

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

IN RE KINDER MORGAN  
ENERGY PARTNERS, L.P.  
CAPEX LITIGATION

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CONSOLIDATED  
C.A. No. 9318-VCL

**NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF UNITHOLDER ACTION, SETTLEMENT HEARING, AND RIGHT TO APPEAR**

***The Delaware Court of Chancery authorized this Notice.  
This is not a solicitation from a lawyer.***

**NOTICE OF PENDENCY OF UNITHOLDER ACTION:** Please be advised that your rights may be affected by the above-captioned consolidated unitholder action (the “Action”) pending in the Court of Chancery of the State of Delaware (the “Court”), if you held common units of Kinder Morgan Energy Partners, L.P. (the “Partnership”) at any time during the period beginning on February 5, 2011, through and including the closing of the merger of the Partnership with and into Kinder Morgan, Inc. (“Parent”) on November 26, 2014 (the “Class Period”).<sup>1</sup>

**NOTICE OF SETTLEMENT:** Please also be advised that lead plaintiff Jon Slotoroff (“Lead Plaintiff”), on behalf of himself and the Class (defined in ¶ 37 below), and derivatively on behalf of the Partnership, has reached a proposed settlement of the Action for \$27.5 million in cash (the “Settlement”) that, if approved by the Court, will resolve all claims asserted in the Action as well as certain other claims, including all claims asserted in the Texas Action (defined below), as set forth in the Stipulation.

**PLEASE READ THE NOTICE CAREFULLY AND IN ITS ENTIRETY.** THIS NOTICE EXPLAINS IMPORTANT RIGHTS YOU MAY HAVE, INCLUDING THE POSSIBLE RECEIPT OF CASH FROM THE SETTLEMENT. IF YOU ARE A MEMBER OF THE CLASS, YOUR LEGAL RIGHTS WILL BE AFFECTED WHETHER OR NOT YOU ACT AND WHETHER OR NOT YOU ARE ELIGIBLE TO RECEIVE A PAYMENT FROM THE SETTLEMENT FUND. PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY.

The following table provides a brief summary of the rights you have as a Class Member and the relevant deadlines, which are described in more detail later in this Notice:

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT:</b>	
<b>SUBMIT A PROOF OF CLAIM FORM (“CLAIM FORM”) BY DECEMBER 26, 2015 TO DETERMINE WHETHER YOU ARE ELIGIBLE TO RECEIVE A CASH PAYMENT FROM THE SETTLEMENT.</b>	This is the only way to be eligible to get a payment from the Settlement. If you wish to obtain a payment as a Class Member, you will need to submit a Claim Form (which is included with this Notice) postmarked no later than December 26, 2015.
<b>OBJECT TO THE SETTLEMENT BY SUBMITTING A WRITTEN OBJECTION SO THAT IT IS RECEIVED NO LATER THAN NOVEMBER 13, 2015.</b>	If you do not like the proposed Settlement, the proposed Plan of Allocation, and/or the request for attorneys’ fees and reimbursement of Litigation Expenses, you may write to the Court and explain why you do not like it/them. You can object to the Settlement, the Plan of Allocation and/or the fee and expense application only if you are a Class Member.
<b>GO TO THE HEARING ON NOVEMBER 23, 2015 AT 10:00 A.M., AND FILE A NOTICE OF INTENTION TO APPEAR SO THAT IT IS RECEIVED NO LATER THAN NOVEMBER 13, 2015.</b>	Filing a written objection and notice of intention to appear by November 13, 2015 allows you to speak in Court about the fairness of the proposed Settlement, the Plan of Allocation, and/or the request for attorneys’ fees and reimbursement of Litigation Expenses. If you submit a written objection, you may (but do not have to) attend the hearing and speak to the Court about your objection.
<b>DO NOTHING.</b>	If you are a member of the Class and you do not submit a Claim Form by December 26, 2015, you will not be eligible to receive any payment from the Settlement Fund. You will, however, remain a member of the Class, which means that you give up your right to sue about the claims that are resolved by the Settlement and you will be bound by any judgments or orders entered by the Court in the Action.

<sup>1</sup> This Notice incorporates by reference the definitions in the Stipulation and Agreement of Settlement dated August 14, 2015 (the “Stipulation”), which is available on the settlement website at [www.kindermorgancapexlitigationsettlement.com](http://www.kindermorgancapexlitigationsettlement.com). Unless otherwise indicated herein, the definitions shall have the same meaning as they have in the Stipulation (certain of these definitions are repeated herein for ease of reference only).

**WHAT THIS NOTICE CONTAINS**

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**WHY DID I GET THIS NOTICE?**

1. This Notice is being sent to you pursuant to an Order of the Court because you or someone in your family or an investment account for which you serve as custodian may have held common units of the Partnership during the Class Period. The Court has directed us to send you this Notice because, as a potential Class Member, you have a right to know about your options before the Court rules on the proposed Settlement of this case. Additionally, you have the right to understand how a class action lawsuit may generally affect your legal rights. If the Court approves the Settlement and the Settlement becomes effective, (a) the Action will be dismissed with prejudice, (b) all Class Members will be deemed to have released the Released Plaintiff Claims (defined in ¶ 61 below and which includes the claims asserted in the Texas Action) against the Released Defendant Persons (defined in ¶ 64 below), and (c) the claims administrator (“Claims Administrator”) approved by the Court will make payments pursuant to the Settlement.

2. A class action is a type of lawsuit in which the claims of a number of individuals are resolved together, thus providing the class members with both consistency and efficiency. In a class action lawsuit, the court selects one or more people, known as class representatives, to sue on behalf of all people with similar claims, commonly known as the class or the class members. Once the class is certified, the Court must resolve all issues on behalf of the class members. In this Action, the Court has directed that Lead Plaintiff and Co-Lead Counsel (as defined in ¶ 11 below) shall have primary responsibility for prosecuting, on behalf of all Class Members, all claims against Defendants (defined in ¶ 3 below) in the Action.

3. The court in charge of this case is the Court of Chancery of the State of Delaware, and the case is known as *In re Kinder Morgan Energy Partners, L.P. Capex Litigation*, Consolidated C.A. No. 9318-VCL. The judge presiding over this case is Vice Chancellor J. Travis Laster. In this case, Lead Plaintiff, on behalf of himself and the Class, and derivatively on behalf of the Partnership, is suing defendants Parent and Kinder Morgan G.P., Inc. (the “General Partner” and, together with Parent, “Defendants”). If the Settlement is approved, it will resolve all claims asserted against Defendants and bring the Action to an end.

4. This Notice explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them. The purpose of this Notice is to inform you of this case, that it is a class action, and how you might be affected. It also is being sent to inform you of the terms of the proposed Settlement, and of a hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the proposed Settlement, the proposed Plan of Allocation, and the motion by Co-Lead Counsel for an award of attorneys’ fees and reimbursement of Litigation Expenses (the “Settlement Hearing”). See paragraph 74 below for details about the Settlement Hearing, including the date and location of the hearing.

5. This Notice does not express any opinion by the Court concerning the merits of any claim in the Action, and the Court still has to decide whether to approve the Settlement. If the Court approves the Settlement, payments to Authorized Claimants (as defined in the Stipulation) will be made after any appeals are resolved, and after the completion of all claims processing. Please be patient.

**WHAT IS THIS CASE ABOUT? WHAT HAS HAPPENED SO FAR?**

THE FOLLOWING RECITATION DOES NOT CONSTITUTE FINDINGS OF THE COURT. THE COURT HAS MADE NO FINDINGS WITH RESPECT TO THE FOLLOWING MATTERS AND THESE RECITATIONS SHOULD NOT BE UNDERSTOOD AS AN EXPRESSION OF ANY OPINION OF THE COURT AS TO THE MERITS OF ANY OF THE CLAIMS OR DEFENSES RAISED BY ANY OF THE PARTIES.

6. On February 5, 2014, Jon Slotoroff (“Slotoroff”) filed a putative class and derivative action in this Court against the Defendants, asserting claims for breach of the Partnership’s limited partnership agreement, dated as of May 18, 2001, as amended

(the “LPA”), breach of the implied covenant of good faith and fair dealing, aiding and abetting, and tortious interference with the LPA, styled *Slotoroff v. Kinder Morgan, Inc., et al.*, C.A. No. 9318-VCL (the “Slotoroff Action”).

7. On March 6, 2014, Kenneth Walker (the “Texas Plaintiff”) filed a derivative action in the District Court of Harris County, Texas against Parent, the General Partner, Kinder Morgan Management LLC (the “General Partner Delegate”), Richard D. Kinder, Steven J. Kean, Ted A. Gardner, Gary L. Hultquist and Perry M. Waughtal, alleging claims for breach of duty, breach of the implied covenant of good faith and fair dealing, abuse of control, and gross mismanagement, styled *Walker v. Kinder Morgan, Inc., et al.*, C.A. No. 2014-11872 (the “Texas Action”).

8. On March 27, 2014, Darrell Burns (“Burns”) and Terrence Zehrer (“Zehrer” and, together with Burns and Slotoroff, the “Plaintiffs”) filed a putative class and derivative action in this Court against the Defendants, asserting claims for breach of the LPA, breach of the implied covenant of good faith and fair dealing, aiding and abetting, and tortious interference with the LPA, styled *Burns v. Kinder Morgan, Inc., et al.*, C.A. No. 9479-VCL (the “Burns Action” and, together with the Slotoroff Action, the “Delaware Actions”).

9. On April 8, 2014, the Court entered an Order: (i) consolidating the Delaware Actions under the caption *In re Kinder Morgan Energy Partners, L.P. Derivative Litigation*, Consolidated C.A. No. 9318-VCL; and (ii) deeming the Complaint filed in the Slotoroff Action to be the operative complaint in the Action.<sup>2</sup>

10. On April 9, 2014, the District Court of Harris County, Texas granted an Agreed Order Staying Case in the Texas Action pending this Court’s ruling on a motion to dismiss the Action.

11. On April 14, 2014, the Court entered an Order: (i) appointing Jon Slotoroff as lead plaintiff; (ii) appointing the law firms of Bernstein Litowitz Berger & Grossmann LLP and Grant & Eisenhofer P.A. as Co-Lead Counsel in the Action (“Co-Lead Counsel”); and (iii) designating the law firms of Gardy & Notis, LLP and Robbins Arroyo LLP as additional counsel for Plaintiffs (“Plaintiffs’ Additional Counsel,” and together with Co-Lead Counsel, “Plaintiffs’ Counsel”).

12. In his Complaint, Lead Plaintiff alleges, among other things, that he brought “this suit to compel [Parent] to act in accordance with the terms of the Partnership Agreement” and further sought disgorgement of distributions paid to the General Partner, Parent and any related entities.

13. On March 3, 2014, Defendants and the Partnership filed a motion to dismiss the Action on the basis that the Lead Plaintiff’s class claims were, in fact, derivative claims, and that Lead Plaintiff had failed to comply with the demand requirement governing derivative suits. Defendants and the Partnership filed and served their opening brief on March 24, 2014. On April 22, 2014, Lead Plaintiff filed and served his opposition, and, on May 12, 2014, Defendants and the Partnership filed their reply brief in further support of their motion. On May 21, 2014, the Court granted the Parties’ Stipulation and Proposed Order withdrawing the motion to dismiss without prejudice in light of the Court’s May 19, 2014 decision in *Allen v. El Paso Pipeline GP Company, L.L.C.*, C.A. No. 7520-VCL.

14. On June 27, 2014, Defendants answered the Complaint, asserting a number of defenses and affirmative defenses, including, among others, that they had complied in all respects with the LPA, the putative Class Members had not suffered any injury, and the claims were barred by the doctrines of laches, estoppel, and acquiescence. The Partnership subsequently served and filed its Answer.

15. Between February 5, 2014 and September 2, 2014, Lead Plaintiff served five separate requests for production of documents directed to all Defendants and the Partnership, requesting materials relating to myriad aspects of the Partnership’s operations (including, without limitation, the calculation and payment of distributions, the classification of capital expenditures, the issuance of debt and equity, and the annual budget process) for the time period from February 5, 2011 through February 5, 2014 (the class period alleged in the Complaint).

16. Prior to September 18, 2014, Defendants produced over 157,000 pages of documents to Lead Plaintiff, covering the period February 5, 2011 through February 5, 2014, including electronic and hard copy discovery from over 70 different custodians, employing search parameters agreed to by the parties.

17. On August 9, 2014, Parent and the Partnership entered into a merger agreement pursuant to which Parent would acquire directly or indirectly all of the outstanding Partnership units that Parent and its subsidiaries did not already own.

18. On November 26, 2014, the Merger closed, at which time Parent acquired all of the outstanding common units of the Partnership that it did not already own, and each common unit held by a public Partnership unitholder received 2.1931 shares of Parent’s common stock and \$10.77 in cash. The Partnership is now a wholly owned subsidiary of Parent. Effective with the Merger, the incentive distribution rights held by the General Partner were eliminated.

19. Periodically during the litigation, Co-Lead Counsel and Defendants’ Counsel engaged in discussions concerning a potential resolution of the Action. In addition to numerous telephone conversations between counsel, two in-person meetings to discuss a potential resolution were held, one on September 23, 2014 and a second on November 11, 2014. During these sessions, counsel engaged in extensive substantive discussions regarding the merits of the claims asserted in the Complaint, the defenses asserted thereto, the construction and interpretation of the relevant LPA provisions, as well as potential damages theories should a breach be proven. A senior executive of Parent participated in both of these sessions.

20. By Orders dated September 30, 2014 and November 26, 2014, the Court granted the Parties’ stipulated requests to adjourn various case deadlines in the Action in order to facilitate these discussions. While these sessions did not result in a settlement, the parties agreed to continue their dialogue.

21. On December 3, 2014, Lead Plaintiff served his sixth request for production of documents, consisting of 65 individual requests, which sought documents from not only the putative class period alleged in the Complaint, but for an additional five-year period, January 1, 2006 through February 5, 2011. Defendants agreed to extend the search parameters to identify and provide responsive material, including for the expanded time period.

<sup>2</sup> After the Merger closed, the Court modified the case caption on January 5, 2015 to read: *In re Kinder Morgan Energy Partners, L.P. Capex Litigation*.

22. On January 5, 2015, the Court ordered an amended case schedule which provided, among other things, for a trial commencing on April 11, 2016.

23. On January 12, 2015, Lead Plaintiff served his first set of interrogatories directed to all Defendants, which Defendants responded to on February 20, 2015.

24. During the period between February 2015 and May 2015, the Parties engaged in additional discovery, including the production by Defendants of over 272,000 additional pages of documents covering the period from January 1, 2006 through February 5, 2014, bringing the total number of pages produced to over 430,000.

25. In addition, Lead Plaintiff took the depositions of five senior-level employees of the General Partner, including a Rule 30(b)(6) deposition of its Chief Financial Officer, Kimberly A. Dang, as well as the senior leadership of the Partnership's CO2 business unit (including the division's president and its chief operating officer).

26. In response to Defendants' requests, Plaintiffs produced over 17,000 pages of documents sought by Defendants in furtherance of their defenses to the Plaintiffs' substantive claims.

27. As a result of their on-going discussions, including the two in-person sessions referenced above, an agreement-in-principle to settle the Action was reached in mid-June 2015, subject to execution of customary documentation, which agreement was memorialized in the Stipulation. On June 17, 2015, counsel advised the Court of the agreement-in-principle to settle, and the case was taken off calendar.

28. The Parties entered into the Stipulation and Agreement of Settlement on August 14, 2015, and on August 19, 2015, the Court entered a Scheduling Order that preliminarily certified the Class for purposes of the Settlement only, authorized this Notice to be sent to Class Members, and scheduled the Settlement Hearing.

29. Based on their investigation and prosecution of the Action, Lead Plaintiff and Co-Lead Counsel have concluded that the terms and conditions of the Settlement and the Stipulation are fair, reasonable and adequate to Lead Plaintiff and the other Class Members, and is in each of those Persons' best interests. Based on his direct oversight of the prosecution of this matter, along with the input of Co-Lead Counsel, Lead Plaintiff has agreed to settle the claims raised in the Action pursuant to the terms and provisions of the Stipulation, after considering: (i) the substantial benefits that Lead Plaintiff and the other Class Members will receive from the resolution of the Action; (ii) the attendant risks of litigation as well as the expense and length of continued proceedings necessary to prosecute the Action through trial; and (iii) the desirability of permitting the Settlement to be consummated as provided by the terms of the Stipulation. The Settlement and the Stipulation shall in no event be construed as, or deemed to be, evidence of or a concession by Lead Plaintiff or any other Class Member of any infirmity in the claims asserted in the Action.

30. All of the Defendants (and the General Partner Delegate) vigorously and expressly deny all allegations of breach of contract, wrongdoing, fault, liability, or damage to Plaintiffs as well as each and every other Class Member and the Partnership, including all of the allegations made in the Actions. All of the Defendants (and the General Partner Delegate): (i) deny that Plaintiffs have asserted a valid claim as to any of them; (ii) deny that they engaged in any wrongdoing (including as to the CAPEX Matters), committed or aided and abetted any violation of law, breach of contract or other duty; and (iii) believe that they acted properly, in good faith, and in a manner consistent with any and all legal, contractual and equitable duties and obligations, including those contained in the LPA. The Defendants are entering into the Settlement and the Stipulation solely to avoid the substantial burden, expense, inconvenience and distraction of continued litigation and to resolve each of the Released Plaintiff Claims as against each of the Released Defendant Persons. The Settlement and the Stipulation shall in no event be construed as, or deemed to be, evidence of an admission or concession on the part of any of the Defendants, the Partnership and/or the General Partner Delegate with respect to any claim or factual allegation or of any fault, breach of contract, liability, wrongdoing, or damage whatsoever or of any infirmity in the defenses that any of them have or could have asserted in the Actions.

#### **WHAT ARE LEAD PLAINTIFF'S REASONS FOR THE SETTLEMENT?**

31. Lead Plaintiff and Co-Lead Counsel believe that the claims asserted against Defendants have merit, and that their diligent prosecution of the claims asserted in the Action has led to a Settlement that provides an excellent recovery for the Class.

32. Lead Plaintiff, through Co-Lead Counsel, has conducted an investigation and pursued extensive discovery relating to the claims and the underlying events and transactions alleged in the Action. Co-Lead Counsel have analyzed the evidence adduced during their investigation and through the extensive discovery in the Action described above, and have also researched the applicable law with respect to the claims asserted in the Action and the potential defenses thereto. Additionally, the multiple settlement conferences and meetings, including with a senior officer of Parent, at which Plaintiffs' liability theories and potential damages models were discussed (should any liability be proven), have provided Lead Plaintiff with an informed and detailed basis upon which to assess the relative strengths and weaknesses of the Parties' respective positions in the litigation.

33. In negotiating and evaluating the terms of the Settlement, Lead Plaintiff and Co-Lead Counsel considered the significant legal and factual defenses to Lead Plaintiff's claims and the expense, length, and risk of pursuing their claims through trial and appeals. While Lead Plaintiff has asserted that Defendants have breached the LPA, and the implied covenant of good faith and fair dealing, by failing to allocate the Partnership's capital expenditures in good faith, Defendants have vigorously argued that they acted appropriately and are not subject to any liability or damages. Among other things, Defendants have argued that they did not misallocate the Partnership's capital expenditures, that all allocation decisions were made in good faith and within the scope of Defendants' authority, and that, even if Lead Plaintiff's theory of liability were adopted, none of the Class Members suffered any harm thereby.

34. In light of the risks of continued litigation, the amount of the Settlement and the immediacy of recovery to the Class, Lead Plaintiff and Co-Lead Counsel believe that the proposed Settlement is fair, reasonable and adequate, and in the best interests of the Class. Lead Plaintiff and Co-Lead Counsel believe that the Settlement provides a substantial benefit to the Class, namely \$27,500,000 in cash (less the various deductions described in this Notice), as compared to the risk that the claims in the Action would produce a smaller, or no recovery after trial and appeals, possibly years in the future.

35. THE COURT HAS NOT FINALLY DETERMINED THE MERITS OF THE CLAIMS MADE BY LEAD PLAINTIFF AGAINST THE DEFENDANTS AND HAS NOT FINALLY DETERMINED THE MERITS OF ANY DEFENSES PUT FORTH BY THE DEFENDANTS. THIS NOTICE DOES NOT IMPLY THAT THERE HAS BEEN OR WOULD BE ANY FINDING OF VIOLATION OF THE LAW OR THAT RELIEF IN ANY FORM OR RECOVERY IN ANY AMOUNT COULD BE HAD IF THE ACTION WAS NOT SETTLED.

#### WHAT ARE THE TERMS OF THE SETTLEMENT?

36. In consideration for the full and final settlement and dismissal with prejudice of the Action, the release by the Releasing Plaintiff Persons of any and all Released Plaintiff Claims as against the Released Defendant Persons, and the other terms of the Settlement, Parent has agreed to pay or cause to be paid \$27,500,000 in cash into an interest-bearing escrow account for the benefit of the Class as provided in the Stipulation.

#### HOW DO I KNOW IF I AM AFFECTED BY THE SETTLEMENT?

37. If you are a member of the Class, you are subject to the Settlement. The Class preliminarily certified by the Court, for Settlement purposes only, consists of:

Any Person who held common units of the Partnership at any time during the Class Period. Excluded from the Class are: (a) (i) the Defendants, the Partnership, the General Partner Delegate, and their respective Affiliates during the Class Period or currently; (ii) any Person who currently is, or was at any time during the Class Period, an Officer or director of any Defendant, the Partnership or the General Partner Delegate, and the members of their respective Immediate Family; and (iii) any Person in which any of the Persons identified in (a)(i) or (a)(ii) above currently has or had during the Class Period a Controlling Interest (the Persons identified in (a)(i) through (a)(iii) above are collectively, the "Excluded Parties"); and (b) each of the Excluded Parties' respective legal representatives, heirs, beneficiaries, successors or assigns.

**PLEASE NOTE:** The Class has been preliminary certified as a non-"opt-out" class pursuant to Delaware Court of Chancery Rules 23(a), 23(b)(1) and 23(b)(2). Accordingly, Class Members do not have the right to exclude themselves from the Class.

**PLEASE ALSO NOTE THAT RECEIPT OF THIS NOTICE DOES NOT MEAN THAT YOU ARE A CLASS MEMBER OR THAT YOU WILL BE ENTITLED TO RECEIVE PROCEEDS FROM THE SETTLEMENT. IF YOU ARE A CLASS MEMBER AND YOU WISH TO BE ELIGIBLE TO PARTICIPATE IN THE DISTRIBUTION OF PROCEEDS FROM THE SETTLEMENT, YOU ARE REQUIRED TO SUBMIT THE CLAIM FORM THAT IS BEING DISTRIBUTED WITH THIS NOTICE AND THE REQUIRED SUPPORTING DOCUMENTATION AS SET FORTH THEREIN POSTMARKED NO LATER THAN DECEMBER 26, 2015.**

#### HOW MUCH WILL MY PAYMENT BE?

38. At this time, it is not possible to make any determination as to how much any individual Class Member may receive from the Settlement.

39. Pursuant to the Settlement, Defendants have agreed to pay or cause to be paid \$27,500,000 in cash (the "Settlement Amount"). The Settlement Amount will be deposited into an escrow account. The Settlement Amount plus any interest earned thereon is referred to as the "Settlement Fund." If the Settlement is approved by the Court and the Effective Date occurs, the "Net Settlement Fund" (that is, the Settlement Fund less (a) all federal, state and/or local taxes on any income earned by the Settlement Fund and the expenses and costs incurred in connection with determining the amount of and paying taxes owed by the Settlement Fund (including expenses of tax attorneys and accountants); (b) the costs and expenses incurred in connection with providing notice to Class Members and administering the Settlement on behalf of Class Members; and (c) any attorneys' fees and Litigation Expenses awarded by the Court) will be distributed to Class Members who submit valid Claim Forms to the Claims Administrator, in accordance with the proposed Plan of Allocation or such other plan of allocation as the Court may approve.

40. The Net Settlement Fund will not be distributed unless and until the Court has approved the Settlement and a plan of allocation, the Judgment (as defined in the Stipulation) has become Final, which requires, among other things, that the time for any petition for rehearing, appeal or review of the Judgment, whether by certiorari or otherwise, has expired, and the Effective Date (as defined in the Stipulation) has occurred.

41. Neither Defendants nor any other person or entity that paid any portion of the Settlement Amount on their behalf are entitled to get back any portion of the Settlement Fund once the Court's order or judgment approving the Settlement becomes Final. Defendants shall not have any liability, obligation or responsibility for the administration of the Settlement, the disbursement of the Net Settlement Fund or the plan of allocation.

42. Approval of the Settlement is independent from approval of a plan of allocation or an award of attorneys' fees or reimbursement of Litigation Expenses. Any determination with respect to a plan of allocation, an award of attorneys' fees, or reimbursement of Litigation Expenses will not affect the Settlement, if approved, or the Judgment, if entered.

43. Unless the Court otherwise orders, any Class Member who fails to submit a Claim Form postmarked on or before December 26, 2015 shall be fully and forever barred from receiving payments pursuant to the Settlement but will in all other respects remain a Class Member and be subject to the provisions of the Stipulation, including the terms of any Judgment entered and the releases given. This means that, upon the Effective Date, each Class Member will release the Released Plaintiff Claims (defined in ¶ 61 below) against the Released Defendant Persons (defined in ¶ 64 below) and will be enjoined and prohibited from filing, prosecuting, or pursuing any of the Released Plaintiff Claims against any of the Released Defendant Persons whether or not such Class Member submits a Claim Form.

44. The Court has reserved jurisdiction to allow, disallow, or adjust on equitable grounds the Claim of any Class Member.
45. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to his, her or its Claim Form.
46. Only Class Members will be eligible to share in the distribution of the Net Settlement Fund. Persons that are excluded from the Class by definition will not be eligible to receive a distribution from the Net Settlement Fund and should not submit Claim Forms. The only security included in the Settlement is the Partnership's common units. Option contracts are not securities eligible to participate in the Settlement.

**PROPOSED PLAN OF ALLOCATION**

47. The objective of the Plan of Allocation is to equitably distribute the Settlement proceeds to those Class Members who allegedly suffered losses as a result of the alleged wrongdoing. The calculations made pursuant to the Plan of Allocation are not intended to be estimates of, nor indicative of, the amounts that Class Members would or might have been able to recover after a trial. Nor are the calculations pursuant to the Plan of Allocation intended to be estimates of the amounts that will be paid to Authorized Claimants pursuant to the Settlement. The computations under the Plan of Allocation are only a method to weigh the claims of Authorized Claimants against one another for the purposes of making pro rata allocations of the Net Settlement Fund. This Plan of Allocation is based on Lead Plaintiff's theories of liability and damages and is not intended to be, nor should it be construed as, an admission by the Defendants that they engaged in any wrongdoing or that the Class Members have suffered any injury.

48. Lead Plaintiff alleges in the Action that Defendants breached the LPA, and the implied covenant of good faith and fair dealing, in connection with quarterly distributions issued by the Partnership during the Class Period ("Quarterly Distributions"). Lead Plaintiff alleges that if Defendants issued Quarterly Distributions exceeding cumulative cash from operations (accumulated over the life of the Partnership) ("Cumulative Cash from Operations"), as is alleged here due to the purported misallocation of capital expenditures, then any distributions above Cumulative Cash from Operations would be re-characterized as cash from interim capital transactions ("ICT"). Under the terms of the LPA, Lead Plaintiff alleges, any Quarterly Distributions of cash from ICT should have increased the proportion of the given distribution received by the limited partners (and lowered the proportion received by the General Partner). Under Lead Plaintiff's theory of liability, Quarterly Distributions using cash from operations exceeded the Cumulative Cash from Operations – triggering larger required distributions to the limited partners – beginning with the 4th Quarter of 2012. Based on the foregoing, Lead Plaintiff's damages expert has opined that Quarterly Distributions were underpaid from the 4th Quarter of 2012 through and including the 3rd Quarter of 2014. Accordingly, in order to be eligible for recovery under the proposed Plan of Allocation, Partnership common units must have been held as of the close of trading on one or more of the Quarterly Distribution Holding Dates<sup>3</sup> set forth in the Table in paragraph 49 below. To the extent that a Claimant did not hold Partnership common units as of the close of trading on any of the Quarterly Distribution Holding Dates, Lead Plaintiff has concluded that he, she or it did not suffer compensable losses pursuant to this Plan of Allocation and, for this reason, will not be eligible for recovery from the Net Settlement Fund.

**CALCULATION OF CLAIM AMOUNTS**

49. The Claims Administrator will calculate a Claimant's purported "Quarterly Loss Amount" for each Quarter beginning with the Fourth Quarter of 2012 through and including the Third Quarter of 2014. The "Quarterly Loss Amount" for each of those Quarters will be calculated by multiplying the number of Partnership common units held by the Claimant as of the close of trading on the Holding Date by the Alleged Per Unit Loss Amount for that Quarter set forth in the following Table:

<b><u>Holding Date</u></b>	<b><u>Relevant Quarterly Distribution</u></b>	<b><u>Alleged Per Unit Loss Amount</u></b>
January 28, 2013	4th Quarter 2012	\$0.04
April 24, 2013	1st Quarter 2013	\$0.04
July 26, 2013	2nd Quarter 2013	\$0.16
October 28, 2013	3 <sup>rd</sup> Quarter 2013	\$0.11
January 28, 2014	4th Quarter 2013	\$0.02
April 25, 2014	1st Quarter 2014	\$0.04
July 28, 2014	2nd Quarter 2014	\$0.16
October 28, 2014	3rd Quarter 2014	\$0.10

50. The sum of a Claimant's purported Quarterly Loss Amounts shall be his, her or its "Claim Amount" under the Plan of Allocation.

<sup>3</sup> Each Holding Date is the business day immediately preceding the "Ex-Record Date" utilized by the Partnership for each Quarterly Distribution. Lead Plaintiff understands that Partnership common units purchased on or after the Ex-Record Date for a given Quarterly Distribution were not entitled to receive that Quarterly Distribution; however, Partnership common units purchased on or before the date immediately preceding the Ex-Record Date and held through that date, even if subsequently sold, were entitled to receive the Quarterly Distribution. Accordingly, the Plan of Allocation uses the business day immediately prior to the Ex-Record Date as the relevant Holding Date for determining Quarterly Loss Amounts.

51. The Net Settlement Fund will be distributed to Authorized Claimants on a *pro rata* basis based upon the relative size of their Claim Amounts. Specifically, a “Distribution Amount” will be calculated for each Authorized Claimant, which shall be the Authorized Claimant’s Claim Amount divided by the total Claim Amounts of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund. If any Authorized Claimant’s Distribution Amount calculates to less than \$10.00, it will not be included in the calculation and no distribution will be made to such Authorized Claimant.

#### **ADDITIONAL PROVISIONS**

52. After the initial distribution of the Net Settlement Fund, the Claims Administrator shall make reasonable and diligent efforts to have Authorized Claimants cash their distribution checks. To the extent any monies remain in the fund nine (9) months after the initial distribution, if Co-Lead Counsel, in consultation with the Claims Administrator, determine that it is cost-effective to do so, the Claims Administrator shall conduct a re-distribution of the funds remaining after payment of any unpaid fees and expenses incurred in administering the Settlement, including for such re-distribution, to Authorized Claimants who have cashed their initial distributions and who would receive at least \$10.00 from such re-distribution. Additional re-distributions to Authorized Claimants who have cashed their prior checks and who would receive at least \$10.00 on such additional re-distributions may occur thereafter if Co-Lead Counsel, in consultation with the Claims Administrator, determines that additional re-distributions, after the deduction of any additional fees and expenses incurred in administering the Settlement, including for such re-distributions, would be cost-effective. At such time as it is determined that the re-distribution of funds remaining in the Net Settlement Fund is not cost-effective, the remaining balance shall be contributed to non-sectarian, not-for-profit organization(s), to be recommended by Co-Lead Counsel and approved by the Court.

53. Payment pursuant to the Plan of Allocation, or such other plan of allocation as may be approved by the Court, shall be conclusive against all Authorized Claimants. No Person shall have any claim against Lead Plaintiff, Co-Lead Counsel, Defendants, Defendants’ Counsel, the Partnership, or Partnership’s Counsel, or any of the other Released Persons (including Lead Plaintiff’s damages expert, the Claims Administrator or any other agent designated by Co-Lead Counsel) arising from distributions made substantially in accordance with the Stipulation, the plan of allocation approved by the Court, or further Orders of the Court. Lead Plaintiff, Defendants, the Partnership, and their respective counsel, and all other Released Defendant Persons shall have no responsibility or liability whatsoever to any Person for the investment or distribution of the Settlement Fund, the Net Settlement Fund, the Plan of Allocation, or the determination, administration, calculation, or payment of any Claim Form or nonperformance of the Claims Administrator, the payment or withholding of taxes owed by the Settlement Fund, or any losses incurred in connection therewith.

54. The Plan of Allocation set forth herein is the plan that is being proposed to the Court for its approval by Lead Plaintiff after consultation with Lead Plaintiff’s damages expert. The Court may approve this plan as proposed or it may modify the Plan of Allocation without further notice to the Class. Any Orders regarding any modification of the proposed Plan of Allocation will be posted on the settlement website, [www.kindermorgancapexlitigationsettlement.com](http://www.kindermorgancapexlitigationsettlement.com). Any such modifications will not affect the approval of the Settlement, the finality of the Judgment and/or the Effective Date of the Settlement.

#### **WHAT RIGHTS ARE BEING COMPROMISED BY THE SETTLEMENT?**

55. If the Settlement is approved, the Court will enter a final order and judgment which will be binding on all Class Members. Pursuant to the judgment proposed by the Parties, as of the Effective Date (as defined in the Stipulation):

(a) The Action shall be dismissed with prejudice;

(b) Each and every one of the Releasing Plaintiff Persons (defined in ¶ 59 below) (regardless of whether or not that Person actually submits a Claim Form, seeks or obtains a distribution from the Net Settlement Fund, is entitled to receive such a distribution under the Plan of Allocation, or has objected to the Settlement, the Plan of Allocation and/or any application for an award of attorneys’ fees or Litigation Expenses) shall: (a) have, and by operation of law and the Judgment be deemed to have, completely, fully, finally, and forever dismissed, released, relinquished and discharged with prejudice each and every one of the Released Defendant Persons (defined in ¶ 64 below) from each and every one of the Released Plaintiff Claims (defined in ¶ 61 below); (b) forever be barred and enjoined by operation of law and the Judgment from filing, commencing, intervening in, participating in (as a class member or otherwise), instituting, maintaining, prosecuting, seeking relief in (including filing an application or motion for preliminary or permanent injunctive relief) or receiving any recovery, remedy, benefits or other relief from any lawsuit, action, arbitration or other proceeding in any jurisdiction that asserts any or all of the Released Plaintiff Claims against any or all of the Released Defendant Persons; and (c) by operation of law and the Judgment be deemed to have covenanted not to sue any or all of the Released Defendant Persons with respect to each and every one of the Released Plaintiff Claims; and

(c) Each and every one of the Releasing Defendant Persons (defined in ¶ 60 below) shall: (a) have, and by operation of law and the Judgment be deemed to have, completely, fully, finally, and forever dismissed, released, relinquished and discharged with prejudice each and every one of the Released Plaintiff Persons (defined in ¶ 63 below) from each and every one of the Released Defendant Claims (defined in ¶ 62 below); (b) forever be barred and enjoined by operation of law and the Judgment from filing, commencing, intervening in, participating in, instituting, maintaining, prosecuting, seeking relief in or receiving any recovery, remedy, benefits or other relief from any other lawsuit, action, arbitration or other proceeding in any jurisdiction that asserts any or all of the Released Defendant Claims against any or all of the Released Plaintiff Persons; and (c) by operation of law and the Judgment be deemed to have covenanted not to sue any or all of the Released Plaintiff Persons with respect to each and every one of the Released Defendant Claims.

56. With respect of the use of the term “Unknown Claims” in the definitions of Released Plaintiff Claims and Released Defendant Claims:

(a) (i) Lead Plaintiff specifically acknowledges (and the other Releasing Plaintiff Persons shall be deemed by operation of law and the Judgment to have acknowledged) that the term “Unknown Claims” in the definitions of Released Plaintiff Claims shall mean

all claims that each of the Releasing Plaintiff Persons do not know or suspect to exist at the time of the release of the Released Plaintiff Claims against the Released Defendant Persons, but which, if known by it/her/him, might affect its/her/his decision with respect to the Settlement (including the decision to object or not to object to the Settlement); and (ii) Defendants and the Partnership specifically acknowledge (and the other Releasing Defendant Persons shall be deemed by operation of law and the Judgment to have acknowledged) that the term “Unknown Claims” in the definitions of Released Defendant Claims shall mean all claims that each of the Releasing Defendant Persons do not know or suspect to exist at the time of the release of the Released Defendant Claims against the Released Plaintiff Persons, but which, if known by it/her/him, might affect its/her/his decision with respect to the Settlement (including the decision to object or not to object to the Settlement);

(b) (i) Lead Plaintiff expressly acknowledges (and the other Releasing Plaintiff Persons shall be deemed by operation of law and the Judgment to have acknowledged) that they may hereafter discover facts in addition to or different from those that it/she/he now knows or believes to be true with respect to the subject matter of the Released Plaintiff Claims but that it is nevertheless its/her/his intention to fully, finally and forever settle and release the Released Plaintiff Claims without regard to the subsequent discovery of any such additional or different facts; and (ii) the Partnership and the Defendants expressly acknowledge (and the other Releasing Defendant Persons shall be deemed by operation of law and the Judgment to have acknowledged) that they may hereafter discover facts in addition to or different from those that it/she/he now knows or believes to be true with respect to the subject matter of the Released Defendant Claims but that it is nevertheless its/her/his intention to fully, finally and forever settle and release the Released Defendant Claims without regard to the subsequent discovery of any such additional or different facts; and

(c) the Parties expressly acknowledge (and the other Releasing Persons shall be deemed by operation of law and the Judgment to have acknowledged) that the inclusion of “Unknown Claims” in the definitions of the Released Claims was separately bargained for and was a key element of the Settlement, and with respect to the Released Claims the Parties expressly waive and relinquish, and the other Releasing Persons shall be deemed to have waived and relinquished, and by operation of law and the Judgment shall have specifically waived and relinquished: (i) any and all provisions, rights and benefits conferred under Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS, WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

and (ii) any and all provisions, rights and benefits conferred by any law of the United States or state or territory of the United States or principle of common law or foreign law which is similar, comparable or equivalent to Section 1542 of the California Civil Code.

57. Notwithstanding the above, the Released Claims do not include claims to enforce the Stipulation, the Judgment (if entered) and the Settlement, including without limitation the Releases.

58. “Releases” means the releases and liability protections set forth in ¶ 30 through and including ¶ 34 of the Stipulation.

59. “Releasing Plaintiff Persons” means each and all of the following: (i) Lead Plaintiff and each and every Class Member, on behalf of themselves, derivatively on behalf of the Partnership, and on behalf of each and all of their respective successors in interest, predecessors, representatives, trustees, executors, Affiliates, administrators, agents, heirs, estates, assigns, or transferees, immediate and remote, in their capacities as such, and any other Person who has the right, ability, standing or capacity to assert, prosecute or maintain on behalf of any Class Member any of the Released Plaintiff Claims (or to obtain the proceeds of any recovery therefrom), whether in whole or in part; and (ii) the Partnership. A Person is a Releasing Plaintiff Person regardless of whether or not that Person actually submits a Claim Form, seeks or obtains a distribution from the Net Settlement Fund, is entitled to receive such a distribution or payment under the Plan of Allocation, and/or has objected to the Settlement, the Plan of Allocation and/or any application for an award of attorneys’ fees or Litigation Expenses.

60. “Releasing Defendant Persons” means each and all of the following: Defendants and the Partnership, on behalf of themselves, each of the other Released Defendant Persons, and each and all of Released Defendant Persons’ respective successors in interest, predecessors, representatives, trustees, executors, Affiliates, administrators, agents, heirs, estates, assigns, or transferees, immediate and remote, in their capacities as such, and any other Person who has the right, ability, standing or capacity to assert, prosecute or maintain on behalf of the Partnership and/or any of the Defendants any of the Released Defendants’ Claims (or to obtain the proceeds of any recovery therefrom), whether in whole or in part.

61. “Released Plaintiff Claims” means (i) any and all claims, demands, rights, liabilities, losses, obligations, duties, damages, costs, interests, debts, expenses, charges, rights, interest, penalties, sanctions, fees, attorneys’ fees, actions, potential actions, causes of action, suits, agreements, judgments, decrees, matters, issues and controversies of any kind, nature and description whatsoever; (ii) whether disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, perfected or not perfected, choate or inchoate, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, ripened or unripened, including both known claims and any Unknown Claims; (iii) whether at law or equity, whether based on or arising under contract (including under the LPA) or state, local, foreign, federal, statutory, regulatory, common or other law or rule and upon any legal theory (including but not limited to any claims that could be asserted derivatively on behalf of the Partnership), no matter how asserted; (iv) that previously existed, currently exist, or that exist as of the date of the approval of the Settlement by the Court; (v) that are, were, or could have been asserted by the Releasing Plaintiff Persons against any or all of the Released Defendant Persons in the Actions, in any federal or state court, or in any other court, tribunal, arbitration, proceeding, administrative agency or other forum in the United States or elsewhere that arise out of or relate to a Class Member’s ownership or holdings of Partnership common units and/or his/her/its status as holders of Partnership common units; and (vi) that are based upon, arise out of, relate in any way to, concern, implicate or involve (in whole or in part) any of the facts, matters, occurrences, conduct, activities, behavior, allegations, representations, omissions, events, transactions, decisions, allocations, actions (or failures to act), or any series thereof, that were alleged, asserted, raised, mentioned, made, set forth, claimed, embraced, involved in, related to, or referred to, in whole or in

part, in the complaints, pleadings or briefs filed in the Actions, including, without limitation, those allegations concerning the following: (A) the fairness, propriety, calculation, amount, determination and/or nature of any distributions paid (whether in cash or otherwise) by the Partnership as a result of the determination, classification or allocation of, to, or between Capital Additions and Improvements and Maintenance Capital Expenditures (as those terms are defined in the LPA) (the “CAPEX Allocation”); (B) the payment of distributions, including the Incentive Distribution (as that term is defined in the LPA), to the General Partner and its Affiliates as a result of the allegedly improper CAPEX Allocation; (C) the Partnership’s issuances of equity securities and/or raising of debt as they pertain to the allegedly improper CAPEX Allocation; (D) the Partnership’s alleged underspending on operating expenses, maintenance and/or Maintenance Capital Expenditures to increase distributions; (E) any actual or potential conflicts of interest by any Defendant (or one of its Affiliates) as they pertain to the allegedly improper CAPEX Allocation; and/or (F) the effect or impact on the Partnership (or any of its Affiliates) and/or the Partnership’s assets as a result of any of the matters identified in (A) through (E) above of this ¶ 61(vi). (The matters set forth in Paragraph ¶ 61(vi) are referred to herein as the “CAPEX Matters.”) “Released Plaintiff Claims” specifically includes the claims asserted in the Texas Action. “Released Plaintiff Claims” shall not, however, include any claims to enforce the Settlement, the Judgment, or the Stipulation, including, without limitation, the Releases. For the avoidance of doubt, the Parties do not intend to release any claims that have been asserted in the action styled In re Kinder Morgan, Inc. Corporate Reorganization Litigation, Consolidated C.A. No 10093-VCL (Del. Ch.), except to the extent they relate to alleged damages arising from, or wrongdoing related to, the CAPEX Matters.

62. “Released Defendant Claims” means (i) any and all claims, demands, rights, liabilities, losses, obligations, duties, damages, costs, interests, debts, expenses, charges, rights, interest, penalties, sanctions, fees, attorneys’ fees, actions, potential actions, causes of action, suits, agreements, judgments, decrees, matters, issues and controversies of any kind, nature and description whatsoever; (ii) whether disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, perfected or not perfected, choate or inchoate, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, ripened or unripened, including known claims and any Unknown Claims; (iii) whether at law or equity, whether based on or arising under state, local, foreign, federal, statutory, regulatory, common or other law or rule and upon any legal theory, no matter how asserted; (iv) that previously existed, currently exist, or that exist as of the date of the approval of the Settlement by the Court; (v) that were or could have been asserted by any or all of the Releasing Defendant Persons against any or all of the Released Plaintiff Persons in the Actions, in any federal or state court, or in any other court, tribunal, arbitration, proceeding, administrative agency or other forum in the United States or elsewhere; and (vi) that are based upon, arise out of, relate in any way to, concern, implicate or involve (in whole or in part) the institution, prosecution, settlement or dismissal of the claims against the Defendants in the Actions (or any of the constituent actions that comprise the Actions). “Released Defendant Claims” shall not, however, include any claims to enforce the Settlement, the Judgment, or the Stipulation (including, without limitation, the Releases).

63. “Released Plaintiff Persons” means each of: (i) Lead Plaintiff, Plaintiffs Burns and Zehrer, and any and all other Class Members (the “Plaintiff Party Releasees”); (ii) each of the Plaintiff Party Releasees’ respective past and/or present attorneys’ (including Plaintiffs’ Counsel), Affiliates, subsidiaries, and parents, and any Person in which any Plaintiff Party Releasee has or had a Controlling Interest (the “Plaintiff Affiliated Releasees” and, together with the Plaintiff Party Releasees, the “Plaintiff Releasees”); and (iii) each of the Plaintiff Releasees’ respective past and/or present Immediate Family members, heirs, principals, trustees, executors, administrators, predecessors, successors, assigns, members, subsidiaries, Affiliates, employees, officers, managers, directors, parents, agents, investment bankers, attorneys, representatives, estates, divisions, financial advisors, experts, estate managers, assigns, insurers, and reinsurers.

64. “Released Defendant Persons” means each of: (i) the Defendants and the Partnership (the “Defendant Party Releasees”); (ii) each of the Defendant Party Releasees’ respective past and/or present attorneys, Affiliates, subsidiaries, and parents, and any Person in which any Defendant Party Releasee has or had a Controlling Interest (the “Defendant Affiliated Releasees,” and together with the Defendant Party Releasees, the “Defendant Releasees”); and (iii) each of the Defendant Releasees’ respective past and/or present Immediate Family members, heirs, principals, trustees, executors, administrators, predecessors, successors, assigns, members, parents, subsidiaries, Affiliates, employees, officers, managers, directors, agents, investment bankers, attorneys, representatives, estates, divisions, financial advisors, experts, estate managers, assigns, insurers and reinsurers in their capacities as such. “Released Defendant Persons” specifically includes the General Partner Delegate, Richard D. Kinder, Steven J. Kean, Ted A. Gardner, Gary L. Hultquist and Perry M. Waughtal.

65. “Releasing Persons” means collectively each and all of the Releasing Defendant Persons and each and all of the Releasing Plaintiff Persons.

66. “Released Claims” means collectively each and all of the Released Defendant Claims and each and all of the Released Plaintiff Claims.

67. “Released Persons” means collectively each and all of the Released Defendant Persons and each and all of the Released Plaintiff Persons.

68. All proceedings in the Action, other than such proceedings as may be necessary to carry out the terms and conditions of the Settlement, are stayed and suspended until further order of the Court. Pending final determination by the Court of whether the Settlement should be approved, all Class Members are barred and enjoined from commencing, prosecuting, maintaining, instigating or asserting any of the Released Plaintiff Claims (which include the claims asserted in the Texas Action) against any of the Released Defendant Persons.

<p style="text-align: center;"><b>WHAT PAYMENT ARE THE ATTORNEYS FOR THE CLASS SEEKING? HOW WILL THE LAWYERS BE PAID?</b></p>
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69. Plaintiffs’ Counsel have not received any payment for their services in pursuing claims against Defendants on behalf of the Class, nor have Plaintiffs’ Counsel been reimbursed for their out-of-pocket expenses. Before final approval of the Settlement, Co-Lead Counsel will apply to the Court for an award of attorneys’ fees to Plaintiffs’ Counsel from the Settlement Fund in an amount not to exceed 25% of the Settlement Fund. At the same time, Co-Lead Counsel also intend to apply for the reimbursement of Litigation Expenses not to exceed \$750,000. The Court will determine the amount of any award of attorneys’ fees or reimbursement of Litigation Expenses. Such sums as may be approved by the Court will be paid from the Settlement Fund. Class Members are not personally liable for any such fees or expenses.

70. The Court is to consider and rule upon the fairness, reasonableness, and adequacy of the Settlement independently of any consideration and ruling on Co-Lead Counsel's application for an award of attorneys' fees and Litigation Expenses. The Settlement, the Stipulation and the implementation or effectuation thereof, as well as entry or Finality of the Judgment, are not conditioned in any way on any award of attorneys' fees and/or Litigation Expenses to Plaintiffs' Counsel.

**HOW DO I PARTICIPATE IN THE SETTLEMENT? WHAT DO I NEED TO DO?**

71. To be eligible for a payment from the proceeds of the Settlement, you must be a member of the Class and you must timely complete and return the Claim Form with adequate supporting documentation **postmarked no later than December 26, 2015**. A Claim Form is included with this Notice, or you may obtain one from the website maintained by the Claims Administrator for the Settlement, [www.kindermorgancapexlitigationsettlement.com](http://www.kindermorgancapexlitigationsettlement.com), or you may request that a Claim Form be mailed to you by calling the Claims Administrator toll free at (888) 208-1235. If you do not submit a timely and valid Claim Form, you will not be eligible to share in the Net Settlement Fund. Please retain all records of your ownership of common units of the Partnership, as they may be needed to document your Claim.

72. As a Class Member, you are represented by Lead Plaintiff and Co-Lead Counsel, unless you enter an appearance through counsel of your own choice at your own expense. You are not required to retain your own counsel, but if you choose to do so, such counsel must file a notice of appearance on your behalf and must serve copies of his or her notice of appearance on the attorneys listed in the section entitled, "When and Where Will the Court Decide Whether to Approve the Settlement?," below.

**WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT? DO I HAVE TO COME TO THE HEARING? MAY I SPEAK AT THE HEARING IF I DON'T LIKE THE SETTLEMENT?**

73. **Class Members do not need to attend the Settlement Hearing. The Court will consider any submission made in accordance with the provisions below even if a Class Member does not attend the hearing. You can participate in the Settlement without attending the Settlement Hearing.**

74. The Settlement Hearing will be held on November 23, 2015 at 10:00 a.m. before Vice Chancellor J. Travis Laster, at the Court of Chancery in the New Castle County Courthouse, 500 North King Street, Wilmington, DE 19801. At the Settlement Hearing, the Court will, among other things: (a) determine whether the proposed Settlement on the terms and conditions provided for in the Stipulation is fair, reasonable and adequate to the Class, and should be approved by the Court; (b) determine whether the Judgment (substantially in the form attached as Exhibit B to the Stipulation) should be entered, dismissing the Action with prejudice, releasing the Released Claims against the Released Parties, and barring and enjoining the prosecution of the Released Claims against the Released Persons; (c) determine whether the Class should be permanently certified for Settlement purposes; (d) determine whether the proposed Plan of Allocation is fair and reasonable and should be approved by the Court; (e) determine whether the application by Co-Lead Counsel for an award of attorneys' fees and Litigation Expenses should be approved; (f) hear and consider any objections to the Settlement, the proposed Plan of Allocation, or Co-Lead Counsel's application for an award of attorneys' fees and Litigation Expenses; and (g) consider any other matters that may properly be brought before the Court in connection with the Settlement. The Court reserves the right to approve the Settlement, the proposed Plan of Allocation, Co-Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses and/or any other matter related to the Settlement at or after the Settlement Hearing without further notice to Class Members.

75. If you are a Class Member and you wish to object to the Settlement, the proposed Plan of Allocation, or Co-Lead Counsel's application for attorneys' fees and reimbursement of Litigation Expenses, you must do so in writing. You must file any written objection, together with copies of all other papers and briefs supporting the objection, with the Registry in Chancery at the address set forth below on or before November 13, 2015. You must also serve the papers on Co-Lead Counsel, Defendants' Counsel, and Partnership's Counsel at the addresses set forth below so that the papers are *received* on or before November 13, 2015.

**Register in Chancery**

Register in Chancery  
Court of Chancery  
New Castle County Courthouse 500  
North King Street Wilmington, DE 19801

**Co-Lead Counsel**

Mark Lebovitch, Esq.  
Bernstein Litowitz Berger  
& Grossmann LLP  
1285 Avenue of the Americas  
New York, NY 10019

**Defendants' Counsel**

Bradley R. Aronstam, Esq.  
Ross Aronstam Moritz LLP  
100 S. West Street, Suite 400  
Wilmington, DE 19801

**Partnership's Counsel**

Henry E. Gallagher, Jr., Esq.  
Connolly Gallagher LLP  
1000 West Street, Suite 1400  
Wilmington, DE 19801

76. Any objection to the Settlement, the Plan of Allocation, and/or the application for attorneys' fees and Litigation Expenses must (a) state the name, address and telephone number of the person or entity objecting and, if represented by counsel, the name, address and telephone number of its/her/his counsel; (b) be signed by the objector; (c) contain a written detailed statement of the Class Member's objection or objections, and the specific reasons for each objection, including any legal and evidentiary support the Class Member wishes to bring to the Court's attention; and (d) demonstrate that the objector is a member of the Class by including documents sufficient to prove that the objector held common units of the Partnership during the Class Period. You may not object to the Settlement, the Plan of Allocation or the motion for attorneys' fees and Litigation Expenses if you are not a Class Member.

77. You may file a written objection without having to appear at the Settlement Hearing. You may not, however, appear at the Settlement Hearing to present your objection unless you first filed and served a written objection in accordance with the procedures described above, unless the Court orders otherwise.

78. If you wish to be heard orally at the hearing in opposition to the approval of the Settlement, the Plan of Allocation, or Co-Lead Counsel's request for an award of attorneys' fees and Litigation Expenses, and if you file and serve a timely written objection as described above, you must also file a notice of appearance with the Register in Chancery and serve it on Co-Lead Counsel, Defendants' Counsel, and the Partnership's Counsel at the addresses set forth in ¶ 75 above so that it is **received** on or before November 13, 2015. Persons or entities who intend to object and desire to present evidence at the Settlement Hearing must include in their written objection or notice of appearance the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the Settlement Hearing.

79. You are not required to hire an attorney to represent you in making written objections or in appearing at the Settlement Hearing. However, if you decide to hire an attorney, it will be at your own expense, and that attorney must file a notice of appearance with the Register in Chancery and serve it on Co-Lead Counsel, Defendants' Counsel, and the Partnership's Counsel at the addresses set forth above so that the notice is **received** on or before November 13, 2015.

80. The Settlement Hearing may be adjourned by the Court without further written notice to the Class. If you intend to attend the Settlement Hearing, you should confirm the date and time with Co-Lead Counsel.

**Unless the Court orders otherwise, any Class Member who does not object in the manner described above will be deemed to have waived any objection and shall be forever foreclosed from making any objection to the proposed Settlement, the proposed Plan of Allocation, or Co-Lead Counsel's request for an award of attorneys' fees and Litigation Expenses. Class Members do not need to appear at the hearing or take any other action to indicate their approval.**

**CAN I SEE THE COURT FILE? WHOM SHOULD I CONTACT IF I HAVE QUESTIONS?**

81. This Notice contains only a summary of the terms of the proposed Settlement. For more detailed information about the matters involved in the Action, you are referred to the papers on file in the Action, including the Stipulation, which may be inspected, unless sealed, during regular business hours of each business day at the Office of the Register in Chancery in the Court of Chancery in the State of Delaware, New Castle County Courthouse, 500 North King Street, Wilmington, DE 19801. Additionally, copies of the Stipulation and any related orders entered by the Court will be posted on the settlement website maintained by the Claims Administrator, [www.kindermorgancapexlitigationsettlement.com](http://www.kindermorgancapexlitigationsettlement.com). All inquiries concerning this Notice or the Claim Form should be directed to:

*In re Kinder Morgan Energy Partners, L.P. Capex Litigation*  
c/o A.B. Data, Ltd.  
P.O. Box 170900  
Milwaukee, WI 53217  
(888) 208-1235  
[www.kindermorgancapexlitigationsettlement.com](http://www.kindermorgancapexlitigationsettlement.com)

and/or

Mark Lebovitch, Esq.  
BERNSTEIN LITOWITZ BERGER &  
GROSSMANN LLP  
1285 Avenue of the Americas  
New York, NY 10019  
(800) 380-8496  
[blbg@blbglaw.com](mailto:blbg@blbglaw.com)

**DO NOT CALL OR WRITE THE COURT OR THE OFFICE OF THE REGISTER IN CHANCERY REGARDING THIS NOTICE.**

Dated: September 17, 2015

BY ORDER OF THE COURT

\_\_\_\_\_  
/s/  
Register in Chancery