

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

CHIEFTAIN ROYALTY COMPANY,

Plaintiff,

v.

SM ENERGY COMPANY (including  
Predecessors, successors and affiliates),

Defendant.

Case No. 5:18-cv-01225-J

**NOTICE OF PROPOSED SETTLEMENT, MOTION FOR ATTORNEYS' FEES,  
AND FAIRNESS HEARING**

*A court authorized this Notice. This is not a solicitation from a lawyer.*

***If you belong to the Settlement Class and this Settlement is approved, your legal rights will be affected whether you act or not.*** Read this Notice carefully to see what your rights and options are in connection with this Settlement.<sup>1</sup>

- On January 13, 2021, the Court preliminarily approved a Settlement in the above-captioned litigation (the "Litigation") between Plaintiff, Chieftain Royalty Company ("Plaintiff"), on behalf of itself and the Settlement Class, and SM Energy Company ("Defendant"). The Litigation and the defenses of Defendant are described in the Answer to Question No. 2 below. Capitalized terms not otherwise defined in this notice shall have the meanings attributed to those terms in the Settlement Agreement referred to below.
- Defendant has agreed to pay \$10,000,000.00 in cash ("Gross Settlement Fund") in settlement of all claims alleged in the Litigation, or which could have been asserted with respect to the allegations set forth in paragraph 1.35 of the Settlement Agreement. In exchange, the Settlement Class shall release any and all Released Claims (as defined below in the Answer to Question No. 2) the Settlement Class and Releasing Parties may have against Defendant and the Released Parties (as defined below in the Answer to Question No. 2). The Gross Settlement Fund, less Plaintiff's Attorneys' Fees, Litigation Expenses, any Case Contribution Award awarded by the Court, other costs approved by the Court, and Administration, Notice, and Distribution costs (the "Net Settlement Fund"), will be distributed to Settlement Class Members who qualify for a distribution.
- The Settlement Class definition and exceptions are listed below in Question No. 5: "**How do I know whether I am part of the Settlement Class?**" and Question No. 6: "**Are there other exceptions to being included?**"
- Defendant expressly denies all allegations of wrongdoing or liability with respect to the claims and allegations in the Litigation and denies that the Litigation could have been properly maintained as a class action.

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<sup>1</sup> This Notice summarizes and is qualified in its entirety by the Stipulation and Agreement of Settlement ("Settlement Agreement") and the documents referenced therein, which set forth the terms of the Settlement. Please refer to the Settlement Agreement for a complete description of the terms and provisions thereof. A copy of the Settlement Agreement is available at [www.chieftain-smenergy.com](http://www.chieftain-smenergy.com).

- Counsel for Plaintiff (“Plaintiff’s Counsel”) intends to seek an award of attorneys’ fees up to \$4,000,000.00 to be paid from the Gross Settlement Fund. Plaintiff’s Counsel have been litigating this case for over five (5) years without any payment whatsoever, advancing hundreds of thousands of dollars in labor and expense. Plaintiff’s Counsel will also request reimbursement of the expenses they have incurred in connection with the prosecution of this Litigation, and will incur through final distribution, which will not exceed \$800,000.00 and will be paid from the Gross Settlement Fund. Plaintiff’s Counsel will also seek payment of Administration, Notice, and Distribution Costs from the Gross Settlement Fund in an amount not to exceed \$225,000.00. In addition, Plaintiff intends to seek a Case Contribution Award of up to \$50,000.00 to be paid from the Gross Settlement Fund for its representation of the Class.
- In reaching the Settlement, Plaintiff and Defendant have avoided the uncertainty, cost and time of a contested class certification proceeding and trial. Plaintiff has agreed to the Settlement to avoid the risk that the Settlement Class could not be certified in a contested class action and that some or all of the claims of the Settlement Class against Defendant could be dismissed.

<b>YOUR LEGAL RIGHTS AND OPTIONS</b>	
<b>You Do Not Need To Take Further Action To Participate In The Settlement</b>	If the Settlement is approved, you do not need to take any further action to participate in the Settlement and receive a payment. The portion of the Net Settlement Fund to which you are entitled will be calculated as part of the administration of the Settlement.
<b>Exclude Yourself (by April 12, 2021 at 5 p.m. CT)</b>	If you do not wish to be a member of the Settlement Class, you <i>must</i> exclude yourself (as described below in Answer to Question No. 13 and in the Settlement Agreement) and you <b>will not</b> receive any payment from the Settlement Fund. You cannot bring or be part of another lawsuit or arbitration against any of the Released Parties based on any Released Claims unless you exclude yourself from the Settlement Class.
<b>Object (by April 12, 2021 at 5 p.m. CT)</b>	If you do not exclude yourself and you wish to object to any part of the Settlement, the attorneys’ fees or litigation costs requested by Plaintiff’s Counsel, or the Case Contribution Award requested by Plaintiff, you may (as discussed below in Answer to Question No. 18 and in the Settlement Agreement) write to the Court about your objections.
<b>Attend the Final Fairness Hearing (to be held telephonically on April 27, 2021)</b>	If you have submitted a valid and timely written objection to any aspect of the Settlement, the attorneys’ fees or litigation expenses requested by Plaintiff’s Counsel, or the Case Contribution Award requested by Plaintiff, you may (but do not have to) attend the Final Fairness Hearing by telephone and present your objections to the Court at that hearing (as described below in Answer to Question No. 22 and in the Settlement Agreement).
<b>Do Nothing</b>	If you are a Settlement Class Member and do nothing, you will be bound by the terms of the Settlement as set forth in the Settlement Agreement and the documents referenced therein, will be bound by the release and agreement not to sue the Released Parties, will receive your portion of the Net Settlement Fund (if any), and will not be able to bring or pursue any Released Claims in any other lawsuit or arbitration. It is your responsibility to familiarize yourself with the Settlement and all other documents regarding the Settlement that can be found at <a href="http://www.chieftain-smenergy.com">www.chieftain-smenergy.com</a> .

- These rights and options—and the deadlines to exercise them—are explained in this Notice and in the Settlement Agreement. Please note that the date of the Final Fairness Hearing—currently scheduled for April 27, 2021—is subject to change without further notice. If you plan to attend the Final Fairness Hearing by telephone, you should check the Court’s docket or [www.chieftain-smenergy.com](http://www.chieftain-smenergy.com) to be sure no change to the date and time of the hearing has been made.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made to Settlement Class Members only if the Court approves the Settlement and that approval is upheld in any appeals that may be filed.

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## **BASIC INFORMATION**

### **1. Why did I get a postcard notice or this Notice package?**

You are being sent a postcard notice or this Notice because you may be a member of the Settlement Class in the Litigation as described herein. Payment history records reflect that you have received payments from Defendant (or someone paying proceeds on Defendant's behalf) for oil and gas production proceeds from oil and gas wells in Oklahoma during the Claim Period (as defined in the Settlement Agreement and in the answer to Question No. 2). This Notice is not intended to be, and should not be construed as, an expression of any opinion with respect to the merits of the allegations in the Complaint and amendments to the Complaint filed in the Litigation. This Notice explains the claims being asserted in the Litigation, explains the Settlement, explains your right to remain a member of the Settlement Class (see Answer to Question No. 12), explains your right to opt out of the Settlement Class and be excluded from the Settlement (see Answer to Question No. 13), and explains your right to object to the Settlement (see Answer to Question No. 18).

The Court caused the postcard notice to be sent to you because, if you fall within this group and are not otherwise excluded from the Settlement Class, your rights will be affected and you have a right to know about the proposed Settlement, and about all of your options, before the Court decides whether to approve the Settlement. If the Court approves it, after any objections and appeals are resolved, the Court-appointed Settlement Administrator will cause payments to be made to Settlement Class Members in accordance with the Settlement Agreement.

This Notice package describes the Litigation, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of this Litigation is the United States District Court for the Western District of Oklahoma. The company prosecuting this Litigation on behalf of the Class is called the "Plaintiff" and the company it is suing is called the "Defendant." This case, also called the "Litigation," is known as *Chieftain Royalty Company v. SM Energy Company*, Case No. CIV-18-1225-J.

### **2. What is the Litigation about?**

The Litigation seeks damages for Defendant's alleged underpayment of royalty due Plaintiff and Class Members on production of gas and its constituents from the Class Wells.

Defendant denies any and all liability related to Plaintiff's allegations and further states that neither Plaintiff nor any of the Class Members are entitled to the relief sought in the Litigation and further states that it would not be appropriate to award any type of damages, an accounting, disgorgement, or injunctive relief to the Class Members. Defendant further denies it would be appropriate to certify a contested class based on the facts and claims at issue in the Litigation.

The Court has made no determination with respect to any of the Parties' claims or defenses.

A more complete description of the Litigation, its status, and the rulings made in the Litigation are available in the pleadings and other papers maintained by the United States District Court for the Western District of Oklahoma, located at 200 NW 4<sup>th</sup> Street, Oklahoma City, OK 73102, in the file for Case No. CIV-18-1225-J. Some of the relevant pleadings are additionally located on the website found at [www.chieftain-smenergy.com](http://www.chieftain-smenergy.com). Should you have questions regarding the status, rulings or issues in the Litigation, such questions can be submitted as set forth below.

#### **Release**

If the Court enters a final order approving the Settlement, all Settlement Class Members, on behalf of the "Releasing Parties," their personal representatives, heirs, executors, administrators, trustees, successors, and assigns, will release any "Released Claims" they have against the "Released

Parties.” This means that if you remain a member of the Settlement Class, any and all claims related to underpaid and unpaid royalties during the Claim Period will be released and discharged.

“**Claim Period**” means production months October 1, 2001 through May 31, 2015.

“**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/d 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.

“**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.

“**Releasing Parties**” means Plaintiff and all Settlement Class Members who do 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.

### **3. Why is this case a class action?**

In a class action, one or more plaintiffs sue on behalf of people who have similar claims. All of the individuals and entities on whose behalf the plaintiffs are suing are class members. One court resolves the issues for all class members, except for those who choose to exclude themselves from the class. Here, United States District Judge Bernard M. Jones is presiding over the Litigation.

### **4. Why is there a Settlement?**

The Court has not reached a final judgment as to whether the Settlement Class could be certified as a contested class action or that Plaintiff has proved or can prove its claims against the Defendant. It would likely take several more years before a contested class certification proceeding and trial on the merits could be held, final judgment entered, and appeals exhausted. Instead, Plaintiff and Defendant have agreed to the Settlement in order to resolve the Litigation. In reaching the Settlement, both sides have avoided the risk, cost and time of a trial, and Plaintiff has avoided any further delay in resolving the Litigation. In addition, as with any litigated case, Plaintiff would face an uncertain outcome if this Litigation went to trial. On the one hand, a trial could result in a verdict greater than the Settlement. However, Defendant has asserted many defenses, and a trial could result in a judgment in favor of Defendant on class certification and liability or a verdict lower than the Settlement Amount that Plaintiff has obtained, or even no recovery at all for Plaintiff and the putative Class Members. Based on these factors and others, Plaintiff and Plaintiff’s Counsel believe the Settlement is best for all Settlement Class Members.

### **5. How do I know whether I am part of the Settlement Class?**

The Settlement Class consists of the following individuals and entities, subject to the exceptions listed in the answer to Question No. 6 below:

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 was the operator. The Settlement 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.

A complete list of the 126 Coal County Gathering system wells (the “Class Wells”) is available at [www.chieftain-smenergy.com](http://www.chieftain-smenergy.com).

### **6. Are there other exceptions to being included?**

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.

Also, you are not a Settlement Class Member if you exclude yourself from the Settlement Class by submitting a valid and timely request for exclusion in accordance with the requirements set forth in this Notice and in the Settlement Agreement. The procedure for requesting exclusion from the Settlement Class is described below in the Answer to Question No. 13.

**7. I am still not sure whether I am included.**

If you are still not sure whether you are included, you can ask for help, which will be provided to you at no cost. You can call the Settlement Administrator at 1-833-667-1231, or write to the following address:

*Chieftain-SM Settlement*  
c/o JND Legal Administration, Settlement Administrator  
PO Box 91348  
Seattle, WA 98111

**THE SETTLEMENT BENEFITS – WHAT YOU RECEIVE**

**8. What does the Settlement provide?**

In consideration of the Settlement, Defendant has agreed to pay \$10,000,000.00 in cash. See the Settlement Agreement for full details.

The Settlement, if approved, will result in the dismissal of the Complaint and all amendments to the Complaint against Defendant and the release by all Settlement Class Members of all the Released Claims the Releasing Parties may have against the Released Parties, as defined above in Answer to Question No. 2. The Net Settlement Fund will be distributed to the Settlement Class Members who are not excluded from the Settlement Class in accordance with the provisions of the Allocation Methodology and Final Plan of Allocation, which is explained below in the Answer to Question No. 9.

**9. How much will the cash portion of my payment be?**

The Net Settlement Fund shall be allocated to Settlement Class Members on the following basis:

Plaintiff's Counsel shall, subject to Court approval, first allocate the Net Settlement Fund 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 Settlement Class Members, and the time period when the claimed underpayment occurred. Thereafter, the Settlement Administrator will allocate the Net Settlement Fund for each Class Well proportionately among all Settlement Class Members in such well based on their respective royalty decimal interests as defined below. 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 Settlement 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 Settlement 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. 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 allocation is subject to modification by Plaintiff's Counsel and final approval by the Court.

**If you have questions about the tax consequences of participating in the Settlement, you should consult with your own tax advisor.**

## 10. How can I get a payment?

If you do **not** exclude yourself pursuant to the procedure set forth in Answer to Question No. 13 below, **YOU DO NOT NEED TO TAKE ANY ACTION WHATSOEVER** to receive your portion of the Net Settlement Fund (if any).

## 11. When would I get my payment?

Payment to Settlement Class Members is contingent on several matters, including the Court's approval of the Settlement and that approval becoming final and no longer subject to any appeal to any court, as set forth more specifically in paragraph 1.16 of the Settlement Agreement.

The Net Settlement Fund will be distributed by the Settlement Administrator as soon as reasonably possible after final approval has been obtained for the Settlement and any appeals are exhausted. The Settlement Agreement specifies deadlines for distributing the Net Settlement Fund. Any appeal of final approval could take well in excess of one year. It is not anticipated that any meaningful interest will accrue on the Net Settlement Fund. The Settlement may be terminated on several grounds, including if the Court does not approve or materially modifies the terms of the Settlement. If the Settlement is terminated, the Litigation will proceed as if the Settlement had not been reached.

You may receive information about the progress of the Settlement by visiting the website at [www.chieftain-smenergy.com](http://www.chieftain-smenergy.com), or by calling 1-833-667-1231 or writing to: *Chieftain-SM Settlement*, c/o JND Legal Administration, Settlement Administrator, PO Box 91348, Seattle, WA 98111.

## 12. What is the effect of my remaining in the Settlement Class?

Unless you exclude yourself from the Settlement Class, if the Settlement is approved, you will be a Participating Class Member. As a Participating Class Member, you will receive any portion of the Net Settlement Fund allocated to you and will be bound by all orders and judgments entered by the Court regarding the Settlement. If the Settlement is approved, you will not be able to sue, continue to sue, or be part of any other lawsuit against any of the Released Parties concerning any of the Released Claims.

## 13. How do I get out of the Settlement and not release my claims?

To get out of the Settlement, you must exclude yourself from the Settlement Class. To exclude yourself from the Settlement Class, you must send by certified mail, return receipt requested, to Defendant's Counsel, Plaintiff's Counsel, and the Settlement Administrator a written statement that you want to be excluded from the Settlement Class in *Chieftain Royalty Company v. SM Energy Company*. In addition to the other information specified in the rest of this answer, your statement must include your name, address, telephone number, and notarized signature, and must be received no later than April 12, 2021 at 5 p.m. CT. Your written statement must be sent to:

### Plaintiff's Counsel:

Bradley E. Beckworth  
Jeffrey J. Angelovich  
Lisa P. Baldwin  
NIX PATTERSON, LLP  
3600 N Capital of Texas Hwy.  
Suite 350, Building B  
Austin, TX 78746

Robert N. Barnes  
Patranell Lewis  
Emily Kitch  
BARNES & LEWIS, LLP  
208 N.W. 60th Street  
Oklahoma City, OK 73118



Defendant's Counsel:	Settlement Administrator
J. Kevin Hayes Pamela S. Anderson HALL, ESTILL, HARDWICK, GABLE, GOLDEN & NELSON, P.C 320 South Boston Avenue, Suite 200 Tulsa, OK 74103-3706	<i>Chieftain-SM Settlement</i> c/o JND Legal Administration, Settlement Administrator PO Box 91348 Seattle, WA 98111

**To be effective, your written request for exclusion must be SERVED and RECEIVED at the above addresses no later than April 12, 2021 at 5 p.m. CT.** You cannot exclude yourself on the website, by telephone, facsimile or by e-mail. The letter must be signed by you under oath and acknowledged by a Notary Public. In the letter, you must identify your interest in any wells for which you have received payments from Defendant or anyone making payments on Defendant's behalf, including the name, well number, county in which the well is located, and the owner identification number. Any such letter also should state generally:

Dear Judge, I want to exclude myself from the Settlement Class in *Chieftain Royalty Company v. SM Energy Company*, Case No. CIV-18-1225-J, United States District Court for the Western District of Oklahoma. I understand it will be my responsibility to pursue any claims I may have, if I so desire, on my own and at my expense.

**If you do not follow these procedures—including meeting the date for exclusion set out above—you will not be excluded from the Settlement Class, and you will be bound by all of the orders and judgments entered by the Court regarding the Settlement, including the release of claims.** You must exclude yourself even if you already have a pending case against any of the Released Parties based upon any Released Claims.

If you validly request exclusion as described above, you cannot object to the Settlement, and you will not have released any claim against the Released Parties. You will not be legally bound by anything that happens in the Litigation. You will also not participate in any distribution of the Net Settlement Fund. Do not request exclusion if you wish to participate in the Settlement.

**14. If I don't exclude myself from the Class, can I sue the Released Parties for the same thing later?**

No. Unless you exclude yourself from the Settlement Class in connection with the Litigation, you (and any other Releasing Parties) give up any right to sue any or all of the Released Parties for any Released Claims. If you have a pending lawsuit or arbitration against Defendant or any of its officers and/or directors or any other Released Parties, speak to the lawyer representing you in that case immediately. You must exclude yourself from this Settlement Class to continue your own lawsuit or arbitration against any of the Released Parties.

**15. If I exclude myself, can I get money from this Settlement in connection with the Litigation?**

No. If you exclude yourself from the Settlement Class, you may be able to sue, continue to sue, or be part of a different lawsuit or arbitration against the Released Parties, but you will not receive any money from the Settlement discussed in this Notice.

## **THE LAWYERS REPRESENTING YOU**

### **16. Do I have a lawyer in the case?**

The law firms of (a) Nix Patterson, LLP; and (b) Barnes & Lewis, LLP, represent the Plaintiff and all other Settlement Class Members in this Litigation. These lawyers are called Plaintiff's Counsel. You will not be charged directly by these lawyers. If the Court authorizes it, these lawyers will be paid in accordance with the Answer to Question No. 17 below. If you want to be represented by your own lawyer, you may hire one at your own expense.

### **17. How will the lawyers be paid?**

Plaintiff's Counsel intends to seek an award of attorneys' fees up to \$4,000,000.00 to be paid out of the Gross Settlement Fund. Plaintiff's Counsel has been litigating this case for over five years without any payment whatsoever. At the Final Fairness Hearing, Plaintiff's Counsel will also seek reimbursement from the Gross Settlement Fund of the expenses incurred in connection with the prosecution of this Litigation, and which will be incurred through final distribution of the Settlement, which amount will not exceed \$800,000.00. Plaintiff's Counsel will also seek payment of Administration, Notice, and Distribution costs from the Gross Settlement Fund in an amount not to exceed \$225,000.00. Plaintiff intends to seek a Case Contribution Award relating to its representation of the Settlement Class, taking into account Plaintiff's time, effort, risk and burden, up to \$50,000.00.

## **OBJECTING TO THE SETTLEMENT, PLAN OF ALLOCATION, ATTORNEYS' FEES AND EXPENSES, AND PLAINTIFF'S CASE CONTRIBUTION AWARD**

### **18. How do I tell the Court that I do not like any aspect of the Settlement?**

If you are a Settlement Class Member and you do not exclude yourself, you can object to the Settlement if you do not like any part of it. You can give reasons why you think the Court should not approve the Settlement, Allocation Methodology, Initial Plan of Allocation, request for Plaintiff's Attorneys' Fees or reimbursement of Litigation Expenses, or Case Contribution Award to Plaintiff. To object, you must send a written statement to the Court, Plaintiff's Counsel, and Defendant's Counsel saying that you object to the proposed Settlement. You must include in your written statement:

- (a) a heading referring to *Chieftain Royalty Company v. SM Energy Company*, Case No. CIV-18-1225-J, United States District Court for the Western District of Oklahoma;
- (b) a statement as to whether you intend to appear at the Final Fairness Hearing, either in person or through counsel, and, if through counsel, counsel must be identified by name, address and telephone number (this statement must also comply with the requirement stated in Answer to Question No. 22 below);
- (c) a detailed statement of the specific legal and factual basis for each and every objection;
- (d) a list of any witnesses you wish to call at the Final Fairness Hearing, together with a brief summary of each witness's expected testimony (to the extent you desire to offer expert testimony and/or an expert report, any such evidence must fully comply with the Federal Rules of Civil Procedure, Federal Rules of Evidence, and the Local Rules of the Court);
- (e) a list of and copies of any exhibits you may seek to use at the Final Fairness Hearing;
- (f) a list of any legal authority you may present at the Final Fairness Hearing;
- (g) your name, current address, current telephone number, and all owner identification numbers with Defendant;

- (h) your signature executed before a Notary Public;
- (i) identification of your interest in wells from which you have received payments made by or on behalf of Defendant (by well name, payee well number, and county in which the well is located) during the Claim Period and identification of such payments by date of payment, date of production, and amount; and
- (j) if you are objecting to any portion of the Plaintiff's Attorneys' Fees or Litigation Expenses sought by Plaintiff's Counsel on the basis that the amounts requested are unreasonably high, you must specifically state the portion of Plaintiff's Attorneys' Fees and/or Litigation Expenses you believe is fair and reasonable and the portion that is not.

**Your written objection must be filed with the Court and served on Plaintiff's Counsel and Defendant's Counsel by certified mail, return receipt requested, and received at the addresses below no later than April 12, 2021:**

**By the above date, your written objection must be ON FILE with the Court at the address below:**

Clerk of the Court  
 United States District Court for the Western District of Oklahoma  
 200 NW 4<sup>th</sup> Street  
 Oklahoma City, OK 73102

**And, by the same date, copies of your written objection must be served and received by counsel at the addresses below:**

Plaintiff's Counsel:	Defendant's Counsel:
Bradley E. Beckworth Jeffrey J. Angelovich Lisa P. Baldwin NIX PATTERSON, LLP 3600 N Capital of Texas Hwy. Suite 350, Building B Austin, TX 78746  Robert N. Barnes Patranell Lewis Emily Kitch BARNES & LEWIS, LLP 208 N.W. 60th Street Oklahoma City, OK 73118	J. Kevin Hayes Pamela S. Anderson HALL, ESTILL, HARDWICK, GABLE, GOLDEN & NELSON, P.C 320 South Boston Avenue, Suite 200 Tulsa, OK 74103-3706

**UNLESS OTHERWISE ORDERED BY THE COURT, ANY SETTLEMENT CLASS MEMBER WHO DOES NOT OBJECT IN THE MANNER DESCRIBED HEREIN WILL BE DEEMED TO HAVE WAIVED ANY OBJECTION AND SHALL BE FOREVER FORECLOSED FROM MAKING ANY OBJECTION TO THE PROPOSED SETTLEMENT AND THE APPLICATION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES AND CASE CONTRIBUTION AWARD AND WILL NOT BE ALLOWED TO PRESENT ANY OBJECTIONS AT THE FINAL FAIRNESS HEARING.**

**19. What's the difference between objecting and excluding myself?**

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you are a Participating Class Member. Excluding yourself is telling the Court that you

do not want to be part of the Settlement Class. If you exclude yourself from the Settlement Class, you have no basis to object, because the Settlement no longer affects you. If you do not exclude yourself from the Settlement Class, you will remain a member of the Settlement Class and will be bound by the terms of the Settlement Agreement (including the release contained therein) and all orders and judgments entered by the Court regarding the Settlement regardless of whether the Court accepts or denies your objection.

**20. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Final Fairness Hearing on April 27, 2021, at 10:00 a.m. CT, at the United States District Court for the Western District of Oklahoma, 200 NW 4<sup>th</sup> Street, Oklahoma City, OK 73102. The hearing is currently scheduled to occur telephonically. **Please note that the date of the Final Fairness Hearing is subject to change without further notice. If you plan to attend the hearing by telephone, you should check with the Court and [www.chieftain-smenergy.com](http://www.chieftain-smenergy.com) to be sure no change to the date and time of the hearing has been made.** At this hearing, the Court will consider whether the Settlement is fair, reasonable and adequate. If there are objections, the Court will consider them at that time. After the Final Fairness Hearing, the Court will decide whether to approve the Settlement, the Allocation Methodology, and the Plan of Allocation. The Court will also rule on the request for attorneys' fees, litigation expenses, and administration, notice and distribution costs by Plaintiff's Counsel and the request for Case Contribution Award for Plaintiff relating to its representation of the Settlement Class. We do not know how long it will take the Court to make these decisions.

**21. Do I have to attend the hearing?**

No. Plaintiff's Counsel will answer any questions the Court might have for the Settlement Class. But you are welcome to attend by telephone at your own expense. If you timely and properly file and serve an objection (see Answer to Question No. 18 above), you do not have to attend the hearing by telephone to talk about it. As long as you properly file and serve your written objection on time, it will be before the Court when the Court considers whether to approve the Settlement as fair, reasonable and adequate. You also may hire and pay your own lawyer to attend the Final Fairness Hearing by telephone, but attendance is not necessary. However, if you fail to timely and properly file and serve an objection, you will not be entitled to be heard at the Final Fairness Hearing regarding any objections.

**22. May I speak at the hearing?**

If you are a Settlement Class Member who has not requested to be excluded from the Settlement Class, you may ask the Court for permission to speak at the Final Fairness Hearing. To do so, you must send a letter or other paper called a "Notice of Intention to Appear at Fairness Hearing in *Chieftain Royalty Company v. SM Energy Company*." Be sure to include your name, address, telephone number, and signature. Your Notice of Intention to Appear must be served on and received by the counsel listed in Answer to Question No. 18 and must be filed with the Clerk of the Court at the address in the Answer to Question No. 18 no later than April 12, 2021 at 5 p.m. CT. You cannot speak at the Final Fairness Hearing if you exclude yourself from the Settlement Class.

If you object to the Settlement or any part thereof and you or your attorney wish to be heard at the Final Fairness Hearing, you must file a Notice of Intention to Appear as outlined above by the date specified for objections in the Answer to Question No. 18 in order to present your objection at the Hearing (see also Answer to Question No. 18 above).

## IF YOU DO NOTHING

### **23. What happens if I do nothing at all?**

If you do nothing and you are a Settlement Class Member, you will receive payment in connection with the Settlement as explained in response to Question No. 9 above if you are entitled to a distribution pursuant to the Allocation Methodology and Final Plan of Allocation, and you will be bound by the Settlement. Unless you exclude yourself from the Settlement Class, neither you nor any other Releasing Party will be able to start a lawsuit or arbitration, continue a lawsuit or arbitration, or be part of any other lawsuit or arbitration against any of the Released Parties based on any Released Claims.

## GETTING MORE INFORMATION

### **24. Are there more details about the Settlement?**

This Notice summarizes the Settlement. The complete terms of the Settlement are set out in the Settlement Agreement and the documents referenced therein and attached thereto. You may obtain a copy of the Settlement Agreement, as well as other documents, from the settlement website for free at [www.chieftain-smenergy.com](http://www.chieftain-smenergy.com) or you may request copies by writing to *Chieftain-SM Settlement*, c/o JND Legal Administration, Settlement Administrator, PO Box 91348, Seattle, WA 98111. If you elect to obtain copies from a source other than the free website, there may be a charge to you for copying and mailing such documents. The Settlement Agreement also is filed in *Chieftain Royalty Company v. SM Energy Company*, Case No. CIV-18-1225-J, with the Clerk of the United States District Court for the Western District of Oklahoma, 200 NW 4<sup>th</sup> Street, Oklahoma City, OK 73102, and may be obtained from the Clerk's office directly. Further information regarding the Litigation and this Notice may be obtained by contacting Plaintiff's Counsel at the address provided in the Answer to Question No. 18 above.

### **25. How do I get more information?**

You can visit the website at [www.chieftain-smenergy.com](http://www.chieftain-smenergy.com), where you will find answers to common questions about the Settlement plus other information to help you determine whether you are a Settlement Class Member and whether you are eligible for payment. You can also call 1-833-667-1231 toll free or write to *Chieftain-SM Settlement*, c/o JND Legal Administration, Settlement Administrator, PO Box 91348, Seattle WA 98111.

## INQUIRIES

All inquiries concerning this notice or any other questions by Class Members should be directed to the Settlement Administrator as follows:

*Chieftain-SM Settlement*  
c/o JND Legal Administration, Settlement Administrator  
PO Box 91348  
Seattle WA 98111  
Toll Free: 1-833-667-1231  
Website: [www.chieftain-smenergy.com](http://www.chieftain-smenergy.com)  
Email: [info@chieftain-smenergy.com](mailto:info@chieftain-smenergy.com)

**PLEASE DO NOT CONTACT THE COURT REGARDING THIS NOTICE.**

DATED: February 23, 2021

BY ORDER OF THE COURT