

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

**KEVIN L. JETER, JOE A. JETER,
BARBARA LUCAS, JAMES H. MILLER,
SHARON RIGSBY MILLER, LARRY
SMITH, and JANICE SUE PARKER,
Individually and as Class Representatives
on Behalf of All Similarly-Situated
Persons,**

Plaintiffs,

and

**JAMES D. ENLOE, CARLOYN R.
ENLOE, and SCOTT BAILY,
Individually and as Class Representatives
on Behalf of All Similarly-Situated
Persons,**

Consolidated Plaintiffs,

v.

**BULLSEYE ENERGY, INC., CEP MID-
CONTINENT L.L.C., KRS&K, an
Oklahoma Partnership, GASHOMA,
INC., PURGATORY CREEK GAS,
INC., REDBIRD OIL, an Oklahoma
Partnership, WILD WEST GAS, LLC,
WHITE HAWK GAS, INC.,
FOUNTAINHEAD, LLC, ROBERT M.
KANE, LOUISE KANE ROARK, ANN
KANE SEIDMAN, MARK KANE,
PAMELA BROWN, and GARY
BROWN**

Defendants/Consolidated Defendants,

**Case No. 12-CV-411-TCK-PJC
BASE FILE**

**Consolidated with:
Case No. 15-CV-455-TCK-PJC**

**ORDER PRELIMINARILY APPROVING CLASS SETTLEMENT,
APPROVING FORM OF NOTICE TO CLASS MEMBERS, AND
SETTING DATE FOR SETTLEMENT FAIRNESS HEARING**

This matter came on for hearing on the 15th day of March, 2018, on the Joint Motion for Preliminary Approval of Settlement Agreement With Defendant Bullseye Energy, Inc., et al., for Certification of a Settlement Class, and for Approval of Notice of Settlement and Plan of Notice (“Joint Motion”) (Doc. 244).¹ The Joint Motion was filed by Defendants and two of the named Plaintiffs, Kevin L. Jeter and Joe A. Jeter (the “Jeters”) (together with Defendants, the “Moving Parties”). The Jeters propose to represent a Settlement Class defined in the proposed Settlement Agreement (hereinafter the “Settlement Agreement”) (Doc. 244-1). The Moving Parties additionally seek approval of the form of Notice of Settlement, the setting of a date for the Settlement Fairness Hearing, and preliminary approval of the motion of Class Counsel for fees and litigation expenses from the Settlement Proceeds to be filed herein. The remaining eight named Plaintiffs (hereinafter the “Non-Moving Plaintiffs”) filed a Response in Opposition to the Joint Motion (Doc. 249) and appeared through counsel at the March 15, 2018 hearing to present their objections to preliminary approval and class certification.

The Court, after reviewing the pleadings on file in this cause, hearing arguments of counsel and being sufficiently advised, and after making a preliminary review of the Settlement Agreement among Plaintiffs and Defendants, finds that the Joint Motion should be, and is hereby, GRANTED IN PART. Specifically, for the purpose of preliminary approval of the Settlement Agreement and preliminary certification of a Settlement Class, the Court finds and orders as follows:

¹ Unless otherwise specified, the capitalized terms in this order are given the same meanings as such terms are given in the Settlement Agreement (Doc. 244-1).

1. The Settlement Agreement was fairly and honestly negotiated over a period of several months, at length, and without collusion.
2. The Settlement Agreement appears to the Court to be fair, reasonable and adequate to the Settlement Class, and should be preliminarily approved by the Court, subject to the limitations set forth in this Order.
3. Class Counsel's motion for: (1) an award of an attorneys' fee, (2) a Class Representatives' award, and (3) expert and consultant fees, litigation expenses, and other costs incurred directly or indirectly by Class Counsel (such litigation costs totaling no greater than \$170,000), appears to the Court to be fair and reasonable, subject to the following limitations: (1) the attorneys' fee to be awarded to Class Counsel will not exceed 30 percent of the Settlement Proceeds; and (2) only one Class Representative award, not greater than \$21,000, may be awarded. Conditioned on these limitations, the Court preliminarily approves the proposed Class Counsel fee, Class Representative award, and expenses and costs of litigation to be paid from the Settlement Proceeds.
4. The Court further finds that a Settlement Fairness Hearing should be held before the Court on September 10, 2018 at 1:30 p.m. before Judge Terence C. Kern at the United States District Court for the Northern District of Oklahoma, 224 S. Boulder Ave., Courtroom #245, Tulsa, Oklahoma 74103, at which hearing evidence and arguments will be presented in support of final approval of the Settlement Agreement in accordance with Rule 23 of the Federal Rules of Civil Procedure. Class Counsel will also present evidence and arguments in support of their fee and expense requests. At the Settlement Fairness Hearing, the Court may, among other matters:

(a) consider any proper and timely filed opt-outs, objections to the proposed settlement, and objections to the request by the Class Representatives and Class Counsel for fees and expenses, if such opt-outs or objections comply with the requirements set forth in this Order and the Notice of Settlement, as modified in conformance with this Order;

(b) make further findings and orders concerning certification of the Settlement Class for settlement purposes, whether the Settlement Agreement is fair, reasonable and adequate to the Settlement Class, and whether it should therefore be finally approved by the Court as required by Rule 23 of the Federal Rules of Civil Procedure;

(c) make findings concerning whether the requests by the Class Representatives and Class Counsel for fees and litigation expenses represents fair and reasonable attorney fees, representative fees and litigation expenses to be awarded from the Settlement Proceeds in this case;

(d) enter a Judgment as provided for in the Settlement Agreement; and

(e) consider any other matters properly brought before the Court concerning the Class Lawsuit and the proposed settlement.

5. Subject to their modification in conformance with this Order, the proposed form of the Notices attached to the Settlement Agreement as Exhibits D-1 and D-2, and the method of notification to the Settlement Class set forth herein and in the Plan of Notice provided for in the Settlement Agreement, will adequately inform the members of the Settlement Class of the scope and effect of the proposed settlement,

as well as their rights related thereto. However, the Court's approval is conditional on the following limitations and specifications:

- a. The Court does not approve the proposed requirement under ¶ 8.B of Exhibit D-1, and ¶ 6.B of Exhibit D-2, requiring a Class member to have a letter acknowledged by a notary public in order to opt out of the Class settlement. The proposed Notices for mailing and for publication, Exhibits D-1 and D-2, should be revised to eliminate the notary requirement.
- b. The Court does not approve the following provision in the proposed Notices:

OBJECTING CLASS MEMBERS MUST ALSO APPEAR AT THE FAIRNESS HEARING, EITHER PERSONALLY OR THROUGH COUNSEL, IN ORDER TO PRESENT THEIR OBJECTIONS. THE COURT MAY SUMMARILY OVERRULE ANY OBJECTION IF THE OBJECTING CLASS MEMBER DOES NOT APPEAR AT THE FAIRNESS HEARING. THE COURT MAY ALSO SUMMARILY OVERRULE ANY OBJECTION WHICH DOES NOT STRICTLY COMPLY WITH THE TERMS OF THIS SECTION. FAILURE TO COMPLY WITH THIS SECTION SHALL CONSTITUTE WAIVER OF ANY OBJECTION TO THE SETTLEMENT AGREEMENT.

The proposed Notices should be revised to eliminate this language.

- c. Paragraph 6.A of Exhibit D-2, the form of Notice for publication, should clearly indicate that an individual who believes he or she is a Class member but did not receive a copy of the Notice by mail should contact Class Counsel about his or her claim.
- d. Both Notice forms should be modified in conformance with all other specifications of this Order, including the limitations set forth in ¶ 3 herein.

Subject to these conditions, the Court approves the proposed Notices referenced in Exhibits D-1 and D-2 to the Settlement Agreement.

6. The manner of providing notice of the proposed settlement to putative members of the Settlement Class should, as provided in the Settlement Agreement, be accomplished by: (1) mailing the proposed Notice attached as Exhibit D-1 to the Settlement Agreement, not more than thirty (30) days from the date of this Order, to those putative members of the Settlement Class for whom names and mailing addresses have been identified; and (2) publishing the proposed Notice attached as Exhibit D-2 to the Settlement Agreement, as further described in the Plan of Notice in the Settlement Agreement, as modified in conformance with this Order, not more than forty-five (45) days from the date of this Order (or if the newspaper does not publish daily, the first publication date thereafter).
7. Subject to modification in conformance with this Order, the Notices attached to the Settlement Agreement as Exhibit D-1 and Exhibit D-2, and the method of notification to the Settlement Class set forth herein and in the Plan of Notice provided for in the Settlement Agreement, constitute the best notice practicable under the circumstances. Such forms of notice constitute due and sufficient notice of the Settlement Agreement and the proposed class settlement (as well as the requests by the Class Representatives and Class Counsel for attorneys' fees and litigation expenses and an award to the Class Representatives) and of the time, date, and place of the Settlement Fairness Hearing, and constitutes due and sufficient notice to all persons legally entitled to receive such notice.
8. Class Counsel shall cause to be filed under seal with the Court an affidavit of mailing reflecting the names, addresses and date of mailing of the form of Notice attached to the Settlement Agreement as Exhibit D-1, as modified in conformance with this

Order, and shall also cause to be filed affidavits of publication of the form of Notice attached to the Settlement Agreement as Exhibit D-2, as modified in conformance with this Order, prior to the Settlement Fairness Hearing.

9. Each person who wishes to appear at the Settlement Fairness Hearing in person or through separate counsel to challenge the fairness or reasonableness of Class Counsel's and Class Representatives' requested fees and litigation expense shall be required to file with Mark McCartt, Court Clerk of the United States District Court for the Northern District of Oklahoma, and make delivery into the hands of Class Counsel and Defendants' Counsel within twenty (20) days before the fairness hearing, a written objection which shall contain the following:

- (a) A heading referring to *Kevin L. Jeter, et al., v. Bullseye Energy, Inc. et al.*, Case No. 12-CV-411-TCK-PJC, consolidated with *James D. Enloe, et al., v. Bullseye Energy, Inc., et al.*, Case No. 15-CV-455-TCK-PJC, in the United States District Court for the Northern District of Oklahoma;

- (b) A statement as to whether the objector intends to appear at the Settlement Fairness Hearing, either in person or through counsel, and, if through counsel, identifying counsel by name, address and telephone number;

- (c) A detailed statement of the specific legal and factual basis for each and every objection;

- (d) A list of any witnesses the objector may call at the Settlement Fairness Hearing, together with a brief summary of each witness's expected testimony;

- (e) A list and copies of any exhibits which the objector may seek to use at the Settlement Fairness Hearing;

(f) A list of any legal authority the objector may present at the Settlement Fairness Hearing;

(g) The objector's current address;

(h) The objector's current telephone number;

(i) The objector's signature; and

(j) Such information as will allow Class Counsel to identify the objector's interest including, if available, identification of each Class Well (by well name, well number, Section, Township and Range) and the objector's Operator-assigned royalty number.

10. The Court further finds that an objector who fails to follow the specified procedure for objecting to the settlement, or fee and expense requests, as set forth immediately above, shall not be permitted to raise or pursue an objection at the Settlement Fairness Hearing.

Dated this 21st day of March, 2018.



TERENCE C. KERN
U.S. DISTRICT COURT JUDGE