

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA**

CHIEFTAIN ROYALTY COMPANY,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-18-1225-J
)	
SM ENERGY COMPANY (including)	
Predecessors, successors and affiliates),)	
)	
Defendant.)	

INITIAL PLAN OF ALLOCATION ORDER

Having held a Final Fairness Hearing in this Action on April 27, 2021, in which the Court fulfilled its duties to consider objections and independently evaluate the fairness, reasonableness, and adequacy of the Settlement, and having thereafter finally approved the Settlement, the Court now enters this Initial Plan of Allocation Order to instruct the Parties and the Settlement Administrator on the manner in which the Net Settlement Fund shall be allocated and distributed to Class Members.¹ The Court finds, orders, and adjudges that the methodology set forth below (the Allocation Methodology) is fair, reasonable, and adequate and in the best interest of the Settlement Class. Accordingly, the Court hereby orders that, once the Judgment becomes Final and Non-Appealable, the Parties and the Settlement Administrator are to promptly carry out the terms of this Order and distribute the Net Settlement Fund as follows:

1. Subject to the jurisdiction of the Court, the Settlement Administrator shall administer the Settlement under Class Counsel’s supervision in accordance with this Initial Plan of Allocation Order and the Settlement Agreement. Class Counsel and Defendant shall cooperate

¹ All capitalized terms not otherwise defined in this Order shall have the same meanings ascribed to them in the Stipulation and Agreement of Settlement (the Settlement Agreement).

in the administration of the Settlement to the extent reasonably necessary to effectuate its terms. The Net Settlement Fund shall be distributed to Class Members according to this Order. The Court reserves the right to modify this Initial Plan of Allocation Order upon application of any Party hereto, without further notice to any Class Members who have not entered an appearance herein. The allocation of the Net Settlement Fund among Class Members and the Allocation Methodology is a matter separate and apart from the proposed Settlement between Plaintiff and Defendant, and any decision by the Court concerning allocation and distribution of the Net Settlement Fund among Class Members shall not affect the validity or finality of the Settlement or operate to terminate or cancel this Settlement.

2. Plaintiff's Counsel shall first allocate Net Settlement Fund proceeds to individual Class Wells proportionately, with due regard for the production marketed by Defendant on behalf of itself and/or other well owners, the amount and date of claimed royalty underpayment to Class Members, and the time period when the claimed underpayment occurred. Thereafter, the Settlement Administrator will allocate the Net Settlement Fund proceeds for each Class Well proportionately among all Class Members in such well based on their respective royalty decimal interests. The allocation will be based upon the decimal of interest ownership used to pay royalty for the last production month for each well in the Settlement Class. Any amount of interest or returns that have accrued on the Class Member's proportionate share of the Net Settlement Fund during the time such share was held in the Escrow Account will be included in the allocation to Class Members proportionately. This allocation is subject to modification by Plaintiff's Counsel and final approval by the Court. Neither Defendant nor Defendant's Counsel, nor any Released Party, is responsible or liable for any aspect of the Allocation Methodology or any plan of allocation implementing that methodology. Defendant, Defendant's Counsel, and the Released

Parties shall not be liable for any claims by, through, or under any Class Member or third party relating to the allocation or distribution of the Net Settlement Fund, including, but not limited to, any claims that a Class Member should have been allocated and distributed a different amount of the Net Settlement Fund than it actually received or was provided by the Plan of Allocation.

3. No distributions will be made to Class Members who would otherwise receive a distribution of less than \$10.00 under the Initial Plan of Allocation. This *de minimis* threshold is set in order to preserve the overall Net Settlement Fund from the costs of claims that are likely to exceed the value of those claims.

4. Within 30 days after the Effective Date, Plaintiff will file a Final Plan of Allocation and seek approval of a distribution order with the Court (the Distribution Order). The Distribution Order will indicate the proportionate amount of the Net Settlement Fund to be paid to each Participating Class Member pursuant to the Allocation Methodology and the Final Plan of Allocation.

5. The Settlement Administrator shall administer the Settlement and distribute the Net Settlement Fund under Plaintiff's Counsel's supervision in accordance with this Settlement Agreement and subject to the jurisdiction of the Court. The Net Settlement Fund shall be distributed to Participating Class Members according to the Final Plan of Allocation, as determined by Plaintiff's Counsel, or according to such other plan of allocation and distribution order(s) as the Court approves. Further, to the extent Defendant has not provided the taxpayer identification number for a Class Member, the Settlement Administrator shall make reasonable efforts to obtain the Class Member's tax identification number, including making reasonable inquiry and sending a form W-9 Request for Taxpayer Identification Number and Certification to the best reasonably obtainable address of the Class Member.

6. After Court approval of the Final Plan of Allocation and entry of the Distribution Order, the Settlement Administrator will make prompt distribution of funds to those ordered by the Court to receive those funds. The Settlement Administrator will only make distributions based on the Final Plan of Allocation and Distribution Order approved by the Court. It is contemplated that distributions may be made in waves, where using that approach is more efficient for the Settlement Administrator, so that payments to readily identified owners are not unduly delayed. The Settlement Administrator will make a diligent effort to mail the first Distribution Checks within 90 days after the Effective Date and, within the subsequent 90 days, will mail the Distribution Checks representing the remaining 95% of the Net Settlement Fund (such percentage to be calculated based upon the amount of payments shown in the Final Plan of Allocation). The remainder of the Net Settlement Fund will be distributed to Participating Class Members by the Settlement Administrator as quickly as possible, using commercially reasonable efforts. Any portion of the Net Settlement Fund remaining in the Escrow Account one year after the Settlement Administrator sends the final wave of Distribution Checks will be considered Residual Unclaimed Funds that will be deposited into a *cy pres* fund for distribution based on the reasonable recommendation by Plaintiff's Counsel upon Court approval.

7. The Settlement Administrator will use commercially reasonable efforts, subject to review and approval by Plaintiff's Counsel, to distribute the Net Settlement Fund. If the information needed to send a Distribution Check cannot be obtained through such efforts, the portion of the Net Settlement Fund attributable to such Class Member will remain in the Escrow Account as Residual Unclaimed Funds that will be deposited into a *cy pres* fund for distribution on the reasonable recommendation of Plaintiff's Counsel upon Court approval.

8. If a Distribution Check is returned to the Settlement Administrator for incorrect or insufficient address, the Settlement Administrator and/or consultants working with the Settlement Administrator will use commercially reasonable methods to locate an updated address and will re-issue and re-mail the Distribution Check within 30 days. If the second Distribution Check is returned and the Class Member cannot be located through commercially reasonable efforts, the portion of the Net Settlement Fund attributable to them will remain in the Escrow Account for one year after the date the Second Distribution Check was returned and, thereafter, will be considered Residual Unclaimed Funds that will be deposited into a *cy pres* fund for distribution based on the reasonable recommendation of Plaintiff's Counsel upon Court approval.

9. Included with each Distribution Check shall be an enclosure that includes the following notice (or, if a change is required by the Court, a notice substantially the same as the following):

Class Member: The enclosed check represents a share of the net settlement fund in the settlement of the Class Action *Chieftain Royalty Company v. SM Energy Company*, Case No. CIV-18-1225-J, United States District Court for the Western District of Oklahoma. You are receiving this distribution and check because you have been identified as a Class Member in this action. If you are not legally entitled to the proceeds identified on the check, the Court has entered an Order that requires you to pay these proceeds to persons legally entitled thereto or return this check uncashed to the sender.

The person to whom this check was originally made payable, and anyone to whom the check has been assigned by that person, has accepted this payment pursuant to the terms of the Settlement Agreement, Notice of Settlement, and Judgment related thereto, which releases, *inter alia*, Defendant and the other Released Parties (as defined in the Settlement Agreement) from any and all Released Claims (as defined in the Settlement Agreement). Pursuant to the Order of the Court, it is the duty of the payee of the check to ensure that the funds are paid to the Class Member(s) entitled to the funds, and the release by Class Member(s) entitled to the funds shall be effective regardless of whether such Class Member(s) receive some, all, or none of the proceeds paid to a payee of a settlement check.

This check shall be null and void if not endorsed and negotiated within ninety (90) days after its date. The release of claims provided in the settlement shall be effective regardless of whether this check is cashed.

10. Defendant, Defendant's Counsel, the Settlement Administrator, Plaintiff, and Plaintiff's Counsel shall have no liability to any Class Member for mispayments, overpayments, or underpayments of the Net Settlement Fund.

11. If any Class Member has been paid any portion of the Net Settlement Fund for any period of time for which that Class Member was not entitled to receive that payment, and some other person or entity who owned or claims they owned the right to assert the Released Claims and asserts a claim against any of the Released Parties for payment of all or a portion of the Net Settlement Fund or any other Released Claim, then the Class Member who received an excess share shall be liable for any overpayment amount to the person who is determined to have been properly owed that amount, and that Class Member shall indemnify, defend, and hold harmless any of the Released Parties, Plaintiff's Counsel, Defendant's Counsel, or any other Class Member for such claims.

12. Upon completing all distributions of the Net Settlement Fund to Participating Class Members, complying with the Court's orders in furtherance of the Settlement, and distributing the Residual Unclaimed Funds (which will be deposited into a *cy pres* fund for distribution on the reasonable recommendation of Plaintiff's Counsel upon Court approval) or any other funds as set forth in the Settlement Agreement to Plaintiff's Counsel, the Settlement Administrator will have satisfied all obligations relating to the payment and distribution of the Net Settlement Fund.

13. Within one year after the Settlement Administrator sends the final wave of Distribution Checks, the Settlement Administrator shall send a reconciliation of the amount remaining in the Escrow Account to Defendant's and Plaintiff's Counsel. The reconciliation must

include (a) a detail of each distribution or refund made from the Escrow Account; (b) the detail of any interest or other returns earned on the Escrow Account; (c) the total Residual Unclaimed Funds and detail sufficient to verify that total; and (d) detail showing the total amount of the Administration, Notice, and Distribution Costs paid from the Escrow Account. The Settlement Administrator must pay the total amount remaining in the Escrow Account to Plaintiff's Counsel for deposit into a *cy pres* fund for distribution on the reasonable recommendation of Plaintiff's Counsel upon Court approval no later than 10 business days after sending this reconciliation to Defendant's and Plaintiff's Counsel.

14. The Court shall retain jurisdiction to determine any issues relating to the payment and distribution of the Net Settlement Fund, and any claims relating thereto shall be determined by the Court alone, and shall be limited to a determination of the claimant's entitlement to any portion of the Net Settlement Fund, and no consequential, punitive, or other damages; fees; interest; or costs shall be awarded in any proceeding regarding any such determination.

15. The Mutual Release, Dismissal, and Covenant Not to Sue shall be effective as provided in this Settlement Agreement, regardless of whether or not particular members of the Settlement Class did or did not receive payment from the Net Settlement Fund and regardless of whether or not any person or entity who received a Distribution Check was obligated pursuant to the Judgment to pay some or all of the distributed funds to another Class Member in fact made such payment to such other member of the Settlement Class. The failure of a Class Member to receive a Distribution Check from the Net Settlement Fund or the failure of a person or entity who received a Distribution Check to make payment to another Class Member pursuant to the payment obligations of the Judgment shall not be a defense to enforcement of the release of the Released Claims against the Released Parties or the Covenant Not to Sue, as to any Class Member.

16. Except in the case of willful and intentional malfeasance of a dishonest nature directly causing such loss, Plaintiff's Counsel, Plaintiff, Released Parties, Defendant's Counsel, Defendant, and the Settlement Class shall have no liability for loss of any portion of the Escrow Account under any circumstances and, in the event of such malfeasance, only the party whose malfeasance directly caused the loss has any liability for the portion of the Escrow Account lost.

IT IS SO ORDERED this 27th day of April, 2021.



BERNARD M. JONES
UNITED STATES DISTRICT JUDGE

Subject: Activity in Case 5:18-cv-01225-J Chieftain Royalty Company v. SM Energy Company Order
Date: Tuesday, April 27, 2021 at 12:42:15 PM Central Daylight Time
From: okwd_ecf_notice@okwd.uscourts.gov
To: okwdecf@okwd.uscourts.gov

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U.S. District Court

Western District of Oklahoma[LIVE]

Notice of Electronic Filing

The following transaction was entered on 4/27/2021 at 12:42 PM CDT and filed on 4/27/2021

Case Name: Chieftain Royalty Company v. SM Energy Company

Case Number: [5:18-cv-01225-J](#)

Filer:

WARNING: CASE CLOSED on 04/27/2021

Document Number: [118](#)

Docket Text:

ORDER ~ Having held a Final Fairness Hearing in this Action on April 27, 2021, in which the Court fulfilled its duties to consider objections and independently evaluate the fairness, reasonableness, and adequacy of the Settlement, and having thereafter finally approved the Settlement, the Court now enters this Initial Plan of Allocation Order to instruct the Parties and the Settlement Administrator on the manner in which the Net Settlement Fund shall be allocated and distributed to Class Members. The Court finds, orders, and adjudges that the methodology set forth (the Allocation Methodology) is fair, reasonable, and adequate and in the best interest of the Settlement Class. Accordingly, the Court hereby orders that, once the Judgment becomes Final and Non-Appealable, the Parties and the Settlement Administrator are to promptly carry out the terms of this Order and distribute the Net Settlement Fund as more fully set out. Signed by Honorable Bernard M. Jones on 4/27/2021. (dwl)

5:18-cv-01225-J Notice has been electronically mailed to:

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5:18-cv-01225-J Notice has been delivered by other means to:

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