

STATE OF WYOMING)

IN THE DISTRICT COURT

) ss.

COUNTY OF CAMPBELL)

SIXTH JUDICIAL DISTRICT

Civil Action No. 25547

Donald and Betty Brown Family)
Trust; Frederick and Mary Ann)
Oedekoven Family Trust; First)
Interstate Bank as Trustee of the)
Pilch Family Mineral Trust dated)
January 19, 2001; Oedekoven)
Water & Hot Oil, Inc., and Fred)
C. Wilson,)

Plaintiffs,

vs.

J.M. Huber Corporation,

Defendant.)

FILED NO. _____
CIVIL [] PROBATE [] CRIMINAL []
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Wardene Jett
DEPUTY CLERK OF DISTRICT COURT

**MOTION FOR CONDITIONAL CONSIDERATION OF
SETTLEMENT AGREEMENT AND PROVISIONAL
CERTIFICATION OF THE HUBER 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 Plaintiff’s Motion for Preliminary Approval, Hearing and Provisional Certification of the Huber Second Settlement Class,” and respectfully requests this Court to order that:

1. The above entitled action involving J.M. Huber Corporation (“Huber”), 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 May 14, 2004 (“Final Order”);
2. Pursuant to the Final Order, the Court certified a settlement class described on Exhibit A attached thereto and retained continuing jurisdiction over the action and the implementation of the Settlement Agreement dated March 12, 2004 (“Settlement Agreement”);
3. In accordance with Section 2.5.1 of the Settlement Agreement, Huber and Plaintiff are proposing the certification of a second settlement class (“Second Settlement Class”) to settle potential class claims that relate to owners of Huber’s Nonproducing Leases and owners of Producing Leases and any other leases that were not included in the First Settlement Class;
4. The settlement of these potential class claims for the Second Settlement Class in accordance with the Settlement Agreement dated March 12, 2004 (“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

5. 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 Plaintiff presents to the Court as evidence in this matter: (1) the Settlement Agreement - Exhibit 1; and (2) lists of the owners in the Second Settlement Class - Exhibit 2 (the class members in the Non-Producing Second Settlement Class) and Exhibit 3 (the class members in the Producing Second Settlement Class); (3) a copy of the proposed Notices of Proposed Class Action Settlement to be sent to Non-Producing Second Settlement Class members and the Producing Second Settlement Class members - Exhibits 4 and 5, respectively;; and (4) Schedules of Leases - Exhibit 6 (for the Producing Second Settlement Class) and Exhibit 7 (for the Non-Producing Second Settlement Class).

I. INTRODUCTION AND BACKGROUND

A. Certification of First Settlement Class

1. Plaintiffs, on behalf of themselves and on behalf of those similarly situated, filed an Amended Complaint on March 12, 2004, against J.M. Huber Corporation, the Defendant 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.

2. 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 Huber’s alleged violations of leases, instruments and the Wyoming Royalty Payment Act.

3. Commencing in November of 2003, Huber and the Plaintiffs began settlement negotiations. Subsequent to the execution of a Confidentiality Agreement on November 12, 2003, and receipt from Huber of substantial data and information, those settlement negotiations accelerated. In early January 2004, 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.

4. The Settlement Agreement, as presented to the Court by Motion for Conditional Consideration of Settlement Agreement and Provisional Certification of Huber Settlement Class dated March 12, 2004:

(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 Huber would pay class members' royalties for future gas, condensate and natural gas liquids produced from Huber 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 Huber Wells; and

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

5. 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 Huber 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 Huber. The entire terms of the release are contained in the Settlement Agreement. However, the release may be summarized as releasing Huber for: (1) all past Gas Royalty Claims; (2) past Reporting Claims; (3) Future Gas Royalty Claims, contingent upon Huber's compliance with the Future Royalty Payment Methodology; and (4) future Reporting Claims contingent upon Huber's compliance with the Future Royalty Payment Format.

6. By Settlement Order and Final Judgment dated May 14, 2004, 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."

7. The Court's order approving the settlement became final and non-appealable on June 14, 2004 (the "Approval Event"). Thereafter, Huber paid the settlement amount of Six Million Four Hundred Twenty-Eight Thousand Two Hundred and Fifty-Five Dollars (\$6,428,255) as follows: (a) Five Million Four Hundred Sixty-Four Thousand and Seventeen Dollars (\$5,464,017) was distributed to class members ("Distribution Amount"), and (b) Nine Hundred Sixty-Four Thousand Two Hundred Thirty-Eight Dollars (\$964,238) was distributed to Class Counsel in complete payment of attorneys fees, costs and settlement administration expenses ("Litigation Expenses"). The Distribution Amount consists of (i) additional value distributed pro rata based on the quantity on which royalties were originally paid; and (ii) additional royalty based on Disputed Deductions (including costs of production and fuel) distributed pro rata based on the Disputed Deductions previously taken by Huber in calculating each class member's royalties.

B. Proposed Second Settlement Class

1. Sections 2.5.1 and 2.5.2 of the Settlement Agreement state as follows:

2.5.1 Within six months after the Approval Event, Huber and Plaintiffs may petition the Court for certification of a Second Settlement Class as to all or any portion of the Nonproducing Leases for the purpose of agreeing on the future royalty payment methodology and future reporting format for such leases.

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 than six months after the Approval Event. In accordance with the terms of the Settlement Agreement, Huber and Plaintiffs have proposed the certification of a second settlement class composed of two groups. The first group covers the owners of royalty interests in Huber's Nonproducing Leases, as defined in the Settlement Agreement. The Nonproducing Leases were not included in the lease schedule for the First Settlement Class. This first group is referred to as the "Non-Producing Second Settlement Class" and are listed on Exhibit 2 attached hereto. The Nonproducing Leases associated with the Non-Producing Second Settlement Class are listed on Exhibit 6 attached hereto.

2. The second group covers owners of royalty interests in Producing Leases as defined in the Settlement Agreement who were not included in the First Settlement Class and owners in any other Huber Leases which were not on the lease schedule for the First Settlement Class, all of which Leases now have wells located on them (the ‘Producing Second Settlement Class’). Although the Settlement Agreement contemplated that the second settlement class would only cover Nonproducing Leases, Plaintiffs’ counsel and Huber discovered certain parties that own interests in Producing Leases who may be entitled to payment of royalties but who were not included in the First Settlement Class for various reasons including owners in wells for which title was still being examined at the time the list of owners for the First Settlement Class was created. Plaintiffs and Huber wish to amend the Settlement Agreement by adding to the second settlement class these owners of interests in the Producing Leases and owners in any other Leases not included in the First Settlement Class which have or have had Huber-operated wells on such Leases. Members of the Producing Second Settlement Class may have received from Huber or may in the future be entitled to receive from Huber a cash payment for production attributable to their interest in these Huber Leases. The members of the Producing Second Settlement Class are listed on Exhibit 3 attached hereto and the leases associated with the Producing Second Settlement Class are listed on Exhibit 7 attached hereto.

3. The Non-Producing Second Settlement Class and the Producing Second Settlement Class constitute all members of the proposed second settlement class under Sections 2.5.1 and 2.5.2 of the Settlement Agreement, as amended herein, and are together referred to as the “Second Settlement Class.”

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

- (a) establishes the potential class members; and
- (b) settles all past Gas Royalty Claims (including Valuation and Disputed Deductions), Reporting Claims and Interest Claims by (I) providing, with respect to members of the Producing Second Settlement Class that have received payments of royalties from Huber through July 31, 2004 (“Refund Members”), 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) providing for all members of the Second Settlement Class a Future Royalty Payment Methodology by which Huber will pay class members’ royalties for future gas, condensate and natural gas liquids produced from Huber 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) providing for all members of the Second Settlement Class 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 Huber Wells.

5. 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 Huber 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 Huber. The entire terms of the release are contained in the Settlement Agreement. However, the release may be summarized as releasing Huber for: (1) all past Gas Royalty Claims; (2) past Reporting Claims; (3) Future Gas Royalty Claims, contingent upon Huber's compliance with the Future Royalty Payment Methodology; and (4) future Reporting Claims contingent upon Huber's compliance with the Future Royalty Payment Format.

6. Plaintiffs and Huber have agreed that the consideration for the settlement 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 Refund Members of the Producing Second Settlement Class, there is additional consideration in the form of a Distribution Amount to be paid to the Refund Members. The Distribution Amount is \$45,580.55. The Distribution Amount consists of (i) additional value which shall be distributed pro rata based on the quantity on which royalties were originally paid; and (ii) additional royalty based on Disputed Deductions (including costs of production and fuel) which shall be distributed pro rata based on the Disputed Deductions previously taken by Huber in calculating each Refund Member's royalties.

7. Upon final approval of the Second Settlement Class under the terms of the Settlement Agreement, the Refund Amount (less any amounts attributable to Opt-Out Claimants) shall be paid by wire transfer to a trust account designated by class counsel. The distribution to class members shall be done by class counsel, and the costs of check preparation and mailing shall be paid by class counsel. All interest earned in the escrow, if any, shall be treated as interest earned on an IOLTA account and distributed accordingly. 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, Huber can not recover retroactively any Disputed Deductions or other Settled Claims.

II. 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 Huber a list of the following parties: owners of royalty interests in Huber's Nonproducing Leases, as defined in the Settlement Agreement; owners of royalty interests in Producing Leases who were not included in the First Settlement Class; and owners of royalty interests in any other Huber Leases which were not on the lease schedule for the First Settlement Class but which now have wells located on them. 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; (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; and (d) royalty owners in active litigation with Huber in other cases. A list of the royalty owners constituting the proposed Second Settlement Class is attached hereto as Exhibit 2 (the Non-Producing Second Settlement Class) and Exhibit 3 (the Producing Second Settlement Class). Huber also provided electronic information concerning the historical quantity, value and deductions for each Refund Member in the Producing Second Settlement Class. Huber has represented and warranted that the electronic data that it has produced is true and accurate to the best of Huber's knowledge. Should the Court grant Plaintiffs' Motion, notices substantially in the form of Exhibits 4 (Notice to the Non-Producing Second Settlement Class) and 5 (Notice to the Producing Second Settlement Class) to this Motion will be sent to each potential class member by priority mail with provision for electronic confirmation that the article has been delivered to the specified address.

III. 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 Exhibit 2 to this Motion, there are over 430 potential members of the Nonproducing Second Settlement Class. As identified in Exhibit 3 to this Motion, there are over 200 potential members of the Producing 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 F.2d 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, Huber acknowledges treating royalty owners within the Second Settlement Class similarly for the purposes of settlement. 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. Additionally, as to the Refund Members of the Producing Second Settlement Class, each Refund Member’s claims are being resolved in a similar manner. Recoveries for Gas Royalties Claims for the Refund Members are computed and distributed among Refund Members based upon the quantities on which each Refund Member was originally paid and the Disputed Deductions previously taken from each such Refund Member. Distribution is done on a proportionate basis. 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).

1. The Named Plaintiffs and Designated Class Representatives

Some of the named Plaintiffs in this case own royalty interests in both (i) Huber Wells on Producing Leases, including wells in Campbell and Sheridan Counties, and (ii) Huber Nonproducing Leases. The named Plaintiffs are participating in the Second Settlement on the same basis as all potential second settlement class members. The Designated Class Representatives, Donald and Betty Brown Family Trust; First Interstate Bank as Trustee of the Pilch Family Mineral Trust dated January 19, 2001; and Oedekoven Water & Hot Oil, Inc., one or more of them, are the owners of mineral royalties and/or overriding royalties, reside within northeastern Wyoming, and are fairly representative of the Second Settlement Class.

2. 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 May 14, 2004, 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 have sought class certification against Huber both under Rule 23(b)(2) and Rule 23(b)(3), and the settlement provides for the distribution of the proceeds of the settlement, 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, the distribution of settlement funds based on each member's Disputed Deductions and checks received necessarily involves an equitable resolution of the common issues from which the common settlement funds were developed. Significantly, for the Second Settlement Class, the royalty payment methodology and reporting format avoid potential

litigation over valuation and reporting issues; provide potential class members larger royalty payments and significantly better information concerning the calculation of their royalties in the future. These benefits extend to _____ plus 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).

IV. 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. In addition, the Refund Members of the Producing Second Settlement Class will receive amounts for the Gas Royalties Claims that approximate almost all of the portions of the alleged Disputed Deductions that reduced that member's royalty payments. The Second Settlement Class will not incur any attorneys fees, costs or settlement administration expenses except a reduced contingent fee in the amount of fifteen percent of the total recovery to Refund Members of the Producing Second Settlement Class. While many of the Refund Members in the Producing Second Settlement Class will receive a minimal amount of damages as their interest are either very small or such individuals only owned an interest for a short periods of time since 1989 and others have succeeded to their interests, in the absence of a class settlement, they would be unlikely to recover anything because no single member's interest is large enough to justify the time and expense involved in pursuing the matter. The Refund Members of the Producing Second Settlement Class will receive their Distribution Amount after attorneys' fees, costs and settlement administration expenses which are stated in the Settlement Agreement and shall not exceed 15% of the Huber Distribution Amount.

As set forth above, the Plaintiffs and Huber 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 Huber would ask the Court to recognize the contingent effect of the Settlement.

V. NOTICE TO POTENTIAL MEMBERS OF THE SETTLEMENT CLASS

Attached as Exhibits 4 and 5 are proposed notices. The notice set forth in Exhibit 4 shall be sent to all members of the Non-Producing Second Settlement Class and the notice set forth in Exhibit 5 shall be sent to members of the Producing Second Settlement Class (together the "Notices"). 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 4 and 5 assure that each potential class member will receive the individual information necessary to effectuate proper notice. The Notices, among other things, (1) describe the terms of the settlement as well as provide an opportunity for class members to receive relevant documents either electronically or in paper copy; (2) describe the release that Huber and the Additional Released Parties will be given; (3) provide class members an opportunity to either opt out of the class or object to the settlement; and (4) provide that attorney's fees will be limited to 15% of the gross Huber Distribution Amount owed to the Refund Members of the Producing Second Settlement Class. Plaintiffs submit that the proposed Notices comply with Wyo.R.Civ.P. 23. The Notice set forth in Exhibit 4 shall be sent via priority mail to all potential members of the Non-Producing Second Settlement Class identified in Exhibit 2 and the Notice set forth in Exhibit 5 shall be sent via priority mail to all potential members of the Producing Second Settlement Class identified in Exhibit 3.

VI. CONCLUSION

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

1. Plaintiffs filed a suit against Huber 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 (as amended in paragraph I.B.2 above), the Settlement Agreement shall govern.

2. 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.

3. 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.

4. 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 Huber 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.

5. There are in excess of ____ Second Settlement Class Members and they are so numerous that joinder is impractical.

6. There are questions of law and fact common to the Second Settlement Class Members and Plaintiff.

7. 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.

8. Plaintiffs' claims are typical of the Settlement Class Members' claims.

9. 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.

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

11. Class Counsel is experienced and fully qualified.

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

13. Huber has acted or refused to act 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.
14. Subject to the provisions of Paragraph 17 and in accordance with the provisions of Wyo.R.Civ.P. 23, the Court certifies as potential members of the Huber Second Settlement Class the Royalty Owners as set forth in Exhibits 4 and 5 to this Motion (“Second Settlement Class”).
15. 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”).
16. The Court finds that the proposed settlement as provided in the Settlement Agreement as amended in paragraph I.B.2 of this Motion 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.
17. 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.
18. The Court finds that reasonable and adequate notice will be given to potential Second Settlement Class Members by providing the Notices found in Exhibit 4 and 5 attached to this Motion (“Notices”).
19. The Court finds that reasonable and adequate notice of the settlement will be given to potential members of the Second Settlement Class if the Notices are sent by priority mail (with electronic confirmation of delivery) to each Potential Class Member’s last known address.
20. 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”).
21. 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 Huber Counsel on or before February 2, 2005 (“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 Huber 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.

22. Any objections to the Settlement Agreement or the Second Settlement Class shall be in writing and delivered to Class Counsel and Huber Counsel on or before February 2, 2005. 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 Huber Second Settlement Class."

DATED this 22nd day of December, 2004.

Plaintiffs:

BY: 

STEVEN F. FREUDENTHAL
BRUCE A. SALZBURG
Freudenthal, Salzburg & Bonds, P.C.
123 East 17th Street
P. O. Box 387
Cheyenne, WY 82003
(307) 634-2240

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of December, 2004, 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:

Rex O. Arney
Brown, Drew & Massey, LLP
45 East Loucks
Suite 109
Sheridan, WY 82801
HAND DELIVERED

Judith Matlock
Davis Graham & Stubbs LLP
1550 Seventeenth Street
Suite 500
Denver, CO 80202
HAND DELIVERED

Stephanie Anesi
Assistant Attorney General
Pat Crank
Attorney General
123 State Capitol
Cheyenne, WY 82002


Steven F. Freudenthal

- Exhibit 1: Settlement Agreement
- Exhibit 2: Members of the Non-Producing Second Settlement Class
- Exhibit 3: Members of the Producing Second Settlement Class
- Exhibit 4: Form of Notice of Proposed Class Action Settlement for the Non-Producing Second Settlement Class
- Exhibit 5: Form of Notice of Proposed Class Action Settlement for the Producing Second Settlement Class
- Exhibit 6: Schedule of Leases for Non-Producing Second Settlement Class
- Exhibit 7: Schedule of Leases for the Producing Second Settlement Class