STATE OF WYOMING))ss. COUNTY OF CAMPBELL)

IN THE DISTRICT COURT

SIXTH JUDICIAL DISTRICT

Civil Action No. 26698

Spear Lazy S Land Company, Star Investment Corp., and Patsy L. Larson

Plaintiffs,

vs.

Westport Oil and Gas Company, L.P., as to the first settlement class, and Hilcorp Energy Company, as to the second settlement class,

Defendants.

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MOTION FOR CONDITIONAL CONSIDERATION OF SETTLEMENT AGREEMENT AND PROVISIONAL CERTIFICATION OF THE HILCORP SECOND SETTLEMENT CLASS

Plaintiffs', on their behalf and as representative of all similarly situated persons, by and through one of their attorneys, moves this Court for an "Order on Plaintiffs' Motion for Preliminary Approval, Hearing and Provisional Certification of the Second Settlement Class," and respectfully requests this Court to order that:

(1) The above entitled action, originally only involving Westport Oil and Gas Company, L.P. ("Westport"), was severed from an action that also included numerous co-defendants, was certified as a settlement class action pursuant to Wyo.R.Civ.P. 23 pursuant to this Court's Settlement Order and Final Judgment entered on November 14, 2005 ("Final Order");

(2) Pursuant to the Final Order, the Court certified a settlement class described on Exhibit A attached thereto (the "First Settlement Class") and retained continuing jurisdiction over the action and the implementation of the Settlement Agreement dated effective June 1, 2005 ("Settlement Agreement");

(3) The Producing Leases and Additional Leases, as defined in the Settlement Agreement have been transferred by Westport to Hilcorp Energy Company ("Hilcorp"). Contemporaneously with the filing of this Motion, Hilcorp has filed a Motion for Substitution of Party Defendant For Purposes of the Second Settlement Class.

(4) In accordance with Section 2.5.1 of the Settlement Agreement, Hilcorp, as successor in interest to Westport, and Plaintiffs are proposing the certification of a second settlement class ("Second Settlement Class") to settle potential class claims that relate to royalty and overriding royalty owners ("Royalty Payees") of Additional Leases (leases in Campbell and Johnson Counties, Wyoming in which Hilcorp owns an interest, whether producing or non-producing, that were not included with the First Settlement Class);

(5) The settlement of these potential class claims for the Second Settlement Class in accordance with the Settlement Agreement, a copy of which is attached hereto as Exhibit 1 (without the voluminous exhibits which pertain to the First Settlement Class) appears to be fair, reasonable and equitable; and

(6) Dates shall be set by which class members in the Second Settlement Class may opt out of the class, file objections and revoke prior elections to opt out as well as for a final hearing.

In support of this Motion, the Plaintiffs present to the Court as evidence in this matter:

(1) The Settlement Agreement - <u>Exhibit 1</u>;

(2) As to Hilcorp's oil and gas leases producing *natural gas and associated hydrocarbons from coal bed seams ("Shallow Gas")* in Campbell County, Wyoming:

<u>Exhibit 2A</u> - list of the owners in the Second Settlement Class and the associated wells in which they have an interest,

<u>Exhibit 2B</u> - alphabetical list of wells cross-referenced to the Hilcorp oil and gas leases covering those wells,

<u>Exhibit 2C</u> - more detailed description of the Hilcorp oil and gas leases in which the owners in the Second Settlement Class have an interest as a royalty or overriding royalty owner, and

<u>Exhibit 2D</u> - proposed Notice of Proposed Class Action Settlement to be sent to the Second Settlement Class members on Exhibit 2A.

(3) As to Hilcorp's oil and gas leases producing *oil* in Campbell and Johnson Counties, Wyoming:

<u>Exhibit 3A</u> - list of the owners in the Second Settlement Class and the associated wells in which they have an interest,

Exhibit 3B - alphabetical list of wells cross-referenced to the Hilcorp oil and gas leases covering those wells,

Exhibit 3C - more detailed description of the Hilcorp oil and gas leases in which the owners in the Second Settlement Class have an interest as a royalty or overriding royalty owner, and

Exhibit 3D - proposed Notice of Proposed Class Action Settlement to be sent to the Second Settlement Class members on Exhibit 3A.

(4) As to Hilcorp's oil and gas leases that are *nonproducing* (at least as to the formations in which Hilcorp has an interest) in Campbell and Johnson Counties, Wyoming:

Exhibit 4A - list of the owners in the Second Settlement Class and the associated oil and gas leases in which they have an interest,

Exhibit 4B - more detailed description of the Hilcorp oil and gas leases in which the owners in the Second Settlement Class have an interest as a royalty or overriding royalty owner, and

Exhibit 4C - proposed Notice of Proposed Class Action Settlement to be sent to the Second Settlement Class members on Exhibit 4A.

1. INTRODUCTION AND BACKGROUND

a. Certification of First Settlement Class

i. Plaintiffs, on behalf of themselves and on behalf of those similarly situated, filed an Amended Complaint on September 16, 2005, against Westport Oil and Gas Company, L.P., the Defendant, as to the First Settlement Class, in this action, challenging valuation for royalty calculation purposes, deductions in volume and deductions of costs from their royalties on natural gas and associated hydrocarbons from coal bed seams ("Shallow Gas") in Campbell, Sheridan and Johnson Counties, Wyoming.

ii. In the Amended Complaint, the Plaintiffs, on behalf of themselves and a class of royalty payees, sought declaratory and injunctive relief as well as monetary damages for Westport's alleged violations of leases, instruments and the Wyoming Royalty Payment Act.

iii. Commencing in September, 2004, Westport and the Plaintiffs began settlement negotiations. Subsequent to the execution of a Confidentiality Agreement and receipt from Westport of substantial data and information, those settlement negotiations accelerated. In September 2005, attorneys for the parties reached a proposed settlement framework for the compromise of disputed claims, which the attorneys then presented to their respective clients for consideration and general approval. Plaintiffs' counsel presented the proposed settlement framework to the named plaintiffs both by telephone conferences and by personal meetings. Without exception, the named plaintiffs directed Plaintiffs' counsel to go forward with the proposed settlement framework.

iv. The Settlement Agreement, as presented to the Court by Motion for Conditional Consideration of Settlement Agreement and Provisional Certification of Westport Settlement Class filed September 16, 2005:

   (a) established the potential class members;

   (b) settled all past Gas Royalty Claims (including Valuation and Disputed Deductions), Reporting Claims and Interest Claims by (i) providing for each class member's recovery of substantially all of the underpayment of royalty resulting from the alleged Valuation Claims and Disputed Deductions as defined in the Settlement Agreement, (ii) provided a Future Royalty Payment Methodology by which Westport would pay class members' royalties for future gas, condensate and natural gas liquids produced from Westport Wells based on the total proceeds received from the first arms-length sale of the gas, condensate or liquids with only specifically defined and limited Permitted Deductions, and (iii) provided for judicial consideration of a Future Royalty Reporting Format from which Plaintiffs believe class members will have what is a more useful and complete understanding of the royalties paid for gas from Westport Wells; and

   (c) provided for Westport to pay an additional amount in settlement of attorneys fees, costs, and settlement administration costs.

v. In addition to the benefits to class members stated in the Settlement Agreement, the agreement also contains provisions for all members of the class to release Westport and Additional Released Parties as defined in the Settlement Agreement for Settled Claims, excluding certain reserved claims which mainly consist of claims that could arise out of any clerical errors in accounting for the volumes, price, value or decimal interest reported by Westport. The entire terms of the release are contained in the Settlement Agreement. However, the release may be summarized as releasing Westport for: (1) all past Gas Royalty Claims; (2) past Reporting Claims; (3) Future Gas Royalty Claims, contingent upon Westport's compliance with the Future Royalty Payment Methodology; and (4) future Reporting Claims contingent upon Westport's compliance with the Future Royalty Payment Format.

vi. By Settlement Order and Final Judgment dated November 14, 2005, this Court certified for settlement purposes only a settlement class as described on Exhibit A attached to the Order ("First Settlement Class"). This Court further held that "in accordance with the requirements of Rule 23 of the Wyoming Rules of Civil Procedure, the Court approves the settlement of the above-captioned action as set forth in the Settlement Agreement as fair, just, reasonable and adequate as to the settling parties."

vii. The Court's order approving the settlement became final and non-appealable on December 14, 2005 (the "Approval Event"). Thereafter, Westport paid the settlement amount of Three Hundred Forty-Eight Thousand, Eight Hundred Eighteen Dollars and Ninety-Three Cents ($348,818.93) as follows: (a) Two Hundred Ninety-Six Thousand, Four Hundred Ninety-Six Dollars and Nine Cents ($296,496.09) was distributed to class members ("Distribution Amount"), and (b) Fifty-Two Thousand, Three Hundred Twenty-Two Dollars and Eighty-Four Cents ($52,322.84) was distributed to Class Counsel in complete payment of attorneys fees, costs and settlement administration expenses ("Litigation Expenses"). The Distribution Amount consisted of additional royalty based on Disputed Deductions per field which were distributed pro rata to the class members with an interest in each lease based on the quantity on which royalties were originally paid to such class members.

b. Proposed Second Settlement Class

i. Section 2.5.1 and 2.5.2 of the Settlement Agreement state as follows:

2.5.1 Within six (6) months after the Approval Event, Westport and Plaintiffs may petition the Court for certification of a second settlement class as to all or any portion of the Additional Leases for the purpose of agreeing on the Future Royalty Payment Methodology and Future Reporting Format for such Leases. Such petition may also include royalty and overriding royalty owners in Existing Wells and New Wells located on the Producing Leases who were not included in the initial settlement class for whatever reason. As to any members of the second settlement class who have received payments of Royalties from Westport, the settlement may include a proposed settlement amount to make such prior payments consistent with the Future Royalty Payment Methodology in addition to the proposal to agree on the Future Royalty Payment Methodology and Future Reporting Format.

2.5.2 This Agreement shall apply to the Second Settlement Class and the petition described in Section 2.5.1 above to the same extent as if the Second Settlement Class had been part of the original Potential Settlement Class.

The parties have stipulated to an extension of time to allow the motion for certification of a second settlement class to be filed more that six months after the Approval Event. The parties have further stipulated as to the second settlement class that notwithstanding the provisions of Section 2.6 of the Settlement Agreement, Plaintiffs' Counsel is authorized to respond to questions from individual potential class members as Plaintiffs' Counsel deems appropriate based upon the individual circumstances of that class member.

In accordance with the terms of the Settlement Agreement, Hilcorp, as the successor in interest to Westport, and Plaintiffs have proposed the certification of a second settlement class composed of three groups.

The first group covers Royalty Payees in leases producing Shallow Gas. These Royalty Payees are listed on Exhibit 2A. Such Royalty Payees are currently being paid in a manner more favorable than the Future Royalty Payment Methodology approved in the Final Order and in the following final orders in other Shallow Gas class action cases that have come before this court:

William L. and Bernadette L. Barlow, Trust, et al. v. Pennaco Energy, Inc. and Marathon Oil Company, Civil Action No. 25244 (Settlement Order and Final Judgment dated March 2, 2004),

Donald and Betty Brown Family Trust, et al. v. J. M. Huber Corporation, Civil Action No. 25547 (Settlement Order and Final Judgment as to the first settlement class dated May 14, 2004; Settlement Order and Final Judgment as to the second settlement class dated February 15, 2005)

Fred C. Wilson and Spear Lazy "S" Land Company v. Prima Oil & Gas Company, Civil Action No. 26151 (Settlement Order and Final Judgment as to the first settlement class dated

February 15, 2005; Settlement Order and Final Judgment as to the second settlement class dated November 14, 2005)

Patsy L. Larson and Duane D. Odegard v. Devon Energy Production Company, L.P. and Devon Energy Management Company, L.L.C., Civil Action No. 26817 (Settlement Order and Final Judgment dated September 5, 2006)

This is because Westport, due to the uncertainty surrounding the definition of market pipeline under the Wyoming Royalty Payment Act,[1] W.S. 30-5-301 et seq., elected as to the leases described on Exhibit 2C in which the Exhibit 2A owners have a royalty or overriding royalty interest not to take any deductions except WIC pipeline charges and associated WIC fuel. The Future Royalty Payment Methodology in the Settlement Agreement permits the deduction of costs from the Market Point which is defined as the outlet of the second stage compressor or such further downstream point where the gas is at at least 800 psig or delivered into a interstate pipeline, whichever occurs first. The difference in cost between the Market Point and the point where Westport began deducting is currently approximately $0.14 to $0.16 per MMBtu. The Future Royalty Payment Methodology also permits the deduction of fuel consumed before the outlet of the first stage compressor. This is approximately 4.2% of the gas produced.

Hilcorp is proposing that the Exhibit 2A Royalty Payees be included in the Second Settlement Class to avoid future litigation. Hilcorp's position is that it should not have to start taking disputed deductions (deduction of more costs than are permitted under the Settlement Agreement) and, as a result be sued, in order to reach a settlement comparable to the Future Royalty Payment Methodology. Hilcorp proposes to achieve the same objective without litigation. Hilcorp also is concerned that the value of the leases in which these Royalty Payees have an interest are affected by the conservative position taken by Westport as to deductions. In addition to the benefit of avoidance of litigation, Hilcorp is agreeing to waive any claims it might have against these Royalty Payees who do not opt out of the second settlement class for a refund for costs not previously deducted that would have been deductible under the Future Royalty Payment Methodology and, Hilcorp believes, under the Royalty Payment Act. Hilcorp is proposing that the Future Royalty Payment Methodology and the Future Royalty Reporting Format will apply to the Royalty Payees only from and after the date Hilcorp implements the Future Royalty Payment Methodology after a final order approving the second settlement class is entered. The Shallow Gas wells for which the Exhibit 2A Royalty Payees are

[1]Section 305 of the WRPA permits the deduction of the reasonable costs of transportation in the "market pipeline" but does not define market pipeline.

currently receiving royalties are listed with each Royalty Payee's name on Exhibit 2A. An alphabetized list of these wells and the associated Hilcorp lease numbers are listed in Exhibit 2B. A more detailed description of the leases covering these wells is contained on Exhibit 2C. Hilcorp is proposing application of the Future Royalty Payment Methodology as to the working interests in Shallow Gas produced from the existing wells and any new wells operated by Hilcorp and located on the leases described on Exhibit 2C for which Hilcorp pays Royalties to the Royalty Payees. The proposed form of notice to the Exhibit 2A Royalty Payees is Exhibit 2D.

The second group covers Royalty Payees in Leases that have wells currently producing oil but not natural gas. These Royalty Payees are listed on Exhibit 3A. The leases in which they have an interest are undeveloped as to natural gas. Hilcorp is proposing to include the Exhibit 3A Royalty Payees in the second settlement class so that if Shallow Gas is produced from these leases, there will already be an agreement in place as to how royalties are to be calculated on the Shallow Gas production and this will avoid future litigation. Hilcorp is proposing that as to Shallow Gas production, the Future Royalty Payment Methodology and the Future Royalty Reporting Format will apply. The oil wells for which the Exhibit 3A Royalty Payees are currently receiving royalties are listed with each Royalty Payee's name on Exhibit 3A. An alphabetized list of these wells and the associated Hilcorp lease numbers are listed in Exhibit 3B. A more detailed description of the leases covering these wells is contained on Exhibit 3C. The proposed form of notice to the Exhibit 3A Royalty Payees is Exhibit 3C.

The third group covers Royalty Payees in leases that are undeveloped completely or leases that are undeveloped in the formations in which Hilcorp has an interest. These Royalty Payees are listed on Exhibit 4A. Hilcorp is proposing to include the Exhibit 4A Royalty Payees in the second settlement class so that if Shallow Gas is produced from these leases, there will already be an agreement in place as to how royalties are to be calculated on the Shallow Gas production and this will avoid future litigation. Hilcorp is proposing that as to Shallow Gas production, the Future Royalty Payment Methodology and the Future Royalty Reporting Format will apply. The leases associated with the Exhibit 4A Royalty Payees are listed with each Royalty Payee's name on Exhibit 4A. A more detailed description of these leases is contained on Exhibit 4B. The proposed form of notice to the Exhibit 4A Royalty Payees is Exhibit 4C.

ii. The Second Settlement Class as provided for under the Settlement Agreement presented to the Court:

(a) establishes the potential class members; and

(b) provides for all members of the Second Settlement Class (i) a Future Royalty Payment Methodology by which Hilcorp will pay class members' royalties for future Shallow Gas, condensate and natural gas liquids produced from wells operated by Hilcorp based on the total proceeds received from the first arms-length sale of the gas, condensate or liquids with only specifically defined and limited Permitted Deductions, and (iii) a Future Royalty Reporting Format from which Plaintiffs believe class members will have what is a more useful and complete understanding of the royalties paid for gas from wells operated by Hilcorp.

iii. Hilcorp, as the successor in interest to Westport, is bound by the Settlement Agreement as to the first settlement class and is entitled to the rights and subject to the obligations of the Settlement Agreement as to the second settlement class. As to the second settlement class, all references in the Settlement Agreement to Westport mean Hilcorp.

iv. In addition to the benefits to class members stated in the Settlement Agreement, the agreement also contains release provisions pursuant to which all members of the second settlement class will release Hilcorp and Additional Released Parties as defined in the Settlement Agreement for Settled Claims, excluding certain reserved claims which mainly consist of claims that could arise out of any clerical errors in accounting for the volumes, price, value or decimal interest reported by Hilcorp. The entire terms of the release are contained in the Settlement Agreement. However, the release may be summarized as releasing Hilcorp, its successors and assigns, including Hilcorp, for: (1) all past Gas Royalty Claims; (2) past Reporting Claims; (3) Future Gas Royalty Claims, contingent upon Hilcorp's compliance with the Future Royalty Payment Methodology; and (4) future Reporting Claims contingent upon compliance with the Future Royalty Payment Format.

v. Plaintiffs and Hilcorp have agreed that the consideration for the second settlement class is the avoidance of litigation associated with uncertainty in determining the valuation of royalties and the reporting requirements under the WRPA. Additionally, as to the Royalty Payees listed on Exhibit 2A, there is additional consideration in the form of a waiver by Hilcorp of any claims for refunds for production prior to Hilcorp's implementation of the Future Royalty Payment Methodology after the date of any final order approving the second settlement class.

vi. Should there be a change in the law regarding the interpretation of the *Wyoming Royalty Payment Act* either by the Wyoming Legislature or the Wyoming Supreme Court, Hilcorp cannot recover retroactively any Disputed Deductions or other Settled Claims.

2. POTENTIAL MEMBERS OF THE SETTLEMENT CLASS AND JURISDICTION

With regards to the identity of potential members of the Second Settlement Class, counsel for Plaintiffs obtained from Hilcorp a list of the potential members of the second settlement class. That list was reviewed by the parties to remove: (a) governmental entities; (b) royalty owners also having working interests deemed to be potentially antagonistic to the other class members; and (c) royalty owners whose leases or overriding royalty instruments contain provisions regarding deductions which are more stringent than those contained in the Wyoming Royalty Payment Act. Hilcorp has represented and warranted that the information that it has produced is true and accurate to the best of Hilcorp's knowledge. Should the Court grant Plaintiffs' Motion, notice substantially in the form of Exhibits 2D, 3D and 4C to this Motion will be sent to the corresponding potential class members by priority mail with provision for electronic confirmation that the article has been delivered to the specified address.

3. THE REQUIREMENTS OF RULE 23(a) AND (b).

a. Numerosity

Wyo.R.Civ.P. 23(a)(1) requires "[t]he class [be] so numerous that joinder of all members is impracticable." As identified in Exhibits 2A, 3A and 4A to this Motion, there are approximately 388 potential members of the Second Settlement Class. This number of potential members of the Second Settlement Class meets the numerosity requirement. There is no fixed number of class members that is *per se* "numerous," but it was held in a pre-amendment case that a class of only 11 mineral owners was sufficiently numerous. Jones Oil Corp. v. Claro, 459 P.2d 858, 862 (Okla. 1969). On the other hand, 3 HERBERT B. NEWBERG AND ALBA CONTE, NEWBERG ON CLASS ACTIONS § 3.05 (3rd ed. 1992) advises that the numerosity test is satisfied by numbers alone when the size of the class is in the hundreds. See also Rex v. Owens, ex. rel State of Oklahoma, 585 F.2d 432, 436 (10th Cir. 1978) (citing Arkansas Educational Ass'n. v. Board of Education, 446 F.2d 763 (8th Cir 1971) (17 to 20 persons are identified as a class), Afro American Patrolmen's League v. Duck, 503 F.2d 294

(6th Cir. 1974) (35 members are a class), McCown v. Heidler, 527 F.2d 204 (10th Cir. 1975) (262 lot purchasers are a class), or Penn v. San Juan Hospital, Inc., 528 F2.d 1181 (10th Cir. 1975)).

b. Commonality

Wyo.R.Civ.P. 23(a)(2) requires that "[t]here are questions of law or fact common to the class." The Rule 23(a)(2) "commonality" requirement is merely that there are common questions of law and fact, not that all issues need to be identical or even that the common issues predominate. As cases have stated, the Rule 23(a)(2) commonality requirement is satisfied if at least one question of law or fact is shared by the named plaintiff and the prospective class members. Baby Neal v. Casey, 43 F.3d 48, 56 (3d Cir. 1994); Krell v. The Prudential Insurance Company of America, 148 F.3d 283, 300 (1998); and Tana Oil and Gas Corporation v. Bates, 978 S.W.2d 735 (Tex. App. 1998).

Here, Hilcorp acknowledges treating the Royalty Payees on Exhibit 2A similarly for the purposes of settlement. As to all of the Royalty Payees on Exhibits 2A, 3A and 4A, there are also common questions of law that have governed the settlement. Lease Oil Antitrust Litigation, 186 F.R.D. 403, 420-421 (S.D. Tex. 1999). For a class to be certified, the legal and remedial theories for the class representatives and the proposed class members' claims must be similar, i.e., there must be a nexus between the injuries suffered by the representative and the injuries suffered by other members of the class. Lobo Exploration Company v. Amoco Production Company, 991 P.2d 1048 (Ok. App. 1999); Dresser Industries, Inc. v. Snell, 847 S.W.2d 367, 372 (Tex. App. 1993).

As part of the settlement, all members of the Second Settlement Classes will have the benefit of the Future Royalty Payment Methodology and the Future Royalty Reporting Format. Therefore, for settlement purposes, Plaintiffs claims are common and typical.

c. Adequacy of the Named Class Representatives

Another requirement under Rule 23(a) is that the representative parties fairly and adequately protect the interests of the class. The "adequacy" element is comprised of essentially two parts: (1) class counsel must be qualified and experienced; and (2) the proposed representative(s) must not have interests antagonistic to the proposed class members. 1 HERBERT B. NEWBERG AND ALBA CONTE, NEWBERG ON CLASS ACTIONS at § 3.21 at 1-113 (3rd ed. 1992).

(i) The Named Plaintiffs and Designated Class Representatives

The Designated Class Representatives (named Plaintiffs) are the owners of mineral royalties and/or overriding royalties, reside within Wyoming, and are fairly representative of the Settlement Class. They are receiving payments from Hilcorp under the same formula that will be employed to determine payments due to the second settlement class.

The named Plaintiffs are participating in the Second Settlement on the same basis as all potential Second Settlement Class members.

(ii) Plaintiff's Counsel

Plaintiffs' attorneys have each been admitted to practice in Wyoming in excess of twenty-five years, and have been extensively involved in oil and gas valuation issues for more than fifteen years. Freudenthal, Salzburg & Bonds, P.C. has represented numerous governmental entities in tax valuation disputes with oil and gas producers. Mr. Schrinar served as Commissioner of Public Lands for the State of Wyoming for approximately ten years where he had responsibility for administering the leasing of state minerals and royalty collections for state leases. Both Mr. Freudenthal and Mr. Salzburg were active participants in the statutory class action proceedings for the Big Horn Adjudication. By Order dated February 14, 2005, this Court approved Plaintiffs' counsel as Class Counsel for the First Settlement Class. The Plaintiffs request that their attorneys be designated as Class Counsel.

d. The Superiority of a Class Action as a Fair and Effective Means of Settlement and Adjudication of This Controversy

Since the Plaintiffs sought class certification against Westport both under Rule 23(b)(2) and Rule 23(b)(3), and the settlement provides for application of the same going forward methodologies to all class members, it is important to discuss the requirements of Rule 23(b)(3). The important considerations here are whether common issues predominate and whether a class action is superior to alternative methods of adjudication. As noted above, for the Second Settlement Class, the Future Royalty Payment Methodology and Future Reporting Format avoid potential litigation over valuation and reporting issues and provide potential class members larger royalty payments and significantly better information concerning the calculation of their royalties in the future than they might have otherwise received as a result of litigation. These benefits extend to approximately 388 royalty owners. A class settlement is simply the only way such results can be obtained for such a significant group of individuals.

The questions of law and fact common to the members of the Second Settlement Class predominate over any questions affecting only individual members. A settlement class action under Wyo.R.Civ.P. 23 is superior to other available methods for the fair and effective settlement and adjudication of the controversy. For the purposes of this Motion, the Parties would ask that the Court find this matter meets the numerosity, commonality, adequacy and typicality requirements of Wyo.R.Civ.P. 23(a) as well as the requirements set forth in Rule 23(b)(3).

4. FAIRNESS AND REASONABLENESS OF THE SETTLEMENT

Plaintiffs' counsel believes the issues before the Court are complex, and there is an uncertainty as to the outcome of the litigation should it proceed to trial or to the Wyoming Supreme Court. Should this matter proceed to trial, it is believed that many issues will be contested making the litigation of this matter extremely time consuming and costly. Pursuant to the terms of the Settlement Agreement, each potential member of the Second Settlement Class who elects to participate in the Settlement will avoid litigation regarding future royalty payments.

As set forth above, the Plaintiffs and Hilcorp believe the settlement is fair and reasonable considering the inherent risks of litigation and the probable delays to be encountered.

The certification of the Second Settlement Class and the Settlement Agreement, however, is only for the purpose of settlement and not for any other purpose in this litigation. This Court's certification would be subject to its further review of objections, if any, filed with regard to the class settlement. If settlement of the class claims is not finalized, the certification shall be void and have no further effect. As a result, Plaintiffs and Hilcorp would ask the Court to recognize the contingent effect of the Settlement.

5. NOTICE TO POTENTIAL MEMBERS OF THE SETTLEMENT CLASS

Attached as Exhibits 2D, 3D and 4C are proposed notices to each of the three groups in the proposed second settlement class. The applicable notice shall be sent to each member of the Second Settlement Class (the "Notice"). The proposed Notices are submitted for the Court's review and approval. Should the Court enter the Order sought by Plaintiff, Wyo.R.Civ.P. 23 requires each potential member of the Second Settlement Class receive the "best notice practicable under the circumstances." The Notices attached hereto as Exhibits 2D, 3D and 4C assure that each potential class member will receive the individual information necessary to effectuate proper notice. The Notice, among other things, (1) describes the terms of the settlement as well as provides an opportunity for class members to receive relevant documents either electronically or in paper copy; (2) describes the release that Hilcorp and the Additional Released Parties will be given; (3) provides class members an opportunity to either opt out of the class or object to the settlement; and (4) provides that, pursuant to Section 2.5.4 of the Settlement Agreement, Hilcorp will pay to Class Counsel as administrative costs of the Second Settlement class the sum of Ten Thousand Dollars ($5,000.00) plus Fifteen Dollars ($15.00) per owner in the Second Settlement Class. Plaintiffs submit that the proposed Notice complies with Wyo.R.Civ.P. 23.

6. CONCLUSION

For the reasons described herein, the Plaintiffs respectfully requests that the Court find and order as follows:

(1) Plaintiffs filed a suit against Westport alleging individual claims and class action claims. After extensive negotiations and exchange of information, the parties agreed to settle this action on the terms now memorialized in the Settlement Agreement, executed by and between the parties (the "Settlement Agreement"). The Settlement Agreement shall be attached to the Order as Exhibit 1, and incorporated fully therein. All capitalized terms used in the Order and not defined therein shall have the meanings set forth in the Settlement Agreement. In the event of any conflict between the descriptions in these paragraphs and the more detailed terms of the Settlement Agreement, the Settlement Agreement shall govern.

(2) The Producing Leases and Additional Leases, as defined in the Settlement Agreement have been transferred by Westport to Hilcorp Energy Company ("Hilcorp"). Contemporaneously with the filing of this Motion, Hilcorp has filed a Motion for Substitution of Party Defendant For Purposes of the Second Settlement Class.

(3) This suit involves claims brought under Leases, other instruments and the Wyoming Royalty Payment Act, Wyo. Stat. § 30-5-301 et seq. for Disputed Deductions, Valuation Claims, Statutory Interest, Statutory Reporting Assessments and Attorneys' Fees, as those terms are defined in the Settlement Agreement.

(4) The Court has jurisdiction and venue over this suit and the Second Settlement Class. Under Wyo.R.Civ.P. 23(e), this Court's approval of any settlement is required.

(5) The Settled Claims as defined in the Settlement Agreement all arise from the same nucleus of operative facts and form part of the same case or controversy as alleged against Westport in Plaintiffs' Complaint so that all of the claims approved for settlement by this Order were or could have been asserted as class claims in this Action.

(6) There are approximately 388 Second Settlement Class Members and they are so numerous that joinder is impractical.

(7) There are questions of law and fact common to the Second Settlement Class Members and Plaintiffs.

(8) The questions of law and fact common to the Second Settlement Class Members predominate over any questions affecting only individual members, and in the context of this settlement only, the settlement of Settlement Class Members' claims by a class action under Wyo.R.Civ.P. 23 is superior to other available methods for the fair and effective settlement and adjudication of this controversy.

(9) Plaintiffs' claims are typical of the Settlement Class Members' claims.

(10) Plaintiffs and Designated Class Representatives are appropriate representatives of the Second Settlement Class and have and will adequately represent the interests of the Second Settlement Class Members.

(11) Second Settlement Class Members have no special interest in individually controlling the prosecution of separate actions.

(12) Class Counsel is experienced and fully qualified.

(13) No significant difficulties are likely to be encountered in the management of the action as a class action for settlement purposes only.

(14) Hilcorp has acted on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

(15) Subject to the provisions of Paragraph 18 and in accordance with the provisions of Wyo.R.Civ.P. 23, the Court certifies as potential members of the Hilcorp Second Settlement Class the Royalty Owners as set forth in Exhibits 2A, 3A and 4A to this Motion ("Second Settlement Class").

(16) The Court approves the Designated Class Representatives as representative of this Second Settlement Class and appoints Plaintiffs counsel to represent the Second Settlement Class ("Class Counsel").

(17) The Court finds that the proposed settlement as provided in the Settlement Agreement is fair and reasonable under the circumstances. This finding and determination is subject to the Court's further review of objections, if any, filed with regard to the class settlement according to the terms of the Settlement Agreement.

(18) The certification of the Second Settlement Class is only for the purpose of settlement and not for any other purpose in this litigation. This certification is subject to the Court's further review of objections, if any, filed with regard to the class settlement according to the terms of the Settlement Agreement. If the settlement is not finalized, the certification provided herein shall be void and have no further effect.

(19) The Court finds that reasonable and adequate notice will be given to potential Second Settlement Class Members by providing the Notices found in Exhibits 2D, 3D and 4C to this Motion ("Notice").

(20) The Court finds that reasonable and adequate notice of the settlement will be given to potential members of the Second Settlement Class if the Notice is sent by priority mail (with electronic confirmation of delivery) to each Potential Class Member's last known address.

(21) A hearing to consider objections, if any, to the Second Settlement Class and to finally determine if the Settlement Agreement is fair and equitable shall be heard at the Campbell County Courthouse, Gillette, Wyoming on a time and date set by the Court ("Final Settlement Hearing for the Second Settlement Class").

(22) Any Potential Class Member who desires to be excluded from the Second Settlement Class shall deliver in writing that Member's election to be excluded to Class Counsel and Hilcorp's Counsel on or before ________________ ("Deadline for Exclusion"). Any Potential Class Member may revoke that Member's election to be excluded from the Second Settlement Class by delivering such written revocation to Class Counsel and Hilcorp's Counsel in writing at least six (6) days prior to the Final Settlement Hearing for the Second Settlement Class. Class Counsel shall file with the Court a report ("Class Counsel's Report") four (4) days before the Final Settlement Hearing for the Second Settlement Class to provide to the Court a compilation of (a) all Potential Class Members who have opted out of the Second Settlement Class ("Opt Out Claimants"), (b) all Opt Out Claimants who have properly revoked their election to opt-out and c) those Potential Class Members who shall constitute the Second

Settlement Class if finally approved by the Court at the Final Settlement Hearing for the Second Settlement Class.

(23) Any objections to the Settlement Agreement or the Second Settlement Class shall be in writing and delivered to Class Counsel and Hilcorp's Counsel on or before ______________ . Class Counsel shall file with the Court as part of Class Counsel's Report a compilation of the objections and Class Counsel's responses to the objections, if any.

WHEREFORE, the Plaintiffs respectfully request that the Court grant this motion and enter its "Order on Plaintiff's Motion for Conditional Consideration of Settlement Agreement and Provisional Certification of the Hilcorp Second Settlement Class."

DATED this 20th day of March, 2008.

Plaintiffs:

BY: Steve Freudenthal

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of March, 2008 I served the foregoing by placing a true and correct copy thereof in the United States mail, postage prepaid and properly addressed (or as otherwise indicated) to the following:

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Steve Freudenthal
Steven F. Freudenthal

Exhibit 1:	Settlement Agreement
Exhibit 2A:	For owners in leases producing shallow gas - list of owners
Exhibit 2B:	For owners in leases producing shallow gas - list of wells and associated leases numbers
Exhibit 2C:	For owners in leases producing shallow gas - lease descriptions
Exhibit 2D:	For owners in leases producing shallow gas - proposed form of notice
Exhibit 3A:	For owners in leases producing oil - list of owners
Exhibit 3B:	For owners in leases producing oil - list of wells and associated lease numbers
Exhibit 3C:	For owners in leases producing oil - lease descriptions
Exhibit 3D:	For owners in leases producing oil - proposed form of notice
Exhibit 4A:	For owners in nonproducing leases - list of owners
Exhibit 4B:	For owners in nonproducing leases - description of leases
Exhibit 4C:	For owners in nonproducing leases - proposed form of notice