

proposed Settlement of the Litigation. In accordance with the Settlement Agreement, Plaintiff now presents the Settlement to the Court for preliminary approval under Federal Rule of Civil Procedure 23.

After reviewing the pleadings and Plaintiff's Motion to Certify the Class for Settlement Purposes, Preliminarily Approve Class Action Settlement, Approve Form and Manner of Notice, and Set Date for Final Fairness Hearing ("Motion for Preliminary Approval") and Plaintiff's Memorandum of Law in Support thereof, the Court has preliminarily considered the Settlement to determine, among other things, whether the Settlement warrants the issuance of notice to the Settlement Class. Upon reviewing the Settlement and the Motion for Preliminary Approval, it is hereby **ORDERED, ADJUDGED AND DECREED** as follows:

1. For purposes of this Order, the Court adopts all defined terms as set forth in the Settlement Agreement unless otherwise defined herein.
2. The Court finds the Settlement Class should be certified for the purposes of this Settlement. The Class meets all certification requirements of Federal Rule of Civil Procedure 23 for a settlement class.

The certified Settlement Class is defined as follows:

All non-excluded persons or entities who are or were royalty owners in Oklahoma wells where Defendant, including its predecessors or affiliates, is or was the operator or, as a non-operator, Defendant separately marketed gas. The Class Claims relate only to royalty payments for gas and its constituents (including helium, residue gas, natural gas liquids, nitrogen and condensate) produced from such wells from May 1, 2002 through production month May 31, 2017. The Class does not include overriding royalty owners or other owners who derive their interest through the oil and gas lessee.

The persons, entities, and claims excluded from the Class are: (1) agencies, departments or instrumentalities of the United States of America and the State of Oklahoma; (2) publicly traded oil and gas

exploration companies and their affiliates; (3) the claims of royalty owners in Defendant wells gathered by Timberland Gathering & Processing Co. Inc. and processed at the Tyrone Plant that were the subject of the action styled *Fankhouser, et al. v XTO Energy, Inc.*, Case No. CIV-07-798-L USDC WD OK (formerly *Beer et al. v XTO*), which was previously settled and all claims fully released; (4) the claims of royalty owners that were previously released by settlement in the case styled *Booth v Cross Timbers Oil Co*, Case No. CJ-98-016, District Court for Dewey County, OK, which was previously settled and all claims fully released; (5) persons or entities that Plaintiff's Counsel are, or may be, prohibited from representing under Rule 1.7 of the Oklahoma Rules of Professional Conduct, including, but not limited to Charles David Nutley and Danny George (who Plaintiff's Counsel cannot represent because such representation would create a concurrent conflict of interest); and (6) officers of the Court.

3. The Court finds the above-defined Class satisfies all prerequisites of Federal Rule of Civil Procedure 23(a) for purposes of the proposed class settlement:

a. Numerosity. Plaintiff has demonstrated “[t]he class is so numerous that joinder of all members is impracticable.” FED. R. CIV. P. 23(a)(1). The Tenth Circuit has not adopted a set number as presumptively sufficient to meet this burden, and there is “no set formula to determine if the class is so numerous that it should be so certified.” *Trevizo v. Adams*, 455 F.3d 1155, 1162 (10th Cir. 2006). Whether a class satisfies the numerosity requirement is “a fact-specific inquiry” that district courts have “wide latitude” when determining. *In re Cox Enters., Inc.*, No. 12-ML-2048-C, 2014 U.S. Dist. LEXIS 2459, *13 (W.D. Okla. Jan. 9, 2014) (quoting *Trevizo*, 455 F.3d at 1162). Here, the Settlement Class consists of thousands of royalty owners. Therefore, the Court finds the numerosity prerequisite is undoubtedly met.

b. Commonality. Plaintiff has also demonstrated “[t]here are questions of law or fact common to the class.” FED. R. CIV. P. 23(a)(2).

c. Typicality. Plaintiff has also shown “[t]he claims or defenses of the representative parties are typical of the claims or defenses of the class.” FED. R. CIV. P. 23(a)(3).

d. Adequacy. Plaintiff and Plaintiff’s Counsel have demonstrated “[t]he representative parties will fairly and adequately protect the interests of the class.” FED. R. CIV. P. 23(a)(4).

In addition, because the Court finds Plaintiff, Chieftain Royalty Company, and Plaintiff’s Counsel Nix, Patterson & Roach, LLP, Barnes & Lewis, LLP and Gunderson Sharp, LLP (n/k/a Rex A. Sharp, P.A. and Gunderson Law, P.C.) to be adequate representatives of the Settlement Class, the Court hereby appoints Plaintiff as Class Representative; Plaintiff’s Counsel Nix, Patterson & Roach, LLP; Barnes & Lewis, LLP; and Gunderson Sharp, LLP (n/k/a Rex A. Sharp, P.A. and Gunderson Law, P.C.) as Settlement Class Counsel; and Plaintiff’s Counsel Whitten Burrage; and Richards & Connor, PLLP as liaison local counsel for the Settlement Class.

4. The Court also finds the requirements of Federal Rule of Civil Procedure 23(b)(3) are met:

a. Predominance. Class Representative has shown “questions of law or fact common to the members of the class predominate over any questions affecting only individual members.” FED. R. CIV. P. 23(b)(3).

b. Superiority. Class Representative has also established “that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.” FED. R. CIV. P. 23(b)(3).

In sum, the Court finds all prerequisites and requirements of Federal Rule of Civil

Procedure 23(a)-(b) are satisfied, and the Settlement Class is hereby certified for the purposes of this Settlement.

5. The Court preliminarily finds (i) the proposed Settlement resulted from extensive arm's-length negotiations; (ii) the proposed Settlement was agreed to only after Class Counsel had conducted legal research and discovery regarding the strengths and weakness of Class Representative and the Class' claims; (iii) Class Representative and Class Counsel have concluded that the proposed Settlement is fair, reasonable, and adequate; and (iv) the proposed Settlement is sufficiently fair, reasonable, and adequate to warrant sending notice of the proposed Settlement to the Settlement Class.

6. Having considered the essential terms of the Settlement under the recognized standards for preliminary approval as set forth in the relevant jurisprudence, the Court preliminarily approves the Settlement, subject to the right of any member of the Settlement Class to challenge the fairness, reasonableness, and adequacy of the Settlement, Settlement Agreement, Allocation Methodology, or proposed Initial Plan of Allocation (or any other Plan of Allocation), and to show cause, if any exists, why a Final Judgment dismissing the Action based on the Settlement Agreement should not be ordered after adequate notice to the Settlement Class has been given in conformity with this Order. As such, the Court finds that those Settlement Class Members whose claims would be settled, compromised, dismissed, and released pursuant to the Settlement should be given notice and an opportunity to be heard regarding final approval of the Settlement and other matters.

7. The Court further preliminarily approves the form and content of the proposed Notice and the proposed Summary Notice, which are attached to the Settlement Agreement as Exhibits 3 and 4, respectively, and finds the Notice and Summary Notice are the best notice

practicable under the circumstances, constitute due and sufficient notice to all persons and entities entitled to receive such notice, and fully satisfy the requirements of applicable laws, including due process and Federal Rule of Civil Procedure 23. The Court finds the form and content of the Notice and Summary Notice fairly and adequately: (i) describe the terms and effect of the Settlement; (ii) notify the Class that Class Counsel will seek attorneys' fees, reimbursement of Litigation Expenses, and a Case Contribution Award for Class Representative's services; (iii) notify the Class of the time and place of the Final Fairness Hearing; (iv) describe the procedure for requesting exclusion from the Settlement; and (v) describe the procedure for objecting to the Settlement or any part thereof.

8. The Court also preliminarily approves the proposed manner of communicating the Notice and Summary Notice to the Class, as set out below, and finds that it is the best notice practicable under the circumstances, constitutes due and sufficient notice to all persons and entities entitled to receive such notice, and fully satisfies the requirements of applicable laws, including due process and Federal Rule of Civil Procedure 23:

a. No later than February 12, 2018, the Settlement Administrator will mail (or cause to be mailed) the Notice of Settlement by first class mail to all potential Class Members who have been identified after reasonable efforts to do so. The Notice of Settlement will be mailed to potential Class Members using the royalty paydeck data described in paragraph 3.3 of the Settlement Agreement and any updated addresses found by the Settlement Administrator. For wells currently operated by Defendant, the Notice of Settlement will be mailed to Class Members using Defendant's approximate July 2017 royalty paydeck data. For non-operated wells where Defendant separately marketed gas, the Settlement Administrator will mail the Notice of Settlement based on reasonably

current royalty owner names and addresses available from the well operator. For wells that have been sold or are no longer producing, the Settlement Administrator will mail the Notice of Settlement to the last known royalty owners based on electronic data available to Defendant. The Settlement Administrator will also publish the summary form of the Notice of Settlement as described below. It is not reasonable or economically practical for the Settling Parties to do more to determine the names and addresses of Class Members.

b. No later than February 12, 2018, the Settlement Administrator also shall publish (or cause to be published) the summary Notice of Settlement one time in each of the following newspapers: (1) *The Oklahoman*, a paper of general circulation in Oklahoma; (2) *The Tulsa World*, a paper of general circulation in Oklahoma; (3) *The Daily Ardmoreite*, a paper of local circulation; (4) *The Fairview Republican*, a paper of local circulation; (5) *The McAlester News Capital & Democrat*, a paper of local circulation; and (6) *The Holdenville Tribune*, a paper of local circulation.

c. Within 10 days after mailing the first Notice of Settlement and through the Final Fairness Hearing, the Settlement Administrator will also display (or cause to be displayed) on an Internet website dedicated to this Settlement the following documents: (1) the Notice of Settlement, (2) the Petition and Answer, (3) the Settlement Agreement, and (4) the Preliminary Approval Order.

d. Defendant shall bear Administration, Notice, and Distribution Costs up to \$750,000.00 in accordance with the Settlement Agreement. The Gross Settlement Fund shall bear any Administration, Notice, and Distribution Costs exceeding \$750,000.00.

9. Class Counsel is authorized to act on behalf of the Settlement Class with respect

to all acts required by, or which may be given pursuant to, the Settlement Agreement, or such other acts that are reasonably necessary to consummate the proposed Settlement set forth in the Settlement Agreement.

10. The Court appoints JND Legal Administration to act as Settlement Administrator and perform the associated responsibilities set forth in the Settlement Agreement. The Settlement Administrator will receive and process any Requests for Exclusion and, if the Settlement is finally approved by the Court, will supervise and administer the Settlement in accordance with the Settlement Agreement, the Judgment, and the Court's Plan of Allocation order(s) authorizing distribution of the Net Settlement Fund to Class Members. The Parties and their counsel shall not be liable for any act or omission of the Settlement Administrator.

11. The Court appoints Citibank as the Escrow Agent. The Escrow Agent is authorized and directed to act in accordance with the Settlement Agreement, Supplemental Agreements, and Escrow Agreement. Except as set forth in paragraph 6.21 of the Settlement Agreement, the Parties and their counsel shall not be liable for any act or omission of the Escrow Agent for the funds placed in the Escrow Account.

12. Pursuant to Federal Rule of Civil Procedure 23(e), a Final Fairness Hearing shall be held on March 26, 2018 at 9:00 A.M. in the United States District Court for the Eastern District of Oklahoma, the Honorable Kimberly E. West presiding, to:

- a. determine whether the Settlement should be approved by the Court as fair, reasonable, and adequate and in the best interests of the Class;
- b. determine whether the notice method utilized: (i) constituted the best practicable notice under the circumstances; (ii) constituted notice reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Litigation, the

Settlement, their right to exclude themselves from the Settlement, their right to object to the Settlement, and their right to appear at the Final Fairness Hearing; (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons and entities entitled to such notice; and (iv) met all applicable requirements of the Federal Rules of Civil Procedure and any other applicable law;

c. determine whether a Judgment should be entered pursuant to the Settlement Agreement, *inter alia*, dismissing the Litigation against Defendant with prejudice and extinguishing, releasing, and barring all Released Claims against all Released Parties in accordance with the Settlement Agreement;

d. determine the proper method of allocation and distribution of the Net Settlement Fund among Class Members who are not excluded from the Settlement Class by virtue of a timely and properly submitted Request for Exclusion or other order of the Court;

e. determine whether the applications for Plaintiff's Attorneys' Fees, reimbursement for Litigation Expenses, and a Case Contribution Award to Class Representative are fair and reasonable and should be approved; and

f. rule on such other matters as the Court may deem appropriate.

13. The Court reserves the right to adjourn, continue, and reconvene the Final Fairness Hearing, or any aspect thereof, including the consideration for the application of attorneys' fees and reimbursement of Litigation Expenses, without further notice to the Settlement Class and to approve the Settlement at or after the Final Fairness Hearing without further notice to the Settlement Class. The Settlement Administrator will update the website

maintained pursuant to paragraph 8(c) of this Order to reflect the current information about the date and time for the Final Fairness Hearing.

14. Class Members wishing to exclude themselves from the Settlement Class pursuant to Federal Rule of Civil Procedure 23(e)(4) must submit to the Settlement Administrator a valid and timely Request for Exclusion. Requests for Exclusion must include: (i) the Class Member's name, address, telephone number, and notarized signature; (ii) a statement that the Class Member wishes to be excluded from the Settlement Class in *Chieftain Royalty Company, et.al. v. XTO Energy Inc.*, Case No. CIV-11-29-KEW (E.D. Okla.); and (iii) a description of the Class Member's interest in any Oklahoma wells where Defendant, including its predecessors or affiliates, is or was the operator or, as a non-operator, Defendant separately marketed gas, including the name, well number, county in which the well is located, and the owner identification number. Requests for Exclusion must be filed with the Court and served on the Settlement Administrator, Defendant's Counsel, and Plaintiff's Counsel by certified mail, return receipt requested and received no later than 5 p.m. CDT on March 5, 2018. Requests for Exclusion may be mailed as follows:

The Court

Clerk of the Court
United States District Court for the Eastern District of Oklahoma
101 North 5th Street
Muskogee, Oklahoma 74401

Class Counsel:

Bradley E. Beckworth
NIX PATTERSON & ROACH LLP
3600 N Capital of Texas Hwy.
Suite 350, Building B
Austin, TX 78746

Defendant's Counsel:

Jeffrey C. King
WINSTEAD, PC
300 Throckmorton, Ste 1700
Fort Worth, TX 76102

Requests for Exclusion may not be submitted through the website or by phone, facsimile, or email. Any Class Member that has not timely and properly submitted a Request for Exclusion shall be included in the Settlement and shall be bound by the terms of the Settlement Agreement if the Court finally approves the Settlement.

15. Any Class Member who wishes to object to the fairness, reasonableness, or adequacy of the Settlement, any term of the Settlement, the Allocation Methodology, the Initial Plan of Allocation, the request for Plaintiff's Attorneys' Fees and Litigation Expenses, or the proposed request for a Case Contribution Award to Class Representative may file an objection. An objector must file with the Court and serve upon Plaintiff's Counsel and Defendant's Counsel a written objection containing the following: (i) a heading referring to *Chieftain Royalty Company v. XTO Energy Inc.*, Case No. CIV-11-29-KEW, and to the United States District Court for the Eastern District of Oklahoma; (ii) a statement as to whether the objector intends to appear at the Final Fairness Hearing, either in person or through counsel, and, if through counsel, identifying counsel by name, address, email address and telephone number; (iii) a detailed statement of the specific legal and factual basis for each and every objection; (iv) a list of any witnesses the objector wishes to call at the Final Fairness Hearing, together with a brief summary of each witness's expected testimony (to the extent the objector desires to offer expert testimony and/or an expert report, any such evidence must fully comply with the Federal Rules of Civil Procedure, Federal Rules of Evidence, and the Local Rules of the Court); (v) a list of and copies of any exhibits the objector may seek to use at the Final Fairness Hearing; (vi) a list of any legal authority the objector may present at the Final Fairness Hearing; (vii) the objector's name, current address, current telephone number, all royalty owner identification numbers with Defendant (or other operator), (viii) the objector's signature executed before a Notary Public;

(ix) identification of the objector's interest in wells where Defendant, including its predecessors or affiliates, is or was the operator or, as a non-operator, Defendant separately marketed gas (by well name, payee well number, and county in which the well is located) during the Class Period; and (x) If the objector is objecting to any portion of Plaintiff's and Plaintiff's Counsel's requested attorneys' fees, Litigation Expenses, or Case Contribution Award, the objector must specifically state the portion of attorneys' fees, Litigation Expenses, and/or Case Contribution Award (whichever applies to the objection) that he/she believes is fair and reasonable and the portion that is not. Such written objections must be filed with the Court and served on Plaintiff's Counsel and Defendant's Counsel via certified mail return receipt requested, and received no later than 5:00 p.m. CDT on March 8, 2018 at the addresses set forth in paragraph 14 above. Any Class Member who fails to timely file and serve such written statement and provide the required information will not be permitted to present any objections at the Final Fairness Hearing and such failure will render any such attempted objection untimely and of no effect. All presentations of objections will be further limited by the information listed. Either or both Party's Counsel may file any reply or response to any objections no later than March 22, 2018. The procedures set forth in this paragraph do not supplant, but are in addition to, any procedures required by the Federal Rules of Civil Procedure.

16. Any objector who timely files and serves a valid written objection in accordance with the above paragraph may also appear at the Final Fairness Hearing, either in person or through qualified counsel retained at the objector's expense. Objectors or their attorneys intending to present any objection at the Final Fairness Hearing must comply with the Local Rules of this Court in addition to the requirements set forth in paragraph 15 above.

17. No later than 5:00 p.m. CDT on February 26, 2018, if the Settlement has not been terminated pursuant to this Settlement Agreement or Supplemental Agreement 1, Plaintiff's Counsel and Plaintiff shall move for: (a) final approval of the Settlement pursuant to Federal Rule of Civil Procedure 23(e); (b) entry of a Judgment in substantially the same form as Exhibit 2; (c) final approval of the Allocation Methodology and Initial Plan of Allocation; and (d) attorneys' fees, reimbursement of Litigation Expenses, and/or a Case Contribution Award.

18. If the Settlement is not approved by the Court, is terminated in accordance with the terms of the Settlement Agreement, or otherwise does not become Final and Non-Appealable for any reason whatsoever, the Settlement, Settlement Agreement, and any actions taken or to be taken in connection therewith (including this Order and any Judgment entered herein), shall be terminated and become void and of no further force and effect as described in the Settlement Agreement (including, but not limited to paragraph 9.4 of the Settlement Agreement). Any obligations or provisions relating to the refund of Plaintiff's Attorney's Fees, Litigation Expenses, the payment of Administration, Notice, and Distribution Costs already incurred, and any other obligation or provision in the Settlement Agreement or Supplemental Agreements that expressly pertains to the termination of the Settlement or events to occur after the termination, shall survive termination of the Settlement Agreement and Settlement.

19. All proceedings in the Litigation, other than such proceedings as may be necessary to carry out the terms and conditions of the Settlement, are hereby stayed and suspended until further order of this Court. Pending final approval of the Settlement, Class Representative and all Class Members are barred, enjoined, and restrained from commencing, prosecuting, continuing, or asserting in any forum, either directly or indirectly, on their own behalf or on the behalf of any other person or class, any Released Claim against Released Parties.

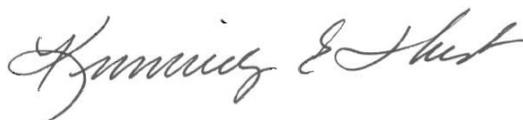
20. Entering into or carrying out the Settlement Agreement, and any negotiations or proceedings related thereto, is not, and shall not be construed as, or deemed to be evidence of, an admission or concession by any of the Parties to the Settlement Agreement and shall not be offered or received in evidence in any action or proceeding by or against any Party in any court, administrative agency, or other tribunal for any purpose whatsoever other than to enforce the provisions of the Settlement between Defendant and any Class Member(s), the provisions of the Settlement Agreement, or the provisions of any related agreement, order, judgment or release. This Order shall not be construed or used as an admission, concession, or declaration by or against the Defendant of any fault, wrongdoing, breach, or liability, or the propriety of maintaining this Litigation as a contested class action and Defendant specifically denies any such fault, wrongdoing, breach, liability, and allegation regarding certification. This Order shall not be construed or used as an admission, concession, or declaration by or against Class Representative or the Settlement Class that their claims lack merit or that the relief requested in the Litigation is inappropriate, improper, or unavailable. This Order shall not be construed or used as an admission, concession, declaration, or waiver by any party of any arguments, defenses, or claims he, she, or it may have with respect to the Litigation in the event the Settlement is terminated. Moreover, the Settlement and any proceedings taken pursuant to the Settlement are for settlement purposes only.

21. The Court, along with any appellate court with power to review the Court's orders and rulings in the Litigation, hereby retains exclusive and continuing jurisdiction over this Litigation to consider all further matters arising out of or connected with the Settlement reflected in the Settlement Agreement, including enforcement of the releases provided for in the Settlement Agreement. The Court, along with any appellate court with power to review the

Court's orders and rulings in the Litigation, also hereby retains exclusive and continuing jurisdiction over this Litigation to administer all other matters related to the enforcement of the Settlement Agreement and Settlement and the orders of the Court related thereto.

22. The Court may, for good cause shown, extend any of the deadlines set forth in this Order without further written notice to the Settlement Class.

IT IS SO ORDERED this 18th day of January, 2018.



Kimberly E. West
UNITED STATES MAGISTRATE JUDGE

APPROVED AS TO FORM

CLASS COUNSEL:

/s/Bradley E. Beckworth
Bradley E. Beckworth
bbeckworth@nixlaw.com
Jeffrey Angelovich
jangelovich@nixlaw.com
Susan Whatley
susanwhatley@nixlaw.com
Lisa Baldwin
lbaldwin@nixlaw.com
Trey Duck
tduck@nixlaw.com
NIX, PATTERSON & ROACH, LLP
3600 North Capital of Texas Highway
Suite 350, Building B
Austin Texas, 78746
(512) 328-5333
(512) 328-5335

Robert N. Barnes
rbarnes@barneslewis.com
Patranell Britten Lewis

plewis@barneslewis.com
BARNES & LEWIS, LLP
208 N.W. 60th Street
Oklahoma City, Oklahoma 73118
(405) 843-0363
(405) 843-0790

Michael Burrage
Mburrage@whittenburrage.com
WHITTEN BURRAGE
512 N. Broadway Ave.
Oklahoma City, OK 73102
(405) 516-7800
(405) 516-7859

Lawrence R. Murphy, Jr.
Lmurphy@richardsconnor.com
RICHARDS & CONNOR, PLLP
525 S Main St. 12th Floor
Tulsa, OK 74103
(918) 585-2394
(918) 585-1449

Rex A. Sharp
rsharp@midwest-law.com
Barbara Frankland
bfrankland@midwest-law.com
REX A. SHARP, P.A.
5301 West 75th St.
Prairie Village, KS 66208
(913) 901-0505
(913) 901-0419

Joseph R. Gunderson
Gunderson.joseph.r@gmail.com
GUNDERSON LAW, P.C.
321 W. Walnut St., Ste 300
Des Moines, IA 50309
(515) 865-4513

-and-

COUNSEL FOR XTO ENERGY, INC.:

/s/ Jeffrey C. King

Jeffrey C. King

Jking@winstead.com
WINSTEAD, PC
300 Throckmorton, Ste 1700
Fort Worth, TX 76102
(817) 420-8200
(817) 420-8201

Christopher A. Brown
Cabrown@winstead.com
WINSTEAD, PC
2728 N Harwood, Ste 500
Dallas, TX 75201
(214) 745-5400
(214) 745-5390

James C.T. Hardwick
Jhardwick@hallestill.com
Mark Banner
Mbanner@hallestill.com
HALL ESTILL HARDWICK GABLE GOLDEN & NELSON
320 S Boston Ave, Ste 200
Tulsa, OK 74103
(918) 594-0400
(918) 594-0505