

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

COOK CHILDREN'S HEALTH
FOUNDATION a/k/a W.I. COOK
FOUNDATION, INC., on behalf of itself
and a class of similarly situated persons,

Plaintiff,

vs.

DIAMONDBACK E&P LLC,

Defendant.

Case No. CIV-21-359-D

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

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

***If you belong to the Settlement Class and this Settlement is approved,
your legal rights will be affected.***

Read this Notice carefully to see what your rights are in connection with this Settlement.

Because you may be a member of the Settlement Class in the Litigation captioned above and described below (the "Litigation"), the Court has directed this Notice to be provided for you. The records of Diamondback E&P, LLC, Diamondback Energy, Inc., and/or Energen Resources Corporation and/or each's respective affiliates, lessees, or successors-in-interest under oil and gas leases, and their respective predecessors, successors, assigns, and their past, present and future officers, directors, affiliates, employees, agents, servants, and representatives, excluding, however, QEP Resources, Inc. (collectively, the "Diamondback Entities") show you are a royalty owner in Texas well(s) for which the Diamondback Entities remitted oil-and-gas royalties. Capitalized terms not otherwise defined in this Notice shall have the meanings attributed to those terms in the Settlement Agreement referred to below and available for free at www.cook-diamondback.com.¹

¹ This Notice is a summary of the terms of the Settlement Agreement in this matter. Please refer to the Settlement Agreement for a complete description of the terms and

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This Notice generally explains the claims being asserted in the Litigation, summarizes the Settlement, and tells you about your rights to remain a Class Member or to timely and properly submit a Request for Exclusion (also known as an “opt out”) so that you will be excluded from the Settlement. This Notice provides information so you can decide what action you want to take with respect to the Settlement before the Court is asked to finally approve it. If the Court approves the Settlement and after the final resolution of any objections or appeals, the Court-appointed Settlement Administrator will issue payments to Settlement Class Members, without any further action from you. This Notice describes the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Settlement Class in the Litigation consists of the following individuals and entities:

All royalty owners in Texas wells where Diamondback E&P LLC, Diamondback Energy, Inc., Energen Resources Corporation, and/or each’s respective affiliates was the operator (or a working interest owner who marketed its share of gas and directly paid royalties to the royalty owners) from April 1, 2011, to July 31, 2023, under oil and gas leases which expressly contain the off-lease use of gas royalty clause, the on-lease free use clause, or both, and in which Diamondback E&P LLC, Diamondback Energy, Inc., Energen Resources Corporation, and/or each’s respective affiliates are lessees or successors-in-interest under such agreements (collectively, the “Diamondback Entities”).

Excluded from the Class are: (1) agencies, departments or instrumentalities of the United States of America, including but not limited to the U.S. Department of the Interior (the United States, Indian tribes, and Indian allottees); (2) agencies, departments or instrumentalities of the State of Texas; (3) the Diamondback Entities and their affiliates, officers, and directors; (4) any publicly traded entity (and its affiliates) that produces, gathers, processes, or markets gas; (5) the claims of royalty owners to the extent covered by arbitration clauses or prior settlement agreements, if any, still in effect on the date this lawsuit was filed; and (6) royalty paid by the Diamondback Entities only as a pass-through for other non-affiliated entities, except to the extent any claims are asserted against the Diamondback Entities that arise from such royalty paid.

provisions thereof. The terms, conditions, and definitions in the Settlement Agreement qualify this Notice in its entirety.

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Claim Period means checks or payments from April 1, 2011, to and including July 31, 2023, subject to the terms of the Settlement Agreement regarding Released Claims. If you are unsure whether you are included in the Settlement Class, you may contact the Settlement Administrator at:

Cook v. Diamondback Settlement
c/o JND Legal Administration, Settlement Administrator
P.O. Box 91231
Seattle, WA 98111
Call Toll-Free: 1-877-595-0197
Email: info@cook-diamondback.com

TO OBTAIN THE BENEFITS OF THIS PROPOSED SETTLEMENT, YOU DO NOT HAVE TO DO ANYTHING.

I. General Information About the Litigation

The Litigation seeks damages for the Diamondback Entities' alleged payment, underpayment, or nonpayment of royalties paid to Plaintiff and the Settlement Class or its predecessors on the volumes of natural gas, natural gas liquids, and associated hydrocarbons produced during the Claim Period. The Diamondback Entities expressly deny all allegations of wrongdoing or liability with respect to the claims and allegations in the Litigation. The Court has made no determination with respect to the merits of any of the parties' claims or defenses. A more complete description of the Litigation, its status, and the rulings made in the Litigation are available in the pleadings and other papers maintained by the United States District Court for the Western District of Oklahoma in the file for the Litigation.

II. The Settlement, Plaintiff's Attorneys' Fees, Litigation Expenses, Administration, Notice, and Distribution Costs, an Incentive Award, and the Settlement Allocation and Distribution to the Settlement Class

On January 2, 2024, the Court preliminarily approved a Settlement in the Litigation between Plaintiff, on behalf of itself and the Settlement Class, and the Diamondback Entities. This approval and this Notice are not an expression of opinion by the Court as to the merits of any of the claims or defenses asserted by any of the parties to the Litigation, or of whether the Court will ultimately approve the Settlement Agreement.

In settlement of the Litigation, the Diamondback Entities have agreed to pay Eleven Million Nine Hundred Seventy-Five Thousand, Five Hundred and Eighty Dollars (\$11,975,580.00) in cash ("Gross Settlement Amount"). In exchange for the payment of the Gross Settlement Amount and other considerations stated in the Settlement Agreement, the Settlement Class shall release the Released Claims against the Released Parties. The

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Gross Settlement Amount, less Plaintiff's Attorneys' Fees and Litigation Expenses and Administration, Notice, and Distribution Costs, and other costs approved by the Court, including an Incentive Award to the named Plaintiff (the "Net Settlement Amount"), will be distributed to Settlement Class Members pursuant to the terms of the Settlement Agreement.

Class Counsel intends to seek an award of Attorneys' Fees of not more than 40% of the Gross Settlement Amount. Class Counsel have been litigating this case since 2021 without any payment whatsoever, advancing significant funds in expenses. At the Final Fairness Hearing, Class Counsel will also seek reimbursement of the litigation and administration expenses incurred in connection with the prosecution of this Litigation and that will be incurred through final distribution of the Settlement, which is estimated to be approximately \$250,000. In addition, Plaintiff intends to seek an Incentive Award for its representation of the Class, specifically Plaintiff's time, expense, risk and burden in serving as Class Representative, which amount will not exceed 1% of the Gross Settlement Amount.

The Court must approve the Allocation Methodology, which describes how the Net Settlement Fund will be allocated to Settlement Class Members. The Settlement Administrator will distribute the benefits of the Net Settlement Fund after the Effective Date of the Settlement. The Effective Date requires the exhaustion of any appeals, which may take a year or more after the entry of Judgment. The Settlement may be terminated on several grounds, including if the Court does not approve, or materially modifies, the terms of the Settlement. If the Settlement is terminated, the Litigation will proceed as if the Settlement had not been reached.

This Notice does not and cannot set out all the terms of the Settlement Agreement, which is available for review at www.cook-diamondback.com. This website will eventually include this Notice, the proposed Allocation Methodology, and Class Counsel's application for Attorneys' Fees and Litigation Expenses, Administration, Notice, and Distribution Costs, and any other costs awarded by the Court. You may also receive information about the progress of the Settlement by visiting the website, or by contacting the Settlement Administrator at the address set forth above.

III. Class Settlement Fairness Hearing

The Final Fairness Hearing will be held on March 27, 2024, beginning at 3 p.m., before the Honorable Timothy D. DeGiusti, U.S. District Judge for the Western District of Oklahoma, 200 NW 4th Street, Oklahoma City, OK 73102, Courtroom 301. Please note that the date of the Fairness Hearing is subject to change without further notice. You should check the website at www.cook-diamondback.com to confirm no change to the date and time of the hearing. At the Final Fairness Hearing, the Court will consider: (a) whether the Settlement is fair, reasonable, and adequate; (b) any timely and properly raised objections

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to the Settlement; (c) the Allocation Methodology; (d) the application for Attorneys' Fees and Litigation Expenses and Administration, Notice, and Distribution Costs; and (e) the application for an Incentive Award for the Class Representative.

A CLASS MEMBER WHO WISHES TO PARTICIPATE IN THE SETTLEMENT AND DOES NOT SUBMIT A VALID REQUEST FOR EXCLUSION DOES NOT NEED TO APPEAR AT THE FINAL FAIRNESS HEARING OR TAKE ANY OTHER ACTION TO PARTICIPATE IN THE SETTLEMENT.

IV. What Are Your Options as a Class Member?

A. You Can Participate in the Settlement by Doing Nothing

By taking no action, your interests will be represented by Plaintiff as the Class Representative and Class Counsel. As a Settlement Class Member, you will be bound by the outcome of the Settlement, if finally approved by the Court. The Class Representative and Class Counsel believe that the Settlement is in the best interest of the Class, and, therefore, they intend to support the proposed Settlement at the Final Fairness Hearing. As a Settlement Class Member, if you are entitled to a distribution pursuant to the Allocation Methodology and Final Distribution Schedule, you will receive your portion of the Net Settlement Amount, and you will be bound by the Settlement Agreement and all orders and judgments entered by the Court regarding the Settlement. If the Settlement is approved, unless you exclude yourself from the Settlement Class, neither you nor any other Releasing Party will be able to start a lawsuit or arbitration, continue a lawsuit or arbitration, or be part of any other lawsuit against any of the Released Parties based on any of the Released Claims.

B. You May Submit a Request for Exclusion to Opt Out of the Settlement Class

If you do not wish to be a member of the Settlement Class, then you must exclude yourself from the Settlement Class by complying with the requirements set forth in Section 8 of the Settlement Agreement and summarized here. All Requests for Exclusion must include: (a) the Class Member's name, address, telephone number, and notarized signature; (b) a statement that the Class Member wishes to be excluded from the Settlement Class in *Cook Children's Health Foundation a/k/a W.I. Cook Foundation, Inc., et al. v. Diamondback E&P LLC*; and (c) a description of the Class Member's interest in any wells for which the Diamondback Entities remitted oil-and-gas proceeds, including the well name, well number, county in which the well is located, and the owner identification number. Requests for Exclusion may not be submitted through the website or by telephone, facsimile or e-mail. Requests for Exclusion must be served on Class Counsel and the Settlement Administrator by certified mail, return receipt requested and received **no later than 5 p.m. CT on March 6, 2024**. Requests for Exclusion may be mailed as follows:

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Settlement Administrator	Class Counsel
Cook v. Diamondback Settlement c/o JND Legal Administration, Settlement Administrator P.O. Box 91231 Seattle, WA 98111	Rex A. Sharp Scott B. Goodger Sharp Law, LLP 4820 W. 75th Street Prairie Village, KS 66208

If you do not follow these procedures—including mailing the Request for Exclusion so that it is received by the deadline set out above—you will not be excluded from the Settlement Class, and you will be bound by all of the orders and judgments entered by the Court regarding the Settlement, including the release of claims. If you validly request exclusion as described above, you will not receive any distribution from the Net Settlement Fund, you cannot object to the Settlement, and you will not have released any claim against the Released Parties. You will not be legally bound by anything that happens in the Litigation.

C. You May Remain a Member of the Settlement Class, but Object to the Settlement, Allocation Methodology, Distribution Schedule, Plaintiff’s Attorneys’ Fees, Litigation Expenses, Administration, Notice, and Distribution Costs, or Incentive Award

Any Class Member who wishes to object to the fairness, reasonableness, or adequacy of the Settlement, any term of the Settlement Agreement, the Allocation Methodology, the Distribution Schedule, the request for Plaintiff’s Attorneys’ Fees and Litigation Expenses and Administration, Notice, and Distribution Costs, or the request for an Incentive Award to the Class Representative may file an objection as set forth in Section 10 of the Settlement Agreement. An objector must file with the Court and serve upon Class Counsel and Diamondback’s Counsel by certified mail, return receipt requested a written objection containing the following: (a) a heading referring to *Cook Children’s Health Foundation, a/k/a W.I. Cook Foundation, Inc., et al. v. Diamondback E & P LLC*, Case No. 5:21-cv-00359-D, United States District Court for the Western District of Oklahoma; (b) a statement as to whether the objector intends to appear at the Final Fairness Hearing, either in person or through counsel, and, if through counsel, counsel must be identified by name, address, and telephone number; (c) a detailed statement of the specific legal and factual basis for each and every objection; (d) a list of any witnesses the objector may call at the Final Fairness Hearing, together with a brief summary of each witness’s expected testimony (to the extent the objector desires to offer expert testimony and/or an expert report, any such evidence must fully comply with the Federal Rules of Civil Procedure, Federal Rules of Evidence, and the Local Rules of the Court); (e) a list of, and copies of, any exhibits the objector may seek to use at the Final Fairness Hearing; (f) a list of any legal authority the objector may present at the Final Fairness Hearing; (g) the objector’s name, current address, current telephone number, and all owner identification numbers with the Diamondback

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Entities; (h) the objector’s signature executed before a Notary Public; (i) identification of the objector’s interest in wells for which the Diamondback Entities have remitted oil and gas proceeds (by well name, well number, payee name, payee number, and county in which the well is located) during the Claim Period and identification of any payments by date of payment, date of production, and amount; and (j) if the objector is objecting to any portion of the Plaintiff’s Attorneys’ Fees or Litigation Expenses and Administration, Notice, and Distribution Costs, or an Incentive Award sought by Class Representative or Class Counsel on the basis that the amounts requested are unreasonably high, the objector must specifically state the portion of such requests he/she/it believes is fair and reasonable and the portion that is not. Such written objections must be filed with the Court at the address below:

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

The same written objection must be served on Class Counsel and Diamondback’s Counsel, via certified mail return receipt requested, and received **no later than 5 p.m. CT by March 6, 2024**, at the addresses set forth above for Class Counsel and the Court and below for Diamondback’s Counsel.

Diamondback’s Counsel	
John J. Griffin, Jr. Crowe & Dunlevy 324 N. Robinson Ave. Suite 100 Oklahoma City, OK 73102	John F. Shepherd Christopher A. Chrisman Michelle R. Seares Holland & Hart LLP P.O. Box 8749 555 17th Street, Suite 3200 Denver, CO 80201-8749

UNLESS OTHERWISE ORDERED BY THE COURT, ANY CLASS MEMBER WHO DOES NOT OBJECT IN THE MANNER DESCRIBED HEREIN WILL BE DEEMED TO HAVE WAIVED ANY OBJECTION AND SHALL BE FOREVER FORECLOSED FROM MAKING ANY OBJECTION TO THE SETTLEMENT (OR ANY PART THEREOF) AND WILL NOT BE ALLOWED TO PRESENT ANY OBJECTIONS AT THE FINAL FAIRNESS HEARING.

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D. You May Retain Your Own Attorney to Represent You at the Final Fairness Hearing

You have the right to retain your own attorney to represent you at the Final Fairness Hearing. If you retain separate counsel, you will be responsible to pay his or her fees and expenses out of your own pocket.

V. Availability of Filed Papers and More Information

This Notice summarizes the Settlement Agreement. You may obtain a free copy of the Settlement Agreement with its exhibits, as well as other relevant documents, from the settlement website at www.cook-diamondback.com, or you may request copies by contacting the Settlement Administrator. In addition, the pleadings and other papers filed in the Litigation, including the Settlement Agreement, are available for inspection at the Office of the Clerk of the Court, whose address is set forth above, and may be obtained from the Clerk's office directly. The records are also available online for a fee through the PACER service at www.pacer.gov. If you have any questions about this Notice, you may consult an attorney of your own choosing at your own expense or Class Counsel.

PLEASE DO NOT CONTACT THE JUDGE OR THE COURT CLERK ASKING FOR INFORMATION REGARDING THIS NOTICE.

TIMOTHY D. DIGIUSTI
CHIEF UNITED STATES DISTRICT JUDGE