

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

LADENE RAMSEY BEER, and)
KATHERINE K. BOECK, (collectively)
“Plaintiffs”) on behalf of themselves and)
others similarly situated,)

Plaintiffs,)

v.)

Case No. CIV-07-798-L

XTO ENERGY, INC. f/k/a CROSS)
TIMBERS OIL COMPANY, a Delaware)
Corporation (“XTO”),)

Defendant.)

MOTION TO INTERVENE AND BRIEF IN SUPPORT

Intervenors, Bill Fankhouser and Tim Goddard, move to intervene in this case as Plaintiffs and representatives of the putative class. In support, Intervenors set forth the following:

1. On April 13, 2010, this Court decertified the class in this action and dismissed the class claims without prejudice.

2. Intervenors Bill Fankhouser and Tim Goddard seek leave from this Court to intervene in this action and file claims on behalf of the class as set forth in the proposed Amended Complaint attached hereto as Exhibit “1”.

3. Intervenor, Bill Fankhouser owns Oklahoma mineral interests that fall under the Oklahoma subclass of the previously certified class definition. Intervenor, Tim Goddard

owns Kansas mineral interests that fall under the Kansas subclass of the previously certified class definition.

4. Intervenor believe that the interests of the proposed class and judicial economy would be best served by allowing them to intervene in this case, as substantial steps in the litigation have taken place, i.e. discovery, class certification and summary judgment in favor of the *Beer* Plaintiffs.

5. Intervenor's counsel is currently representing another certified class involving similar issues in *Naylor v. Questar Exploration, et al.*, United States District Court for the Western District of Oklahoma Case No. 5:08-cv-00668-R, and is prepared to represent the proposed class, including both Oklahoma and Kansas subclasses fully and adequately.

6. Counsel for Plaintiffs Ladene Ramsey Beer and Katherine K. Boeck do not object to this motion.

7. Counsel for Defendant XTO Energy, Inc., objects to this motion.

ARGUMENT AND AUTHORITY

Intervention under Federal Rule of Civil Procedure Rule 24(a)(2) should be granted when a timely motion to intervene demonstrates that (1) the intervenor has an interest in the property or transaction that is the subject matter of the action, (2) the interest might be impaired absent intervention, and (3) the existing parties will not adequately represent the interest. Kirkes v. Lake Co. Chevrolet Cadillac, LLC, 2008 WL 4534213 at *1 (E.D. Okla.

Oct. 3, 2008) (citing Alameda Water & Sanitation Dist. v. Browner, 9 F.3d 88, 90 (10th Cir. 1993)).

Both Intervenors have interests in the litigation that will be impaired unless they are allowed to intervene. In the case at hand, there has been substantial discovery conducted. Additionally, the Court has initially seen fit to certify the proposed class and granted summary judgment (individually) to the *Beer* Plaintiffs. This Court is already familiar with the issues in this matter. It would be a waste of resources and time for all parties including another court to require the members of the class to initiate the process anew. Allowing Bill Fankouser and Tim Goddard to intervene herein would be in the best interest of everyone.

WHEREFORE, Intervenors pray for an order granting their motion for intervention.

Respectfully submitted,

s/Gary Underwood

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ATTORNEYS FOR INTERVENERS

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CERTIFICATE OF SERVICE

I hereby certify that on this 26TH of April, 2010, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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