

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

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

**CLASS REPRESENTATIVE’S MOTION FOR FINAL APPROVAL**

Class Representative, Chieftain Royalty Company (“Class Representative” or “Chieftain”), on behalf of itself and all others similarly situated, respectfully files this Motion for Final Approval, and hereby moves the Court for final approval of the following:

1. Proposed class action Settlement Agreement;
2. Form and manner of the Notice sent to the Class; and
3. Proposed Initial Plan of Allocation.

Class Representative bases this Motion on its Memorandum of Law in Support thereof and all Exhibits submitted contemporaneously herewith, as well as the Settlement Agreement, the applicable law, and all pleadings and records on file in this matter, which are respectfully incorporated by reference as if set forth fully herein.

Class Representative’s Proposed Order and Judgment Granting Final Approval of Class Action Settlement (“Final Approval Order”) is attached as Exhibit 1. Class Representative’s Proposed Initial Plan of Allocation Order is attached hereto as Exhibit 2.

Class Representative respectfully requests the Court grant the relief listed above by entering the proposed Final Approval Order and the proposed Initial Plan of Allocation Order and otherwise granting any and all further relief to which the Court finds Class Representative and the Settlement Class entitled.

DATED: March 29, 2021.

Respectfully submitted,

/s/ Bradley E. Beckworth

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**CLASS COUNSEL**

**CERTIFICATE OF SERVICE**

I hereby certify that I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system, which will send email notification of such filing to all registered parties.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED: March 29, 2021.

*/s/ Bradley E. Beckworth* \_\_\_\_\_

Bradley E. Beckworth

# EXHIBIT 1

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

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

**ORDER AND JUDGMENT GRANTING FINAL APPROVAL  
OF CLASS ACTION SETTLEMENT**

This is a class action lawsuit brought by Plaintiff, Chieftain Royalty Company, on behalf of itself and all others similarly situated (“Plaintiff”), against Defendant SM Energy Company (“Defendant”). On January 8, 2021, Plaintiff and Defendant executed a Stipulation and Agreement of Settlement (the “Settlement Agreement” or “Settlement”) and Supplemental Agreements finalizing the terms of the Parties’ Settlement.<sup>1</sup>

On January 13, 2021, the Court preliminarily approved the Settlement and issued an Order Granting Preliminary Approval of Class Action Settlement, Certifying the Class for Settlement Purposes, Approving Form and Manner of Notice, and Setting Date for Final Fairness Hearing (the “Preliminary Approval Order”). Dkt. No. 97. In the Preliminary Approval Order, the Court, *inter alia*:

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<sup>1</sup> Capitalized terms not otherwise defined in this Order shall have the meaning ascribed to them in the Settlement Agreement.

a. certified the Settlement Class for settlement purposes, finding all requirements of Federal Rule of Civil Procedure 23 have been satisfied, for settlement purposes only, with respect to the proposed Settlement Class;

b. appointed Plaintiff, Chieftain Royalty Company, as Settlement Class Representative and Plaintiff's Counsel, Nix Patterson, LLP and Barnes & Lewis, LLP as Settlement Class Counsel;

c. preliminarily found: (i) the proposed Settlement resulted from extensive arm's-length negotiations; (ii) the proposed Settlement was agreed to only after Settlement Class Counsel had conducted legal research and discovery regarding the strengths and weaknesses of Settlement Class Representative's and the Settlement Class' claims; (iii) Settlement Class Representative and Settlement Class Counsel have concluded that the proposed Settlement is fair, reasonable, and adequate; and (iv) the proposed Settlement is sufficiently fair, reasonable, and adequate to warrant sending notice of the proposed Settlement to the Settlement Class;

d. preliminarily approved the Settlement as fair, reasonable, and adequate and in the best interest of the Settlement Class;

e. preliminarily approved the form and manner of the proposed Short Form Notice, Long Form Notice, and Summary Notice to be communicated to the Settlement Class, finding specifically that such Short Form Notice, Long Form Notice, and Summary Notice, among other information, fairly and adequately: (a) described the terms and effect of the Settlement among other information; (b)

notified the Settlement Class of the time and place of the Final Fairness Hearing; (c) described the options for requesting exclusion from the Settlement or objecting to the Settlement or any part thereof; and (d) directed potential Settlement Class Members to where they may obtain more detailed information about the Settlement;

f. provided for the appointment of a Settlement Administrator;

g. instructed the Settlement Administrator to disseminate the approved Short Form Notice by mail to potential members of the Settlement Class, to publish the Summary Notice, and to display the Long Form Notice and other documents related to the Settlement on an internet website in accordance with the Settlement Agreement and in the manner approved by the Court;

h. set the date and time for the Final Fairness Hearing as April 27, 2021 at 10:00 A.M. in the United States District Court for the Western District of Oklahoma; and

i. set out the procedures and deadlines by which Settlement Class Members could properly request exclusion from the Settlement Class or object to the Settlement or any part thereof.

After the Court issued the Preliminary Approval Order, due and adequate notice by means of the Short Form Notice, Summary Notice, and Long Form Notice was given to the Settlement Class, notifying them of the Settlement and the upcoming Final Fairness Hearing. On April 27, 2021, in accordance with the Preliminary Approval Order and the Notices, the Court conducted a Final Fairness Hearing to, *inter alia*:

a. determine whether the Settlement should be approved by the Court as fair, reasonable, and adequate and in the best interests of the Settlement Class;

b. determine whether the notice method utilized by the Settlement Administrator: (i) constituted the best practicable notice under the circumstances; (ii) constituted notice reasonably calculated under the circumstances to apprise Settlement Class Members of the pendency of the Litigation, the Settlement, their right to exclude themselves from the Settlement, their right to object to the Settlement or any part thereof, and their right to appear at the Final Fairness Hearing; (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons and entities entitled to such notice; and (iv) met all applicable requirements of the Federal Rules of Civil Procedure, the state and federal Constitutions, and any other applicable law;

c. determine whether to approve the Allocation Methodology, the Initial Plan of Allocation, and distribution of the Net Settlement Fund to Participating Class Members;<sup>2</sup>

d. determine whether a Judgment should be entered pursuant to the Settlement Agreement, *inter alia*, dismissing the Litigation against Defendant with prejudice and extinguishing, releasing, and barring all Released Claims against all Released Parties in accordance with the Settlement Agreement;

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<sup>2</sup> The Court will issue a separate order pertaining to the allocation and distribution of the Net Settlement Proceeds among Class Members (the “Plan of Allocation Order”).



e. determine whether the applications for Plaintiff's Attorneys' Fees, reimbursement for Litigation Expenses, and Case Contribution Award to Class Representative are fair and reasonable and should be approved;<sup>3</sup> and

f. rule on such other matters as the Court deems appropriate.

The Court, having reviewed the Settlement Agreement, and all related pleadings and filings, and having heard the evidence and argument presented prior to and at the Final Fairness Hearing, now **FINDS, ORDERS, and ADJUDGES as follows:**

1. The Court, for purposes of this Order and Judgment (the "Judgment"), adopts all defined terms as set forth in the Settlement Agreement and incorporates them as if fully set forth herein.

2. The Court has jurisdiction over the subject matter of this Litigation and all matters relating to the Settlement, as well as personal jurisdiction over Defendant and Settlement Class Members.

3. The Settlement Class, which was certified in the Court's Preliminary Approval Order, is defined as:

All non-excluded persons or entities who are or were royalty owners in Defendant's 126 Coal County Gathering System wells ("the Class Wells") where Defendant is or was the operator. The Class Claims relate only to payment for gas and its constituents (residue gas, natural gas liquids, and drip gas) produced from the wells for production months October 1, 2001 through May 31, 2015. The Settlement Class does not include overriding royalty owners or other owners who derive their interest through the oil and gas lessee.

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<sup>3</sup> The Court will issue separate orders pertaining to Plaintiff's Counsel's request for Attorneys' Fees and reimbursement of Litigation Expenses and Class Representative's request for a Case Contribution Award.

The persons or entities excluded from the Class are: (1) agencies, departments, or instrumentalities of the United States of America or the State of Oklahoma; (2) Commissioners of the Land Office of the State of Oklahoma (CLO); (3) publicly traded oil and gas exploration companies and their affiliates; (4) persons or entities (and their affiliates) who are the Oklahoma Corporation Commission (OCC) designated operator of more than fifty (50) Oklahoma wells in the month when this Settlement Class definition was originally filed; (5) persons or entities that Plaintiff's counsel may be prohibited from representing under Rule 1.7 of the Oklahoma Rules of Professional Conduct; and (6) officers of the court.

The Court finds that the above-defined Settlement Class has been properly certified for the purposes of this Settlement. The Court finds that the persons and entities identified in the attached Exhibit 1 have submitted timely and valid Requests for Exclusion and are hereby excluded from the foregoing Settlement Class, will not participate in or be bound by the Settlement, or any part thereof, as set forth in the Settlement Agreement, and will not be bound by or subject to the releases provided for in this Judgment and the Settlement Agreement.

4. As used in this Judgment, the following terms shall have the following meanings:

- a. **“Released Claims”** include all claims associated with the marketing of, and the calculation, reporting and payment of royalty on, gas and its constituents (including, but not limited to, residue gas, natural gas liquids, and drip gas) from October 1, 2001, through May 31, 2015, with respect to the Class Wells, and include, without limitation, all claims that a Class member could make with regard to the following allegations: (1) that the Released Parties underpaid royalty as a result of direct or indirect deductions from (or factoring costs into) royalty associated with marketing, gathering, transporting, compressing, dehydrating, treating, blending, processing, including plant and compressor fuel, and similar services with respect to gas and its constituents produced from the Class Wells; (2) that the Released Parties underpaid royalty on gas and gas constituents produced from the Class Wells by not paying royalty on gas used in operations, gas

used for gas plants, and gas used in the manufacture of products (“fuel gas”); (3) that the Released Parties failed to pay or underpaid royalty on drip gas, condensate, or other substances separated from the gas stream in the gathering system, gas plant, or other facilities with respect to gas and gas constituents produced from the Class Wells; (4) that the Released Parties underpaid royalty by not paying royalty on the full value (before deduction of any costs) of residue gas, natural gas liquids, or other products that were part of the gas stream produced from the Class Wells; (5) that the Released Parties misled Class members in monthly royalty payments as to, among other things, the amount and nature of deductions from royalty on gas and gas constituents produced from the Class Wells; (6) that the Released Parties violated their alleged fiduciary or quasi-fiduciary duties to the Class members; (7) that the Released Parties failed to provide on the monthly check stubs and/or check detail all the information required by the Oklahoma Production Revenue Standards Act (“PRSA”); (8) that the Released Parties failed to make diligent efforts to secure the best terms available for the sale of gas and its constituents; (9) that the Released Parties failed to account to Class members for the full value of the production, including all deductions and reductions from the value of production; (10) that affiliate or alleged self-dealing transactions of the Released Parties violated the rights of the Class members; (11) that the Released Parties deducted from royalties owed to Class members a “profit fee” or similar fee ; (12) that the Released Parties double-charged all Class members a fuel gas fee and a gathering fee; (13) that the Released Parties failed to pay interest upon any unpaid or underpaid royalty payments from which deductions or reductions were allegedly made, pursuant to the terms of the PRSA, or any other statute, law, rule, regulation, agreement, or obligation; (14) that as a result of the Released Parties’ actions with respect to the Class Wells, the Released Parties are liable to Class members for breach of contract, tortious breach of contract, breach of fiduciary or quasi-fiduciary duty, actual fraud, constructive fraud, conversion, conspiracy, unjust enrichment/disgorgement, accounting, punitive damages, statutory interest and penalties under the PRSA or otherwise, and fees (attorney fees, expert fees, and other litigation costs) under the PRSA or otherwise; and (15) all allegations regarding all other legal theories (whether sounding in tort, contract, or otherwise) and equitable theories that, based upon the facts alleged in the Litigation and/or discovered or capable of discovery during the course of the Litigation, could have been asserted against the Released Parties as to the Class Wells and as to the period of time from October 1, 2001, through May 31, 2015. Released claims do not include claims

related to alleged failure to pay interest on proceeds payments made outside the time periods set forth in the PRSA, including claims which Plaintiff acknowledges were previously resolved in a separate settlement agreement entered into by the plaintiff and defendants, and approved in a Judgment entered by the court, in *DASA Investments, Inc. v. EnerVest Operating, LLC, et al.*, Case No. 6:18-CV-083-SPS, in the United States District Court for the Eastern District of Oklahoma.

- b. **“Released Parties”** means SM Energy Company, and each of its current and prior affiliates (including, without limitation, Four Winds Marketing, LLC), all of their respective successors-in-interest (the “Companies”), all parents, affiliates and subsidiaries of the Companies, and the employees, directors, officers, members and shareholders of SM Energy and the Companies.
- c. **“Releasing Parties”** means Plaintiff and all Settlement Class Members who did not timely and properly opt-out or submit a request for exclusion from the Settlement, and who are not otherwise excluded from the Settlement Class by order of the Court.
- d. **“Claim Period”** means production months October 1, 2001 through May 31, 2015.

5. At the Final Fairness Hearing on April 27, 2021, the Court fulfilled its duties to independently evaluate the fairness, reasonableness, and adequacy of, *inter alia*, the Settlement and the Notice of Settlement provided to the Settlement Class, considering not only the pleadings and arguments of Settlement Class Representative and Defendant and their respective counsel, but also the concerns of any objectors and the interests of all absent Settlement Class Members. In so doing, the Court considered arguments that could reasonably be made against, *inter alia*, approving the Settlement and the Notice of Settlement, even if such argument was not actually presented to the Court by pleading or oral argument.

6. The Court further finds that due and proper notice, by means of the Short Form Notice, Long Form Notice, and Summary Notice, was given to the Settlement Class in conformity with the Settlement Agreement and Preliminary Approval Order. The form, content, and method of communicating the Short Form Notice mailed to the Settlement Class, the Long Form Notice published on the website, and the Summary Notice published pursuant to the Settlement Agreement and the Preliminary Approval Order: (a) constituted the best practicable notice under the circumstances; (b) constituted notice reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Litigation, the Settlement, their right to exclude themselves from the Settlement, their right to object to the Settlement or any part thereof, and their right to appear at the Final Fairness Hearing; (c) was reasonable and constituted due, adequate, and sufficient notice to all persons and entities entitled to such notice; and (d) met all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause of the United States Constitution, the Due Process protections of the State of Oklahoma, and any other applicable law. Therefore, the Court approves the form, manner, and content of the Short Notice, Long Form Notice, and Summary Notice used by the Parties. The Court further finds that all Settlement Class Members have been afforded a reasonable opportunity to request exclusion from the Settlement Class or object to the Litigation and Settlement.

7. The Court hereby affirms and specifically incorporates herein its determinations and findings in the Preliminary Approval Order certifying, for the purposes of the Settlement only, the Litigation as a settlement class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, including that: the members of the Settlement Class are

so numerous that joinder of all Settlement Class Members in the class action is impracticable; there are questions of law and fact common to the Settlement Class that predominate over any individual questions; the claims of the Settlement Class Representative are typical of the claims of the Settlement Class; the Settlement Class Representative and Plaintiff's Counsel have fairly and adequately represented and protected the interests of the Settlement Class Members; and, after considering the interests of the Settlement Class Members in individually controlling the prosecution of separate actions, the extent and nature of litigation already commenced by members of the Settlement Class, the desirability or undesirability of continuing the litigation of these claims in this forum, and the difficulties likely to be encountered in the management of a class action, a settlement class action is superior to other available methods for the fair and efficient adjudication of the controversy. Pursuant to and in accordance with Federal Rule of Civil Procedure 23, the Settlement, including, without limitation, the consideration paid by Defendant, the covenants not to sue, the releases, and the dismissal with prejudice of the Released Claims against the Released Parties as set forth in the Settlement Agreement, is finally approved as fair, reasonable and adequate and in the best interests of the Settlement Class. The Settlement Agreement was entered into between the Parties at arm's-length and in good faith after substantial negotiations free of collusion. The Settlement fairly reflects the complexity of the Released Claims, the duration of the Litigation, the extent of discovery, and the balance between the benefits the Settlement provides to the Settlement Class and the risk, cost, and uncertainty associated with further litigation and trial. Serious questions of law and fact remain contested between experienced counsel and

parties alert to defend their interests. The Settlement provides a means of gaining immediate valuable and reasonable compensation and forecloses the prospect of uncertain results after many more months or years of additional discovery and litigation. The considered judgment of the Parties, aided by experienced legal counsel, supports the Settlement. The Parties and the Settlement Administrator are hereby authorized and directed to comply with and to cause the consummation of the Settlement in accordance with the Settlement Agreement and Supplemental Agreements, and the Clerk of this Court is directed to enter and docket this Judgment in the Litigation.

8. By agreeing to settle the Litigation, Defendant does not admit, and instead specifically denies, that the Litigation could have otherwise been properly maintained as a contested class action (as opposed to a settlement class), and specifically denies any and all wrongdoing and liability to the Settlement Class, Settlement Class Representative, and Plaintiff's Counsel.

9. The Court finds that on January 27, 2021, Defendant caused notice of the Settlement to be served on the appropriate state official for each state in which a Settlement Class Member resides, and the appropriate federal official, as required by and in conformance with the form and content requirements of 28 U.S.C. § 1715. In connection therewith, the Court has determined that, under 28 U.S.C. § 1715, the appropriate state official for each state in which a Settlement Class Member resides was and is the State Attorney General for each such state, and the appropriate federal official was and is the Attorney General of the United States. Further, the Court finds it was not feasible for Defendant to include on each such notice the names of each of the Settlement Class

Members who reside in each state and the estimated proportionate share of each such Settlement Class Members to the entire Settlement as provided in 28 U.S.C. § 1715(b)(7)(A); therefore, each notice included a reasonable estimate of the number of Settlement Class Members residing in each state and the estimated proportionate share of the claims of such Settlement Class Members to the Settlement. No appropriate state or federal official has entered an appearance or filed an objection to the entry of final approval of the Settlement. Thus, the Court finds that all requirements of 28 U.S.C. § 1715 have been met and complied with and, as a consequence, no Settlement Class Member may refuse to comply with or choose not to be bound by the Settlement and this Court's Orders in furtherance thereof, including this Judgment, under the provisions of 28 U.S.C. § 1715.

10. The Litigation, the Complaint and all subsequent amendments thereto, and all claims included therein, as well as all Released Claims, are dismissed with prejudice as to the Released Parties. The Court orders that, upon the Effective Date, the Settlement Agreement shall be the exclusive remedy for any and all Released Claims of Participating Class Members. The Court finds that Defendant has agreed not to file a claim against Plaintiff or Plaintiff's Counsel based upon an assertion that the Litigation was brought by Plaintiff or Plaintiff's Counsel in bad faith or without a reasonable basis. Similarly, the Court finds that Plaintiff has agreed not to file a claim against Defendant or Defendant's Counsel based upon an assertion that the Litigation was defended by Defendant or Defendant's Counsel in bad faith or without a reasonable basis. The Releasing Parties are hereby deemed to have finally, fully, and forever conclusively released, relinquished, and discharged all of the Released Claims against the Released Parties to the fullest extent



permitted by law. The Court thus hereby permanently bars and enjoins the Releasing Parties, and each of them (regardless of whether or not any such person or party shares in the Net Settlement Fund), and all persons acting on their behalf from, directly or indirectly, or through others, suing, instigating, instituting, or asserting against the Released Parties any claims or actions on or concerning the Released Claims. The Released Parties are discharged and/or released from all claims for contribution that have been or may be brought by or on behalf of any persons relating to the Settlement of the Released Claims. The releases and prohibitions of this paragraph apply equally to any claim that relates to the subject matter of the Released Claims except as expressly excluded therefrom. The Court's approval of the Settlement and entry of judgment herein shall have the effect of barring each of the Releasing Parties from asserting any claim from which that party would be barred by a judgment resolving the certified claims herein had such claims been brought by such party individually. Neither Party will bear the other's Party's litigation costs, costs of court, or attorney's fees.

11. The Court also approves the efforts and activities of the Settlement Administrator, JND Legal Administration, in assisting with certain aspects of the administration of the Settlement, and directs them to continue to assist Settlement Class Representative in completing the administration and distribution of the Settlement in accordance with the Settlement Agreement, the Supplemental Agreements, this Judgment, any Plan of Allocation approved by the Court, and the Court's other orders.

12. Nothing in this Judgment shall bar any action or claim by Settlement Class Representative or Defendant to enforce or effectuate the terms of the Settlement Agreement or this Judgment.

13. This Judgment, the Settlement, the Supplemental Agreements, and the Settlement Agreement—including any provisions contained in or exhibits attached to the Settlement Agreement; any negotiations, statements, or proceedings in connection therewith; or any action undertaken pursuant thereto—shall not be used for any purpose or admissible in any action or proceeding for any reason, other than an action to enforce the terms of this Judgment, the Supplemental Agreements, or the Settlement (including, but not limited to defending or bringing an action based on the release provided for herein). The Judgment, the Settlement, the Supplemental Agreements, and the Settlement Agreement are not and shall not be deemed, described, or construed to be or offered or received as evidence of a presumption, concession, declaration, or admission by any person or entity of the truth of any allegation made in the Litigation; the validity or invalidity of any claim or defense that was, could have been, or might be asserted in the Litigation; the amount of damages, if any, that would have been recoverable in the Litigation; any liability, negligence, fault, or wrongdoing of any person or entity in the Litigation; or whether any other lawsuit should be certified as a class action pursuant to Federal Rule of Civil Procedure 23 or any applicable state rule of procedure.

14. As separately set forth in detail in the Court's Plan of Allocation Order(s), the Allocation Methodology, the Plan of Allocation, and distribution of the Net Settlement Fund among Participating Class Members are approved as fair, reasonable and adequate,

and Settlement Class Counsel and the Settlement Administrator are directed to administer the Settlement in accordance with the Plan of Allocation Order(s) entered by the Court.

15. The Court finds that Settlement Class Representative, Plaintiff's Counsel, Defendant, and Defendant's Counsel have complied with the requirements of the Federal Rules of Civil Procedure as to all proceedings and filings in this Litigation. The Court further finds that Settlement Class Representative and Plaintiff's Counsel adequately represented the Settlement Class in entering into and implementing the Settlement.

16. Neither Defendant nor Defendant's Counsel has any liability or responsibility to Plaintiff, Plaintiff's Counsel, or the Settlement Class with respect to the Gross Settlement Fund or its administration, including but not limiting to any distributions made by the Settlement Administrator. Except as described in paragraph 6.19 of the Settlement Agreement, no Settlement Class Member shall have any claim against Plaintiff's Counsel, the Settlement Administrator, or any of their respective designees or agents based on the distributions made substantially in accordance with the Settlement Agreement, the Court's Plan of Allocation Order(s), or other orders of the Court.

17. Any Settlement Class Member who receives a Distribution Check that he/she/it is not legally entitled to receive is hereby ordered to either (a) pay the appropriate portion(s) of the Distribution Check to the person(s) legally entitled to receive such portion(s) or (b) return the Distribution Check uncashed to the Settlement Administrator.

18. All matters regarding the administration of the Escrow Account and the taxation of funds in the Escrow Account or distributed from the Escrow Account shall be handled in accordance with Section 5 of the Settlement Agreement.

19. Any order approving or modifying any Plan of Allocation Order, the distribution of the Net Settlement Fund among the Settlement Class Members, the application by Settlement Class Counsel for an award of Plaintiff's Attorneys' Fees or reimbursement of Litigation Expenses, or the request of Settlement Class Representative for a Case Contribution Award shall be handled in accordance with the Settlement Agreement and the documents referenced therein (to the extent the Settlement Agreement and documents referenced therein address such an order).

20. Plaintiff's Counsel, Plaintiff, and the Settlement Class will only be liable for loss of any portion of the Escrow Account as described in paragraph 6.19 of the Settlement Agreement. Defendant shall have no liability for any such loss.

21. Without affecting the finality of this Judgment in any way, the Court (along with any appellate court with power to review the Court's orders and rulings in the Litigation) reserves exclusive and continuing jurisdiction over the Litigation, Settlement Class Representative, the Settlement Class, Defendant, and the other Released Parties for the purposes of: (a) supervising and/or determining the fairness and reasonableness of the implementation, enforcement, construction, and interpretation of the Settlement, the Settlement Agreement, the Supplemental Agreements, any Plan of Allocation Order entered by the Court, and this Judgment; (b) hearing and determining any application by Settlement Class Counsel for an award of Plaintiff's Attorneys' Fees, and Litigation Expenses and/or a Case Contribution Award for Settlement Class Representative, if such determinations were not made at the Final Fairness Hearing; (c) supervising the distribution of funds from the Escrow Account; (d) resolving any dispute regarding a Party's right to

terminate the Settlement pursuant to the Settlement Agreement or Supplemental Agreement 1; (e) enforcing the terms of the Settlement, including the entry of injunctive or other relief to enforce, implement, administer, construe and interpret the Settlement Agreement and Supplemental Agreements; and (f) exercising jurisdiction over any challenge to the Settlement on any basis whatsoever.

22. In the event the Settlement is terminated as the result of a successful appeal of this Judgment or does not become Final and Non-Appealable in accordance with the terms of the Settlement Agreement for any reason whatsoever, and/or is terminated in accordance with the terms of Supplemental Agreement 1, then this Judgment and all orders previously entered in connection with the Settlement shall be rendered null and void and shall be vacated to the extent provided by and in accordance with the Settlement Agreement and Supplemental Agreements. The provisions of the Settlement Agreement and Supplemental Agreements relating to termination of the Settlement Agreement shall be complied with.

23. The claims asserted by Settlement Class Representative in this Litigation and all Released Claims of the Participating Class Members are hereby DISMISSED WITH PREJUDICE to the refiling of the same or any portion thereof by or against the Released Parties. The Court retains jurisdiction pursuant to paragraph 21 above to administer the Settlement distribution process as contemplated in the Court's separate Plan of Allocation Order(s), to administer other aspects of the Settlement as described in the Settlement Agreement, and to issue additional orders pertaining to, *inter alia*, Settlement Class Counsel's request for Plaintiff's Attorneys' Fees and reimbursement of reasonable

Litigation Expenses and Settlement Class Representative's request for a Case Contribution Award. Notwithstanding the Court's jurisdiction to issue additional orders in this Litigation, this Judgment fully disposes of all claims as to Defendant and is therefore a final appealable judgment. Regardless, there is no just reason to delay the finality of the Judgment. The Court further hereby expressly directs the Clerk of the Court to file this Judgment as a final order and final judgment in this Litigation.

24. [IF OBJECTION(S) ARE MADE – ADDITIONAL LANGUAGE TO BE DETERMINED BASED ON OBJECTION(S)]

IT IS SO ORDERED.

Dated this \_\_\_ day of \_\_\_\_\_, 2021.

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BERNARD M. JONES  
UNITED STATES DISTRICT JUDGE

**APPROVED AS TO FORM**

**PLAINTIFF'S COUNSEL:**

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*-and-*

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# **EXHIBIT 2**



**IN THE UNITED STATES DISTRICT COURT  
FOR THE 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.<sup>1</sup> 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:

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<sup>1</sup> 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”).

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 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-D, 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 order(s) 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.

17. The Court finds that all objections are overruled and hereby severed from this action for the purposes of appeal. In the event any objector appeals this Initial Plan of Allocation Order or any other rulings of this Court, such objector is hereby ordered to post a cash bond in an amount sufficient to reimburse (a) the appellate fees of Plaintiff's Counsel and Defendant's Counsel and (b) the amount of lost interest to the non-objecting Participating Class Members caused by any delay in distribution of the Net Settlement Fund that is caused by appellate review of the objection.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of \_\_\_\_\_ 2021.

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BERNARD M. JONES  
UNITED STATES DISTRICT JUDGE