

### **INITIAL PLAN OF ALLOCATION ORDER**

The Court enters this Initial Plan of Allocation Order to instruct the Settlement Administrator on the manner in which the Net Settlement Fund shall be allocated and distributed to Class Members. The Court finds, orders, and adjudges that the methodology set forth below (the "Allocation Methodology") is fair, reasonable, adequate and in the best interests of the Class. Any capitalized terms found herein shall have the same meaning as set forth in the Settlement Agreement.

1. 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. Defendant shall cooperate in the administration of the Settlement to the extent reasonably necessary to effectuate its terms. The Settlement, adjusted for allowable expenses and revenue, (the "Net Settlement") shall be allocated to Class Members according to this Order. The Court reserves the right to modify this Initial Plan of Allocation Order without further notice to any Class Members. The allocation of the Net Settlement among Class Members and the Allocation Methodology is a matter separate and apart from the proposed Settlement between Plaintiffs and Defendant, and any decision by the Court concerning allocation and distribution of the Net Settlement among Class Members shall not affect the validity or finality of the Settlement or operate to terminate or cancel the Settlement.

2. At such time as the Judgment becomes Final and Non-Appealable, Plaintiffs and Class Counsel will, as promptly as reasonably possible, but no later than 60 days after the Effective Date of Settlement, file a Final Plan of Allocation with the Court, which will reflect the proportionate amount of the Net Settlement to be paid to each Class Member pursuant to the Allocation Methodology. Plaintiffs and Class Counsel will obtain the Court's approval of a list of the names, addresses, and tax identification numbers of Class Members who have not opted-out, along with the amount of distribution for each such Class Member. To the extent any of the foregoing information is unknown for any Class Members, despite reasonable commercial efforts to obtain it, the list may show that such information is unknown. The names, addresses, and amounts to be paid will be determined as described herein.

3. The Net Settlement. The amount of the Settlement Fund to be allocated shall be calculated as the Settlement Amount of \$28 million, adjusted for Fee and Expense Awards,

Administration Expenses, interest, and dividends. The Net Settlement to be allocated is projected to be approximately \$18 million.

4. Allocation Methodology. The allocation relies on owner-side check stub data provided by DEPCO. This data includes owner gross values paid and/or suspended for production months January 2008 through February 2014 (i.e., the duration of the Class Period).<sup>1</sup> Those parties Excluded from the Class and the related data are identified and removed from the allocation.<sup>2</sup> In other words, excluded parties will not receive an allocation of the Settlement Fund nor do their gross owner values affect the allocation. The Net Settlement is allocated to the Class Members using a four-step process:

**First Step:** An allocation of the Net Settlement to wells. The Net Settlement is proportionately allocated to each well by the ratio of (1) the sum of the Class Members' gross value for each well for production months from January 2008 through February 2014, divided by (2) the sum of the total Class Members' gross value for all wells for production months from January 2008 through February 2014.

**Second Step:** An allocation to the Class Members in each well. A secondary allocation apportions each well's allocated amount among the Class Members that held an interest in the respective well's last production month within the Class Period. In most cases, for wells continuing to produce beyond the Class Period, the last month is February 2014. In certain other cases, if wells were producing during the Class Period, but ceased production prior to February 2014, then the last month of production is used for the allocation.<sup>3</sup> The well's allocated amount is proportionately allocated to each Class Member by the ratio of (1) the Class Members' owner gross value for the well's last month of production, divided by (2) the total Class Members' owner gross value for the well's last month of production.

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<sup>1</sup> The check stub data also includes owner volume data, but it is not standardized to MMBtu heat basis. Rather it remains in either MCF or Gallon terms depending on the product, thus owner volume cannot be used as a standardized allocation basis. Per DEPCO, this detail also includes suspended entries.

<sup>2</sup> See "Certified Class." This identification involves a manual inspection of payees and also key word searches for: \*CITY\*, \*TOWN\*, \*MUNI\*, \*ISD\*, \*DISTRICT\*, \*COUNTY\*, \*DEVON\*, and \*SCHOOL\*. [Jim is investigating the materiality of the identified exclusions.]

<sup>3</sup> Mechanically, the allocation identifies the last production month by the maximum month in the Class Period in which a well demonstrates owner production greater than 1 MCF or gallon [Jim Gray is investigating whether 0 or 1 makes a material difference]. In certain instances, owners might receive small adjustments to gross owner value for production months where no production occurred. These instances can cause disruptions in the allocation. Limiting the query for production months where owner production was greater than zero virtually eliminates the potential for erroneous allocations.

**Third Step:** Aggregate the settlement. Class Members' allocated amounts are aggregated, identified by their Tax ID numbers, and provided to the Settlement Administrator. Class Members with an allocation less than a pre-tax amount of \$5 will not receive a check. Instead, those amounts will be ratably re-allocated across the remaining Class Members. The preliminary allocation of the Net Settlement among Class Members has been filed under seal and is approved by this Court. The Settlement Administrator's website shall offer Class Members a method to look up their preliminary allocation using either their owner number or tax ID.

**Fourth Step:** Manage the Opt-Outs. Those Class Members who wish to Opt-Out of the settlement shall identify themselves through the Request for Opt-Out process described within the Settlement Agreement. Any allocated amounts are returned to the Defendant by the Settlement Administrator.

5. Distributions will only be made based on the Final Plan of Allocation approved by the Court.

6. The Settlement Administrator will make a diligent effort to mail the distribution checks within 90 days after the Effective Date of Settlement.

7. Included within each distribution check shall be an enclosure that contains the following notice (or, if a change is required by the Court, a notice substantially the same as the following):

TO: Class Member: The enclosed check represents your share of the net settlement fund in the settlement of the Class Action *Henry Seeligson, et al. v. Devon Energy Production Company, L.P.*, No. 3:16-cv-00082-K, in the United States District Court for the Northern District of Texas. You are receiving this notice and check because you have been identified as a Class Member in this action. This check relates to claims for royalty underpayment for production months January 2008 through February 2014. 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 the person or entity legally entitled thereto or return this check uncashed to the sender. Please see [www.SeeligsonSettlement.com](http://www.SeeligsonSettlement.com) for more information.

8. ~~The allocation described above assumes that very few sales of royalty interests~~ have occurred. It also assumes that where sales did occur, it was the intent of the parties that the

buyer was entitled to receive payment for past claims. Finally, it assumes that where royalty interests passed through inheritance, devise, or interfamily transfers, that it was the intent that the heir, devisee, or transferee also receive payment for past claims. To the extent these assumptions are not correct in relation to particular transfers of interest, the Court orders that the person who receives payment shall in turn make payment to the proper party or return the 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, accepts the payment pursuant to the terms of the Settlement Agreement, Notice of Settlement, and Judgment related thereto, which releases, 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 this Order, it is the duty of the payee of the check to ensure that the funds are paid to the Class Member entitled to the funds, and the release by Class Member entitled to the funds shall be effective regardless of whether such Class Member 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 cashed within ninety (90) days of its issuance date, and a stop payment request will be issued. The portion of the Net Settlement attributable to that Class Member will remain in the Escrow Account for 120 days after the date the initial distribution check was issued and, thereafter, will be considered "Residual Unclaimed Funds". The release of claims provided in the Settlement Agreement shall be effective regardless of whether this check is cashed.

9. The Settlement Administrator will use commercially reasonable efforts, subject to review and approval by Plaintiffs' Counsel, to distribute the Net Settlement. If the information needed to send a distribution check cannot be obtained through such efforts, the portion of the Net Settlement allocated to such Class Member will remain in the Escrow Account as Residual Unclaimed Funds.

10. 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 10 business 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 attributable to that Class Member will remain in the Escrow Account

for 120 days after the date the initial distribution check was issued and, thereafter, will be considered "Residual Unclaimed Funds".

11. Defendant, Defendant's Counsel, the Settlement Administrator, Plaintiffs, and Plaintiffs' Counsel shall have no liability to any Class Member for mis-payments, over-payments, or under-payments of the Net Settlement Fund.

12. 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, Plaintiffs' Counsel, or any other Class Member.

13. To the extent not specifically addressed above, any other amount of the Net Settlement that remains in the Escrow Account one hundred twenty (120) days after the date the Settlement Administrator sends the initial distribution checks and for which further distribution is not economically viable, shall be considered Residual Unclaimed Funds.

14. Within one hundred twenty (120) days after the Settlement Administrator sends the initial distribution checks, the Settlement Administrator shall send a reconciliation of the amount remaining in the Escrow Account to Defendant and Plaintiffs' Counsel, and Plaintiffs shall submit applications to the Court to distribute such funds pursuant to the terms of this Order. The reconciliation must include (i) a detail of each distribution made from the Escrow Account; (ii) a detail of the amounts returned to the Defendant related to Class Members that opted-out of the Settlement, (iii) the total Residual Unclaimed Funds with detail sufficient to verify the total and their disposition; (iv) detail showing the total amount of the Fee and Expense Award, Administration Expenses, other fees as approved by the Court, and (v) interest and dividend income paid into the Escrow Account.

15. Any Residual Unclaimed Funds remaining in the Escrow Account after distribution has otherwise been completed and which can be identified to a Class Member shall be distributed to the State of Texas in accordance with the provisions of the Texas Property Code

relating to unclaimed property.

16. The Court shall retain jurisdiction to determine any issues relating to the payment and distribution of the Net Settlement, 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, and no consequential, punitive, or other damages; attorneys' fees; any other applicable fees; interest; or costs shall be awarded in any proceeding regarding any such determination.

17. The Releases, Dismissal, and Covenants shall be effective as provided in this Settlement Agreement, regardless of whether or not particular Class Members did or did not receive payment in connection with this Settlement Agreement and regardless of whether or not any Class Member who 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 make a payment required of it 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.

18. Except in the case of willful and intentional malfeasance of a dishonest nature directly causing such loss, Plaintiffs' Counsel, Plaintiffs, and the Settlement Class shall have no liability for loss of any portion of the Gross or Net Settlement Fund 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 Gross or Net Settlement Fund lost.

IT IS SO ORDERED.