



is relevant to the analysis for certifying the class in this case; and they only serve as an excuse for Lance to try to persuade this Court, for the third time, that it is entitled to a claim for setoff or recoupment. This Court should once again reject that attempt, and decline to decertify the class.

#### Facts

This class action concerns Lance's method of deducting taxes from royalty payments. Its tax and royalty calculation methodology applies uniformly across the class. Lance does not dispute that it uniformly #1) overestimates, and over deducts (in most years) ad valorem tax rates to be imposed, and #2) calculates the ad valorem, severance and conservation tax it withholds from royalty payments based on the "Royalty Value" rather than the "Taxable Value."<sup>2</sup> Lance does not dispute it has overdeducted based on its use of the incorrect ad valorem tax rate; and the parties have both filed summary judgment motions requesting the Court's ruling on the "Tax Value" issue. The class claims are based entirely on these two, class-wide, tax deduction methodologies. They do not in any way depend on, or arise from, individual lease language that relates to the separate and distinct issues of whether Lance may take deductions for processing, gathering, or other costs it incurs.

Lance's long standing business practice for calculating and paying royalties uses one uniform method for all royalty and overriding royalty owners. This method has been used by Lance from 2002 to the present. *See* Plaintiff's Rule 56.1, ¶ 22-28. Janis Wallner, as Lance's 30(b)(6) designated representative, testified Lance used one uniform method which deducted only transportation costs to calculate all royalties. *See* Plaintiff's Rule 56.1, ¶ 22-28. Even if the lease allowed additional deductions, Lance ignored the language and used the one uniform

---

to a Substitution of Party. When the terms "operator," "producer," "taxpayer," or "lessee" are used, this is also a reference to Lance.

<sup>2</sup> See discussion in *Plaintiff's Brief in Support of Motion for Partial Summary Judgment*, filed August 1, 2013, pp. 4-5; Affidavit of James Steven Wilson attached thereto as Exhibit 1.

method. *See* Plaintiff's Rule 56.1, ¶¶ 23-24, and *Wallner 30(b)(6) deposition* 25: 4-10, attached as Plaintiff's Exhibit 9. She testified that Lance would not go back to prior periods and take deductions on an individual lease basis. *See* Plaintiff's Rule 56.1, ¶27, and *Wallner 30(b)(6) deposition* 31: 13-16. Lance deducts no costs from any royalty payment other than transportation costs, so an analysis of individual lease language is not necessary. The *Lange* settlement agreement establishes the royalty calculation methodology (specifically excluding this tax deduction issue) for the future years. Thus, for all purposes of this case only the royalty method actually used by Lance is at issue, and there is no reason to look at individual leases.

This Court has previously ruled, on two occasions, that Lance's deductions contentions are not a part of this case. *See, Findings of Fact, Conclusions of Law and Order Granting Plaintiff's Motion for Class Certification*, ¶ 52 ("This case is not about whether, under various lease terms, Lance might be able to take deductions for gathering, processing and fuel."); ¶58 ("Defendant's course of conduct in implementing its internal business policy of treating its owners the same for deducting taxes and Royalty payments, regardless of lease language, demonstrates the "typicality" requirement is satisfied."); and ¶96 (recognizing the issue of the permissibility of certain deduction has been raised by Lance in the *Lange Trust* litigation, as distinguished from the Production Tax issue in this case.); and May 10, 2013 *Decision Letter* regarding Class Notice ("individualization of each oil and gas lease provision is beyond the main issue raised by the complaint. That issue is whether the reporting and remittance of royalties is correct when dealing with tax deductions. The possible addition of deductions that defendant *might* have been able to take under a certain lease are a complication that is unnecessary to bring within this case.")

Lance's renewed attempt to argue that the need to examine individual lease language defeats the commonality and predominance factors required for class certification 1) ignores Lance's historic uniform royalty payment practice, 2) is not justified by the recent caselaw, and 3) does not address the fundamental problem with Lance's position – the individual lease language only affects Lance's setoff or recoupment claim, which it has never asserted as a counterclaim and is not a part of this case.<sup>3</sup>

### **Discussion**

Analysis of the cases relied on by Lance reveals their inapplicability to the facts of this case.

#### **A. The Caselaw Does not Support Decertification of the Class**

##### **1. Comcast v. Behrend**

*Comcast v. Behrend*, 133 S.Ct. 1426, 185 L.Ed. 2d 515 (2013), is an antitrust case in which the Plaintiffs asserted four separate theories of antitrust impact, only one of which was accepted by the District Court. 133 S.Ct. at 1430. The Plaintiffs' damage model measured the class damages for all four issues, and "failed to measure damages resulting from the particular antitrust injury on which petitioner's liability in this action is premised." *Id.* at 1433. On this basis, the Supreme Court held that class certification was improper. ("In light of the model's inability to bridge the differences between supra-competitive prices in general and supra-competitive prices attributable to the deterrence of overbuilding, Rule 23(b)(3) cannot authorize treating subscribers within the Philadelphia cluster as members of a single class." *Id.* at 1435.) In contrast, in the *Geer* case, Plaintiff's expert has a model which applies classwide and is consistent with his liability case, for each of the two issues. *See Plaintiff's Expert Report filed*

---

<sup>3</sup> See discussion in *Plaintiff's Brief in Support of Motion for Partial Summary Judgment*, filed August 1, 2013, pp. 6-9, and below.

*March 21, 2013, Plaintiff's Supplemental Disclosure of Expert Witness Testimony filed June 7, 2013, and Affidavit of James Steven Wilson attached to Plaintiff's Rule 56.1 Statement of Facts filed July 312, 2013. See also Expert Report of Lance's Expert Michael A. Zeeb, pp. 3-4, where Mr. Zeeb shows his calculations for the Plaintiff's two tax overpayment issues in both the SAP and Legacy systems, thus demonstrating Lance's ability to make the classwide calculations consistent with Plaintiff's liability case. There is nothing in Comcast which would compel the Court to change its decision certifying the class.*

*Comcast is not quite the sea-change in class action law that Lance contends it is (Lance Brief, p. 14). This "clarification" of Rule 23(b)(3)'s predominance requirement had already been made by the Supreme Court in Wal-Mart Stores, Inc. v. Dukes, 131 S.Ct. 2541, 2551 (2011), when it said class certification requires a common contention that applies to every member of the class sought to be certified, and the "determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." This Court considered and relied upon the Wal-Mart case in its decision to Certify the Class. See, Findings of Fact, Conclusions of Law and Order Granting Plaintiff's Motion for Class Certification, ¶¶ 31, 32, 51, 53, 54, 80, 90. It concluded that Rule 23(b)(3) requirements had been met in this case because, in part, "questions of law or fact common to the members of the class predominate over any questions affecting individual members." Id., p. 22, Conclusions of Law – Rule 23(b)(3) Class, ¶i. Lance provides no basis for the Court to change that conclusion.*

*Lance relies upon a Federal District court case from Kentucky, Cowden v. Parker & Assoc., Inc., 2013 WL 2285163 (E.D. Ky. 2013), to support its contention that Comcast is dispositive of the issues in this case, but that case is also easily distinguishable. In Cowden, insurance agents sued an insurance agency alleging the agency had not paid them commissions*

on their sales of Medicare Advantage plans. *Id.* at \*1. The Court held that class certification was improper because no single issue predominated across the class, finding: 1) commission grids set forth 12 different levels of commissions, requiring additional, unidentified evidence to establish what amount each agent should receive, 2) the evidence regarding each date the agency was obligated to pay, and to cease paying, the agent varied for each agent, and 3) the agency was permitted to deduct certain expenses from each commission check, which expenses varied. The court held “the issue of whether [the agency] breached its obligation to pay agents commissions will require an individual analysis of each agent’s sales and expenses, the commission payments made to the agent, and any legitimate chargebacks to the agent’s account.” *Id.* at \*5. The distinction between the facts in *Cowden* and those in *Geer* illustrates the fallacy of Lance’s entire decertification argument. In *Cowden*, the issue raised by Plaintiffs was the propriety of agents’ commissions, an issue which customarily required calculation of varying commission fee grid provisions, varying timeframes, and varying “chargeback” analyses. In *Geer*, the issue is the propriety of Lance’s tax deduction calculations, an issue which applies uniformly classwide, and which is capable of classwide resolution. Lance’s ability to take deductions for processing, gathering, and other costs has no bearing whatsoever on that issue. (Unlike the agency in *Cowden*, which customarily deducted expenses from agents’ commissions, Lance has never deducted the costs it now asserts it “could have” deducted.) Instead, if Lance wishes to assert such claims, it might have done so as a compulsory counterclaim, which it declined to do,<sup>4</sup> or, as this Court instructed, it “could assert those outside of this class action proceeding in a court of

---

<sup>4</sup> See discussion in *Plaintiff’s Brief in Support of Motion for Partial Summary Judgment*, filed August 1, 2013, pp. 6-9, and below.

competent jurisdiction as to the amount of the claim and deal with the claim on an individualized basis.” *Geer v. Lance Oil & Gas Decision Letter*, May 10, 2013.

## 2. The XTO cases

The Tenth Circuit reversed two District Court cases dealing with class certification of royalty claims on July 9, 2013. *Wallace B. Roderick Revocable Living Trust v. XTO Energy, Inc.*, 2013 WL 3389469, (“*Roderick*”) reversed a Kansas District Court decision certifying a class; *Chieftain Royalty Co. v. XTO Energy, Inc.*, 2013 WL 3388629, (“*Chieftain*”) reversed an Oklahoma District Court decision certifying a class. Both cases are based on the same basic contention; that XTO underpaid royalties by improperly deducting costs. *Roderick*, \*1; *Chieftain*, \*1. The Plaintiffs in both cases relied, in part, on a state law imposing an implied duty of marketability (IDM), which imposes on the producer the full costs of production required to transform gas into a marketable product, “absent a provision to the contrary.” *Id.* The Tenth Circuit held that Plaintiffs’ claims required an individualized factual determination for at least two reasons: First, known variations in lease language in many cases negated the existence of an implied duty of marketability, *Roderick*, \*4; *Chieftain*, \*3; and, Second, gas may be in marketable condition at the mouth of some wells but not others, *Roderick*, \*5; *Chieftain*, \*2.

The Tenth Circuit reversed the decision to certify the class in both cases, because Plaintiffs’ claims did not raise a “common contention . . . ‘of such a nature that it is capable of *classwide resolution* – which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.’” *Roderick*, \*3, *Chieftain*, \*3, quoting *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2551.

In the *XTO* cases, Plaintiffs' claims of improper deductions could not be determined without an examination of lease language that may have rendered those deductions proper; or without an examination of the point at which gas became "marketable" at each well. The critical distinction between those cases and the instant case is that no such factual determination need be made to decide on and quantify Plaintiff's claims of incorrect tax deductions. Lance's tax deduction calculations are either within the law or they are not, and the determination of the truth or falsity of Geer's contentions will resolve the issues that are central to the validity of each one of the claims in one stroke.

The Court should reject Lance's attempt to obfuscate the issue by attempting to replace the central issue of tax deductions with its unasserted counterclaim for setoff or recoupment.

Lance relies upon a quote in *Roderick* from *Sacred Heart Health Systems, Inc. v. Humana Military Healthcare Services, Inc.*, 601 F.2d 1159 (11<sup>th</sup> Cir. 2010), (Lance Brief, pp. 19, 20)<sup>5</sup> but once again fails to provide an analysis of the case's context. In *Sacred Heart*, hospitals in six states sued a health maintenance organization, alleging the HMO had breached their individual network provider agreements when it underpaid them for medical services. *Id.* at 1164. The Court found that the terms of the payment clauses in the provider agreements "contain a wide variety of language,"<sup>6</sup> and further, that the laws of six different states would apply to the contract interpretation. *Id.* at 1167. The HMO asserted that many of the hospitals

---

<sup>5</sup> Lance cites *Sacred Heart* for the proposition that "if the defendant has non-frivolous defenses to liability that are unique to individual class members, and common question may well be submerged into individual ones." But in *Sacred Heart*, as in the *XTO* cases, the defenses were central to the Plaintiffs' claims; unlike here, where Lance's deduction claims are unrelated to the Plaintiffs' tax claims. Further, in *Sacred Heart*, the "non-frivolous defenses" were the affirmative defenses of ratification and waiver; unlike Lance's unasserted compulsory counterclaim of setoff or recoupment.

<sup>6</sup> "[T]he differences in these [payment] provisions are reducible linguistically to a minimum of around 33 variants." *Id.* at 1171.



had either ratified the HMO payment schedule or waived their rights to challenge it. *Id.* at 1168.

The Court held that Plaintiffs' breach of contract claims were not suitable for class certification, stating:

the hospitals' agreements contain a variety of payment terms that variously bolster or detract from Humana's non-frivolous argument that CMAC rates are contractually valid. Also within this spectrum are terms that are not readily classifiable; these singular and enigmatic provisions further erode what marginal textual similarity exists here. They also open the door, under the law of the six relevant states, to consideration of extrinsic evidence. . .

*Id.* at 1175.

Just as in the *XTO* cases, the *Sacred Heart* Plaintiffs' breach of contract contentions rested on many different contractual terms which were central to the validity of their claims. In contrast, the *Geer* claims rest upon provisions of the Wyoming Royalty Payment Act which are applicable classwide. (Lance's assertion that examination of individual lease language is necessary is unrelated to Plaintiffs' WRPA claims, but instead arise from its assertion that it has been entitled to other deductions, for costs it has incurred for processing, gathering, and other expenses.) As the *Sacred Heart* court recognized, "A class action may be maintained even when the claims of members of the class are based on different contracts where the relevant contractual provisions raise common questions of law and fact and do not differ materially." *Id.* at 1171, quoting *Sharkus v. Blue Cross of Greater Philadelphia*, 494 Pa. 336, 431 A.2d 883, 886-87 (1981). The *Sacred Heart* court distinguished the facts of the case before it (with at least 33 different variations of payment terms in the contracts alleged to have been breached) from the facts in *Allapath Services v. Exxon Corp.*, 333 F.3d 1248 (11<sup>th</sup> Cir. 2003), saying that in *Allapath*, while each class member "had a different contract, each contract 'included express language to the effect that any breach of a provision by either party or a failure to carry out the contract provisions 'in good faith' was conclusively deemed to be substantial.'" As that express

language was the central issue of the Plaintiffs' claims, the Court there held that the issue "'was a question common to the class and the issue of liability was appropriately determined on a class-wide basis.'" *Sacred Heart*, 601 F.3d at 1171, quoting *Allapath*, 333 F.3d at 1261.

The same distinction applies here. The claims asserted by the class relate to a question common to the class – whether Lance's tax deduction calculations result in royalty underpayments in violation of the WRPA. The issue of Lance's liability has appropriately been determined by this Court to be resolved on class-wide basis, and Lance's attempt to insert an unasserted counterclaim for setoff or recoupment into the analysis, based on its claim for deductions unrelated to the tax claims, should be rejected.

**B. Plaintiff's Damages Claim Arises from both the Lease Contracts and the Tax Statutes**

Plaintiff's claim for unpaid royalties is based upon the lease obligation which requires the Lessee (Lance in this case) to pay the Lessor (mineral owner) a royalty as compensation for Lessor leasing the mineral interest to Lessee (W.S. 30-5-304(a)(i, ii, vii)), and the statutes allowing Lance to deduct taxes paid from royalties. The overriding royalties are carved out of the Lessee's interest in the lease requiring Lessee to pay a share of proceeds to the overriding royalty owner. W.S. 30-5-304(a)(v). The duty and obligation to pay the royalty arises by contract from the lease. Lance admits and concedes it uses only one uniform method to calculate all royalties due royalty and overriding royalty owners. The obligation to properly calculate and deduct severance and ad valorem taxes from the royalty payments arises by statute.

The WRPA requires the "total amount of state severance, ad valorem and other production taxes" be provided to all interest owners on a monthly basis. W.S. 30-5-305(b)(v). These production taxes are determined by methods prescribed by the Wyoming statutes. The

amount and basis of these taxes are imposed by W.S. 39-14-203. The taxpayer (Lance) is required to report and pay the severance and ad valorem taxes. It does so using the certified value it reported to the State of Wyoming, Department of Revenue (“DOR”). Lance is required to report to the royalty owner the actual amount of these taxes paid, not the amount it deducts from royalties.

As the Lessee, Lance then must allocate these taxes paid between the various interest owners. The allocation of these taxes is required to be based upon the Lessor’s retained interest under the lease (royalty percentage). W.S. 39-14-203(c). With regard to ad valorem taxes, the Lessor (royalty owner) is only liable for the amount of taxes “to the extent of the lessor’s retained interest under the lease,” and the Lessee (Lance) “is liable for all other ad valorem taxes due on production under the lease.” W.S. 39-14-203(c)(i). Lance may deduct from royalty owners’ share of royalties only those severance “taxes paid” . . . “in proportion to the interest ownership.” W.S. 39-14-203(c)(iii). Lance may only deduct severance and ad valorem taxes paid in proportion to the ownership interest of each royalty or overriding royalty owner—no more. Lance is only authorized to deduct the proportionate share of taxes paid, and by deducting a larger amount, Lance has violated both W.S. 39-14-203(c), and W.S. 30-5-301-305, by failing to pay the proceeds to all persons “legally entitled thereto.”

Thus, Plaintiff’s claim for underpayment of royalties arises by contract and statute. Royalties are due pursuant to the lease in the percentage amount set forth in the lease or document creating the overriding royalty; Lance calculates these royalties using the one uniform method it has used since 2002 to calculate royalties; and the amount of severance and ad valorem taxes which may be deducted from royalties must be based upon the actual taxes paid to the extent of the Lessor’s retained interest/proportionate share in the lease, which equals the royalty

rate stated in the lease or overriding royalty document. This method results in the royalty owner paying its share of severance and ad valorem taxes paid in proportion to the interest ownership of each party as required by the tax statutes. W.S. 39-14-203(c).

A simple example helps to illustrate the interplay between the lease requiring payment of royalties and the amount of taxes allowed to be deducted from royalties.

**Example:**

**Allocation of Severance and Ad Valorem Taxes by Extent of Ownership Interest:**

Assume:

- 1) Royalty Owner #1: 12.5%
- 2) Overriding Royalty (ORR) Owner #2: 4.0%
- 3) Lessee's interest(Lance): 83.5%
- 4) Severance taxes actually paid: \$250.00
- 5) Ad valorem taxes actually paid: \$250.00

Each owner's proportionate share of taxes is determined by the calculation set forth below:

<b><u>Interest Owner</u></b>	<b><u>Proportionate Amt. Severance Tax</u></b>	<b><u>Proportionate Amt. Ad Valorem Tax</u></b>
RO #1 <b>12.5%</b>	\$31.25	\$31.25
ORR #2 <b>4%</b>	\$10.00	\$10.00
Lessee/Lance <b>83.5%</b>	<u>\$208.75</u>	<u>\$208.75</u>
Totals:	\$250.00	\$250.00

This is the method required by statute, and is the only method which arrives at an accurate division of severance and ad valorem taxes paid to the extent of the royalty owner's retained interest, and in proportion to the interest ownership.

In contrast, Lance's method allocates a larger percentage of taxes to the royalty owners than their retained interest/proportionate share under the lease.

C . Lance is Asserting Claims for Setoff or Recoupment

Lance cannot get around the fact its argument of permissible-deductions-not-taken, which it depends on for its position that predominance is lacking, is a compulsory counterclaim that it has not made. Lance cites three authorities in support of its contention that “Lance’s position in no way implicates the doctrines of setoff or recoupment.” (Lance Brief, pp. 22-23). All three actually support the conclusion that Lance’s deductions-not-taken argument is in fact a setoff or recoupment. *Spratt v. Sec. Bank of Buffalo*, 654 P.2d 130 (Wyo. 1982) was a suit by a trustee and settlor against the bank after the bank setoff a trust asset against the settlor’s debts. At issue was whether the settlor was in fact the owner of the asset such that the bank was justified in taking the setoff. The court discussed the definition of a setoff, including the statement that “there must be mutuality of obligation.. .” *Id.* at 136. Here, the Plaintiff class has asserted Lance has underpaid royalties to it based on overdeduction of taxes; Lance asserts it has overpaid royalties, based on deductions it might have, but did not, take. Mutuality of obligation is what Lance contends exists here. In *Minneapolis Nat. Bank of Minneapolis, Kan. v. Liberty Nat’l Bank of Kansas City*, 72 F.2d 434, 436 (10<sup>th</sup> Cir. 1934), the “doctrine of set-off or counterclaim” actually arose in the context of a cross-petition or counterclaim, which only confirms the Plaintiff’s contention that counterclaim is the only correct procedure for pursuing a setoff. Finally, the section of *Moore’s Federal Practice – Civil* § 13.11 cited by Lance to describe recoupment, is found in Chapter 13, entitled **Counterclaim and Crossclaim**, and the section they cite is entitled **§ 13.11 Recoupment Claims Are Compulsory**.

“Under Rule 13, there is no general difference for purposes of pleading between setoff, recoupment, or independent claims in the sense they all constitute counterclaims.” *Hawkeye-Security Ins. Co. v. Apodaca*, 524 P.2d 874, 879 (Wyo. 1974). “The law is consistent and well

established that the right of setoff or a counterclaim is a required pleading.” *Mad River Boat Trips, Inc. v. Jackson Hole Whitewater, Inc.*, 818 P.2d 1137, 1140 (Wyo. 1991). Lance cannot raise its unasserted setoff or recoupment claim to defeat the class.<sup>7</sup>

### **Conclusion**

Plaintiff has claimed and can establish damages of a common contention that applies to every member of the class, and the “determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” Lance has presented no pertinent new law sufficient to reexamine the Court’s original decision to certify the class. An examination of the recent caselaw only serves to reinforce that decision. The Court should deny Lance’s Motion to Decertify the Damages Class.

DATED this 27th day of August, 2013.



Kate M. Fox  
Wyoming State Bar #5-2646  
John C. McKinley  
Wyoming State Bar #5-2635  
DAVIS & CANNON, LLP  
422 W. 26<sup>th</sup> Street  
Post Office Box 43  
Cheyenne, WY 82003

---

<sup>7</sup> Other legal grounds that prohibit Lance from raising its deductions-not-taken argument are set forth in *Plaintiff’s Brief in Support of Partial Summary Judgment* filed August 1, 2013. They include collateral estoppels based on the *Lange Trust* settlement, *Brief* at 9-11; Law of the case, *Brief* at 11; and the Voluntary Payment Rule, *Brief* at 12.


**CERTIFICATE OF SERVICE**

I hereby certify that on this 22<sup>nd</sup> day of August, 2013, the foregoing was served via U.S. Postal Mail to the following:

Mark R. Ruppert, P.C.  
Holland & Hart, LLP  
2515 Warren Avenue, Suite 450  
P.O. Box 1347  
Cheyenne, WY 82003-1347

Jere C. Overdyke, III  
Holland & Hart, LLP  
25 South Willow Street, Suite 200  
P.O. Box 68  
Jackson, WY 83001

Cathleen D. Parker  
Senior Assistant Attorney General  
Wyoming Attorney General's Office  
123 State Capitol Building  
Cheyenne, WY 82002

  
\_\_\_\_\_  
Kate M. Fox

**AGREN BLANDO COURT REPORTING & VIDEO INC**

1

DISTRICT COURT, CAMPBELL COUNTY, WYOMING  
Civil Action No. 32940

30(b)(6) DEPOSITION OF LANCE OIL & GAS COMPANY, INC.  
BY JANIS WALLNER  
July 12, 2013

KENNETH B. GEER,  
Plaintiff,  
vs.  
ANADARKO E & P ONSHORE, L.L.C.,  
Successor to Lance Oil & Gas Company, Inc.,  
a Delaware corporation,  
Defendant.

APPEARANCES:

DAVIS & CANNON, L.L.P.  
By Kate M. Fox, Esq.  
and  
John C. McKinley, Esq.  
422 West 26th Street  
P.O. Box 43  
Cheyenne, Wyoming 82003  
Appearing on behalf of Plaintiff.

HOLLAND & HART, L.L.P.  
By Mark R. Ruppert, Esq.  
2515 Warren Avenue, Suite 450  
P.O. Box 1347  
Cheyenne, Wyoming 82001-1347  
AND  
ANADARKO PETROLEUM COMPANY  
By Thomas P. Goresen, Esq.  
1201 Lake Robbins Drive  
The Woodlands, Texas 77380  
Appearing on behalf of Defendant.

2

1 Pursuant to Notice and the Wyoming Rules  
2 of Civil Procedure, the 30(b)(6) deposition of  
3 LANCE OIL & GAS COMPANY, INC. BY JANIS  
4 WALLNER, called by Plaintiff, was taken on Friday,  
5 July 12, 2013 commencing at 11:37 a.m., at 555 17th  
6 Street, Suite 3200, Denver, Colorado, before Marlene  
7 F. Smith, Registered Professional Reporter and  
8 Notary Public within and for the State of Colorado.

9 I N D E X

30(b)(6) DEPOSITION OF LANCE OIL & GAS COMPANY, INC.  
BY JANIS WALLNER

11 EXAMINATION BY: PAGE

12 Mr. McKinley 3

13 Ms. Fox --

14 Mr. Ruppert 31

15 Mr. Goresen --

16

EXHIBITS INITIAL REFERENCE

17 Exhibit 8 Definitions 4

18

19

20

21

22

23

24

25

3

1 PROCEEDINGS

2 JANIS WALLNER,

3 being previously sworn in the above cause, was  
4 examined and testified as follows:

5 EXAMINATION

6 BY MR. McKINLEY:

7 Q Janis, have you been designated by Lance  
8 as their deponent for the 30(b)(6) deposition?

9 A Yes.

10 Q How did that designation occur?

11 A I don't know.

12 MS. FOX: Just lucky.

13 Q (BY MR. McKINLEY) Were you asked by Mark  
14 to testify as a 30(b)(6) deponent?

15 A Yes.

16 Q What's your understanding of the  
17 designation as a 30(b)(6) deponent?

18 A Is that I would speak to the -- the  
19 business practices for Lance, on their behalf.

20 Q And by Lance, under the 30(b)(6), let's  
21 define Lance as being Lance the entity responsible  
22 for paying royalties and taxes on coal bed methane  
23 production in Campbell County for the time frame  
24 2000 through the present.

25 A Okay.

4

1 Q Okay. And so then we will try not to do  
2 the Lance-Anadarko stuff, to an extent I may  
3 separate it out, but let's -- let's focus on that  
4 definition of Lance.

5 A Okay.

6 Q What did you do to prepare for the  
7 30(b)(6) deposition?

8 A I read through the questions or the  
9 topics that were on the sheet in front of you, the 1  
10 through 6, questions. Past that and reviewing --  
11 and just trying to think back how everything was  
12 handled, I did not do anything extra in preparation.

13 Q Did you read the first page of the  
14 designation?

15 A I did.

16 Q Okay.  
(Exhibit 8 was marked.)

17 MR. RUPPERT: Can we go off the record  
18 for a second?  
(Discussion off the record.)

20 Q (BY MR. McKINLEY) Okay. If you would  
21 turn to Page 2 of Deposition Exhibit 8, please.  
22 Now, you said that for purposes of  
23 preparing for this deposition, you -- you read the  
24 notice as to Items 1 through 6. Did you read

25



<p>5</p> <p>1 anything else?</p> <p>2 A I read the whole notice.</p> <p>3 Q Did you read Items 7 through 11?</p> <p>4 A Yes.</p> <p>5 Q Okay. Were you designated as Lance's</p> <p>6 30(b)(6) deponent for Question 1?</p> <p>7 A Yes.</p> <p>8 Q Is your answer to Question 1 any</p> <p>9 different than your testimony in your deposition</p> <p>10 this morning?</p> <p>11 A It is not.</p> <p>12 Q Were you designated as Lance's 30(b)(6)</p> <p>13 deponent for Question No. 2?</p> <p>14 A Yes.</p> <p>15 Q Is your answer to Question No. 2 any</p> <p>16 different than your testimony this morning in your</p> <p>17 deposition?</p> <p>18 A No.</p> <p>19 Q Were you designated as Lance's 30(b)(6)</p> <p>20 deponent for Question No. 3?</p> <p>21 A Yes.</p> <p>22 Q Are your answers to Question No. 3 any</p> <p>23 different than your testimony this morning during</p> <p>24 your deposition?</p> <p>25 A No.</p>	<p>7</p> <p>1 Q And that covers both the SAP and Legacy</p> <p>2 computer systems?</p> <p>3 A Correct.</p> <p>4 Q Is your response to No. 9 any different</p> <p>5 than your testimony this morning during your</p> <p>6 deposition?</p> <p>7 A No.</p> <p>8 Q Let's go to Category No. 6, Janis. My</p> <p>9 question is, if I understand this correctly, Lance</p> <p>10 files monthly severance tax returns that have</p> <p>11 estimated taxable value and estimated severance tax</p> <p>12 payments, correct?</p> <p>13 A Correct.</p> <p>14 Q And those calculations are not done by</p> <p>15 you, they're done by Gloria or Kyle?</p> <p>16 A No, the calculations are done in my</p> <p>17 group. The data from those calculations is compiled</p> <p>18 and reported to -- and paid to the state by Gloria</p> <p>19 and Kyle.</p> <p>20 Q So they take information that is in</p> <p>21 your royalty payment accounting system, working</p> <p>22 interest owner accounting system, and use it to</p> <p>23 report the estimated severance tax certified value</p> <p>24 and make the monthly estimated severance tax</p> <p>25 payments?</p>
<p>6</p> <p>1 Q Were you designated as Lance's 30(b)(6)</p> <p>2 deponent for Question No. 4?</p> <p>3 A Yes.</p> <p>4 Q Are your answers to Question No. 4 any</p> <p>5 different than your testimony this morning during</p> <p>6 your deposition?</p> <p>7 A No.</p> <p>8 Q Were you designated as Lance's 30(b)(6)</p> <p>9 deponent for Category No. 5?</p> <p>10 A Yes.</p> <p>11 Q Are your answers to that question any</p> <p>12 different than your testimony this morning in your</p> <p>13 deposition?</p> <p>14 A No.</p> <p>15 Q Were you designated as Lance's 30(b)(6)</p> <p>16 deponent for questions in Category 6?</p> <p>17 A Yes.</p> <p>18 Q Were your answers to the Category 6</p> <p>19 questions any different than your testimony this</p> <p>20 morning in your deposition?</p> <p>21 A No.</p> <p>22 Q You were designated as Lance's 30(b)(6)</p> <p>23 deponent for purposes of the category of questions</p> <p>24 in Item No. 9?</p> <p>25 A Yes.</p>	<p>8</p> <p>1 A Correct.</p> <p>2 Q And those calculations used to calculate</p> <p>3 the amount of severance tax is done by Gloria or</p> <p>4 Kyle?</p> <p>5 A No. They compile and file the reports.</p> <p>6 The calculations are done within the royalty</p> <p>7 accounting system.</p> <p>8 Q So do you -- do you calculate the total</p> <p>9 amount of certified value?</p> <p>10 A Well, at that point it's not certified,</p> <p>11 correct, because it's not gone through the state</p> <p>12 validation process. But the property level taxable</p> <p>13 value is calculated in the royalty accounting</p> <p>14 system.</p> <p>15 Q Okay. And so that's for the monthly</p> <p>16 severance tax reports?</p> <p>17 A Correct.</p> <p>18 Q Okay. So now let's -- let's go to the</p> <p>19 April certified value report. Okay?</p> <p>20 A Yes.</p> <p>21 Q And that April certified value report</p> <p>22 would be for the -- previous calendar year's</p> <p>23 12-months' production?</p> <p>24 A Yes.</p> <p>25 Q And that report includes the certified</p>

<p style="text-align: right;">9</p> <p>1 taxable value for severance and ad valorem taxes?</p> <p>2 A Yes.</p> <p>3 Q And that is a self-reported certified</p> <p>4 value by Lance?</p> <p>5 A Yes.</p> <p>6 Q Okay. Who then calculates the tax on</p> <p>7 that certified value for severance tax purposes?</p> <p>8 A The tax is calculated monthly through the</p> <p>9 royalty accounting software. The -- the report at</p> <p>10 the end of the year is a compilation of all of those</p> <p>11 calculations throughout the year.</p> <p>12 Q Right. And --</p> <p>13 A So it's not recalculated at the end of</p> <p>14 the year.</p> <p>15 Q Well, I'm talking about the certified</p> <p>16 value. You report -- Lance reports a certified</p> <p>17 value to the state of Wyoming in April of every year</p> <p>18 for the previous year's 12 months of production --</p> <p>19 A Yes.</p> <p>20 Q -- correct?</p> <p>21 A Yes.</p> <p>22 Q And that certified value is then used to</p> <p>23 calculate Lance's severance tax for that previous</p> <p>24 year --</p> <p>25 A Yes.</p>	<p style="text-align: right;">11</p> <p>1 bill?</p> <p>2 A Yes.</p> <p>3 Q So the amount of ad valorem tax is not</p> <p>4 calculated by Lance, is it?</p> <p>5 A The actual amount paid to -- to the</p> <p>6 counties, no.</p> <p>7 Q Who calculates that?</p> <p>8 A I believe the counties do.</p> <p>9 Q And then Lance pays that tax bill, right?</p> <p>10 A Correct.</p> <p>11 Q And the calculation of that is based upon</p> <p>12 the total certified value for ad valorem tax, right?</p> <p>13 A Yes.</p> <p>14 Q And there's only one certified value</p> <p>15 reported by Lance, correct?</p> <p>16 A For each property, yes.</p> <p>17 Q Yes. And so Lance does not report the</p> <p>18 working interest owner certified value and the</p> <p>19 royalty owner certified value, do they?</p> <p>20 A No.</p> <p>21 Q And so Campbell County applies a uniform</p> <p>22 ad valorem tax rate to a hundred percent of the</p> <p>23 certified ad valorem tax value, don't they?</p> <p>24 A Yes.</p> <p>25 Q And Lance pays that, correct?</p>
<p style="text-align: right;">10</p> <p>1 Q -- correct?</p> <p>2 And who calculates that severance tax on</p> <p>3 that certified value?</p> <p>4 A That final report would be done by Gloria</p> <p>5 Shone.</p> <p>6 Q So she calculates the amount of</p> <p>7 overpayment or underpayment from those estimated</p> <p>8 severance tax reports?</p> <p>9 A Correct.</p> <p>10 Q And she calculates the total amount of</p> <p>11 severance tax for that production year?</p> <p>12 A Yes.</p> <p>13 Q Okay. Who calculates the amount of ad</p> <p>14 valorem tax owed on that certified value?</p> <p>15 A The ad valorem tax, I believe, is</p> <p>16 actually a bill from the state agencies back to us</p> <p>17 based on that certified value.</p> <p>18 Q Does the state provide that certified</p> <p>19 value to Campbell County?</p> <p>20 A I believe so, yes.</p> <p>21 Q Okay. Does Campbell County calculate the</p> <p>22 amount of ad valorem tax on that previous year's</p> <p>23 production?</p> <p>24 A Yes.</p> <p>25 Q Does Campbell County send Lance a tax</p>	<p style="text-align: right;">12</p> <p>1 A Yes.</p> <p>2 Q And Lance does the same thing for</p> <p>3 severance tax, don't they?</p> <p>4 A Yes.</p> <p>5 Q Okay. You're designated as the 30(b)(6)</p> <p>6 deponent for Lance for Category No. 7?</p> <p>7 A No.</p> <p>8 Q Who at Lance would you talk to to get</p> <p>9 that information?</p> <p>10 A For actual payments made, I'm not sure.</p> <p>11 I would have to look into who the right person would</p> <p>12 be.</p> <p>13 Q Is there anybody at Lance that you would</p> <p>14 talk to to get the answer to that question?</p> <p>15 A Well, I guess I'm not sure exactly what</p> <p>16 the question is. If it's just Lance's payment of</p> <p>17 taxes, the severance taxes are paid by Gloria, the</p> <p>18 ad valorem taxes are paid by Bobby Ralston, the</p> <p>19 actual physical payments to the state.</p> <p>20 Q Is Bobby Ralston a man or woman?</p> <p>21 A Man.</p> <p>22 Q Okay. B-o --</p> <p>23 A B-o-b-b-y.</p> <p>24 Q Okay. That's the current Anadarko</p> <p>25 people?</p>

<p style="text-align: right;">13</p> <p>1 A Correct.</p> <p>2 Q And this category is for the whole time</p> <p>3 and the relevant time period as defined on Page 1 of</p> <p>4 your notice or -- excuse me, Page 2 of the notice is</p> <p>5 2002 to the present?</p> <p>6 A Yes.</p> <p>7 Q So for the time frame of 2002 to 2006,</p> <p>8 who would be -- who would you talk to?</p> <p>9 A There is no one left at the company who</p> <p>10 handled the tax payments in the Legacy time frame.</p> <p>11 So I don't know who the right person within the</p> <p>12 company would be to talk about those payments.</p> <p>13 Q Is that information in storage or</p> <p>14 microfiche, microfilm?</p> <p>15 A I would assume that there is some</p> <p>16 documents, et cetera, in storage boxes. I do not</p> <p>17 have access to those at this time.</p> <p>18 Q Who has access to them?</p> <p>19 A I don't know.</p> <p>20 Q Would those be stored in Denver or</p> <p>21 somewhere else?</p> <p>22 A They could either be in Denver or they</p> <p>23 could be in Houston.</p> <p>24 Q Were you designated as Lance's 30(b)(6)</p> <p>25 deponent for Category No. 8?</p>	<p style="text-align: right;">15</p> <p>1 not long after the merger. So my guess would be the</p> <p>2 first half of 2007. I don't have a date though.</p> <p>3 Q What was his name again?</p> <p>4 A Ralph Thomas, T-h-o-m-a-s.</p> <p>5 Q You testified earlier regarding tax</p> <p>6 settlements and adjustments?</p> <p>7 A Yes.</p> <p>8 Q Are you designated as Lance's 30(b)(6)</p> <p>9 deponent for Item No. 10?</p> <p>10 A No.</p> <p>11 Q Why not?</p> <p>12 A Because tax settlements were not a part</p> <p>13 of my responsibility or something that I have any</p> <p>14 direct knowledge of.</p> <p>15 Q Okay. But your testimony is that you</p> <p>16 never made any adjustments from 2002 to present for</p> <p>17 any tax settlements or adjustments on the -- for</p> <p>18 calculating owner royalties, correct?</p> <p>19 A Correct.</p> <p>20 Q Who would be the person that you would</p> <p>21 talk to at Lance regarding tax settlements and</p> <p>22 adjustments for Category No. 10?</p> <p>23 A My guess is, again, Bobby Ralston would</p> <p>24 be a good resource. His manager above him should</p> <p>25 have information on those type of tax settlements</p>
<p style="text-align: right;">14</p> <p>1 A No.</p> <p>2 Q Who would you talk to within Lance to get</p> <p>3 a response to the question in Item No. 8?</p> <p>4 A Again, for certified value, currently the</p> <p>5 best resource is probably Bobby Ralston. That only</p> <p>6 covers the Anadarko time frame. Like I said,</p> <p>7 everyone who worked in the tax department for</p> <p>8 Western Gas Resources-Lance is no longer with the</p> <p>9 company.</p> <p>10 Q Okay. So let's back up a little bit</p> <p>11 then. From 2002 to the date of the merger, who was</p> <p>12 responsible at Lance Western for reporting the</p> <p>13 certified value on behalf of Lance?</p> <p>14 A The tax reports, there were several</p> <p>15 accountants in that group but the head of that</p> <p>16 department was Ralph Thomas.</p> <p>17 Q T-h-o-m-a-s?</p> <p>18 A Yes.</p> <p>19 Q Do you know where Mr. Thomas is?</p> <p>20 A I don't.</p> <p>21 Q He's no longer employed with Anadarko?</p> <p>22 A He is not.</p> <p>23 Q Okay. Do you know when he left</p> <p>24 Anadarko's employment?</p> <p>25 A I don't know an exact date, but it was</p>	<p style="text-align: right;">16</p> <p>1 and the details contained within them.</p> <p>2 Q Who's his manager?</p> <p>3 A Would be John Valenta, and it's</p> <p>4 V-a-l-e-n-t-a.</p> <p>5 Q Anybody else?</p> <p>6 A No.</p> <p>7 Q Other than -- other than your testimony</p> <p>8 this morning that no tax settlements or adjustments</p> <p>9 have ever been flowed through to the royalty owner</p> <p>10 side, are you aware of any tax settlement or</p> <p>11 adjustments with regard to Lance production in the</p> <p>12 Powder River Basin of Campbell County for coal bed</p> <p>13 methane for 2002 through the present?</p> <p>14 A Am I aware of any?</p> <p>15 Q Yes.</p> <p>16 A I am aware that there was a tax</p> <p>17 settlement. I believe it was through 2008. I don't</p> <p>18 know the exact dollar amount, but it was additional</p> <p>19 funds due to the state from Lance and so that</p> <p>20 additional amount was not -- those additional</p> <p>21 expenses were not passed to the royalty owners;</p> <p>22 those were paid to the state directly from Lance. I</p> <p>23 don't know any details of any settlements that might</p> <p>24 have been made since then.</p> <p>25 Q And so let's just -- can we call that the</p>

<p style="text-align: right;">17</p> <p>1 <b>2008 tax settlement?</b></p> <p>2 A Yes.</p> <p>3 Q And that was for production in tax years</p> <p>4 prior to 2008 tax year?</p> <p>5 A Yes. I believe it might have been 2006</p> <p>6 through 2008, but I'm not exact on that.</p> <p>7 Q Okay.</p> <p>8 A And it was for severance tax.</p> <p>9 Q It was a severance tax adjustment?</p> <p>10 A Yes.</p> <p>11 Q Was it also an ad valorem tax adjustment?</p> <p>12 A Not that I'm aware of.</p> <p>13 Q In this case, Lance has asserted it has</p> <p>14 certain claims against royalty owners. Are you</p> <p>15 familiar with that assertion?</p> <p>16 A Yes.</p> <p>17 Q Please explain to me your understanding</p> <p>18 of that assertion.</p> <p>19 A My understanding is that based on certain</p> <p>20 leases, if the -- the language within the lease</p> <p>21 would allow deduction of other costs that Lance as a</p> <p>22 business practice does not deduct from the royalty</p> <p>23 owners, such as processing, as -- that's a general</p> <p>24 statement. I don't -- I do not interpret leases on</p> <p>25 a monthly basis to make those decisions, but from</p>	<p style="text-align: right;">19</p> <p>1 Union began to be included in the transportation</p> <p>2 deduction in 2010.</p> <p>3 Q So from 2002 through 20 -- the end of</p> <p>4 2009, the first part of 2010, the -- Fort Union was</p> <p>5 not deducted?</p> <p>6 A Correct.</p> <p>7 Q Okay. Have you ever had any discussions</p> <p>8 with anybody at Lance on whether any other costs</p> <p>9 should be deducted from royalty owners?</p> <p>10 A From specific royalty owners, no. We've</p> <p>11 discussed in the conversations for looking at the --</p> <p>12 at a few of the leases that there are leases that</p> <p>13 would allow other costs, but that Lance's more</p> <p>14 conservative viewpoint is that we're not going to</p> <p>15 deduct those from the royalty owners.</p> <p>16 Q So it was a conscious business decision</p> <p>17 by Lance not to deduct any costs other than the</p> <p>18 costs that they've deducted historically to</p> <p>19 calculate royalties?</p> <p>20 A Yes.</p> <p>21 Q And that position has been consistent and</p> <p>22 never changed, correct?</p> <p>23 A Correct.</p> <p>24 Q And have you had meetings where Lance</p> <p>25 discussed the propriety of deducting those costs?</p>
<p style="text-align: right;">18</p> <p>1 what I understand, there are lease language out</p> <p>2 there that would allow deductions that Lance, as a</p> <p>3 business practice, has decided not to deduct.</p> <p>4 Q And what has been Lance's -- where --</p> <p>5 you're designated as -- as the deponent for Question</p> <p>6 11, correct?</p> <p>7 A Yes.</p> <p>8 Q Okay. So what has been Lance's business</p> <p>9 practice from 2002 through the present with regard</p> <p>10 to deducting costs from the royalty owner's share of</p> <p>11 production?</p> <p>12 A Lance's practice has been to deduct the</p> <p>13 costs for transportation on the -- on the pipelines</p> <p>14 for MIGC, Fort Union, the downstream transportation</p> <p>15 costs only and not to deduct the costs related to</p> <p>16 any treating or processing of the gas -- fuel to</p> <p>17 move the gas from the top to bottom -- from the</p> <p>18 wellhead through the final sale nor any costs</p> <p>19 attributable to gathering charged through the</p> <p>20 gathering system.</p> <p>21 Q And that's been their consistent business</p> <p>22 practice from 2002, when it was old Lance, to the</p> <p>23 present?</p> <p>24 A With the exception of in the early time</p> <p>25 frames we did not also deduct Fort Union, and Fort</p>	<p style="text-align: right;">20</p> <p>1 A I'm sorry. Could you repeat that?</p> <p>2 Q Have -- have you had any meetings</p> <p>3 where -- with Lance, that Lance had meetings where</p> <p>4 the deductions of those costs were discussed?</p> <p>5 A Of the costs that are not deducted or the</p> <p>6 costs --</p> <p>7 Q Yes.</p> <p>8 A -- that will be deducted?</p> <p>9 Q That have not been deducted.</p> <p>10 A Not that I'm aware of.</p> <p>11 Q Who -- who made the decision that the</p> <p>12 costs wouldn't be deducted?</p> <p>13 A I don't know.</p> <p>14 Q But you're designated with regard to this</p> <p>15 topic. And so that was historic in pre-2002</p> <p>16 decision?</p> <p>17 A Correct.</p> <p>18 Q And so in 2002, that decision continued?</p> <p>19 A Correct.</p> <p>20 Q And after the merger with Anadarko, that</p> <p>21 decision continued?</p> <p>22 A Yes.</p> <p>23 Q Was Anadarko, as a parent company of</p> <p>24 Lance, fully aware of the deductions being taken for</p> <p>25 calculation of royalties?</p>

<p style="text-align: right;">21</p> <p>1 A Yes.</p> <p>2 Q And they approved that methodology? If</p> <p>3 you continued to pay --</p> <p>4 A We've continued to pay under that</p> <p>5 methodology, yes.</p> <p>6 Q So that methodology has been approved on</p> <p>7 a monthly basis, correct?</p> <p>8 A Yes.</p> <p>9 Q Okay. So explain to me then Lance's</p> <p>10 position with regard to these asserted set-off</p> <p>11 counterclaim expenses in your affidavit and in</p> <p>12 Category 11.</p> <p>13 MR. RUPPERT: I'm going to object to the</p> <p>14 form of the question. There's no counterclaim in</p> <p>15 this case. You can answer.</p> <p>16 A Okay. I believe Lance's assertion is</p> <p>17 there is lease language that would allow those</p> <p>18 deductions to be taken. Even though Lance has made</p> <p>19 the business decision and has set their procedures</p> <p>20 in place to not deduct those deductions, that</p> <p>21 doesn't limit the fact that that decision could be</p> <p>22 reevaluated at some point in the future time frame.</p> <p>23 Q (BY MR. McKINLEY) So if I'm</p> <p>24 understanding, Lance has made a decision. Here's</p> <p>25 the cost we're deducting. We're not deducting costs</p>	<p style="text-align: right;">23</p> <p>1 A We being Lance.</p> <p>2 Q Have you reviewed any specific lease</p> <p>3 language?</p> <p>4 A No.</p> <p>5 Q But you're designated as the deponent for</p> <p>6 11 and it says, Based on specific lease language,</p> <p>7 that Lance asserts deductions can be made. But you</p> <p>8 have not analyzed specific lease language?</p> <p>9 A I have not.</p> <p>10 Q Okay. Has anyone at Lance analyzed</p> <p>11 specific lease language on a lease by lease basis?</p> <p>12 A Our division order department analyzes</p> <p>13 the leases when they are set up and the information</p> <p>14 for No. 11 that there is lease language that would</p> <p>15 allow deductions as received from that group.</p> <p>16 Q And when -- let's go back to the 2002</p> <p>17 time frame. So when a lease is set up, they -- the</p> <p>18 DO department analyzes that lease and sets up the</p> <p>19 royalty rate, all that stuff, and you're saying also</p> <p>20 notes the allowed deductions?</p> <p>21 A Yes.</p> <p>22 Q Okay. And then is that submit --</p> <p>23 transmitted to your department?</p> <p>24 A It is.</p> <p>25 Q And then your department overrides that</p>
<p style="text-align: right;">22</p> <p>1 4 through 8. Okay?</p> <p>2 A Yes.</p> <p>3 Q That's a business decision.</p> <p>4 A Yes.</p> <p>5 Q But they've also said, We could deduct</p> <p>6 costs 4 through 8, but we're not going to. Correct?</p> <p>7 A Correct.</p> <p>8 Q And is it your assertion that Lance</p> <p>9 intends to deduct those costs?</p> <p>10 A I don't know.</p> <p>11 Q Who would know?</p> <p>12 A I have not heard any discussions around</p> <p>13 the fact that we might change that decision at any</p> <p>14 point in the near time.</p> <p>15 Q Is that a prospective only or a</p> <p>16 retroactive adjustment?</p> <p>17 A It would be my opinion that if a change</p> <p>18 was made, it would only be going forward into the</p> <p>19 future. It would not be applied retroactively.</p> <p>20 Q And you base that opinion on what?</p> <p>21 A Based on how -- because we made the</p> <p>22 decision in the past not to -- not to deduct those</p> <p>23 fees from the owners. We would not go back and</p> <p>24 then -- and recharge them.</p> <p>25 Q Okay. And we being Lance?</p>	<p style="text-align: right;">24</p> <p>1 directive and only deducts the business practice</p> <p>2 deductions, correct?</p> <p>3 A I'm sorry, that's not quite accurate.</p> <p>4 They analyze the leases to determine if there are</p> <p>5 additional fees that should be not deducted from the</p> <p>6 royalty owners. We have a standard setup that is we</p> <p>7 will only deduct the transportation and they set --</p> <p>8 they set the leases up in the Powder River Basin</p> <p>9 based on that standard methodology, unless there's</p> <p>10 something in the lease that indicates they could or</p> <p>11 should have additional deductions. So they follow</p> <p>12 the same practice of we will deduct only the</p> <p>13 transportation.</p> <p>14 Q So the DO department sets up a lease no</p> <p>15 matter what it says as -- to begin with, as only</p> <p>16 deduct downstream transportation and MIGC?</p> <p>17 A As far as the information that is fed</p> <p>18 into the revenue accounting department, yes.</p> <p>19 Q Okay. And then if certain additional</p> <p>20 costs are not allowed pursuant to the lease, those</p> <p>21 are also noted?</p> <p>22 A Correct.</p> <p>23 Q And those are backed out of your -- by</p> <p>24 hand on your royalty payment accounting?</p> <p>25 A They're backed out systematically. The</p>

<p>25</p> <p>1 system will know that fee is not deductible. It  2 will -- will come across as a zero on the royalty  3 value. So it will not be a deduction.  4 <b>Q Okay. And if the lease permits</b>  5 <b>additional deductions, those are not considered for</b>  6 <b>your royalty payment accounting?</b>  7 A Correct.  8 <b>Q And they are ignored for purposes of</b>  9 <b>setting up the royalty payment system?</b>  10 A Yes.  11 <b>Q Okay. Is a summary of that information</b>  12 <b>done on a lease by lease basis when the leases are</b>  13 <b>obtained by Lance?</b>  14 A I don't know.  15 <b>Q So -- so how would you go about basing it</b>  16 <b>upon the analysis as a specific lease language?</b>  17 A I'm sorry. Could you repeat the  18 question?  19 <b>Q I'm trying to -- to understand the -- the</b>  20 <b>asserted claims by Lance, whether they be setoffs,</b>  21 <b>whether they be counterclaims, whether they be</b>  22 <b>recoupment claims, whatever they're called, I'm</b>  23 <b>trying to understand how to quantify them since</b>  24 <b>Lance has never considered them costs that could be</b>  25 <b>deducted and has never quantified them. I'm trying</b></p>	<p>27</p> <p>1 property level, regardless of whether the individual  2 owners on that well can be charged those fees. So  3 all the information is there. It would be a set up  4 in division order to pass that information up.  5 <b>Q And the division order is merely for</b>  6 <b>convenience of the accounting purposes, correct?</b>  7 A The division order defines the percentage  8 ownership for each owner and then the appropriate  9 fees that can be passed through.  10 <b>Q And that is merely an internal document</b>  11 <b>for Lance's-Anadarko's convenience in accounting</b>  12 <b>purposes, correct?</b>  13 A Yes. It is within the accounting system  14 to make the calculations at an owner level.  15 <b>Q And a division order is not binding upon</b>  16 <b>the royalty owner under Wyoming law, is it?</b>  17 A I don't know.  18 <b>Q You don't know?</b>  19 A I don't know.  20 <b>Q Do you -- do you base any of your royalty</b>  21 <b>payment accounting systems upon those division</b>  22 <b>orders?</b>  23 A The ownership that is fed from the  24 division order is how the owners are paid. So that  25 information is in our revenue accounting system.</p>
<p>26</p> <p>1 to figure out how to do that. Can you help me?  2 A It would have to be through the division  3 order group analyzing individual leases. To the  4 best of my knowledge, I've not received any  5 information of a summary of that being done for all  6 of the properties in the Powder River Basin.  7 <b>Q So that would have to be done by a lease</b>  8 <b>by lease, property by property basis, by division</b>  9 <b>order analysts?</b>  10 A Correct.  11 <b>Q With Lance?</b>  12 A Yes.  13 <b>Q And then information would have to be</b>  14 <b>analyzed by your department to see whether it is</b>  15 <b>legitimately a deduction or not a deduction for</b>  16 <b>royalty purposes because they can't make your</b>  17 <b>decision, correct?</b>  18 A They would determine whether there are  19 additional fees that could be charged. We determine  20 what the dollar amount of that fee is. So if they  21 were to do that sort of analysis and made the  22 decision to start charging processing, for example,  23 they would change the flag on that fee and then it  24 would start being charged to that individual royalty  25 owner. The fees are applied to the well or the</p>	<p>28</p> <p>1 <b>Q And does your department input that</b>  2 <b>information or does the DO department input --</b>  3 A The division order department inputs  4 that.  5 <b>Q Do you double-check it to make sure it's</b>  6 <b>correct?</b>  7 A No.  8 <b>Q And so the DO department makes all</b>  9 <b>decisions with regard to the methodology used for</b>  10 <b>royalty payments in Wyoming?</b>  11 A No, they make the decision of the  12 percentage of that well that each owner is paid.  13 They use their division order system to flag which  14 fees are exempt. And then we follow the basic  15 business practice of we deduct the downstream  16 transportation unless they have information in their  17 lease that is different than that and it needs to be  18 changed.  19 <b>Q Okay. So your -- your process at your</b>  20 <b>level is more than just hitting the button at the</b>  21 <b>computer. You analyze whether that cost should be</b>  22 <b>deducted or not for royalty purposes?</b>  23 A I analyze which -- which category that  24 cost falls into, yes.  25 <b>Q And if it appears to you to be an</b></p>

<p style="text-align: right;">29</p> <p>1 improper cost deduction, what do you do?</p> <p>2 A Then that would be a discussion with my</p> <p>3 manager to decide whether we want to put it in a</p> <p>4 different classification, that it's not in the</p> <p>5 correct area.</p> <p>6 Q Okay. Has Lance had any discussions</p> <p>7 regarding taking deductions for gathering,</p> <p>8 processing and fuel on a property level basis for</p> <p>9 production in Campbell County?</p> <p>10 A Not that I'm aware.</p> <p>11 Q Do you know if they intend to do so?</p> <p>12 A Not that I know of.</p> <p>13 Q Have they ever asserted claims against</p> <p>14 anybody else for costs?</p> <p>15 A Not that I'm aware of.</p> <p>16 Q Did they assert those claims in the Lange</p> <p>17 case that you mentioned earlier that was recently</p> <p>18 settled?</p> <p>19 A I believe the same assertion was made</p> <p>20 that there are costs that could possibly be deducted</p> <p>21 that have not been.</p> <p>22 Q And those assertions were made in the</p> <p>23 Lange case?</p> <p>24 A I believe so.</p> <p>25 Q So that's -- that's one context where --</p>	<p style="text-align: right;">31</p> <p>1 it -- yes, I believe they are gone as far as</p> <p>2 additional buckets that would be or categories that</p> <p>3 would be deducted from royalty owners in the future.</p> <p>4 Q In the future. So any of these costs in</p> <p>5 the future that we talked about earlier, like, you</p> <p>6 know, November that related back?</p> <p>7 A Yes.</p> <p>8 Q And so any of those for gathering, fuel,</p> <p>9 processing, that Lance is -- is asserting that could</p> <p>10 be taken are resolved in the Lange settlement</p> <p>11 methodology?</p> <p>12 A Yes.</p> <p>13 Q Okay. And you also testified that</p> <p>14 Lance's business practice is they would not go back</p> <p>15 to prior periods and take those deductions, correct?</p> <p>16 A Correct.</p> <p>17 Q Okay. Let me check my notes see where</p> <p>18 we're at and then maybe we can have a discussion on</p> <p>19 the 30(b)(6) categories or something that she wasn't</p> <p>20 able to talk about.</p> <p>21 (Break taken 12:15 p.m. to 12:18 p.m.)</p> <p>22 MR. McKINLEY: I'm finished.</p> <p>23 MR. RUPPERT: I have a few questions.</p> <p>24 EXAMINATION</p> <p>25 BY MR. RUPPERT:</p>
<p style="text-align: right;">30</p> <p>1 where those same claims have been asserted. Is</p> <p>2 there any others besides that?</p> <p>3 A Not that I know of.</p> <p>4 Q And the Lange case has settled?</p> <p>5 A Yes.</p> <p>6 Q Conditionally?</p> <p>7 A Yes.</p> <p>8 Q Did those claims get included in the</p> <p>9 settlement in the Lange case?</p> <p>10 A I'm sorry. I'm not sure.</p> <p>11 Q Well, you're -- you just said that Lance</p> <p>12 has asserted claims that could take deductions for</p> <p>13 gathering, processing fuel and other deductions?</p> <p>14 A Yes.</p> <p>15 Q And those claims were also asserted in</p> <p>16 the Lange case, correct?</p> <p>17 A Yes.</p> <p>18 Q My question is: Did those Lance claims</p> <p>19 -- were those Lance claims included in the</p> <p>20 settlement in Wyoming?</p> <p>21 A I believe so.</p> <p>22 Q And so those claims are gone?</p> <p>23 A The -- the -- the amounts that will be</p> <p>24 deducted going forward from that settlement have</p> <p>25 been defined as a result of that settlement. So</p>	<p style="text-align: right;">32</p> <p>1 Q Janis, I think this is already in your</p> <p>2 affidavit that's been marked as Exhibit 5, but do</p> <p>3 you recall the facilities in the Powder River Basin</p> <p>4 that treat or process gas that you, I think, have</p> <p>5 been calling processing?</p> <p>6 A Yes.</p> <p>7 Q How many of those are there?</p> <p>8 A Let me think. I believe there are three.</p> <p>9 Q Do you recall what those are?</p> <p>10 A Those would be the Little Thunder</p> <p>11 treating facility, there is a Bison treating</p> <p>12 facility, and there is a treating facility at</p> <p>13 Medicine Bow.</p> <p>14 Q And when Mr. McKinley asked you if</p> <p>15 anything in your affidavit needed updating, you</p> <p>16 mentioned the Bison facility and Bison fuel for a</p> <p>17 few months in 2011, right?</p> <p>18 A Yes.</p> <p>19 Q Is there any other processing fuel that</p> <p>20 has been deducted by Lance in more recent times</p> <p>21 besides just the Bison that you recall?</p> <p>22 A The Fort Union fuel that is charged by</p> <p>23 Fort Union which is included as part of the</p> <p>24 transportation, has been indicated that it was for</p> <p>25 the Medicine Bow treater, which I was not aware of</p>

<p style="text-align: right;">33</p> <p>1 until very recently. So it has been included in the 2 transportation. 3 Q So that's fuel for Medicine Bow 4 processing; is that right? 5 A Is what I understand, yes. 6 Q And what's the time period that that's 7 been deducted from royalty owners, do you recall? 8 A I believe it is October of 2010 to 9 current. 10 Q And other than those two exceptions, is 11 it fair to say generally then that royalty owners 12 aren't charged for any processing costs or fuels at 13 those three plants? 14 A Yes. 15 Q Earlier today you made the statement that 16 royalty owners are exempt from certain fees or 17 deductions like processing. Do remember that? 18 A Yes. 19 Q What do you mean by exempt when you say 20 that? 21 A I mean that royalty value is not charged 22 for those deductions. 23 Q Are you giving us an opinion on whether 24 or not they could be charged? 25 A No, just that they are not charged. They</p>	<p style="text-align: right;">35</p> <p>1 land department? 2 A Yes. 3 Q Changing topics here and talking about 4 tax settlements that Mr. McKinley had talked to you 5 about, are you aware of any tax settlements where 6 Lance has received a refund? 7 A No. 8 Q So to your knowledge, they've always been 9 a tax bill from the state of Wyoming? 10 A I believe so. 11 Q And those haven't been passed through to 12 royalty owners -- 13 A No. 14 Q -- those additional tax bills? 15 A No. 16 Q You've talked with us a couple times 17 today about the conservative approach that Lance has 18 taken on -- taking deductions from its royalty 19 owners in Campbell County. Do you know why Lance 20 adopted a conservative approach years ago? 21 A Specifically, no. But my understanding 22 is that that was their -- where they believed that 23 the deductions would be allowed if something were to 24 be challenged in the future. It was a conservative 25 estimate of they believe the downstream transport</p>
<p style="text-align: right;">34</p> <p>1 are not deducted from their royalty value. 2 Q And whether or not they could be charged, 3 is that something within your realm of 4 responsibility? 5 A No. 6 Q And I think this testimony is in the 7 record but just so it's clear, when Mr. McKinley 8 asked you if royalty value was larger than taxable 9 value, I believe your answer was on a property 10 level, yes. Is that correct? 11 A Yes. 12 Q Is that because some tax deductions, like 13 this processing that we've talked about, are not 14 paid by royalty owners? 15 A Yes. 16 Q Looking at your affidavit again, which is 17 Exhibit 5, Paragraph 13, back in October you 18 indicated that as a revenue accountant, you do not 19 interpret lease language like the one from Mr. Geer 20 in your affidavit? 21 A Yes. 22 Q Is this still correct today? 23 A Yes. 24 Q That's someone else who does that? I 25 think you said the division order people and the</p>	<p style="text-align: right;">36</p> <p>1 was appropriate to the royalty owners and that the 2 processing and the treating were not. 3 Q To your knowledge, did the approach have 4 anything to do with the manageability of paying what 5 amounts to thousands of royalty owners? 6 A No. 7 Q And are you aware whether or not a lease 8 by lease analysis has been done by the land 9 department for earlier processing or a gathering 10 deduction? 11 A I'm not. 12 Q You're not aware? 13 A I'm not aware. 14 Q Are you aware that they have done that 15 for a transportation deduction? 16 A I do not know if they have or not. I 17 have not. 18 Q I'm finished. Thank you. 19 A You're welcome. 20 MR. RUPPERT: John, any follow-up? 21 MR. MCKINLEY: No. Finished. 22 THE REPORTER: Reading and signing? 23 MR. RUPPERT: Yes. 24 (The deposition concluded at 12:25 p.m., 25 July 12, 2013.)</p>



**AGREN BLANDO COURT REPORTING & VIDEO INC**

<div style="text-align: right; font-weight: bold;">37</div> <p>1</p> <p>2</p> <p>3 I, JANIS WALLNER, do hereby certify that I</p> <p>4 have read the foregoing transcript and that the same</p> <p>5 and accompanying amendment sheets, if any,</p> <p>6 constitute a true and complete record of my</p> <p>7 testimony.</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p style="text-align: center;">_____ Signature of Deponent</p> <p>12</p> <p style="text-align: center;">( ) No Amendments ( ) Amendments Attached</p> <p>13 Acknowledged before me this</p> <p>14 _____ day of _____, 2013.</p> <p>15</p> <p>16</p> <p>17 Notary Public: _____</p> <p>18</p> <p>19 My commission expires _____</p> <p>20 Seal:</p> <p>21</p> <p>22</p> <p style="text-align: center;">MFS</p> <p>23</p> <p>24</p> <p>25</p>	<div style="text-align: right; font-weight: bold;">39</div> <p>1 AGREN BLANDO COURT REPORTING &amp; VIDEO, INC.</p> <p>2 216 - 16th Street, Suite 600</p> <p>3 Denver, Colorado 80202</p> <p>4 4450 Arapahoe Avenue, Suite 100</p> <p>5 Boulder, Colorado 80303</p> <p>6 July 19, 2013</p> <p>7 Mark R. Ruppert, Esq.</p> <p>8 2515 Warren Avenue, Suite 450</p> <p>9 Cheyenne, Wyoming 82001-1347</p> <p>10 Re: 30(b)(6) DEPOSITION OF LANCE OIL &amp; GAS</p> <p>11 COMPANY, INC. BY JANIS WALLNER</p> <p>12 Geer vs. Anadarko</p> <p>13 Civil Action No. 32940</p> <p>14</p> <p>15 The aforementioned deposition is ready for reading</p> <p>16 and signing. Please attend to this matter by</p> <p>17 following BOTH of the items indicated below:</p> <p>18</p> <p>19 _____ Call the number listed above and arrange with</p> <p>20 us to read and sign the deposition in our</p> <p>21 office</p> <p>22</p> <p>23 _____ XXX_ Have the deponent read your copy and sign the</p> <p>24 signature page and amendment sheets, if</p> <p>25 applicable; the signature page is attached</p> <p>_____ Read the enclosed copy of the deposition and</p> <p>sign the signature page and amendment sheets,</p> <p>if applicable; the signature page is attached</p> <p>_____ XXX_ WITHIN 30 DAYS OF THE DATE OF THIS LETTER</p> <p>_____ By _____ due to a trial date of _____</p> <p>Please be sure the signature page and amendment</p> <p>sheets, if any, are SIGNED BEFORE A NOTARY PUBLIC</p> <p>and returned to Agren Blando for filing with the</p> <p>original. A copy of these changes should also be</p> <p>forwarded to counsel of record.</p> <p>Thank you.</p> <p>AGREN BLANDO COURT REPORTING &amp; VIDEO, INC.</p> <p>cc: All Counsel</p>
<div style="text-align: right; font-weight: bold;">38</div> <p>1 STATE OF COLORADO)</p> <p>2 ) ss. REPORTER'S CERTIFICATE</p> <p>3 COUNTY OF DENVER )</p> <p>4</p> <p>5 I, Marlene F. Smith, do hereby certify</p> <p>6 that I am a Registered Professional Reporter and</p> <p>7 Notary Public within and for the State of Colorado;</p> <p>8 that previous to the commencement of the</p> <p>9 examination, the deponent was duly sworn to testify</p> <p>10 to the truth.</p> <p>11 I further certify that this deposition was</p> <p>12 taken in shorthand by me at the time and place</p> <p>13 herein set forth, that it was thereafter reduced to</p> <p>14 typewritten form, and that the foregoing constitutes</p> <p>15 a true and correct transcript.</p> <p>16 I further certify that I am not related</p> <p>17 to, employed by, nor of counsel for any of the</p> <p>18 parties or attorneys herein, nor otherwise</p> <p>19 interested in the result of the within action.</p> <p>20 In witness whereof, I have affixed my</p> <p>21 signature this 19th day of July, 2013.</p> <p>22 My commission expires June 29, 2017.</p> <p>23</p> <p>24 _____</p> <p>25 Marlene F. Smith, RPR 216 - 16th Street, Suite 600 Denver, Colorado 80202</p>	<div style="text-align: right; font-weight: bold;">40</div> <p>1 AGREN BLANDO COURT REPORTING &amp; VIDEO, INC.</p> <p>2 216 - 16th Street, Suite 600</p> <p>3 Denver, Colorado 80202</p> <p>4 4450 Arapahoe Avenue, Suite 100</p> <p>5 Boulder, Colorado 80303</p> <p>6</p> <p>7 30(b)(6) DEPOSITION OF LANCE OIL &amp; GAS COMPANY, INC.</p> <p>8 BY JANIS WALLNER</p> <p>9 07/12/2013</p> <p>10 Geer vs. Anadarko</p> <p>11 Civil Action No. 32940</p> <p>12</p> <p>13 The original deposition was filed with</p> <p>14 John C. McKinley, Esq., on approximately the</p> <p>15 23rd day of July, 2013.</p> <p>16 _____ Signature waived</p> <p>17 _____ Unsigned; signed signature page and amendment</p> <p>18 sheets, if any, to be filed at trial</p> <p>19</p> <p>20 _____ Reading and signing not requested pursuant to</p> <p>21 C.R.C.P. Rule 30(e)</p> <p>22 _____ XXX_ Unsigned; amendment sheets and/or signature</p> <p>23 pages should be forwarded to Agren Blando to</p> <p>24 be enclosed in the envelope attached</p> <p>25 to the sealed original.</p> <p>_____</p> <p>Thank you.</p> <p>AGREN BLANDO COURT REPORTING &amp; VIDEO, INC.</p> <p>cc: All Counsel</p>

**AGREN BLANDO COURT REPORTING & VIDEO INC**

- AMENDMENT SHEET -  
 30(b)(6) DEPOSITION OF LANCE OIL & GAS COMPANY, INC.  
 BY JANIS WALLNER  
 07/12/2013  
 Geer vs. Anadarko  
 Civil Action No. 32940

The deponent wishes to make the following changes in  
 the testimony as originally given:

Page	Line	Should Read	Reason
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Signature of Deponent: \_\_\_\_\_

Acknowledged before me this \_\_\_\_ day of  
 \_\_\_\_\_, 2013.

Notary's signature \_\_\_\_\_  
 (seal)

My commission expires \_\_\_\_\_.