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ATTORNEYS FOR DEFENDANT

STATE OF WYOMING)
) ss
COUNTY OF CAMPBELL)

IN THE DISTRICT COURT

SIXTH JUDICIAL DISTRICT

KENNETH B. GEER,)
)
) Plaintiff,
)
) vs.
)
ANADARKO E&P ONSHORE LLC,)
Successor to Lance Oil & Gas Company,)
Inc., a Delaware Corporation,)
)
) Defendant.

Civil Action No. 32940

DEFENDANT'S MOTION TO DECERTIFY THE DAMAGES CLASS

Defendant Anadarko E&P Onshore LLC, formerly known as Lance Oil & Gas Company, Inc. (Lance) respectfully moves this Court to decertify the Wyo. R. Civ. P. 23(b)(3) class ("Damages Class") on the following grounds:

1. Wyo. R. Civ. P. 23(c)(1) provides that “[a]s soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subdivision . . . may be altered or amended before the decision on the merits.”

2. On January 29, 2013, the Court certified both a class for damages under Wyo. R. Civ. P. 23(b)(3) and a class for declaratory and injunctive relief claims under Wyo. R. Civ. P. 23(b)(2).

3. On March 27, 2013, however, the United States Supreme Court issued a new class certification decision construing the same language found in Wyoming’s class action rule. *Comcast Corp. v. Behrend*, 133 S.Ct. 1426, 185 L. Ed. 2d 515 (2013). *Comcast* forcefully rejected the rationale relied upon by this Court to certify the Damages Class in this case, and that class certification is therefore legally erroneous.

4. In addition, on July 9, 2013, the Tenth Circuit, relying in part upon *Comcast*, issued two more decisions reversing class certification in royalty underpayment cases, and overruled one of the decisions this Court expressly relied upon for its certification Order. *Wallace B. Roderick Revocable Living Trust v. XTO Energy, Inc.*, No. 12-3176, 2013 WL 3389469 (10th Cir. July 9, 2013); *Chieftain Royalty Co. v. XTO Energy, Inc.*, No. 12-7047, 2013 WL 3388629 (10th Cir. July 9, 2013).

5. *Comcast* provides that where damages are not measurable on a classwide basis, through a classwide methodology, “[q]uestions of individual damage calculations will inevitably overwhelm questions common to the class,” thereby negating Rule 23(b)(3)’s predominance requirement. 133 S.Ct. at 1433. Because damages in this case cannot be calculated on a class-

wide basis through a common class-wide methodology as required by *Comcast* and subsequent case law, the Damages Class must be decertified.

6. Lance incorporates and relies on its Memorandum in Support of Motion to Decertify the Damages Class, filed with this Motion.

7. – The Court should rule on decertifying the Damages Class before ruling on the merits of the case or any dispositive motions.

WHEREFORE, Lance moves for an Order decertifying the Wyo. R. Civ. P. 23(b)(3) Damages Class under Wyo. R. Civ. P. 23(c).

DATED July 31, 2013.



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CERTIFICATE OF SERVICE

I hereby certify that on July 31, 2013, I served the foregoing DEFENDANT'S MOTION TO DECERTIFY THE DAMAGES CLASS by placing a true and correct copy thereof in the United States mail, postage prepaid and properly addressed to the following:

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