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STATE OF WYOMING	)	IN THE DISTRICT COURT
	) ss.	
COUNTY OF CAMPBELL	)	SIXTH JUDICIAL DISTRICT
KENNETH B. GEER,	)	
	)	
	)	
vs.	)	
	)	CIVIL ACTION NO. 32940
	)	
ANADARKO E & P ONSHORE, LLC,	)	
Successor to Lance Oil & Gas Company, Inc.,	)	
a Delaware corporation,	)	
	)	
Defendant.	)	

PLAINTIFF'S RULE 56.1 STATEMENT OF FACTS

Plaintiff Kenneth B. Geer, as representative of the class certified by this Court, submits this statement of undisputed facts pursuant to WRCP 56.1.

1. Kenneth B. Geer ("Geer") brought this action on behalf of himself and all similarly situated royalty interest owners and overriding royalty interests owners (collectively "Royalty Owners") to whom Lance[1] is obligated to pay royalties on gas produced in Campbell County, Wyoming.

2. This Court certified the class by Order dated January 29, 2013.

Issue #1 – Ad Valorem rates

3. Because ad valorem taxes are paid in Wyoming the year following the production year, the exact ad valorem tax rate is unknown at the time that Lance makes Royalty payments. *Exhibit 3, Deposition of Anadarko Petroleum Corporation, formerly Lance Oil & Gas Company,*

[1] Plaintiff will refer to Defendant as "Lance" throughout this brief. The Defendant at the time of filing the original Complaint was Lance Oil & Gas Company, Inc. On or about April 1, 2013, Lance merged into Anadarko E & P Onshore LLC, and the parties subsequently stipulated to a Substitution of Party.

Inc. Accounting Manager Janis Wallner, 101:18-24. Lance therefore estimates the ad valorem tax rate when it calculates the amount to be deducted from Royalty payments.

4. In most years from 2002 through 2011, the ad valorem tax rate imposed by Lance for its royalty deduction calculations exceeded the ad valorem tax rates actually imposed by Campbell County and paid by Lance. *Exhibit 1, Wilson Affidavit, ¶13, Exhibit B thereto.*

5. For example, for May, 2001 production, Lance used an ad valorem tax rate of 6.7434%. The actual effective rate for that period was 5.9723%. As a result, for the Hannum 21-19-4773 well, Lance overwitheld from one royalty owner for that month $0.13. *Exhibit 1, Wilson Affidavit, ¶¶ 11-12, Exhibit A thereto.*

6. Lance concedes that it has incorrectly estimated and deducted the ad valorem tax rate that will be imposed, and never reimbursed the royalty owners for the over withholding. *Exhibit 3, Wallner Deposition, 101:25-102; 103:22-25.*

Issue #2 – Taxable Value

7. Lance calculates all ad valorem, severance and conservation tax ("Production Tax") amounts that it deducts from royalty payments based on Royalty Value rather than Taxable Value.

8. "Royalty Value" is the value Lance uses to calculate an individual Royalty Owner's royalty. Wyoming law prohibits the operator from deducting "costs of production" from the Royalty payment (including, for example, costs of production such as gathering and separating). W.S. § 30-5-304(a); *Cabot Oil & Gas Corp v. Followill*, 2004 WY 80, ¶11, 93 P.3d 238, 242 (Wyo. 2004).

9. For the entire period at issue, Lance has calculated royalty owner taxes using the following calculation: (Owner Gross Value – owner transportation) x tax rate. *Exhibit 2, Lance Responses to Plaintiff's First Interrogatories, No. 2.* Owner gross value minus owner transportation is the Royalty Value historically used by Lance.

10. "Owner gross value" is defined by Lance as "the property gross value reported on the owner's check stub multiplied by the royalty owner's decimal interest. *Exhibit 2, Lance Responses to Plaintiff's First Interrogatories, No. 3.*

11. "Taxable Value" is the value reported by Lance to the Wyoming Department of Revenue from which Production Taxes are calculated, assessed, and paid. Under Wyoming law, the

operator may exclude from Taxable Value certain costs, such as for gathering and separating. W.S. 39-14-203(b)(iv); *Williams Production RMT Co. v. Wyoming Dept. of Revenue*, 2005 WY 28, ¶¶9-12, 107 P.3d 179, 183-84.

12. Lance annually certifies Taxable Value to the State of Wyoming, and the ad valorem, severance and conservation taxes it pays are calculated based on that certified value. *Exhibit 3, Wallner Deposition, 39:15-18; 42:12-22.*

13. Lance calculates the amount it deducts for taxes from royalty payments by applying the tax rate to Royalty Value, not Taxable value.

14. Because there are fewer allowable deductions from Royalty Value than from Taxable Value, Royalty Value exceeds Taxable Value.

> Q: Would you agree with me that the royalty value calculated by Lance as you've described from 2002 through 2013, the present, is larger than the taxable value calculated and reported by Lance to the State of Wyoming for severance and ad valorem purposes?
> A: Can you define royalty value? Are you talking property level or an owner's level?
> Q: We're talking property level. Property level royalty value. Property value level on which you calculate royalties. Okay?
> A: Yes.
> Q: Is larger than the taxable value you report to the State of Wyoming for severance and ad valorem purposes.
> A: That is correct.
> Q: And that is always the case, correct?
> A: I believe so.

Exhibit 3, Wallner Deposition, 48:6-23.

15. Lance's use of the Royalty Value number for purposes of Production Tax deductions from Royalty payments results in deductions for taxes from class members' royalty payments that exceed the royalty owners' proportionate share of the taxes actually paid by Lance.

16. For purposes of illustration, assuming a gross value of $10,000 and royalty ownership interest of 5%, the following would illustrate the effect of Lance's use of different values for purposes of calculating tax deductions from royalty payments:

Gross value	$10,000
Trans. expenses	3,000
Royalty value	7,000

Gross value	10,000
Trans	3,000
Processing	1,000
Taxable value	6,000

Production taxes 12.04%
7,000 x 12.04 = 842.80
6,000 x 12.04 = 722.4

In this example, Lance actually pays $722.40 in taxes; but Lance calculated the taxes to deduct from royalty payments based on $842.80. At 5% ownership percentage in the lease, that would result in a deduction of $42.14 from the royalty payment; while Lance actually paid $36.12 for the royalty owner's proportionate share of taxes paid on this production. *Exhibit 5, Deposition of Debra Liller, 19:20-24:2.*

17. Another illustration of Lance's methodology is set forth in *Exhibit 1, Wilson Affidavit, ¶, 16, and Exhibit A thereto.*

18. Lance designated Debra Liller as its expert to support its theory that it is legitimate to deduct more than the interest owners' proportionate share of taxes actually paid. Her explanation is:

> A: The royalty interest owners are not entitled to a 5 percent share of the $1,000 processing fee deduction because they did not pay for the processing fee deduction, nor did Lance deduct the processing fee from their royalty payment.
>
> Q: So because the royalty owners did not contribute to these costs essentially, they shouldn't get the benefit of the tax deduction. Is that what you're saying?
>
> A: Well, they -- the royalty owners are going to benefit by not paying the processing fee. So it's going to be whatever the processing fee would have been times one minus the tax rate. That's the benefit to the royalty owners.
>
> Q: I understand what you're saying the benefit is. My question is: Because they're getting this benefit, that's the basis for your position that they then should not be entitled to the tax deductions that Lance is getting because of paying those costs?
>
> A: That's correct.

Exhibit 5, Debra Liller Deposition, 25:7-26:3.

19. When asked repeatedly for the basis for her opinion, Ms. Liller could only point to "years and years and years" of experience, "basic taxation theory," *Exhibit 5, Liller Depo, 8:10-17; 9:13-19,* and W.S. § 39-14-203(c)(iii), *Liller Depo, 13:21-14:8.* Ms. Liller could cite to no authority for her views of "basic taxation theory." *Liller Depo, 9:20-10:2.*

20. These practices, which are built into Lance's computerized accounting methodology, are applied by Lance for all its royalty payment calculations for Campbell County production. *Exhibit 3, Wallner Deposition, 49-53.*

21. The combined effect of these two incorrect methodologies is an over-withholding by Lance for the class in excess of $600,000.00, plus interest at the rate of 18% in excess of $875,000.00 for a total in excess of $1,475,000 for Issue #1 (Tax Rate); and over-withholding by Lance for the class in excess of $1,600,000.00, plus interest at the rate of 18% in excess of

2,200,000.00, for a total in excess of $3,800,000.00 for Issue #2 (Tax Value). *Exhibit 1, Wilson Affidavit, ¶¶ 14, 17.*

Lance's Setoff Claim

22. Lance contends that, even if it has overdeducted taxes from royalty payments, it has not underpaid some royalty owners because it is entitled to the benefit of certain deductions which it has historically not taken, although it may have been entitled by specific language in some leases to have taken such deductions.

23. Lance has historically deducted from royalty payments only transportation costs,

> and not to deduct the costs related to any treating or processing of the gas – fuel to move the gas from top to bottom – from the wellhead through the final sale nor any costs attributable to gathering charged through the gathering system.

Exhibit 4, Wallner 30(b)(6) Deposition, 18:12-20, 19:16-23.

24. As a business practice, Lance has never taken these deductions during the Class period (2002-present). *Exhibit 4, Wallner 30(b)(6) Deposition, 17:19-18:3.*

25. There has been no discussion by Lance of any plans to change its longstanding business practice of deducting only transportation costs from royalty payments. *Exhibit 4, Wallner 30(b)(6) Deposition, 20:2-10; 22:8-14.*

26. Lance voluntarily decided not to take these deductions because it chose to take a "conservative approach." Lance's "conservative approach" was not based on "anything to do with the manageability of paying what amounts to thousands of royalty owners." *Exhibit 4, Wallner 30(b)(6) Deposition, 35:16-36:6.*

27. If Lance did change its business practice and decide to take these deductions, it would be prospective only. *Exhibit 4, Wallner 30(b)(6) Deposition, 22:12-24.*

28. Although Lance has never raised this argument as a counterclaim in this action, it did assert a counterclaim for deductions not taken in *Sandra K. Lange Trust et al v. Lance Oil & Gas Company, Inc.*, Case No. 32513, Sixth Judicial District Court (*"Lange Trust"*) in which Lance asserted a counterclaim for recoupment. *Answer and Counterclaims of Defendant Lance Oil & Gas Company to Plaintiff's First Amended Complaint,* Case No. 32513, pp. 10-16. *Exhibit 6.*[2]

[2] "[A] court may "take judicial notice of its own records in the case before it or in a case closely related to it." *Hultgren v. State,* 261 P.3d 753, 754 n.1, 2011 WY 139, ¶6 n.1, quoting *State in Interest of C.,* 638 P.2d 165, 172, n. 10 (Wyo.1981); *Wayt v. State,* 912 P.2d 1106, 1109 (Wyo.1996).

29. The propriety of arguably permissible deductions (specifically for "stranded gas") was at issue in *Lange Trust. See Findings of Fact, Conclusions of Law and Order Granting Plaintiffs' Motion for Class Certification,* ¶¶20, 22, *Exhibit 7.*

30. *Lange Trust* has now been conditionally settled by the parties and approved by the Court. The Settlement Agreement provides:

> 1.40 **"Reserved Claims"** shall mean:
>
> 1.40.1 Claims relating to price, volume or decimal interest arising out of clerical errors, as well as any counterclaims or defenses Lance may have related to such claims, if asserted. It is understood and agreed that such reserved claims or counterclaims apply only to individual claims unique to certain Royalty Payees and not to Settlement Class Members as a whole since any such common claims or counterclaims are included in Settled Claims.
>
> 1.40.4 Claims made in that certain litigation entitled *Kenneth B. Geer v. Lance Oil & Gas Company, Inc.* filed in the Sixth Judicial District as Civil Action No. 32940 as of the Effective Date.
>
> 1.45 "**Settled Claims**" shall mean and include the following:
>
> 1.45.1 For claims against Lance and/or the Lance Additional Released Parties. . . .
>
> 1.45.2 For claims asserted or which could have been asserted by Lance, "Settled Claims" shall mean and include any and all claims, demands, rights, liabilities, and causes of action of every nature and description whatsoever, including interest, attorney fees, and penalties, whether known or unknown, asserted or unasserted, and whether in contract, or tort, or based on statute, or any other legal or equitable ground or theory including but not limited to the *Act,* or duties arising under implied covenants, if any, or any other duties arising under the law, that are held by Lance **that constitute or in any way relate to or arise from or arise out of Over Payment Claims that Lance has or could assert, including those for recoupment or as counterclaims**, against Class Representatives and/or Settlement Class Members, excepting only Reserved Claims.

Exhibit 8, Agreement for Settlement and Release of Claims Against and by Anardarko E&P Onshore LLC as Successor in Interest to Lance Oil & Gas Company, Inc. (emphasis added).

31. Lance has never asserted a counterclaim ("setoff" or "recoupment") for overdeductions in this case. Lance could have asserted all of its setoff and recoupment counterclaims in *Lange Trust.* Lance's alleged setoff or recoupment is a Settled Claim, and is not a Reserved Claim under the *Lange Trust* Settlement Agreement. Settled Claims are released. *Settlement Agreement,* ¶2.12; *Wallner 30(b)(6) Deposition, 29:16-31:12* ("Q. And so any of those for gathering, fuel, processing, that Lance is – is asserting that could be taken are resolved in the Lange settlement methodology? A. Yes.")

32. This Court has ruled against Lance's setoff argument in this case twice before.

33. In *Defendant Lance Oil & Gas Company's Memorandum in Opposition to Plaintiff's Motion for Class Certification*, dated October 5, 2012, Lance argued that no class could be certified because the different lease language that it might raise as a setoff would defeat the element of typicality. (Lance Memorandum, pp. 22-24)

34. In its *Findings of Facts, Conclusions of Law and Order Granting Plaintiff's Motion for Class Certification*, the Court rejected Lance's argument:

> ¶ 52. . . .The issue in this case is the legality of Lance's deductions for Production Taxes from royalty payments. This case is not about whether, under various lease terms, Lance might be able to take deductions for gathering, processing and fuel.
>
> ¶58. In this case, Defendant's course of conduct in implementing its internal business policy of treating its owners the same for deducting taxes from Royalty payments, regardless of lease language, demonstrates the "typicality" requirement is satisfied.

35. Lance again attempted to raise the deductions-not-taken argument when it opposed the Plaintiff's proposed Class Notice, arguing that the Notice should include language of its setoff. *Defendant Lance Oil & Gas Company's Proposed Class Notice and Objection to Plaintiff's Proposed Class Notice*, dated March 15, 2013.

36. In its May 10, 2013 Decision Letter on the Class Notice, the Court stated:

> The possible additional deductions that defendant *might* have been able to take under a certain lease are a complication that is unnecessary to bring within this case. If there are any such deductions and if this is not a compulsory counterclaim, the defendant could assert those outside of this class action proceeding in a court of competent jurisdiction as to the amount of the claim and deal with the claim on an individualized basis.

DATED this 31st day of July, 2013.

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CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of July, 2013, the foregoing was served via U.S. Postal Mail to the following:

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Exhibit Index to Plaintiff's Rule 56.1 Statement of Facts

Exhibit 1	Affidavit of James Steven Wilson
Exhibit 2	Defendant Lance Oil & Gas Compalny, Inc.'s Responses to Plaintiff's First Interrogatories
Exhibit 3	Deposition of Janis Wallner
Exhibit 4	30 (b)(6) Deposition of Janis Wallner
Exhibit 5	Deposition of Debra S. Liller
Exhibit 6	*Answer and Counterclaims of Defendant Lance Oil & Gas Company to Plaintiff's First Amended Complaint,* Case No. 32513
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