UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

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

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

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") and Supplemental Agreements finalizing the terms of the Settlement.[1] The Settlement Agreement and Supplemental Agreements, together with the documents referenced therein and exhibits thereto, set forth the terms and conditions for the proposed Settlement of the Litigation. In accordance with the Settlement Agreement, Plaintiff now presents the Settlement to the Court for preliminary approval under Federal Rule of Civil Procedure 23.

After reviewing the pleadings and Plaintiff's Motion to Certify the Settlement Class for Settlement Purposes, Preliminarily Approve Class Action Settlement, Approve Form and Manner of Notice, and Set Date for Final Approval Hearing ("Motion for Preliminary Approval") [Doc.

[1] Capitalized terms not otherwise defined in this Order shall have the meaning ascribed to them in the Settlement Agreement.

No. 95] and Plaintiff's Memorandum of Law in Support thereof [Doc. No. 96], the Court has preliminarily considered the Settlement to determine, among other things, whether the Settlement warrants the issuance of notice to the Settlement Class. Upon reviewing the Settlement and the Motion for Preliminary Approval, it is hereby **ORDERED, ADJUDGED AND DECREED** as follows:

1. For purposes of this Order, the Court adopts all defined terms as set forth in the Settlement Agreement unless otherwise defined herein.

2. The Court finds the Settlement Class should be certified for the purposes of this Settlement, as the Settlement Class meets all certification requirements of Federal Rule of Civil Procedure 23 for a settlement class.

The certified Settlement Class is defined as follows:

> 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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> 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.

3. The Court finds the above-defined Settlement Class satisfies all prerequisites of Federal Rule of Civil Procedure 23(a) for purposes of the proposed class settlement:

a. Numerosity. Plaintiff has demonstrated "[t]he [settlement] class is so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). The Tenth Circuit has not adopted a set number as presumptively sufficient to meet this burden, and there is "no set formula to determine if the class is so numerous that it should be so certified." *Trevizo v. Adams*, 455 F.3d 1155, 1162 (10th Cir. 2006). Whether a class satisfies the numerosity requirement is "a fact-specific inquiry" that district courts have "wide latitude" when determining. *In re Cox Enters., Inc.*, No. 12-ML-2048-C, 2014 U.S. Dist. LEXIS 2459, *13 (W.D. Okla. Jan. 9, 2014) (quoting *Trevizo*, 455 F.3d at 1162). Here, the Settlement Class consists of thousands of owners. Therefore, the Court finds the numerosity prerequisite is undoubtedly met.

b. Commonality. Plaintiff has also demonstrated "[t]here are questions of law or fact common to the [settlement] class." Fed. R. Civ. P. 23(a)(2).

c. Typicality. Plaintiff has also shown "[t]he claims or defenses of the representative parties are typical of the claims or defenses of the [settlement] class." Fed. R. Civ. P. 23(a)(3).

d. Adequacy. Plaintiff and Plaintiff's Counsel have demonstrated "[t]he representative parties will fairly and adequately protect the interests of the [settlement] class." Fed. R. Civ. P. 23(a)(4).

In addition, because the Court finds Plaintiff and Plaintiff's Counsel to be adequate representatives of the Settlement Class, the Court hereby appoints Plaintiff as Settlement Class Representative, and Plaintiff's Counsel, Nix Patterson, LLP and Barnes & Lewis, LLP, as Settlement Class Counsel for the Settlement Class.

4. The Court also finds the requirements of Federal Rule of Civil Procedure 23(b)(3) are met:

a. Predominance. Settlement Class Representative has shown "questions of law or fact common to the members of the [settlement] class predominate over any questions affecting only individual members." Fed. R. Civ. P. 23(b)(3).

b. Superiority. Settlement Class Representative has also established "that a [settlement] class action is superior to other available methods for the fair and efficient adjudication of the controversy." Fed. R. Civ. P. 23(b)(3).

In sum, the Court finds all prerequisites and requirements of Federal Rule of Civil Procedure 23(a)-(b) are satisfied, and the Settlement Class is hereby certified for the purposes of this Settlement. The Settlement Class is certified for settlement purposes only. In determining whether the requirements of Rule 23 have been satisfied for purposes of certifying the above class for settlement purposes, the Court has taken into account the fact of settlement and its impact upon the factors required for certification of the Settlement Class. Among other impacts of settlement, the Court need not inquire whether the case, if tried, would present intractable case management problems, as the result of settlement is that there will be no trial. Because this case has been settled at this stage of the proceedings, the Court does not reach, and makes no ruling either way, as to the issue of whether the Settlement Class certified by agreement here for settlement purposes could have been certified in this case as a class for litigation purposes.

5. The Court preliminarily finds: (a) the proposed Settlement resulted from extensive arm's-length negotiations; (b) the proposed Settlement was agreed to only after Settlement Class Counsel had conducted legal research and discovery regarding the strengths and weakness of Settlement Class Representative's and the Settlement Class' claims; (c) Settlement Class

Representative and Settlement Class Counsel have concluded that the proposed Settlement is fair, reasonable, and adequate; and (d) the proposed Settlement is sufficiently fair, reasonable, and adequate to warrant sending notice of the proposed Settlement to the Settlement Class.

6. Having considered the essential terms of the Settlement under the recognized standards for preliminary approval as set forth in the relevant jurisprudence, the Court preliminarily approves the Settlement, subject to the right of any member of the Settlement Class to challenge the fairness, reasonableness, and adequacy of any part of the Settlement, Settlement Agreement, Supplemental Agreements, Allocation Methodology, or proposed Initial or Final Plan of Allocation (or any other Plan of Allocation), and to show cause, if any exists, why a final Judgment dismissing the Litigation based on the Settlement Agreement and Supplemental Agreements should not be ordered after adequate notice to the Settlement Class has been given in conformity with this Order. As such, the Court finds that those Settlement Class Members whose claims would be settled, compromised, dismissed, and/or released pursuant to the Settlement should be given notice and an opportunity to be heard regarding final approval of the Settlement and other matters.

7. The Court further preliminarily approves the form and content of the proposed Short Form Notice, Summary Notice, and Long Form Notice, which are attached to the Settlement Agreement as Exhibits 3, 4 and 5, respectively, and finds the Short Form Notice, Summary Notice, and Long Form Notice are the best notice practicable under the circumstances, constitute due and sufficient notice to all persons and entities entitled to receive such notice, and fully satisfy the requirements of applicable laws, including due process and Federal Rule of Civil Procedure 23. The Court finds the form and content of the Short Form Notice, Summary Notice, and Long Form Notice fairly and adequately: (a) describe the terms and effect of the Settlement; (b) notify the

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

8. The Court also preliminarily approves the proposed manner of communicating the Short Form Notice, Summary Notice, and Long Form Notice to the Settlement Class, as set out below, and finds it is the best notice practicable under the circumstances, constitutes due and sufficient notice to all persons and entities entitled to receive such notice, and fully satisfies the requirements of applicable Constitutional standards and other applicable laws, including due process and Federal Rule of Civil Procedure 23.

a. No later than February 23, 2021, the Settlement Administrator will mail (or cause to be mailed) the Short Form Notice by first class mail to all potential Settlement Class Members who have been identified after reasonable efforts to do so. The Short Form Notice will be mailed to potential Settlement Class Members using the payment history data described in paragraph 3.3 of the Settlement Agreement, the last-known addresses for each payee, and any updated addresses found by the Settlement Administrator. The Settlement Administrator will also publish the Summary Notice as described below. It is not reasonable or economically practical for the Settlement Administrator to mail the Long Form Notice or for the Parties to do more to determine the names and addresses of Class Members.

b. No later than March 5, 2021, or at such time as is ordered by the Court, the Settlement Administrator also shall publish (or cause to be published) the Summary Notice one time in each of the following newspapers: (a) *The Oklahoman*, a paper of general

circulation in Oklahoma; (b) the *Tulsa World*, a paper of general circulation in Oklahoma; (c) *The Daily Ardmoreite*, a paper of local circulation; (d) the *Fairview Republican*, a paper of local circulation; (e) the *McAlester News-Capital*, a paper of local circulation; (f) the *Holdenville Tribune*, a paper of local circulation, and (g) the *Coalgate Record Register*, a paper of local circulation.

c. Within ten (10) days after mailing the first Short Form Notice and continuing through the Final Fairness Hearing, the Settlement Administrator will also display (or cause to be displayed) on an internet website dedicated to this Settlement the following documents: (i) the Short Form Notice and Summary Notice, (ii) the Complaint and Answer, (iii) the Settlement Agreement, (iv) this Order, (v) the Long Form Notice, and (vi) other publicly filed documents related to the Settlement.

d. Upon request from a Settlement Class Member, the Settlement Administrator will directly mail a copy of the Long Form Notice to the Settlement Class Member.

e. The Gross Settlement Fund shall bear any Administration, Notice, and Distribution Costs.

9. Settlement Class Counsel is authorized to act on behalf of the Settlement Class with respect to all acts required by, or which may be given pursuant to, the Settlement Agreement and Supplemental Agreements, or such other acts that are reasonably necessary to consummate the proposed Settlement set forth in the Settlement Agreement and Supplemental Agreements.

10. The Court appoints JND Legal Administration to act as Settlement Administrator and perform the associated responsibilities set forth in the Settlement Agreement. The Settlement Administrator will receive and process any Requests for Exclusion and, if the Settlement is finally

approved by the Court, will supervise and administer the Settlement in accordance with the Settlement Agreement, the Supplemental Agreements, the Judgment, and the Court's Plan of Allocation order(s) authorizing distribution of the Net Settlement Fund to Class Members. The Parties and their Counsel shall not be liable for any act or omission of the Settlement Administrator.

11. Pursuant to Federal Rule of Civil Procedure 23(e), a Final Fairness Hearing shall be held on April 27, 2021 at 10:00 a.m. in the United States District Court for the Western District of Oklahoma, the Honorable Bernard M. Jones, presiding, to, among other related matters:

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: (i) constituted the best practicable notice under the circumstances and applicable legal standards; (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, 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 applicable Constitutional standards and all applicable requirements of the Federal Rules of Civil Procedure and any other applicable law;

c. determine whether a final 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, and making the other findings and rulings provided therein, all in accordance with the Settlement Agreement;

d. determine the proper method of allocation and distribution of the Net Settlement Fund among Participating Class Members;

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

f. rule on such other matters as the Court may deem appropriate.

12. The Court reserves the right to adjourn, continue, and reconvene the Final Fairness Hearing, or any aspect thereof, including the consideration for the application of Plaintiff's Attorneys' Fees and reimbursement of Litigation Expenses, without further notice to the Settlement Class. The Settlement Administrator will update the website maintained pursuant to paragraph 8(c) of this Order to reflect the current information about the date and time for the Final Fairness Hearing.

13. The Court reserves the right to continue the Final Fairness Hearing to a later date than the date provided for in the formal notices to the Settlement Class, and to approve the Settlement at or after the Final Fairness Hearing without further notice to the Settlement Class.

14. Settlement Class Members wishing to exclude themselves from the Settlement Class pursuant to Federal Rule of Civil Procedure 23(e)(4) must submit to the Settlement Administrator a valid and timely Request for Exclusion. Requests for Exclusion must include: (i) the Settlement Class Member's name, address, telephone number, and notarized signature; (ii) a statement that the Settlement Class Member wishes to be excluded from the Settlement Class in *Chieftain Royalty Company v. SM Energy Company*; and (iii) a description of the Settlement Class

Member's interest in any wells for which it has received payments from Defendant, including the name, well number, county in which the well is located, and the owner identification number. Requests for Exclusion must be served on the Settlement Administrator, Defendant's Counsel, and Plaintiff's Counsel by certified mail, return receipt requested and received no later than 5 p.m. CDT on April 12, 2021. Requests for Exclusion may be mailed as follows:

Settlement Administrator:

Chieftain-SM Settlement
c/o JND Legal Administration, Settlement Administrator

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Copies of all Requests for Exclusion, including supporting documentation submitted therewith, if any, that are submitted to and received by the Settlement Administrator shall be delivered to Plaintiff's Counsel and Defendant's Counsel within one (1) business day of receipt. Requests for Exclusion may not be submitted through the website or by telephone, facsimile, or e-mail. Any Settlement Class Member that has not timely and properly submitted a Request for Exclusion shall be included in the Settlement and shall be bound by the terms of the Settlement Agreement in the event it is finally approved by the Court.

15. Any Participating Class Member who wishes to object to the fairness, reasonableness, or adequacy of the Settlement, any term of the Settlement, the Allocation Methodology, the Initial Plan of Allocation, the request for Plaintiff's Attorneys' Fees and Litigation Expenses, or the request for a Case Contribution Award to Class Representative may file an objection. An objector must file with the Court and serve upon Plaintiff's Counsel and Defendant's Counsel a written objection containing the following: (a) a heading referring to *Chieftain Royalty Company v. SM Energy Company,* Case No. CIV-18-1225-J, and to the United States District Court for the Western District of Oklahoma; (b) a statement as to whether the objector intends to appear at the Final Fairness Hearing, either in person or through counsel, and, if through counsel, identifying counsel by name, address and telephone number; (c) a detailed statement of the specific legal and factual basis for each and every objection; (d) a list of any witnesses the objector wishes to call at the Final Fairness Hearing, together with a brief summary of each witness's expected testimony (to the extent the objector desires 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 the objector may seek to use at the Final Fairness Hearing; (f) a list of any legal

authority the objector may present at the Final Fairness Hearing; (g) the objector's name, current address, current telephone number, and all owner identification numbers with Defendant; (h) the objector's signature executed before a Notary Public; (i) identification of the objector's interest in wells from which the objector has received payments 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 the objector is 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, the objector must specifically state the portion of Plaintiff's Attorneys' Fees and/or Litigation Expenses he/she/it believes is fair and reasonable and the portion that is not. Such written objections must be filed with the Court and served on Plaintiff's Counsel and Defendant's Counsel, via certified mail return receipt requested, and received no later than 5 p.m. CDT on April 12, 2021 at the addresses set forth in paragraph 14 above. Plaintiff's Counsel and Defendant's Counsel shall promptly furnish each other with copies of any and all objections that come into their possession, to the extent it appears on the face of any objection that said objection has not also been served upon the other Party's counsel.

Any Settlement Class Member who fails to timely file and serve such written statement and provide the required information will not be permitted to present any objections at the Final Fairness Hearing and such failure will render any such attempted objection untimely and of no effect. All presentations of objections will be further limited by the information listed. Either or both Party's counsel may file any reply or response to any objections no later April 19, 2021. The procedures set forth in this paragraph do not supplant, but are in addition to, any procedures required by the Federal Rules of Civil Procedure.

16. Any objector who timely files and serves a valid written objection in accordance with the above paragraph may also appear at the Final Fairness Hearing, either in person or through qualified counsel retained at the objector's expense. Objectors or their attorneys intending to present any objection at the Final Fairness Hearing must comply with the Local Rules of this Court in addition to the requirements set forth in paragraph 15 above.

17. No later than March 29, 2021, if the Settlement has not been terminated pursuant to the Settlement Agreement or Supplemental Agreement 1, Plaintiff's Counsel and Plaintiff shall move for: (a) final approval of the Settlement pursuant to Federal Rule of Civil Procedure 23(e); (b) entry of a Judgment in substantially the same form as Exhibit 2 to the Settlement Agreement; (c) final approval of the Allocation Methodology and Initial Plan of Allocation; and (d) Plaintiff's Attorneys' Fees, reimbursement of Litigation Expenses, and/or a Case Contribution Award.

18. If the Settlement is not approved by the Court, is terminated in accordance with the terms of the Settlement Agreement or Supplemental Agreement 1, or a Judgment approving it is entered that does not become Final and Non-Appealable for any reason whatsoever, the Settlement, Settlement Agreement, Supplemental Agreements, and any actions to be taken in connection therewith (including this Order and any Judgment entered herein), shall be terminated and become void and of no further force and effect as described in the Settlement Agreement (including, but not limited to paragraph 9.4 of the Settlement Agreement). Any obligations or provisions relating to the refund of Plaintiff's Attorney's Fees, Litigation Expenses, and the Gross Settlement Amount; the payment of Administration, Notice, and Distribution Costs already incurred; and any other obligation or provision in the Settlement Agreement or Supplemental Agreements that expressly pertains to the termination of the Settlement or events to occur after the termination, shall survive termination of the Settlement Agreement and Settlement.

19. All proceedings in the Litigation, other than such proceedings as may be necessary to carry out the terms and conditions of the Settlement, are hereby stayed and suspended until further order of this Court. Pending final approval of the Settlement, Settlement Class Representative and all Settlement Class Members are barred, enjoined, and restrained from commencing, prosecuting, continuing, or asserting in any forum, either directly or indirectly, on their own behalf or on the behalf of any other person or class, any Released Claim against the Released Parties.

20. Entering into or carrying out the Settlement Agreement, and any negotiations, terms, or proceedings related thereto, are not, and shall not be construed as, or deemed to be evidence of, an admission or concession by any of the Parties to the Settlement Agreement and shall not be offered or received in evidence in any action or proceeding by or against any Party in any court, administrative agency, or other tribunal for any purpose whatsoever other than to enforce the provisions of the Settlement between Defendant and any Settlement Class Member(s), the provisions of the Settlement Agreement, the provisions of the Supplemental Agreements, or the provisions of any related agreement, order, judgment or release. This Order shall not be construed or used as an admission, concession, or declaration by or against Defendant of any fault, wrongdoing, breach, liability, or the propriety of maintaining this Litigation as a contested class action and Defendant specifically denies any such fault, wrongdoing, breach, liability, and allegation regarding certification for litigation (as opposed to settlement) purposes. This Order shall not be construed or used as an admission, concession, or declaration by or against Settlement Class Representative or the Settlement Class that their claims lack merit or that the relief requested in the Litigation is inappropriate, improper, or unavailable. This Order shall not be construed or used as an admission, concession, declaration, or waiver by any Party of any arguments, defenses,

or claims he, she, or it may have with respect to the Litigation in the event the Settlement is terminated. Moreover, the Settlement and any proceedings taken pursuant to the Settlement are for settlement purposes only.

21. The Court, along with any appellate court with power to review the Court's orders and rulings in the Litigation, hereby retains jurisdiction over this Litigation to consider all further matters arising out of or connected with the Settlement reflected in the Settlement Agreement and Supplemental Agreements, including enforcement of the releases provided for in the Settlement Agreement. The Court, along with any appellate court with power to review the Court's orders and rulings in the Litigation, also hereby retains jurisdiction over this Litigation to administer all other matters related to the enforcement of the Settlement Agreement and Settlement, the Supplemental Agreements, and the orders of the Court related thereto.

22. The Court may, for good cause shown, extend any of the deadlines set forth in this Order without further written notice to the Settlement Class.

IT IS SO ORDERED this 13th day of January, 2021.

BERNARD M. JONES
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM

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