



Court: Grant County District Court
Case Number: 2016-CV-000039
Case Title: Cooper Clark Foundation vs. OXY USA Inc.
Type: Order Approving Class Action Settlement and Final Judgment

SO ORDERED.

A handwritten signature in blue ink, which appears to read "Bradley Ambrosier".

/s/ Honorable Bradley Ambrosier, District Court
Judge

IN THE DISTRICT COURT OF GRANT COUNTY, KANSAS

COOPER CLARK FOUNDATION and
PHILLIP FINK,
on behalf of themselves
and all others similarly situated,

Plaintiffs,

vs.

Oxy USA Inc.,

Defendant.

Case No. 2016-CV-39
LEAD CASE

Consolidated with:
Case No. 2016-CV-17
(Haskell County)
and
Case No. 2016-CV-13
(Morton County)
and
Case No. 2017-CV-3
(Grant County)

**ORDER APPROVING CLASS ACTION SETTLEMENT AND
FINAL JUDGMENT**

This is a putative class action involving four lawsuits (the “Class Action Litigation”) brought by Plaintiffs Cooper Clark Foundation and Phillip Fink, on behalf of themselves and as the proposed representatives of a class of royalty owners, against Defendant Oxy USA Inc. (“Oxy” or “Defendant”), for the alleged non-payment and/or underpayment of royalties on gas and its constituents (including, without limitation, helium, residue gas, natural gas liquids, nitrogen, condensate, and drip condensate). On September 23, 2021, Plaintiffs and Defendant executed a Settlement Agreement describing the terms of a resulting class Settlement.

On September 29, 2021, the Court preliminarily approved the Settlement Agreement and resulting Settlement and issued an Order Granting Preliminary Approval of Class Action Settlement, Certifying the Class for Settlement Purposes, Approving Form and Manner of Notice, and Setting Date for Final Fairness Hearing (the “Preliminary Approval Order”). In the Preliminary Approval Order, the Court:

- a. certified the class (the “Settlement Class”) for settlement purposes, finding

that all requirements of Kansas Rules of Civil Procedure (K.S.A. 60-223) applicable to a settlement class have been satisfied, for settlement purposes only, with respect to the proposed Settlement Class;

b. appointed Plaintiffs, Cooper Clark Foundation and Phillip Fink, as the class representatives (“Class Representatives”) and appointed Class Counsel Rex A. Sharp and Scott B. Goodger.

c. preliminarily found: (i) the proposed Settlement Agreement resulted from extensive arm’s-length negotiations; (ii) the proposed Settlement Agreement was agreed to only after the record was sufficiently developed and complete to allow Class Counsel an adequate opportunity to conduct legal research, fact discovery, expert analysis and to otherwise evaluate relevant factual and legal issues regarding the strengths and weaknesses of Class Representatives’ and the proposed Settlement Class’ claims; (iii) Class Representatives and Class Counsel have concluded that the proposed Settlement Agreement is fair, reasonable, and adequate; and (iv) the proposed Settlement Agreement is sufficiently fair, reasonable, and adequate to warrant sending notice of the proposed Settlement Agreement and Settlement to the proposed Settlement Class;

d. preliminarily approved the Settlement Agreement as fair, reasonable, and adequate and in the best interest of the Settlement Class;

e. preliminarily approved the form and manner of the proposed Notice of Proposed Class Action Settlement to be communicated to the proposed Settlement Class, finding specifically that such Notice of Proposed Class Action Settlement among other information: (i) described the terms and effect of the proposed Settlement Agreement and resulting Settlement; (ii) notified the Settlement Class that Plaintiffs will seek Plaintiffs’

attorneys' fees, litigation expenses, and a case contribution award for Class Representatives' services; (iii) notified the Settlement Class of the time and place of the Settlement Fairness Hearing; (iv) described the procedure for requesting exclusion from the proposed Settlement; and (v) described the procedure for objecting to the proposed Settlement Agreement and resulting Settlement or any part thereof;

f. provided for the appointment of a Settlement Administrator;

g. instructed the Settlement Administrator to disseminate the approved Notice of Proposed Class Action Settlement by direct mail to potential members of the proposed Settlement Class and by publication and to display documents related to the proposed Settlement Agreement and resulting Settlement on an Internet website in accordance with the Settlement Agreement and in the manner approved by the Court, in accordance with the Settlement Agreement;

h. set the date and time for the Final Fairness Hearing as December 8, 2021 at 1:30 P.M. in the District Court of Grant County, Kansas; and

i. set out the procedures and deadlines by which members of the proposed Settlement Class could properly request exclusion from the Settlement Class and resulting Settlement or object to the same or any part thereof.

After the Court issued the Preliminary Approval Order, due and adequate notice by means of the Notice of Proposed Class Action Settlement was given to the proposed Settlement Class, notifying them of the proposed Settlement Agreement and the upcoming Settlement Fairness Hearing. On December 8, 2021, in accordance with the Preliminary Approval Order and the Notice of Proposed Class Action Settlement, the Court conducted a Final Fairness Hearing to:

a. determine whether the proposed Settlement Agreement should be approved by the Court as fair, reasonable, and adequate and in the best interests of the Settlement Class, including the entry of the Judgment attached as Exhibit B to the proposed Settlement Agreement, dismissing the Class Action Litigation against Defendant with prejudice and extinguishing, releasing, and barring all Released Claims against all Released Parties in accordance with the Settlement Agreement;

b. determine whether the notice method utilized by the Settlement Administrator: (i) constituted the best notice that is practicable under the circumstances; (ii) constituted notice reasonably calculated under the circumstances to apprise potential Class Members of the pendency of the Class Action Litigation, the proposed Settlement Agreement, their right to exclude themselves from the proposed resulting Settlement, their right to object to the Settlement Agreement and resulting Settlement or any part thereof, and their right to appear at the Settlement 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 Kansas Rules of Civil Procedure, the state and federal Constitutions and any other applicable law;

c. determine whether to approve the Initial Plan of Allocation and Distribution and distribution of the Net Common Fund Amount to Class Members;

d. determine whether the applications for Class Counsel's Fees and Expenses are fair and reasonable and should be approved; and

e. rule on such other matters as the Court deems appropriate.

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

1. The Court, for purposes of this Order Approving Class Action Settlement and Final 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 the Class Action Litigation and all matters relating to the Settlement Agreement and resulting Settlement, as well as personal jurisdiction over Defendant and Class Members.

3. The Settlement Class, which was certified in the Court’s Preliminary Approval Order, is defined in the Settlement Agreement as:

All royalty owners in Kansas wells: (a) where Oxy USA, Inc. was the operator (or as a non-operator, separately marketed gas); (b) who were paid royalties for production of Gas, NGLs, or Helium from July 1, 2007 to April 30, 2014; and (c) whose gas was marketed under (i) the Gas Processing Agreement for the Amoco Hugoton Jayhawk Plant, between Amoco Production Company and OXY USA, Inc., dated June 15, 1998, as amended, (ii) the Gathering and Processing Agreement between Oxy USA, Inc. and Regency Midcon Gas, LLC dated December 1, 2004, as amended, (iii) the Gathering and Processing Agreement between Oxy USA Inc. and Regency Midcon Gas, LLC dated September 1, 2003, as amended, and (iv) the Processing Agreement between Oxy USA, Inc. and Duke Energy Field Services, LP dated as of August 1, 2005, as amended.

Excluded from the Class are: (1) the Office of Natural Resources Revenue, formerly known as the Mineral Management Service (Indian tribes and the United States); (2) all presiding judge(s) together with their immediate family members; (3) OXY USA Inc., its affiliates, its predecessors-in-interest, and their respective employees, officers, and directors; and (4) any publicly traded company or its affiliated entity that produces, gathers, processes, or markets gas.

The Court finds that the above-defined Settlement Class has been properly certified solely for the purposes of the Settlement Agreement and resulting 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 and will not participate in or be bound by the Settlement.

4. At the Settlement Fairness Hearing on December 8, 2021, the Court fulfilled its duty to independently evaluate the fairness, reasonableness, and adequacy of the Settlement Agreement and resulting Settlement and the Notice of Proposed Class Action Settlement provided to the Settlement Class, considering not only the pleadings and arguments of Class Representatives and Defendant and their respective counsel, but also the concerns of any objectors and the interests of all absent Class Members.

5. The Court further finds that due and proper notice, by means of the Notice of Proposed Class Action Settlement, 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 of Proposed Class Action Settlement, together with the class settlement website referred to therein: (i) constituted the best notice practicable under the circumstances; (ii) constituted notice reasonably calculated, under the circumstances, to apprise potential Class Members of the pendency of the Class Action Litigation, the proposed Settlement Agreement, their right to exclude themselves from the proposed Settlement Agreement and resulting Settlement, their right to object to the same or any part thereof, and their right to appear at the Settlement 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 Kansas Rules of Civil Procedure, the Due Process Clause of the United States Constitution, and any other applicable law. Therefore, the Court approves the form, manner, and content of the Notice of Proposed Class Action Settlement 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 to object to the proposed Settlement Agreement and resulting Settlement.

6. The Court hereby affirms its determinations in the Preliminary Approval Order certifying, for the purposes of the Settlement only, the Class Action Litigation as a class action pursuant to Kansas Rules of Civil Procedure (K.S.A. 60-223), 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 which predominate over any individual questions for purposes of the Settlement; the claims of Plaintiffs are typical of the claims of the Settlement Class; Plaintiffs and their 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 the class action—a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The Settlement Agreement and resulting Settlement, including, without limitation, the consideration paid by Defendant, the covenants not to sue, the releases, and the dismissal with prejudice of the Class Action Litigation and the Released Claims against the Released Parties as set forth in the Settlement Agreement, is 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 and was free of collusion. The Settlement Agreement fairly reflects the complexity of the claims, the duration of the Class Action Litigation, the extent of discovery, and the balance between the benefits the Settlement Agreement provides

to Class Members and the risk, cost, and uncertainty associated with further litigation and trial. Serious questions of law and fact remain contested between experienced counsel and the parties. The Settlement Agreement and resulting Settlement provide a means of gaining immediate valuable and reasonable compensation and foreclosing the prospect of uncertain results that could occur after many more months or years of additional discovery and litigation. The considered judgment of the parties, aided by experienced legal counsel, supports the approval of the Settlement Agreement and resulting Settlement. The parties and the Settlement Administrator are hereby authorized and directed to comply with and to cause the consummation of the proposed Settlement in accordance with the Settlement Agreement.

7. By agreeing to settle the Class Action Litigation, Defendant does not admit, and instead specifically denies, that the Class Action Litigation could have otherwise been properly maintained as a class action (as opposed to a settlement class), and specifically denies any and all liability and wrongdoing to the Class Representative and to the Settlement Class.

8. The Class Action Litigation and all claims included therein, and all the Released Claims, are dismissed with prejudice as to the Released Parties. The Court orders that, upon the date the Judgment becomes Final and Unappealable, the Settlement Agreement shall be the exclusive remedy for any and all Released Claims of the Class Representatives and all Class Members. The Class Representatives and all Class Members 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's approval of the Settlement Agreement and entry of judgment herein shall have the effect of barring each of the Class Representatives and Class Members 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.

9. Any portion of the Common Fund Settlement Proceeds still in the possession of the Settlement Administrator 120 days after the date the Distribution Checks are issued shall be distributed pursuant to the Settlement Agreement.

10. The Court also approves the efforts and activities of the Settlement Administrator, JND Class Action Administration, in assisting with certain aspects of the administration of the Settlement Agreement and resulting Settlement and directs it to continue to assist Class Representatives and Class Counsel in completing the administration and distribution of the same in accordance with the Settlement Agreement, this Judgment, any Plan of Allocation approved by the Court, and the Court's other orders.

11. Nothing in this Judgment shall bar any action or claim by Class Representatives or Defendant to enforce or effectuate the terms of the Settlement Agreement or this Judgment.

12. This Judgment, and the Settlement Agreement and resulting Settlement (including any provisions contained in or exhibits attached to the Settlement Agreement)—and any negotiations, statements, or proceedings in connection therewith, or any action undertaken pursuant thereto—shall not be admissible in any action or proceeding other than an action to enforce the terms of this Judgment or the Settlement Agreement and resulting Settlement (including, but not limited to, defending or bringing an action based on the releases provided for herein). The Judgment and the Settlement Agreement and resulting Settlement 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 Class Action Litigation; the validity or invalidity of any claim or defense that was, could

have been, or might be asserted in the Class Action Litigation; the amount of damages, if any, that would have been recoverable in the Class Action Litigation; or any liability, negligence, fault, or wrongdoing of any person or entity in the Class Action Litigation.

13. As separately set forth in detail in the Initial Plan of Allocation and Distribution, the allocation and distribution of the Net Common Fund Amount among Class Members is approved as fair, reasonable and adequate, and Class Counsel and the Settlement Administrator are directed to administer the Settlement Agreement and resulting Settlement in accordance with the Initial Plan of Distribution and Allocation.

14. Neither Defendant nor Defendant's counsel has any liability or responsibility to Plaintiffs, Plaintiffs' counsel, or the Settlement Class with respect to the Common Fund Settlement Proceeds or its allocation, distribution, or administration, including but not limited to any distributions made by the Settlement Administrator. No Class Member shall have any claim against Class Counsel, the Settlement Administrator, or any of their respective designees or agents based on loss of any portion of the distributions made substantially in accordance with the Settlement Agreement or orders of the Court.

15. Any Class Member who receives a Distribution Check that he/she is not legally entitled to receive is hereby ordered to either (1) pay the appropriate portion(s) of the Distribution Check to the person(s) legally entitled to receive such portion(s) or (2) return the Distribution Check uncashed to the Settlement Administrator.

16. All matters regarding the administration of the Common Fund Settlement Proceeds or taxation of funds distributed from the Net Common Fund Amount shall be handled in accordance with the Settlement Agreement.

17. 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 Class Action Litigation) reserves exclusive and continuing jurisdiction over the Class Action Litigation, Class Representatives, Class Members, Defendant, and the other Released Parties for the purposes of: (i) supervising and/or determining the fairness and reasonableness of the implementation, enforcement, construction, and interpretation of the Settlement Agreement and resulting Settlement, (ii) hearing and determining an application for an award of Class Counsel's Fees and Expenses, if such determinations were not made at the Settlement Fairness Hearing; (iii) supervising the distribution of funds; (iv) resolving any dispute regarding a party's right to terminate the Settlement pursuant to the Settlement Agreement; (v) all matters concerning the administration and enforcement of the Settlement, including the entry of injunctive or other relief to enforce, implement, administer, construe and/or interpret the Settlement Agreement; and (vi) exercising jurisdiction over any challenge to the Settlement Agreement and resulting Settlement on any basis whatsoever.

18. If for any reason whatsoever this Judgment does not become Final and Unappealable in accordance with the definition of that phrase in the Settlement Agreement, for example—but without limitation—because the Settlement Agreement and resulting Settlement is terminated as the result of a successful appeal of this Judgment, then this Judgment and all orders previously entered in connection with the Settlement Agreement and resulting 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 relating to termination of the Settlement Agreement shall be complied with, including the refund to Defendant of all amounts not already expended pursuant to orders of the Court.

19. All Released Claims, on behalf of the Class Representatives and the Class Members, are hereby DISMISSED WITH PREJUDICE to the refiling of the same or any portion thereof against the Released Parties. Notwithstanding the Court's jurisdiction to issue additional orders in this Class Action Litigation, this Judgment fully disposes of all claims against Defendant with prejudice, and is therefore a final appealable judgment. Regardless, there is no reason for delay in the entry of this Judgment, and the Court hereby expressly directs the Clerk of the Court to enter this Judgment as a final order and final judgment in this Class Action Litigation.

IT IS SO ORDERED.

Dated this __ day of December ____, 2021.

HONORABLE BRADLEY AMBROSIER
DISTRICT COURT JUDGE

EXHIBIT 1

List of Exclusions from Settlement

Name
Debra Lynn Kauffman
Merit Energy Company, LLC and its affiliates, including without limitation Merit Management Partners I, L.P., Merit Partners, L.P., Merit Energy Partners III, L.P., Merit Energy Partners D-III, L.P.