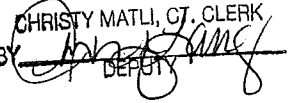


**IN THE DISTRICT COURT OF BLAINE COUNTY
STATE OF OKLAHOMA**

BLAINE COUNTY, OKLAHOMA
F I L E D

JUL 13 2018

CHRISTY MATLI, CT. CLERK
BY  DEPUTY

MARK STEPHEN STRACK, TRUSTEE OF THE)
PATRICIA ANN STRACK REVOCABLE TRUST)
DTD 2/15/99 AND THE)
BILLY JOE STRACK REVOCABLE TRUST)
DTD 2/15/99, AND)
DANIELA A. RENNER, SOLE SUCCESSOR)
TRUSTEE OF THE PAUL ARIOLA LIVING TRUST)
AND THE HAZEL ARIOLA LIVING TRUST,)

**FOR THEMSELVES AND ALL OTHERS)
SIMILARLY SITUATED,)**

PLAINTIFFS,)

VS.)

CONTINENTAL RESOURCES, INC.,)

DEFENDANTS.)

CASE No. CJ-10-75
(JUDGE HLADIK)

**ORDER ON CLASS COUNSEL’S MOTION CONFIRMING
NO GROSS PRODUCTION TAXES ARE DUE ON THE
SUB-CLASS 1 SETTLEMENT PAYMENT**

This matter came on for hearing on the 12th day of July, 2018, on Class Counsel’s motion for an order of the Court confirming that no Gross Production Taxes are due on the Sub-Class 1 Settlement Proceeds of \$49.8 million. Class Counsel was present; neither the Defendant nor the Oklahoma Tax Commission appeared.. The Court, having considered the motion, heard the arguments of counsel, and having being fully advised in the premises, finds as follows:

1. Paragraph 3.2(iv) of the approved Settlement Agreement provides:

No allocation of principal and interest shall be made by Continental as part of the payment process. Calculation of gross production taxes, if any, shall be made by Class Counsel, and withheld from the Net Sub-Class 1 Payments and transferred to Class Counsels’ Client Trust Account and paid directly by Class

Counsel to the Oklahoma Tax Commission, **as necessary**. **Class Counsel shall provide notice to the Oklahoma Tax Commission and obtain an order of the Court related to taxes owed, if any**. Each Class Member of Sub-Class 1 releases, and the Class indemnifies, the Released Parties as to any claims related to any calculation, payment or non-payment of gross production taxes related to the Sub-Class 1 Payment for Sub-Class 1 Claims.

2. Notice of this motion and hearing was served upon the General Counsel of the Oklahoma Tax Commission (“OTC”) by first class mail on June 15, 2018 (and receipt confirmed by email from the First Deputy General Counsel of the OTC dated June 21, 2018), *see* Certificate of Service. The OTC neither filed a response to the motion nor appeared at the hearing.

3. “Class Counsel and the Settlement Administrator have determined a reasonable Sub-Class 1 Gross Payment by System or Claim Allocation to be as follows:

- \$ 3,914,120.31 - Woodford Shale Gathering System
- \$ 6,656,720.84 - Matli Gathering System
- \$11,199,530.85 - Eagle Chief Gathering System
- \$21,427,238.03 - Other Third-party Owned Gathering Systems
- \$ 4,443,748.18 - Waste or Skim Oil Claim
- \$ 2,158,641.79 - Additional Consideration on Oil Sales
- \$49,800,000.00 - Total Gross Sub-Class 1 Payment”

Plan of Allocation and Distribution, ¶17.

4. Class Counsel have examined the facts, allegations and the law related to each of the above claims and have concluded and asserted that no Gross Production Taxes appear to be due Gross Sub-Class 1 Payment.

5. These identified claims can be grouped in two categories: “Unpaid Royalties on Gas Sales” and “Unpaid Royalties on Oil Sales”:

Underpaid Royalties on Gas Sales (\$43,197,610.03)	“Woodford Shale Gathering System” “Matli Gathering System” “Eagle Chief Gathering System” “Other Third-party Owned Gathering Systems”
Underpaid Royalties on Oil Sales (\$6,602,389.97)	“Waste or Skim Oil Claim” “Additional Consideration on Oil Sales” (Barrel-back)

6. The Oklahoma Supreme Court “has observed that a term used for the purpose of calculating a tax may have a different meaning in calculating a royalty. *See Oklahoma Tax Commission v. Sun Oil Company*, 489 P.2d 1078, 1081 (Okla.1971) where [the] Court relied upon *In re Home-Stake Production Co.*, 463 P.2d 983 (Okla.1969) in explaining that *the value of gas for the purpose of the gross production tax was not necessarily calculated in the same manner as its value for the purpose of paying royalties.*” [Emphasis added.]

7. In this case, while the Class asserted that royalties had been underpaid by Continental Resources, it does not appear that Gross Production Taxes were underpaid. Accordingly, as set forth below, there would be no Gross Production Tax due on the Gross Sub-Class 1 Payment.

Unpaid Royalties on Gas Sales

8. Continental agreed to pay \$43,197,610.03 to resolve the Sub-Class 1 Class Members claims of underpaid royalties, and statutory interest thereon, related to Underpaid Royalties on Gas Sales.

9. Continental computed royalties (and Gross Production Taxes) on what it asserted were “wellhead sales”. However, in doing so, the Class asserted that Continental deducted, directly or indirectly through “pricing adjustments”, charges for gathering, field fuel, compression, and dehydration (collectively defined in the Settlement Agreement as “Gathering Charges”), as well as processing charges (defined in the Settlement Agreement as “Processing Charges”), all incurred to move the gas from the lease to the tailgate of the processing plant and to render the gas into a “marketable product”. It is at this point where the Class asserted the royalties should have been determined.

10. While the Class asserted these were improper deduction for royalty calculation purposes, the Gross Production Tax Code (68 O.S. §1001, *et. seq.*) allows for the deduction of “marketing costs” in computing Gross Production Taxes.

A. Producers of natural gas and casinghead gas who incur marketing costs of the gas produced may deduct such costs from the gross value when computing the gross value subject to the taxes levied pursuant to Sections 1001 and 1101 of Title 68 of the Oklahoma Statutes.

B. Marketing costs are nonproduction costs incurred by the producer to enable the transport of gas from the well to the market, including:

1. Costs for compressing the gas sold;
2. Costs for dehydrating the gas sold;
3. Costs for sweetening the gas sold; and
4. Costs for delivering the gas to the purchaser.

68 O.S. §1001.4.

11. Accordingly, the Court finds no Gross Production Taxes are due upon the \$43,197,610.03 that Continental paid to resolve the Sub-Class 1 Claims related to the Underpaid Royalties and interest on Gas Sales

Unpaid Royalties on Oil Sales

12. The “Waste or Skim Oil Claim” is related to oil that Continental produced and saved from Class Wells, but sold at saltwater disposal wells owned and operated by Continental. The Court finds **Continental calculated and has already paid Gross Production Taxes on the oil it sold from the saltwater disposal wells.** Accordingly, no additional Gross Production Taxes would be due on this portion of the Gross Sub-Class 1 Payment.

13. The “Additional Consideration on Oil Sales” or “Barrel-Back” relates to oil Continental allegedly sold at the lease, then re-purchased the equivalent oil back at Cushing and re-sold the oil at Cushing. This very issue has already been litigated by the Oklahoma Tax Commission in 2009, and the Tax Commission lost:

This case concerns the liability of Sunoco for gross production taxes on oil that was marketed under “barrel-back” arrangements between the producers and Sunoco. The Oklahoma Tax Commission contends that Sunoco is liable for additional taxes (1) on “barrel-back” purchases by Sunoco from 1984 and after, and (2) on an amount that Sunoco paid to settle a class action suit by royalty-owners over “barrel-back” transactions. Under these “barrel-back” arrangements, Sunoco purchased oil at the lease and transported it to a market center. At the market center, Sunoco would sell the oil back to the producer for the price paid by Sunoco plus transportation costs. The producer would then sell the oil to third parties at the price set by the New York Mercantile Exchange. Taxes were paid on the Sunoco purchases at the lease in accordance with *68 O.S.2001 § 1010 (B)(5)*.

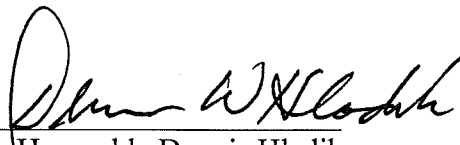
....
[W]e hold the gross production tax law as written by the Legislature does not subject the producers' buy-back of oil and resale at the market center to taxation. In the absence of tax liability on the part of the producer, there can be no tax liability for Sunoco to share or jointly incur. **This conclusion is dispositive of the Tax Commission's claim for additional taxes both on the direct sales between the producers and Sunoco and on the settlement paid by Sunoco in the royalty owners' case.** [Emphasis added.]

State ex. rel. Oklahoma Tax Comm'n v. Sun Co., Inc., 2009 OK 11, ¶ 1 & 12, 222 P.3d 1046, *as corrected* (Mar. 15, 2010).

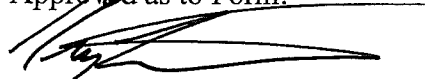
14. Accordingly, the Court finds that no Gross Production Taxes are due upon the \$6,602,389.97 that Continental paid to resolve the Sub-Class 1 Claims related Underpaid Royalties on Oil Sales.

IT IS THEREFORE ORDERED AND ADJUDGED, that pursuant to 3.2(iv) of the approved Settlement Agreement, no Gross Production Taxes are due upon the Gross Sub-Class 1 Payment of \$49,800,000.00 and none should be deducted from the Gross Sub-Class 1 Payment in determining the Net Sub-Class 1 Payment for distribution to the Sub-Class 1 Class members.

IT IS SO ORDERED this 12 day of July, 2018.


The Honorable Dennis Hladik

Approved as to Form: _____



Class Counsel

Attorney for Continental Resources, Inc.

CERTIFICATE OF SERVICE BY COURT CLERK

I hereby certify that on or before the 13th day of July, 2018, a Certified Copy of the foregoing was mailed, postage pre-paid, to:

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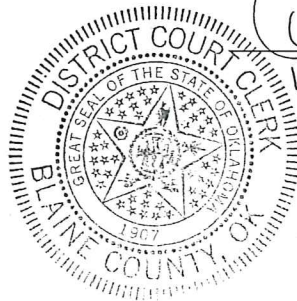
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CHRISTY MATLI, COURT CLERK



Christy Matli
Deputy Court Clerk

State of Oklahoma
Blaine County _____ ss _____ IN THE DISTRICT COURT
I, CHRISTY MATLI, Dist. Court Clerk of Blaine County, Okla.
hereby certify that the foregoing is a true, correct and complete
copy of the instrument herewith set out as appears of record
in the above named Court of the Court Clerk's Office at Blaine
County, Okla. this 13 day of July, 20 18



CHRISTY MATLI, COURT CLERK
By *Christy Matli*
Deputy Court Clerk