



# GRANTED WITH MODIFICATIONS

Exhibit A

## IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

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

CONSOLIDATED  
C.A. No. 9318-VCL

### SCHEDULING ORDER

WHEREAS, the Parties have determined to settle all claims asserted against the Defendants in the above-captioned consolidated action (the “Action”) with prejudice on the terms and conditions set forth in the Stipulation and Agreement of Settlement, dated August 14, 2015 (the “Stipulation”), including, among other things, providing for the full and final compromise, resolution, dismissal, discharge and settlement of each and every one of the Released Claims against each and every one of the Released Persons, subject to the approval of this Court; and

WHEREAS, the Stipulation has been filed with the Court and the Parties have made an application, pursuant to Court of Chancery Rules 23 and 23.1, for entry of this Scheduling Order preliminarily certifying the Class solely for purposes of the Settlement and allowing notice to the Class Members as more fully described herein and scheduling a hearing to consider the proposed Settlement; and

WHEREAS, the Parties have consented to the entry of this Scheduling Order; and

WHEREAS, the Court has read and considered the Stipulation and the exhibits attached thereto and considered the Parties' application for entry of this Scheduling Order; and

WHEREAS, this Order hereby incorporates by reference the definitions in the Stipulation, and the capitalized words and terms used herein shall have the same meaning as they have in the Stipulation (certain of which are repeated herein for ease of reference only),

**IT IS HEREBY ORDERED** this day of \_\_\_\_\_, 2015, that:

1. **Class Certification for Settlement Purposes** – For purposes of the Settlement only, and preliminarily for purposes of this Order, the Action shall be maintained and proceed as a class action pursuant to Delaware Court of Chancery Rules 23(a), 23(b)(1) and 23(b)(2) on behalf of the following Class (the “Class”): Any Person who held common units of the Partnership at any time during the period beginning on February 5, 2011, through and including the closing of the Merger on November 26, 2014 (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.

2. For purposes of the Settlement only, and preliminarily for purposes of this Order, the Court appoints Lead Plaintiff Jon Slotoroff as Class Representative and Co-Lead Counsel as Class Counsel.

3. If final approval of the Settlement is not granted by the Court, this preliminary certification of the Action as a class action (as well as the appointment of Class Representative and Class Counsel) shall be automatically vacated.

4. **Settlement Hearing** – A hearing (the “Settlement Hearing”) shall be held on \_\_\_\_\_, 2015, at \_\_\_\_\_.m. in the Court of Chancery in the New Castle County Courthouse, 500 North King Street, Wilmington, Delaware 19801, for the following purposes: (a) to determine whether the proposed Settlement, on the terms and conditions provided for in the Stipulation, is fair, reasonable, adequate and in the best interests of the Class and the Partnership and should be approved by the Court; (b) to determine whether the preliminary class certification described in this Order should be made final; (c) to determine whether the Court should enter the Judgment substantially in the form attached as Exhibit B to the Stipulation; (d) to determine whether the proposed Plan of Allocation for

the proceeds of the Settlement should be approved as fair and reasonable; (e) to hear the application by Co-Lead Counsel for an award of attorneys' fees and reimbursement of Litigation Expenses; and (f) to consider and rule on any such other matters as the Court may deem appropriate.

5. The Court reserves the right: (a) to adjourn the Settlement Hearing without further notice of any kind to the Class other than by oral announcement at the Settlement Hearing; and (b) to approve the Settlement at or after the Settlement Hearing with such modification(s) as may be consented to by the Parties and without further notice to the Class.

6. **Retention of Claims Administration and Manner of Notice** – Co-Lead Counsel is hereby authorized to retain the firm of A.B. Data, Ltd. (the “Claims Administrator”) to supervise and administer the notice procedures as well as the processing of Claims as more fully set forth below. Notice of the Settlement and the Settlement Hearing shall be given by Co-Lead Counsel as follows:

(a) No later than twenty (20) business days after the entry of this Order (the “Notice Date”), the Claims Administrator shall cause a copy of the Notice and the Claim Form, substantially in the form attached hereto as Exhibits 1 and 2, respectively (the “Notice Packet”), to be mailed by first-class mail, postage prepaid, to all Persons on the Class Member List provided to the Claims Administrator pursuant to the Stipulation;

(b) No later than ten (10) business days after the Notice Date (the “Publication Notice Date”), the Claims Administrator shall cause the Summary Notice, substantially in the form attached hereto as Exhibit 3, to be published once in *Investor’s Business Daily* and to be transmitted once over the *PR Newswire*;

(c) No later than twenty (20) business days of the entry of this Order, the Claims Administrator shall post a copy of the Notice and the Claim Form on the website established for the Settlement;

(d) No later than five (5) calendar days prior to the date of the Settlement Hearing, Co-Lead Counsel shall file with the Court and serve upon Defendants by affidavit or declaration, proof of compliance with the notice procedures directed herein.

7. **Approval of Form and Content of Notice** – The Court: (a) approves, as to both form and content, the Notice, the Claim Form and the Summary Notice attached hereto as Exhibits 1, 2 and 3, respectively; and (b) finds that the mailing and distribution of the Notice and the publication of the Summary Notice in the manner and form set forth in paragraph 6 of this Order: (i) is the best notice reasonably practicable under the circumstances, (ii) constitutes notice that is reasonably calculated, under the circumstances, to apprise the Class Members of the pendency of the Action, of the effect of the proposed Settlement (including, without limitation, the Releases to be provided thereunder), and of their rights to

object to the proposed Settlement and appear at the Settlement Hearing, (iii) constitutes due, adequate and sufficient notice to all Persons entitled to receive notice of the proposed Settlement, and (iv) satisfies the requirements of Chancery of Court Rules 23 and 23.1, the United States Constitution (including the Due Process Clause) and all other applicable law and rules. The date and time of the Settlement Hearing shall be included in the Notice and Summary Notice before they are mailed and published, respectively.

8. **Participation in the Settlement** – Class Members who wish to participate in the Settlement and to be eligible to receive a distribution from the Net Settlement Fund must complete and submit a Claim Form in accordance with the instructions contained therein. Unless the Court orders otherwise, all Claim Forms must be postmarked no later than one hundred (100) calendar days after the Notice Date. Notwithstanding the foregoing, Co-Lead Counsel may, at their discretion, accept for processing late Claims, provided such acceptance does not delay the distribution of the Net Settlement Fund to the Class. By submitting a Claim Form, a Person shall be deemed to have submitted to the jurisdiction of the Court with respect to its/her/his Claim and the subject matter of the Settlement.

9. Each Claim Form submitted must satisfy the following conditions: (a) it must be properly completed, signed and submitted in a timely manner in accordance with the provisions of the preceding paragraph; (b) it must be

accompanied by adequate supporting documentation in the form of broker account statements, or such other documentation as is deemed adequate by Co-Lead Counsel or the Claims Administrator; (c) if the person executing the Claim Form is acting in a representative capacity, a certification of its/her/his current authority to act on behalf of the Class Member must be included in the Claim Form to the satisfaction of Co-Lead Counsel or the Claims Administrator; and (d) the Claim Form must be complete and contain no material deletions or modifications of any of the printed matter contained therein and must be signed under penalty of perjury.

10. Any Class Member that does not timely and validly submit a Claim Form or whose Claim is not otherwise approved by the Court shall be deemed to have waived its/her/his right to share in the Settlement Fund and forever barred from participating in distributions from the Net Settlement Fund. If the Settlement is approved by the Court and the Effective Date occurs, all Class Members, regardless of whether such Person actually submits a Claim Form, seeks or obtains a distribution from the Net Settlement Fund, or is entitled to receive such a distribution under the Plan of Allocation approved by the Court, shall be: (a) bound by all of the terms and provisions of the Stipulation and the Settlement and all proceedings, determinations, judgments and orders in the Action related thereto, including, without limitation, the terms of the Judgment to be entered in the Action

and the Releases provided for therein; and (b) permanently barred and enjoined from commencing, maintaining, prosecuting or bringing any of the Released Plaintiff Claims against any of the Released Defendant Persons.

11. **Supporting Papers and Objections** – Co-Lead Counsel shall file and serve papers in support of final approval of the proposed Settlement, the proposed Plan of Allocation, and their application for an award of attorneys’ fees and reimbursement of Litigation Expenses no later than fifteen (15) calendar days prior to the Settlement Hearing. Any objections to the Settlement, Plan of Allocation and/or the application for an award of attorneys’ fees and Litigation Expense shall be filed and served no later than ten (10) calendar days prior to the Settlement Hearing. If reply papers are necessary, they are to be filed and served no later than five (5) calendar days prior to the Settlement Hearing.

12. Any Class Member may enter an appearance in the Action, at its/her/his own expense, individually or through counsel of its/her/his own choice, by filing with the Register in Chancery and delivering a notice of appearance to both Co-Lead Counsel and Defendants’ Counsel listed in the Notice such that it is received no later than ten (10) calendar days prior to the Settlement Hearing, or as the Court may otherwise direct. Any Class Member who does not enter an appearance will be represented by Co-Lead Counsel, and shall have and be deemed

to have waived and forfeited any and all rights its/she/he may otherwise have to appear separately at the Settlement Hearing.

13. Any Class Member may file a written objection to the proposed Settlement, the proposed Plan of Allocation and/or the application by Co-Lead Counsel for an award of attorneys' fees and reimbursement of Litigation Expenses and appear and show cause, if it/she/he has any cause, why the proposed Settlement, the proposed Plan of Allocation and/or the fee and Litigation Expense application should not be approved; provided, however, that no Class Member shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement, the proposed Plan of Allocation and/or the fee and Litigation Expense application unless that Person has filed a written objection with the Register in Chancery, Court of Chancery, New Castle County Courthouse, 500 North King Street, Wilmington, DE 19801 and served copies of such objection in the manner provided in the Notice such that it is received no later than ten (10) calendar days prior to the Settlement Hearing on each of the following counsel: Mark Lebovitch, Esq., Bernstein Litowitz Berger & Grossmann LLP, 1285 Avenue of the Americas, New York, NY 10019; Geoffrey Jarvis, Esq., Grant & Eisenhofer P.A., 123 Justison Street, Wilmington, DE 19801; Bradley R. Aronstam, Esq., Ross Aronstam & Moritz LLP, 100 S. West Street, Suite 400, Wilmington, DE

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

14. Any objections, filings and other submissions by the objecting Class Member must: (a) state the name, address and telephone number of the Person 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.

15. Any Class Member who does not make its/his/her objection in the manner provided in paragraphs 13 and 14 of this Order, shall: (a) have and be deemed to have waived and forfeited any and all rights it/she/he may otherwise have to object to the Settlement, the Plan of Allocation and/or any award of attorneys' fees and reimbursement of Litigation Expenses to Plaintiffs' Counsel; (b) forever be foreclosed from making any objection to the fairness, adequacy or reasonableness of the Settlement, the Judgment to be entered approving the Settlement, the fairness and reasonableness of the Plan of Allocation, and the attorneys' fees and Litigation Expenses requested and/or awarded, in this or any

other proceeding; (c) be bound by all of the terms of the Stipulation and by all proceedings, orders and judgments entered by the Court in the Action, including the Judgment; and (d) have and be deemed to have waived its/her/his right to, and otherwise be forever barred from, being heard with respect to any matters concerning the Settlement.

16. None of the Released Defendant Persons shall have any responsibility whatsoever for the Plan of Allocation nor for any application for attorneys' fees and reimbursement of Litigation Expenses submitted by Co-Lead Counsel. Both such matters will be considered separately from the fairness, reasonableness and adequacy of the Settlement.

17. **Settlement Administrator Fees and Expenses** – All reasonable costs incurred in identifying and notifying Class Members as well as in administering the Settlement shall be paid in accordance with the provisions of the Stipulation without further order of the Court.

18. **Taxes** – Co-Lead Counsel is authorized and directed to prepare any tax returns and any other tax reporting form for or in respect of the Settlement Fund, to pay from the Settlement Fund any Taxes owed with respect to the Settlement Fund, and to otherwise perform all obligations with respect to Taxes and any reporting or filings in respect thereof without further order of the Court in a manner consistent with the provisions of the Stipulation. Except as otherwise

expressly provided in the Stipulation, the Released Defendant Persons shall have no responsibility whatsoever for, nor any liability whatsoever to any Person in connection with: (a) paying any Taxes due; (b) filing any elections or other required statements or tax returns (or paying or withholding the costs associated therewith) with respect to any Taxes; and/or (c) any tax liability that a Class Member may incur as a result of the Settlement.

19. **Settlement Fund** – The contents of the Settlement Fund held by Valley National Bank (which the Court approves as the Escrow Agent), shall be deemed and considered to be *in custodia legis* of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds are distributed pursuant to the Stipulation and/or further order of the Court.

20. **Termination** – In the event that the Settlement is terminated pursuant to the terms of the Stipulation or the Effective Date does not otherwise occur: (a) the Settlement and the Stipulation shall be null and void and without prejudice to, or force and effect to or upon, the rights of the Parties, and none of their terms shall be effective or enforceable (except for those provisions contained in ¶¶ 3, 17, 19, 36, 46, 47, 48, 54, 60, 61, and 62 of the Stipulation); (b) the fact and terms of the Settlement shall not be admissible in any trial of the Actions; (c) the Parties shall be deemed to have reverted to their respective litigation positions in the Action immediately prior to June 15, 2015; and (d) except as otherwise expressly provided

in the Stipulation, the Parties shall proceed in all respects as if the Stipulation, this Scheduling Order and any orders related to the Settlement had not been entered.

21. **Stay of Litigation** – All proceedings in the Action, 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 determination by the Court of whether the Settlement should be approved, Lead Plaintiff and all other Class Members, or any of them, are barred and enjoined from commencing, prosecuting, maintaining, instigating or in any way participating in the commencement or prosecution of any action asserting any of the Released Plaintiff Claims against any of the Released Defendant Persons.

22. **Use of This Order** – Whether or not the Settlement is approved by the Court and whether or not the Settlement is consummated, this Order, the facts and terms of the Settlement and the Stipulation (including all of its exhibits), as well as all negotiations, discussions, acts performed, agreements, drafts, documents signed and proceedings in connection with the Settlement:

(a) shall not be described as, construed as, interpreted as, or offered or received against any of the Released Defendant Persons as evidence of and/or deemed to be evidence of any presumption, concession, or admission by any of the Released Defendant Persons as to: (i) the truth of any fact alleged in the Actions; (ii) the validity of any claim that has been or could have been asserted in the

Actions or in any other litigation; (iii) the deficiency of any defense that has been or could have been asserted in the Actions or in any other litigation; and/or (iv) any liability, breach of fiduciary duty, negligence, fault or wrongdoing on their part;

(b) shall not be described as, construed as, interpreted as or offered or received against Lead Plaintiff or any other Class Member as evidence of any infirmity in the claims of Lead Plaintiff or any other Class Member or that damages recoverable from the Defendants would not have exceeded the Settlement Amount;

(c) shall not be described as, construed as, interpreted as, offered or received against any of the Parties as an admission or concession that the consideration to be given in the Settlement represents the amount which could be or would have been awarded after trial;

(d) shall not be construed, offered, interpreted, deemed or received in evidence or otherwise against any of the Released Persons in any other civil, criminal or administrative action, litigation or proceeding, except in connection with any proceeding to enforce the terms of the Stipulation or this Order; and

(e) shall not be deemed or construed to create any inferences of any damage, or lack of damages, suffered by Lead Plaintiff or any of the other Class Members.

23. The Court retains jurisdiction over this action to consider all further applications arising out of or connected with the proposed Settlement.

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Vice Chancellor J. Travis Laster



This document constitutes a ruling of the court and should be treated as such.

**Court:** DE Court of Chancery Civil Action

**Judge:** J Travis Laster

**File & Serve**

**Transaction ID:** 57693161

**Current Date:** Aug 19, 2015

**Case Number:** 9318-VCL

**Case Name:** CONF ORD ON DISC - CONS W 9479-VCL IN RE KINDER MORGAN ENERGY PARTNERS LP CAPEX LITIGATION

**Court Authorizer:** Laster, J Travis

**Court Authorizer**

**Comments:**

The Settlement Hearing shall be held on Monday, November 23, 2015, at 10:00 a.m.

**/s/ Judge Laster, J Travis**