

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

CHIEFTAIN ROYALTY COMPANY, )  
)  
Plaintiff, )  
v. )  
) Case No. CIV-11-29-KEW  
XTO ENERGY INC., )  
)  
Defendant. )  
)

**NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION**

*A court authorized this Notice. This is not a solicitation from a lawyer.*

***If you belong to the Settlement Class and this Settlement is approved, your legal rights will be affected. Read this Notice carefully to see what your rights and options are in connection with this Settlement.<sup>1</sup>***

Because you may be a member of the Settlement Class in the Litigation captioned above and described below (“the Litigation”), the Court has directed this Notice to be sent to you. Defendant XTO Energy Inc.’s (“Defendant” or “XTO”) records show payment to you of royalties on natural gas and its constituents (including helium, residue gas, natural gas liquids, nitrogen and condensate) produced from well(s) in Oklahoma that XTO operated or, as non-operator, XTO separately marketed the gas and its constituents. Capitalized terms not otherwise defined in this Notice shall have the meanings attributed to those terms in the Settlement Agreement referred to below and available at [www.chieftain-xto.com](http://www.chieftain-xto.com).

This Notice generally explains the claims being asserted in the Litigation, summarizes the Settlement, and tells you about your rights to remain in the Class or to timely and properly submit a Request for Exclusion (also known as an opt out) so that you will be excluded from the Settlement. This Notice provides information so you can decide what action you want to take with respect to the Settlement before the Court is asked to finally approve it. If the Court approves the Settlement and after the final resolution of any objections or appeals, the Court-appointed Settlement Administrator will issue payments to eligible Class Members, without any further action from you.

This Notice describes the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Settlement Class in the Litigation consists of the following individuals and entities:

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.

<sup>1</sup> This Notice summarizes the terms of the Settlement Agreement in this matter. Please refer to that Settlement Agreement for a complete description of the terms and provisions thereof. A copy of the Settlement Agreement is available at [www.chieftain-xto.com](http://www.chieftain-xto.com). The terms, conditions, and definitions in the Settlement Agreement qualify this Notice in its entirety.

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.

A preliminary list of Class Wells will be posted on the settlement website—[www.chieftain-xto.com](http://www.chieftain-xto.com). If you are unsure whether you are included in the Settlement Class, you may contact the Settlement Administrator at:

*Chieftain-XTO Settlement*  
c/o JND Legal Administration, Settlement Administrator  
P.O. Box 6878  
Broomfield, CO 80021

**TO OBTAIN THE BENEFITS OF THIS PROPOSED SETTLEMENT,**  
**YOU DO NOT HAVE TO DO ANYTHING.**

**I. General Information About The Litigation**

The Litigation seeks damages for Defendant's alleged underpayment of royalties to the royalty owners in the Class described above on Oklahoma wells where Defendant (or a predecessor or affiliate of Defendant) is or was the operator or, as a non-operator, Defendant (or a predecessor or affiliate of Defendant) separately marketed gas. Plaintiff Chieftain Royalty Company ("Plaintiff" or "Class Representative") alleges XTO breached an implied covenant to market in the underlying leases, breached an alleged fiduciary duty, violated the Production Revenue Standards Act, and committed fraud with respect to royalty payments for gas and its constituents (including helium, residue gas, natural gas liquids, nitrogen and condensate). These claims are premised on a variety of allegations, including but not limited to the allegations that Defendant: (1) made various deductions and reductions from royalty payments that should not have been made by deducting direct and indirect fees for marketing, gathering, transporting, compression, dehydration, processing, treatment, and other similar services before the gas and its constituents (including helium, residue gas, natural gas liquids, nitrogen, and condensate) was a "marketable product"; (2) not paying royalty on gas that was used off the lease premises or in the manufacture of products; (3) not paying royalty on drip condensate that dropped out of the gas stream; and (4) failing to provide to royalty payees all of the information required by statute.

Defendant expressly denies all allegations of wrongdoing or liability with respect to the claims and allegations in the Litigation. The Court has made no determination with respect to any of the parties' claims or defenses. A more complete description of the Litigation, its status, and the rulings made in the Litigation are available in the pleadings and other papers maintained by the United States District Court for the Eastern District of Oklahoma, located at 101 North 5th Street, Muskogee, Oklahoma 74401, in the file for Case No. CIV-11-29-KEW.

## **II. The Settlement, Attorneys' Fees, Expenses, Case Contribution Award, And The Settlement Allocation And Distribution To The Class**

On January 18, 2018, the Court preliminarily approved a Settlement in the Litigation between Plaintiff, on behalf of itself and the Settlement Class, and Defendant. This approval and this Notice are not an expression of opinion by the Court as to the merits of any of the claims or defenses asserted by any of the parties to the Litigation, or of whether the Court will ultimately approve the Settlement Agreement.

In settlement of all claims alleged in the Litigation, Defendant has agreed to pay \$80,000,000.00 in cash ("Gross Settlement Fund") plus, as a result of this Litigation, Defendant implemented new procedures and policies for calculating and paying royalty with respect to production on Class Wells connected to the Ardmore Loop that Plaintiff estimates and Defendant does not contest resulted in no less than \$60,000,000.00 already being paid to Class Members who own a royalty interest in the Class Wells connected to the Ardmore Loop. Defendant has also agreed to continue to implement these procedures and policies with respect to production on Class Wells connected to the Ardmore Loop, which Plaintiff estimates has a net present value of at least \$74,000,000.00 over the next ten years ("Future Benefits").

In exchange for the payment noted above and other consideration outlined in the Settlement Agreement, the Settlement Class shall release the Released Claims (as defined in the Settlement Agreement available for review and download at [www.chieftain-xto.com](http://www.chieftain-xto.com)) it has asserted and pursued against the Released Parties (as defined in the Settlement Agreement). The \$80,000,000.00 cash payment, \$60,000,000.00 already paid, \$74,000,000.00 Future Benefits, and \$750,000.00 paid by Defendant for Settlement administration, distribution, and notice costs is referred to collectively as the "Gross Settlement Value." The Gross Settlement Value provided through this Settlement is \$214,750,000.00. The Gross Settlement Fund, less attorneys' fees, Litigation Expenses, any Case Contribution Award, and other costs approved by the Court (the "Net Settlement Fund"), will be distributed to Class Members.

Counsel for Plaintiff ("Plaintiff's Counsel") intends to seek an award of attorneys' fees of 14.9% of the Gross Settlement Value, or \$32,000,000.00. Plaintiff's Counsel have been litigating this case for over ten years without any payment whatsoever, advancing millions of dollars in expenses. At the Fairness Hearing, Plaintiff's Counsel will also seek reimbursement of the Litigation Expenses incurred in connection with the prosecution of this Litigation and that will be incurred through final distribution of the Settlement, which amount will not exceed \$3,250,000.00 to be paid out of the Gross Settlement Fund. In addition, Plaintiff intends to seek a Case Contribution Award for its representation of the Class of 0.1047% of the Gross Settlement Value, or \$225,000.00.

The Court must approve the Allocation Methodology and Initial Plan of Allocation, which describe how Plaintiff's Counsel, with the assistance of the experts and consultants retained, will allocate the Net Settlement Fund to each Class Well and then to the royalty owners in that Class Well. A general description of that process follows: Plaintiff's Counsel will first allocate the Net Settlement Fund proportionately to each Class Well with due regard for: (i) the production marketed by XTO on behalf of itself and/or others; (ii) the amount and date of claimed royalty underpayment to Class Members; (iii) the time period when the claimed underpayment occurred; (iv) the substantial recovery and benefit that royalty owners with Class Wells connected to the Ardmore Loop have already received as a result of this Litigation from Defendant's implementation of new procedures and policies for calculating and paying royalty with respect to production from those wells and will continue to receive from Defendant's agreement to continue these procedures and policies in the future; and (v) the distribution of small amounts that exceed the cost of the distribution. Thereafter, subject to approval by the Court, Plaintiff's Counsel, with the assistance of the experts and consultants they retain, will allocate the Net Settlement Fund for each Class Well proportionately among all Class Members based on their royalty decimal interest in such well using XTO's approximate July 2017 royalty paydeck data for production month May 2017 (or a relatively recent and available royalty paydeck) or, in the case of Class Wells not currently operated by Defendant, the July 2017 paydeck for production month May 2017 (or other reasonably current and available royalty paydeck) to be obtained from the operator.

The distribution to current Class Members described above is based on the following assumptions: (a) that very few sales of royalty interests have occurred during the specified time period; (b) that, where sales did occur, the parties intended for the buyer to receive payment for past claims; and (c) that, where royalty interests passed

through inheritance, devise, or interfamily transfers, it was the intent that the heir, devisee or transferee receive the right to receive payment for claims based on past production.

The Net Settlement Fund will be distributed by the Settlement Administrator as soon as reasonably possible after final approval has been obtained for the Settlement, including the exhaustion of any appeals. Any appeal of final approval could take well in excess of one year. The Settlement may be terminated on several grounds, including if the Court does not approve or materially modifies the terms of the Settlement. If the Settlement is terminated, the Litigation will proceed as if the Settlement had not been reached.

This Notice does not and cannot set out all the terms of the Settlement Agreement, which is available for review and download at [www.chieftain-xto.com](http://www.chieftain-xto.com). This website will also include this Class Notice, a preliminary Class Well list when available, the Initial Plan of Allocation when available, and the Plaintiff's motions and briefs in support of attorneys' fees, Litigation Expenses, and Case Contribution Award. You may also receive information about the progress of the Settlement by visiting the website at [www.chieftain-xto.com](http://www.chieftain-xto.com), or by contacting the Settlement Administrator as set forth above.

### **III. Class Settlement Fairness Hearing**

The Final Fairness Hearing will be held on March 26, 2018 beginning at 9:00 a.m., before the Honorable Kimberly E. West, U.S. District Court Magistrate Judge assigned this case for the Eastern District of Oklahoma, in Muskogee, Oklahoma. Please note that the date of the Fairness Hearing is subject to change without further notice. You should check with the Court and [www.chieftain-xto.com](http://www.chieftain-xto.com) to be sure no change to the date and time of the hearing has been made.

At the Fairness Hearing, the Court will consider (a) whether the Settlement is fair, reasonable, and adequate; (b) any timely and properly raised objections to the Settlement; (c) the Allocation Methodology; (d) the Initial Plan of Allocation; and (e) the request for attorneys' fees and Litigation Expenses and request for Case Contribution Award for Plaintiff relating to its representation of the Class.

**A CLASS MEMBER WHO WISHES TO PARTICIPATE IN THE SETTLEMENT AND DOES NOT SUBMIT A VALID REQUEST FOR EXCLUSION DOES NOT NEED TO APPEAR AT THE FINAL FAIRNESS HEARING OR TAKE ANY OTHER ACTION TO PARTICIPATE IN THE SETTLEMENT.**

### **IV. What Are Your Options As A Class Member?**

#### **A. You Can Participate in the Class Settlement by Doing Nothing**

By taking no action, your interests will be represented by the Class Representative and Plaintiff's Counsel. As a Class Member, you will be bound by the outcome of the Settlement, if finally approved by the Court. The Class Representative and Plaintiff's Counsel believe that the Settlement is in the best interest of the Class, and, therefore, they intend to support the proposed Settlement at the Final Fairness Hearing. As a Class Member, if you are entitled to a distribution pursuant to the Allocation Methodology and Final Plan of Allocation, you will receive your portion of the Net Settlement Fund and will be bound by the Settlement Agreement and all orders and judgments entered by the Court regarding the Settlement. If the Settlement is approved, unless you exclude yourself from the Settlement Class, neither you nor any other Releasing Party will be able to start a lawsuit or arbitration, continue a lawsuit or arbitration, or be part of any other lawsuit against any of the Released Parties based on any of the Released Claims.

#### **B. You May Submit a Request for Exclusion to Opt Out of the Settlement Class**

If you do not wish to be a member of the Settlement Class, then you must exclude yourself from the Settlement Class by filing a written Request for Exclusion with the Court and mailing it to Plaintiff's Counsel and Defendant's Counsel at the addresses below and the Settlement Administrator at the address above by United States Certified Mail, Return Receipt Requested. The Request for Exclusion must state that you want to be excluded from the Settlement Class. Your statement must include your name, address, telephone number, and notarized signature, and **must be filed, served, and received by counsel and the Settlement Administrator no later than March 5, 2018 at 5 p.m. CDT**, and must also state:

(a) I want to exclude myself from the Settlement Class in *Chieftain v. XTO Energy Inc.*, Case No. CIV-11-KEW, U.S. District Court for the Eastern District of Oklahoma. I understand it will be my responsibility to pursue any claims I may have, if I so desire, on my own and at my expense.

(b) a description of your interest in 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 well name, well number, county in which the well is located, and the owner identification number.

**If you do not follow these procedures—including meeting the date for filing and serving a Request for Exclusion set out above—you will not be excluded from the Settlement Class, and you will be bound by all of the orders and judgments entered by the Court regarding the Settlement, including the release of claims.** You must exclude yourself even if you already have a pending case against any of the Released Parties based upon any Released Claims. You cannot exclude yourself on the website, by telephone, facsimile or by e-mail. If you validly request exclusion as described above, you will not receive any distribution from the Net Settlement Fund, you cannot object to the Settlement and you will not have released any claim against the Released Parties. You will not be legally bound by anything that happens in this lawsuit.

### **C. You May Remain a Member of the Settlement Class but Object to the Settlement, Allocation Methodology, Initial Plan of Allocation, Attorneys' Fees, Litigation Expenses, or Plaintiff's Case Contribution Award**

You have the right to remain a member of the Settlement Class but still object to the proposed Settlement and any terms thereof. Persons who desire to object to the Settlement, Allocation Methodology, Initial Plan of Allocation, and/or requests for attorneys' fees or reimbursement of Litigation Expenses or Case Contribution Award to Plaintiff, must file a written statement with the Court, and mail it to Plaintiff's Counsel and Defendant's Counsel stating that you object to the proposed Settlement.

The written objection must contain:

(a) 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;

(b) 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;

(c) A detailed statement of the specific legal and factual basis for each and every objection;

(d) 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);

(e) A list of and copies of any exhibits the objector may seek to use at the Final Fairness Hearing;

(f) A list of any legal authority the objector may present at the Final Fairness Hearing;

(g) The objector's name, current address, current telephone number, and all royalty owner identification numbers with Defendant (or other operator);

(h) The objector's signature executed before a Notary Public;

(i) 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

(j) 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.

Any Class Member that fails to timely file and mail such written statement and provide the required information will not be permitted to present any objections at the Final Fairness Hearing.

**Your written objection must be timely filed with the Court and served on Plaintiff's Counsel and Defendant's Counsel by certified mail, return receipt requested, and received at the addresses below no later than 5 p.m. CDT on March 8, 2018:**

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

**Plaintiff's Counsel:**  
Bradley E. Beckworth  
Nix, Patterson & Roach, LLP  
3600 N Capital of TX Hwy.  
Suite 250, Building B  
Austin, TX 78746

**Defendant's Counsel:**  
Jeffrey C. King  
Winstead, PC  
300 Throckmorton, Ste 1700  
Fort Worth, TX 76102

**UNLESS OTHERWISE ORDERED BY THE COURT, ANY SETTLEMENT CLASS MEMBER WHO DOES NOT OBJECT IN THE MANNER DESCRIBED HEREIN WILL BE DEEMED TO HAVE WAIVED ANY OBJECTION AND SHALL BE FOREVER FORECLOSED FROM MAKING ANY OBJECTON TO THE SETTLEMENT (OR ANY PART THEREOF), AND WILL NOT BE ALLOWED TO PRESENT ANY OBJECTIONS AT THE FINAL FAIRNESS HEARING.**

**D. You May Retain Your Own Attorney to Represent You at the Final Fairness Hearing**

You do not have to come to the Fairness Hearing. Plaintiff's Counsel will answer any questions the Court might have. But you are welcome to come at your own expense. You have the right to retain your own attorney to represent you at the Final Fairness Hearing. If you retain separate counsel, you will be responsible for his or her fees and expenses out of your own pocket.

**V. Availability of Filed Papers and More Information**

This Notice summarizes the Settlement. The complete terms of the Settlement are set out in the Settlement Agreement. As noted, you may obtain a copy of the Settlement Agreement, as well as other relevant documents, from the settlement website for free at [www.chieftain-xto.com](http://www.chieftain-xto.com) or you may request copies by contacting the Settlement Administrator as set forth above. In addition, the pleadings and other papers filed in this Action, including the Settlement Agreement, are available for inspection at the Office of the Clerk of the Court, set forth above, and may be obtained by the Clerk's office directly. The records are also available online for a fee through the PACER service at [www.pacer.gov/](http://www.pacer.gov/).

If you have any questions about this Notice, you may consult an attorney of your own choosing at your own expense or Plaintiff's Counsel.

**PLEASE DO NOT CONTACT THE JUDGE OR THE COURT CLERK ASKING FOR INFORMATION REGARDING THIS NOTICE.**