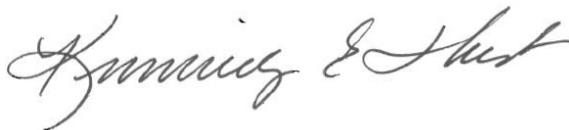
15. The Mutual Release, Dismissal, and Covenant Not to Sue shall be effective as provided in the Settlement Agreement, regardless of whether or not particular members of the

Settlement Class did or did not receive payment from the Net Settlement Fund and regardless of whether or not any Class Member who was obligated pursuant to the Judgment to pay some or all of the distributed funds to another Class Member in fact made such payment to such other member of the Settlement Class. The failure of a Class Member to make payment to another Class Member pursuant to the payment obligations of the Judgment shall not be a defense to enforcement of the Release of the Released Claims against the Released Parties or the Covenant Not to Sue, as to any Class Member.

16. Except in the case of willful and intentional malfeasance of a dishonest nature directly causing such loss, Plaintiff's Counsel, Plaintiff, and the Settlement Class shall have no liability for loss of any portion of the Escrow Account under any circumstances and, in the event of such malfeasance, only the party whose malfeasance directly caused the loss has any liability for the portion of the Escrow Account lost.

IT IS SO ORDERED.

Dated this 27th day of March, 2018.



KIMBERLY E. WEST
UNITED STATES MAGISTRATE JUDGE