

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

DORSEY J. REIRDON,)	
)	
Plaintiff,)	
)	
v.)	Case No. 6:16-cv-00445-SPS
)	
CIMAREX ENERGY COMPANY)	
and CIMAREX ENERGY CO. OF)	
COLORADO,)	
)	
Defendants.)	

CLASS REPRESENTATIVE’S MOTION FOR FINAL APPROVAL

Class Representative, Dorsey J. Reirdon, on behalf of himself and all others similarly situated, respectfully files this Motion for Final Approval, and hereby moves the Court for final approval of the following:

1. Proposed class action Settlement;¹
2. Form and manner of the Notice sent to the Class; and
3. Proposed Plan of Allocation.

Class Representative bases this Motion on the Settlement Agreement, the applicable law, and all pleadings and records on file in this matter, which are respectfully incorporated by reference as if set forth fully herein. Class Representative also bases this Motion on his Memorandum of Law in Support of the Motion, which is filed contemporaneously herewith.

Class Representative’s Proposed Order and Judgment Granting Final Approval of Class

¹ All capitalized terms not otherwise defined herein shall have the meaning given to them in the October 10, 2019 Stipulation and Agreement of Settlement (“Settlement Agreement”), a copy of which is attached as Exhibit 1 to Plaintiff’s Memorandum of Law in Support of Plaintiff’s Motion to Certify the Settlement Class for Settlement Purposes, Preliminarily Approve Class Action Settlement, Approve Form and Manner of Notice and Set Date for Final Approval Hearing (Dkt. No. 107).

Action Settlement (“Final Approval Order”) is attached as Exhibit 1. Class Representative’s Proposed Plan of Allocation Order is attached hereto as Exhibit 2.

Class Representative respectfully requests the Court grant the relief listed above by entering the proposed Final Approval Order and the proposed Plan of Allocation Order, and grant any further relief to which the Court finds Class Representative and the Settlement Class entitled.

DATED: December 23, 2019.

Respectfully submitted,

s/ Bradley E. Beckworth

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CERTIFICATE OF SERVICE

I hereby certify that I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system, which will send email notification of such filing to all registered parties.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED: December 23, 2019.

/s/ Bradley E. Beckworth

Bradley E. Beckworth

EXHIBIT 1

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

DORSEY J. REIRDON,)
)
 Plaintiff,)
)
 v.) **Case No. 6:16-cv-00445-SPS**
)
 CIMAREX ENERGY COMPANY)
 and CIMAREX ENERGY CO. OF)
 COLORADO,)
)
 Defendants.)

**ORDER AND JUDGMENT GRANTING FINAL APPROVAL OF
CLASS ACTION SETTLEMENT**

This is a class action lawsuit brought by Plaintiff, Dorsey J. Reirdon, on behalf of himself and all others similarly situated (“Plaintiff”), against Cimarex Energy Co. and Cimarex Energy Co. of Colorado (“Defendants”) for their alleged underpayment of royalty on Fuel Gas to royalty owners who own interests in wells in Oklahoma that Defendants operate, or as non-operator, separately market the gas.¹ Specifically, Plaintiff alleges Defendants have used, caused to be used, and/or allowed third parties to use gas produced from the wells off the lease as fuel to power compressors and other machinery and equipment in gathering systems and/or gas plant operations without paying royalty thereon. On October 10, 2019, the Parties executed a Stipulation and Agreement of Settlement (the “Settlement Agreement”) (Dkt. No. 107-1) finalizing the terms of the Settlement.

On October 29, 2019, the Court preliminarily approved the Settlement and issued an Order Granting Preliminary Approval of Class Action Settlement, Certifying the Class for Settlement

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

Purposes, Approving Form and Manner of Notice, and Setting Date for Final Fairness Hearing (the “Preliminary Approval Order”) (Dkt. No. 111). In the Preliminary Approval Order, the Court,

inter alia:

- a. certified the Settlement Class for settlement purposes, finding all requirements of Federal Rule of Civil Procedure 23 have been satisfied, for settlement purposes only, with respect to the proposed Settlement Class; (Preliminary Approval Order at 3-4);
- b. appointed Plaintiff, Dorsey J. Reirdon, as Class Representative and the following law firms as Plaintiff’s Counsel: Nix Patterson, LLP and Barnes & Lewis, LLP as Class Counsel, and Whitten Burrage and Lawrence R. Murphy, Jr., as liaison local counsel for the Settlement Class (*id.* at 4);
- c. preliminarily found: (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 fact and expert discovery regarding the strengths and weaknesses of Class Representative’s and the Settlement 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 (*id.* at 5);
- d. preliminarily approved the Settlement as fair, reasonable, and adequate and in the best interest of the Settlement Class (*id.*);
- e. preliminarily approved the form and manner of the proposed Notice and Summary Notice to be communicated to the Settlement Class, finding specifically that such Notice and Summary Notice, among other information fairly and adequately: (i) described the terms and effect of the Settlement among other information; (ii) notified the Settlement Class of the time and place of the Final Fairness Hearing; (iii) described the options for requesting exclusion from the Settlement or objecting to the Settlement or any part thereof; (iv) directed potential Class Members to where they may obtain more detailed information about the Settlement (*id.* at 6);
- f. instructed the Settlement Administrator to disseminate the approved Notice to potential members of the Settlement Class, to publish the Summary Notice, and to display documents related to the Settlement on an Internet website in accordance with the Settlement Agreement and in the manner approved by the Court (*id.* at 7);
- g. provided for the appointment of a Settlement Administrator (*id.* at 8);
- h. provided for the appointment of an Escrow Agent (*id.* at 8);

- i. set the date and time for the Final Fairness Hearing as January 29, 2020 at 2:00 p.m. in the United States District Court for the Eastern District of Oklahoma (*id.* at 9); and
- j. set out the procedures and deadlines by which Class Members could properly request exclusion from the Settlement Class or object to the Settlement or any part thereof (*id.* at 10-11).

After the Court issued the Preliminary Approval Order, due and adequate notice by means of the Notice and Summary Notice was given to the Settlement Class, notifying them of the Settlement and the upcoming Final Fairness Hearing. On January 29, 2020, in accordance with the Preliminary Approval Order and the Notice, the Court conducted a Final Fairness Hearing to, *inter alia*:

- a. determine whether the Settlement should be approved by the Court as fair, reasonable, and adequate and in the best interests of the Settlement Class;
- b. determine whether the notice method utilized by the Settlement Administrator: (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 or any part thereof, 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 to approve the Allocation Methodology, the Plan of Allocation, and distribution of the Net Settlement Fund to participating Class Members;²
- d. determine whether a Judgment should be entered pursuant to the Settlement Agreement, *inter alia*, dismissing the Litigation against Defendants with prejudice and extinguishing, releasing, and barring all Released Claims against all Released Parties in accordance with the Settlement Agreement;

² The Court will issue a separate order pertaining to the allocation and distribution of the Net Settlement Proceeds among Class Members (the “Plan of Allocation Order”).

- e. determine whether the applications for attorneys' fees, reimbursement of Litigation Expenses, and Class Representative's request for a Case Contribution Award to Class Representative are fair and reasonable and should be approved;³ and
- f. rule on such other matters as the Court deems appropriate.

The Court, having reviewed the Settlement, the Settlement Agreement, and all related pleadings and filings, and having heard the evidence and argument presented at the Final Fairness Hearing, now **FINDS, ORDERS, and ADJUDGES** as follows:

1. The Court, for purposes of this Order and Judgment (the "Judgment"), adopts all defined terms as set forth in the Settlement Agreement and incorporates them as if fully set forth herein.

2. The Court has jurisdiction over the subject matter of this Litigation and all matters relating to the Settlement, as well as personal jurisdiction over Defendants and the Class Members.

3. The Settlement Class, which was certified in the Court's Preliminary Approval Order (Dkt. No. 111), is defined as:

All non-excluded persons or entities who are or were royalty owners in Oklahoma wells where Defendants, including their predecessors, subsidiaries, or affiliates, are or were the well operator and working interest owner (or, as a non-operating working interest owner, Defendants separately marketed gas), and who, from January 1, 2013 are or were entitled to share in royalty proceeds payable under oil and gas leases that contain an express provision stating royalty will be paid on gas used off the lease premises and/or in the manufacture of products.

The persons or entities excluded from the Settlement Class are: (1) agencies, departments or instrumentalities of the United States of America and the State of Oklahoma; (2) officers of the Court involved in this action; (3) publicly traded oil and gas exploration companies and their affiliates; and (4) persons or entities Plaintiff's counsel is 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, Danny George, Dan McClure, Kelly McClure Callant, and their relatives and any related trusts.

³ The Court will issue separate orders pertaining to Plaintiff's Counsel's request for attorneys' fees, reimbursement of Litigation Expenses, and Class Representative's request for a Case Contribution Award.

The Court finds the above-defined Settlement Class has been properly certified for the purposes of this Settlement. The Court finds that the persons and entities identified in the attached Exhibit 1 have filed timely and valid Requests for Exclusion and are hereby excluded from the foregoing Settlement Class, will not participate in or be bound by the Settlement, or any part thereof, as set forth in the Settlement Agreement, and will not be bound by or subject to the releases provided for in this Judgment and the Settlement Agreement.

4. As used in this Judgment, the following terms shall have the following meanings:
 - a. “Released Claims” include all claims and damages (statutory, contract, tort, equitable, punitive, interest, and other relief) that the Releasing Parties may have against the Released Parties related to underpaid, unpaid and incorrectly paid royalty on gas used off the lease premises and/or in the manufacture of products (hereafter, “Fuel Gas”). Without limiting the foregoing, the Released Claims include any and all claims that were, or that could have been, asserted in this Litigation. The release shall extend to and include Defendants and their affiliates, subsidiaries, predecessors, successors, officers, directors, employees, insurers, and attorneys. The release also shall extend to and include all claims, demands, actions, causes of action, allegations, rights, obligations, costs, losses, and damages arising in whole or in part at any time from January 1, 2013 through November 30, 2019 from or in connection with acts or omissions of Defendants or any of the other Released Parties of any and every kind or nature, whether in law or in equity, whether in tort or contract, whether arising under any statute or regulation, whether known or unknown, based upon the claims that were, or could have been, asserted in the Litigation. Released Claims specifically include, without limitation, all claims and alleged damages relating to Oklahoma royalty payments made or obligations that arose in whole or in part from January 1, 2013 through November 30, 2019 regarding: (a) any failure to pay, underpayment, incorrectly paid or delay in paying royalty on Fuel Gas; (b) any payment of royalty on Fuel Gas that was less than the amount owed; (c) any interest owed on any payment, underpayment, incorrect payment or nonpayment of royalty on Fuel Gas; (d) any misrepresentation, omission or breach regarding the amount of royalty owed on Fuel Gas or that royalty was, in fact, owed on Fuel Gas; (e) any misrepresentation, omission or breach regarding the value, volume or price of Fuel Gas; (f) any breach of contractual, statutory or other obligation to pay royalty on Fuel Gas or the full volume of gas leaving a lease; (g) any breach of any check stub reporting statute, including the Production

Revenue Standards Act, relating to or arising out of the obligation to pay royalty on Fuel Gas; (h) any alleged fraud, intentional or negligent misconduct, constructive fraud, deceit, concealment, unjust enrichment, disgorgement, accounting, actual damages, punitive damages, statutory damages, and injunctive relief relating to or arising out of the obligation to pay royalty on Fuel Gas that arose in whole or in part from January 1, 2013 to November 30, 2019 in connection with Oklahoma oil and gas production.

- b. “Released Parties” means Defendants; their predecessors, successors, heirs, assignors, and assignees; and any past and present affiliates, directors, officers, employees, attorneys, agents, consultants, servants, stockholders, members, representatives, subsidiaries, insurers, and affiliates of the foregoing persons or entities.
- c. “Releasing Parties” means Plaintiff and the Class Members; their predecessors, successors, heirs, assignors, and assignees; and any past and present affiliates, officers, employees, attorneys, agents, consultants, servants, stockholders, members, representatives, subsidiaries, and affiliates of such persons or entities.
- d. “Claim Period” means between January 1, 2013 and November 30, 2019.

5. At the Final Fairness Hearing on January 29, 2020, the Court fulfilled its duties to independently evaluate the fairness, reasonableness, and adequacy of, *inter alia*, the Settlement and the Notice of Settlement provided to the Settlement Class, considering not only the pleadings and arguments of Class Representative and Defendants and their respective Counsel, but also the concerns of any objectors and the interests of all absent Class Members. In so doing, the Court considered arguments that could reasonably be made against, *inter alia*, approving the Settlement and the Notice of Settlement, even if such argument was not actually presented to the Court by pleading or oral argument.

6. The Court further finds that due and proper notice, by means of the Notice and Summary Notice, was given to the Settlement Class in conformity with the Settlement Agreement and Preliminary Approval Order. The form, content, and method of communicating the Notice disseminated to the Settlement Class and the Summary Notice published pursuant to the Settlement

Agreement and the Preliminary Approval Order: (a) constituted the best practicable notice under the circumstances; (b) 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 or any part thereof, and their right to appear at the Final Fairness Hearing; (c) was reasonable and constituted due, adequate, and sufficient notice to all persons and entities entitled to such notice; and (d) met all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause of the United States Constitution, the Due Process protections of the State of Oklahoma, and any other applicable law. Therefore, the Court approves the form, manner, and content of the Notice and Summary Notice used by the Parties. The Court further finds that all Class Members have been afforded a reasonable opportunity to request exclusion from the Settlement Class or object to the Settlement.

7. The Court hereby affirms its determinations in the Preliminary Approval Order certifying, for the purposes of the Settlement only, the Litigation as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, including that: the members of the Settlement Class are so numerous that joinder of all Class Members in the class action is impracticable; there are questions of law and fact common to the Settlement Class that predominate over any individual questions; the claims of Class Representative are typical of the claims of the Settlement Class; Class Representative and Plaintiff's Counsel have fairly and adequately represented and protected the interests of the Class Members; and, after considering the interests of the Class Members in individually controlling the prosecution of separate actions, the extent and nature of litigation already commenced by members of the Settlement Class, the desirability or undesirability of continuing the litigation of these claims in this forum, and the difficulties likely to be encountered in the management of a class action – a class action is superior to other available methods for the

fair and efficient adjudication of the controversy. Pursuant to and in accordance with Federal Rule of Civil Procedure 23, the Settlement, including, without limitation, the consideration paid by Defendants, the covenants not to sue, the releases, and the dismissal with prejudice of the Released Claims against the Released Parties as set forth in the Settlement Agreement, is finally approved as fair, reasonable and adequate and in the best interests of the Settlement Class. The Settlement Agreement was entered into between the Parties at arm's-length and in good faith after substantial negotiations free of collusion. The Settlement fairly reflects the complexity of the Claims, the duration of the Litigation, the extent of discovery, and the balance between the benefits the Settlement provides to the Settlement Class and the risk, cost, and uncertainty associated with further litigation and trial. Serious questions of law and fact remain contested between experienced counsel and Parties alert to defend their interests. The Settlement provides a means of gaining immediate valuable and reasonable compensation and forecloses the prospect of uncertain results after many more months or years of additional discovery and litigation. The considered judgment of the Parties, aided by experienced legal counsel, supports the Settlement. The Parties and the Settlement Administrator are hereby authorized and directed to comply with and to cause the consummation of the Settlement in accordance with the Settlement Agreement, and the Clerk of this Court is directed to enter and docket this Judgment in the Litigation.

8. By agreeing to settle the Litigation, Defendants do not admit, and instead specifically deny, that the Litigation could have otherwise been properly maintained as a contested class action (as opposed to a settlement class), and specifically deny any and all wrongdoing and liability to the Settlement Class, Class Representative, and Plaintiff's Counsel.

9. The Court finds that on October 23, 2019, Defendants caused notice of the Settlement to be served on the appropriate state official for each state in which a Class Member

resides, and the appropriate federal official, as required by and in conformance with the form and content requirements of 28 U.S.C. § 1715 (Dkt. No. 112). In connection therewith, the Court has determined that, under 28 U.S.C. § 1715, the appropriate state official for each state in which a Class Member resides was and is the State Attorney General for each such state, and the appropriate federal official was and is the Attorney General of the United States. Further, the Court finds it was not feasible for Defendants to include on each such notice the names of each of the Class Members who reside in each state and the estimated proportionate share of each such Class Members to the entire Settlement as provided in 28 U.S.C. § 1715(b)(7)(A); therefore, each notice included a reasonable estimate of the number of Class Members residing in each state and the estimated proportionate share of the claims of such Class Members to the entire Settlement. No appropriate state or federal official has entered an appearance or filed an objection to the entry of final approval of the Settlement. Thus, the Court finds that all requirements of 28 U.S.C. § 1715 have been met and complied with and, as a consequence, no Class Member may refuse to comply with or choose not to be bound by the Settlement and this Court's Orders in furtherance thereof, including this Judgment, under the provisions of 28 U.S.C. § 1715.

10. The Litigation and the Complaint and all claims included therein, as well as all Released Claims, are dismissed with prejudice as to the Released Parties. The Court orders that, upon the Effective Date, the Settlement Agreement shall be the exclusive remedy for any and all Released Claims of participating Class Members. The Court finds that Defendants have agreed not to file a claim against Plaintiff or Plaintiff's Counsel based upon an assertion that the Litigation was brought by Plaintiff or Plaintiff's Counsel in bad faith or without a reasonable basis. Similarly, the Court finds that Plaintiff has agreed not to file a claim against Defendants or Defendants' Counsel based upon an assertion that the Litigation was defended by Defendants or Defendants'

Counsel in bad faith or without a reasonable basis. The Releasing Parties are hereby deemed to have finally, fully, and forever conclusively released, relinquished, and discharged all of the Released Claims against the Released Parties to the fullest extent permitted by law. The Court thus hereby permanently bars and enjoins the Releasing Parties, and each of them (regardless of whether or not any such person or party shares in the Net Settlement Fund), and all persons acting on their behalf from, directly or indirectly, or through others, suing, instigating, instituting, or asserting against the Released Parties any claims or actions on or concerning the Released Claims. The Released Parties are discharged and/or released from all claims for contribution that have been or may be brought by or on behalf of any persons relating to the Settlement of the Released Claims. The releases and prohibitions of this paragraph apply equally to any claim that relates to the subject matter of the Released Claims except as expressly excluded therefrom. The Court's approval of the Settlement and entry of judgment herein shall have the effect of barring each of the Releasing Parties from asserting any claim from which that party would be barred by a judgment resolving the certified claims herein had such claims been brought by such party individually. Neither Party will bear the other's Party's litigation costs, costs of court, or attorneys' fees. The Court orders that Defendants shall be allowed to a refund of the Residual Unclaimed Funds pursuant to the procedures and at the time specified in the Settlement Agreement.

11. The Court approves the efforts and activities of the Settlement Administrator, JND Legal Administration LLC, and the Escrow Agent, Signature Bank, in assisting with certain aspects of the administration of the Settlement, and directs them to continue to assist Class Representative in completing the administration and distribution of the Settlement in accordance with the Settlement Agreement, this Judgment, any Plan of Allocation approved by the Court, and the Court's other orders.

12. Nothing in this Judgment shall bar any action or claim by Class Representative or Defendants to enforce or effectuate the terms of the Settlement Agreement or this Judgment.

13. If it has not already occurred, the Settlement Administrator is directed to refund to Defendants the amount attributable to Class Members who timely and properly submitted a Request for Exclusion or who were otherwise excluded from the Settlement Class by order of the Court. The amount of such refund must be calculated in accordance with paragraph 6.4 of the Settlement Agreement.

14. This Judgment, the Settlement, the Supplemental Agreements, and the Settlement Agreement—including any provisions contained in or exhibits attached to the Settlement Agreement; any negotiations, statements, or proceedings in connection therewith; or any action undertaken pursuant thereto—shall not be used for any purpose or admissible in any action or proceeding for any reason, other than an action to enforce the terms of this Judgment, the Supplemental Agreements, or the Settlement (including, but not limited to defending or bringing an action based on the release provided for herein). The Judgment, the Settlement, the Supplemental Agreements, and the Settlement Agreement are not and shall not be deemed, described, or construed to be or offered or received as evidence of a presumption, concession, declaration, or admission by any person or entity of the truth of any allegation made in the Litigation; the validity or invalidity of any claim or defense that was, could have been, or might be asserted in the Litigation; the amount of damages, if any, that would have been recoverable in the Litigation; any liability, negligence, fault, or wrongdoing of any person or entity in the Litigation; or whether any other lawsuit should be certified as a class action pursuant to Federal Rule of Civil Procedure 23 or any applicable state rule of procedure.

15. As separately set forth in detail in the Court's Plan of Allocation Order(s), the Allocation Methodology, the Plan of Allocation, and distribution of the Net Settlement Fund among participating Class Members are approved as fair, reasonable and adequate, and Class Counsel and the Settlement Administrator are directed to administer the Settlement in accordance with the Plan of Allocation Order(s) entered by the Court.

16. The Court finds that Class Representative, Defendants, and their Counsel have complied with the requirements of the Federal Rules of Civil Procedure as to all proceedings and filings in this Litigation. The Court further finds that Class Representative and Plaintiff's Counsel adequately represented the Settlement Class in entering into and implementing the Settlement.

17. Neither Defendants nor Defendants' Counsel have any liability or responsibility to Plaintiff, Plaintiff's Counsel, or the Settlement Class with respect to the Gross Settlement Fund or its administration, including but not limited to any distributions made by the Escrow Agent or Settlement Administrator. Except as described in paragraph 6.19 of the Settlement Agreement, no Class Member shall have any claim against Plaintiff's Counsel, the Settlement Administrator, the Escrow Agent, or any of their respective designees or agents based on the distributions made substantially in accordance with the Settlement Agreement, the Court's Plan of Allocation Order, or other orders of the Court.

18. Any Class Member who receives a Distribution Check that he/she/it is not legally entitled to receive is hereby ordered to either (a) pay the appropriate portion(s) of the Distribution Check to the person(s) legally entitled to receive such portion(s), or (b) return the Distribution Check uncashed to the Settlement Administrator.

19. All matters regarding the administration of the Escrow Account and the taxation of funds in the Escrow Account or distributed from the Escrow Account shall be handled in accordance with Section 5 of the Settlement Agreement.

20. Any order approving or modifying any Plan of Allocation Order, the application by Class Counsel for an award of attorneys' fees or reimbursement of Litigation Expenses, or the request of Class Representative for a Case Contribution Award, shall be handled in accordance with the Settlement Agreement and the documents referenced therein (to the extent the Settlement Agreement and documents referenced therein address such an order).

21. Plaintiff's Counsel, Plaintiff, and the Settlement Class will only be liable for loss of any portion of the Escrow Account as described in paragraph 6.19 of the Settlement Agreement. Defendants shall have no liability for any such loss.

22. Without affecting the finality of this Judgment in any way, the Court (along with any appellate court with power to review the Court's orders and rulings in the Litigation) reserves exclusive and continuing jurisdiction over the Litigation, Class Representative, the Settlement Class, Defendants, and the other Released Parties for the purposes of: (a) supervising and/or determining the fairness and reasonableness of the implementation, enforcement, construction, and interpretation of the Settlement, the Settlement Agreement, any Plan of Allocation Order entered by the Court, and this Judgment; (b) hearing and determining any application by Class Counsel for an award of Plaintiff's Attorneys' Fees, and Litigation Expenses and/or a Case Contribution Award for Class Representative, if such determinations were not made at the Final Fairness Hearing; (c) supervising the distribution of funds from the Escrow Account; (d) resolving any dispute regarding a Party's right to terminate the Settlement pursuant to the Settlement Agreement or the Supplemental Agreements; (e) enforcing the terms of the Settlement, including the entry of

injunctive or other relief to enforce, implement, administer, construe and interpret the Settlement Agreement and the Supplemental Agreements; and (f) exercising jurisdiction over any challenge to the Settlement on any basis whatsoever.

23. In the event the Settlement is terminated as the result of a successful appeal of this Judgment or does not become Final and Non-Appealable in accordance with the terms of the Settlement Agreement for any reason whatsoever, then this Judgment and all orders previously entered in connection with the Settlement shall be rendered null and void and shall be vacated to the extent provided by and in accordance with the Settlement Agreement. The provisions of the Settlement Agreement and the Supplemental Agreements relating to termination of the Settlement Agreement shall be complied with, including the refund of amounts in the Escrow Account to Defendants and the refund by Plaintiff's Counsel into the Escrow Account of any amounts previously paid to them from the Escrow Account.

24. The claims asserted by Class Representative in this Litigation and all Released Claims of the participating Class Members are hereby **DISMISSED WITH PREJUDICE** to the refiling of the same or any portion thereof by or against the Released Parties. The Court retains jurisdiction pursuant to paragraph 22 above to administer the Settlement distribution process as contemplated in the Court's separate Plan of Allocation Order(s), to administer other aspects of the Settlement as described in the Settlement Agreement, and to issue additional orders pertaining to, *inter alia*, Class Counsel's request for Plaintiff's Attorneys' Fees and reimbursement of reasonable Litigation Expenses and Class Representative's request for a Case Contribution Award. Notwithstanding the Court's jurisdiction to issue additional orders in this Litigation, this Judgment fully disposes of all claims as to Defendants and is therefore a final appealable judgment. Regardless, there is no just reason to delay the finality of the Judgment. The Court further hereby

expressly directs the Clerk of the Court to file this Judgment as a final order and final judgment in this Litigation.

25. [IF OBJECTION(S) ARE MADE – ADDITIONAL LANGUAGE TO BE DETERMINED BASED ON OBJECTION(S)]

IT IS SO ORDERED this ____ day of _____.

STEVEN P. SHREDER
UNITED STATES MAGISTRATE JUDGE

EXHIBIT 2

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

DORSEY J. REIRDON,)	
)	
Plaintiff,)	
)	
v.)	Case No. 6:16-cv-00445-SPS
)	
CIMAREX ENERGY COMPANY)	
and CIMAREX ENERGY CO. OF)	
COLORADO,)	
)	
Defendants.)	

PLAN OF ALLOCATION ORDER

Having held a Final Fairness Hearing in this Action on January 29, 2020, 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 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 distribute 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 Plan of

¹ All capitalized terms not otherwise defined in this Order shall have the same meanings ascribed to them in the Stipulation and Agreement of Settlement (the “Settlement Agreement”).

Allocation Order and the Settlement Agreement. Class Counsel and Defendants shall cooperate 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 Defendants, 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 sixty (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 Defendants, 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 Defendants. 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 for failure to pay royalty on Fuel Gas 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 Defendants on behalf of themselves and/or others, the amount and date of unclaimed royalty underpayment to Class Members, and the time period when the claimed underpayment occurred. Using 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 Members is shown on Exhibit 2 to the Affidavit of Barbara Ley attached to Class Representative's Memorandum of Law in Support of Class Representative's Motion for Final Approval and is approved by this Court. It is understood that this preliminary allocation 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 an updated Exhibit 2 to the Affidavit of Barbara Ley 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 Defendants to distribute such funds to the appropriate 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. 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: The enclosed check represents a share of the net settlement fund in the settlement of the Class Action *Reirdon v. Cimarex Energy Co., et al.*, Case No. 16-cv-00445-SPS, in the United States District Court for the Eastern District of Oklahoma. You are receiving this distribution and check because you have been identified as a Class Member in this action. 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.

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, *inter alia*, Defendants 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 after its date. The release of claims provided in the settlement shall be effective regardless of whether this check is cashed.

5. The Settlement Administrator will make a diligent effort to mail the first Distribution Checks within ninety (90) days after the Effective Date and, within the subsequent ninety (90) days, will mail the Distribution Checks representing the remaining 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 six (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 refunded to Defendants.

6. 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 refunded to Defendants.

7. 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 thirty (30) 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 them will remain in the Escrow Account for ninety (90) days after the date the Second Distribution Check was returned and, thereafter, will be considered Residual Unclaimed Funds that shall be paid to Defendants.

8. The Settlement Administrator will only make distributions based on the Plan of Allocation and distribution order approved by the Court. It is contemplated that distributions may be made in waves, where using that approach is more efficient for the Settlement Administrator, so that payments to readily identified owners are not unduly delayed.

9. Defendants, Defendants' Counsel, the Settlement Administrator, Plaintiff, and Plaintiff's Counsel shall have no liability to any Class Member for mispayments, overpayments, or underpayments 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, Defendants' 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 Defendants, 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 150 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 120 days after the Settlement Administrator sends the final wave of Distribution Checks, the Settlement Administrator shall send a reconciliation of the Residual Unclaimed Funds to Defendants' and Plaintiff's Counsel. The reconciliation must include: (a) a detail of each distribution made from the Escrow Account; (b) the detail of any interest or other returns earned on the Escrow Account; (c) the total Residual Unclaimed Funds and detail sufficient to verify that total; and (d) detail showing the total amount of the Administration, Notice, and

Distribution Costs paid from the Escrow Account. The Settlement Administrator must pay the total amount remaining in the Escrow Account to Defendants no later than ten (10) business days after sending a reconciliation of the Residual Unclaimed Funds to Defendants' and Plaintiff's Counsel.

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.

17. The Court finds that all objections are overruled and hereby severed from this action for the purposes of appeal. In the event any objector appeals this Plan of Allocation Order or any other rulings of this Court, such objector is hereby ordered to post a cash bond in an amount sufficient to reimburse (a) the appellate fees of Plaintiff's Counsel and Defendants' Counsel and (b) the amount of lost interest to the non-objecting Class Members caused by any delay in distribution of the Net Settlement Fund that is caused by appellate review of the objection.

IT IS SO ORDERED this ____ day of _____ 2020.

STEVEN P. SHREDER
UNITED STATES MAGISTRATE JUDGE

Subject: Activity in Case 6:16-cv-00445-SPS Reirdon v. Cimarex Energy Company et al Motion for Miscellaneous Relief

Date: Monday, December 23, 2019 at 4:26:31 PM Central Standard Time

From: CM-ECFRetMail_OKED@oked.uscourts.gov

To: CM-ECFLive_OKED@oked.uscourts.gov

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U.S. District Court

Eastern District of Oklahoma

Notice of Electronic Filing

The following transaction was entered by Beckworth, Bradley on 12/23/2019 at 4:26 PM CST and filed on 12/23/2019

Case Name: Reirdon v. Cimarex Energy Company et al

Case Number: [6:16-cv-00445-SPS](#)

Filer: Dorsey J. Reirdon

Document Number: [116](#)

Docket Text:

[MOTION Class Representative's Motion for Final Approval by All Plaintiffs \(With attachments\) Responses due by 1/6/2020\(Beckworth, Bradley\)](#)

6:16-cv-00445-SPS Notice has been electronically mailed to:

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6:16-cv-00445-SPS Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1108664770 [Date=12/23/2019] [FileNumber=1082876-0] [5c43a7617d24bf0b12b505e9a874fd48d0154769bc795679ee27c57abf3cad1e7fbce3a5aca2ee790803a90b1e2ad19364e55e7f99377a74f626f01d8fc13500]]

Document description:Exhibit Exhibit 1 - (Proposed) Order Granting Final Approval of Class Action Settlement

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1108664770 [Date=12/23/2019] [FileNumber=1082876-1] [cb929394e205c29640a83595b3ea2327bd273e8306cad9524411b39e67ee914ceec04b6650a3e60b311cd423a196a66debf374af4dfb98b68316e7ffc9f424f5]]

Document description:Exhibit Exhibit 2 - (Proposed) Plan of Allocation Order

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1108664770 [Date=12/23/2019] [FileNumber=1082876-2] [a5836dc23a61663789bd635284fefa57e90202592ebbc9a8ffaba67e41f828ae99ac7e0e4a32f3d4bfdd4284637d3dde3db65c939f74899a638ddb9416dfd1ff]]