

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF OKLAHOMA**

DAVID M. OATES, on behalf of himself and others  
similarly situated,

Plaintiff

v.

KINDER MORGAN ENERGY PARTNERS, L.P.,

Defendant.

Case No. 5:19-cv-01171-SLP

Hon. Scott L. Palk

FLSA Collective Action

**RESUBMISSION OF PROPOSED SETTLEMENT AGREEMENT, NOTICE AND  
CLAIM FORM, AND SCRIPTS FOR ADDITIONAL FORMS OF NOTICE**

Pursuant to the Court's September 12, 2023, Order conditionally granting Oates' Unopposed Motion for Preliminary Conditional Certification of Proposed Settlement Class and for Preliminary Approval of the Parties' Proposed Settlement and Notice to the Proposed Settlement Class (Doc. 195), Oates hereby files modified versions of the Parties' proposed: (1) Settlement Agreement and Release (Exhibit 1); (2) Notice and Claim Form (Exhibit 2); and (3) Scripts for Additional Forms of Notice (Exhibit 3).

Oates further advises the Court that, "prior to any final approval of the Settlement Agreement," he intends to provide the Court with written "proof of consent to the Settlement Agreement by the fourteen current opt-in Plaintiffs[.]" *See* Doc. 195 at 14, 22.

Respectfully submitted,

By: /s/ Michael A. Josephson

**Michael A. Josephson**

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**ATTORNEYS IN CHARGE FOR PLAINTIFFS**

### **CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that on October 3, 2023, the foregoing was filed electronically with the Clerk of Court using the ECF system, which sent notice to all known parties of the case in accordance with the Federal Rules of Civil Procedure.

/s/ Michael A. Josephson

Michael Josephson

**CERTIFICATE OF CONFERENCE**

The undersigned attorney hereby certifies that Counsel for Oates and Counsel for Kinder Morgan conferred at length regarding the modifications to their proposed Settlement Agreement, Notice and Claim Form, and scripts for additional forms of notice which are attached hereto.

/s/ Michael A. Josephson  
Michael A. Josephson

# Exhibit 1

## **SETTLEMENT AGREEMENT AND RELEASE**

1. This Settlement Agreement and Release (the “Settlement Agreement”) is entered into between David Oates (“Oates”) on the one hand, and Kinder Morgan Energy Partners, LP, on the other hand (“Kinder Morgan”) (hereinafter, all together as the “Parties”), subject to the approval of the Court (as defined herein).

### **RECITALS**

2. Oates, individually and on behalf of the Settlement Class (as defined herein), asserts in the Action (as defined herein) that Kinder Morgan failed to pay proper overtime wages under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (“FLSA”).

3. As a result of the Parties’ arms’-length negotiations and mediation with an experienced wage and hour mediator, Michael Russell, the Parties have agreed to settle this Action according to the terms of this Settlement Agreement.

4. Class Counsel (as defined herein) has made a thorough and independent investigation of the facts and law relating to the allegations in the Action. In entering into this Settlement Agreement, Class Counsel has considered: (a) the facts developed in litigation and during the Parties’ ADR process and the law applicable thereto; (b) the attendant risks of continued litigation and the uncertainty of the outcome of the claims alleged against Kinder Morgan; and (c) the desirability of consummating this settlement according to the terms of this Settlement Agreement. Oates has concluded that the terms of this Settlement Agreement are fair, reasonable and adequate, and that it is in the best interests of himself and the Settlement Class to settle their claims against Kinder Morgan pursuant to the terms set forth herein.

5. Kinder Morgan denies the allegations in the Action and denies that it engaged in any wrongdoing or violation of law. Kinder Morgan is entering into this Settlement Agreement because it will eliminate the burden, risk, and expense of further litigation. Neither this Settlement Agreement nor any document referred to herein, nor any action taken to carry out this Settlement Agreement, may be used in any way as an admission, concession or indication by or against Kinder Morgan of any fault, wrongdoing, or liability whatsoever, including any concession that certification of a class other than for purposes of this Settlement Agreement would be appropriate in the Action or any other case.

6. The Parties recognize that notice to the Settlement Class of the material terms of this Settlement Agreement, as well as Court approval of this Settlement Agreement, are required to effectuate the Settlement Agreement, and that the Settlement Agreement will not become operative until the Court grants approval of it and the Settlement Agreement becomes effective.

7. The Parties stipulate and agree that, solely for settlement purposes, the requisites for establishing collective action certification under the FLSA pursuant to 29 U.S.C. § 216(b) are met. Should this Settlement Agreement not become final, such stipulation to collective action certification shall become null and void and shall have no bearing on, and shall not be admissible in connection with, the issue of whether or not certification would be appropriate in a non-settlement context.

8. In consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party to the other, IT IS HEREBY AGREED, by and between the undersigned, subject to the approval of the Court and the other conditions set forth herein, that Oates and the Participating Settlement Class Members' (as defined herein) lawsuit against Kinder Morgan shall be settled, compromised and dismissed, on the merits and with prejudice, and that the Released Claims (as defined herein) shall be finally and fully compromised, settled, and dismissed as to the Releasees (as defined herein), in the manner and upon the terms and conditions set forth herein.

### **DEFINITIONS**

9. The following terms used in this Settlement Agreement shall have the meanings ascribed to them below:

a. **"Action"** means the matter of *David Oates v. Kinder Morgan Energy Partners, LP*, Case No. 5:19-CV-01171-SLP, an action that was filed in the United States District Court for the Western District of Oklahoma.

b. **"Approval Order"** means the Court's Final Approval Order approving the terms and conditions of this Settlement Agreement.

c. **"Class Counsel"** means Josephson Dunlap, LLP, Bruckner Burch, PLLC, and Whitten Burrage.

d. **"Class Period"** means three years plus an additional 87 days that preceded the earlier of (a) the date the Settlement Class Member filed or otherwise opted-in to the Action, or (b) May 31, 2021.

e. **"Court"** means the United States District Court for the Western District of Oklahoma.

f. **"Kinder Morgan's Counsel"** means Littler Mendelson, PC and Gable Gotwals.

g. **"Effective Date"** means the first business day following the Court's Approval Order.

h. **"Fee Award"** means the award of attorneys' fees that the Court authorizes to be paid to Class Counsel for the services they provided to Oates and the Settlement Class in the Action. The Fee Award to Class Counsel shall not exceed the gross amount of 35% of the Gross Settlement Amount, or **\$1,244,700.10**, and shall be paid subject to an IRS Form 1099.

i. **"Gross Settlement Amount"** means the maximum amount that Kinder Morgan shall potentially pay as provided for in this Settlement Agreement, in exchange for the release of all Released Claims by Oates and the Participating Settlement Class Members, which is the sum of **\$3,556,286.00**, excluding the employers' share of federal and state payroll taxes. In no event shall the Gross Settlement Amount exceed this sum.

j. **“Kinder Morgan Entities”** means Kinder Morgan Contracting Services, LLC, Gulf Coast Express Pipeline LLC, Kinder Morgan CO2 Company, L.P., Kinder Morgan CO2 Construction Inspection Services, Natural Gas Pipeline Company of America, LLC, KMGF Contracting Services LLC, EPBGP Contracting Services LLC, El Paso Energy Service Company, LLC, Kinder Morgan Inc. and Permian Highway Pipeline LLC.

k. **“Net Settlement Amount”** means the Gross Settlement Amount less: (i) the payment of attorneys’ fees to Class Counsel, not to exceed **\$1,244,700.10**, which is 35% of the Gross Settlement Amount; (ii) out-of-pocket costs incurred by Class Counsel, which the Parties have agreed shall not exceed **\$30,000.00**; (iii) the Settlement Administrator’s (as defined herein) costs related to administering this Settlement Agreement, which the Parties have agreed shall not exceed **\$30,000.00**; and (iv) the Service Award to Oates in an amount not to exceed **\$7,500.00**.

l. **“Notice Deadline”** means the date **seventy-five (75) days** after the Notice of Settlement (as defined herein) is initially mailed by the Settlement Administrator to the Settlement Class Members. Settlement Class Members shall have until the Notice Deadline to return an executed Consent to Join and Claim Form to the Settlement Administrator to participate in this Settlement.

m. **“Notice of Settlement”** means the notice to the Settlement Class Members with a Consent to Join and Claim Form substantially in the form as Exhibit A.

n. **“Participating Settlement Class Members”** means all Settlement Class Members who return an executed Consent to Join and Claim Form to the Settlement Administrator by the Notice Deadline.

o. **“Preliminary Approval Order”** means the Court’s Approval Order preliminarily approving the terms and conditions of this Agreement.

p. **“Released Claims”** means any and all state, local or federal claims, obligations, demands, actions, rights, causes of action and liabilities, against Releasees (as defined herein) for alleged unpaid wages, liquidated or other damages, unpaid costs, penalties (including late payment penalties), premium pay, interest, attorneys’ fees, litigation costs, restitution or any other compensation and relief arising under the FLSA and any other state or local wage-related law applicable to the work performed for Kinder Morgan Entities through one or more of the Vendor Companies (as defined herein) during the Class Period wherein the Participating Class Member was paid an alleged day-rate without overtime for hours worked over 40 in a week. Released Claims expressly do not include any claims that any Participating Settlement Class Member may have related to work performed on Kinder Morgan Entities’ projects on behalf of a vendor other than the Vendor Companies as defined herein.

q. **“Releasees”** means Kinder Morgan Entities, and all of their past, present, and future officers, owners, directors, principals, agents, employees, representatives, parents, shareholders, partners, subsidiaries, holding companies, affiliates, predecessors, successors, assigns, insurers, joint venture parties, and related companies, in their individual and corporate capacities that could be regarded, alleged or determined to be a joint employer for the services

provided on behalf of the Vendor Companies during the Class Period. Releasees expressly excludes the Vendor Companies (as defined herein).

r. **“Service Award”** means the payment that the Court authorizes to be paid to Oates from the Gross Settlement Amount for his service in bringing and prosecuting this case and in consideration of the general release set forth herein Paragraph 10(a). The Service Award to Oates shall not exceed the gross amount of **\$7,500.00** and shall be paid subject to an IRS Form 1099.

s. **“Settlement Administrator”** means CPT Group.

t. **“Settlement Administration Costs”** means the costs related to administering this Settlement Agreement to be paid to the Settlement Administrator from the Gross Settlement Amount, which the Parties have agreed shall not exceed **\$30,000.00**.

u. **“Settlement Award”** means the payment that each respective Participating Settlement Class Member shall be entitled to receive pursuant to the terms of this Settlement Agreement. The gross amount of each respective Settlement Award shall be divided equally between two checks, one for wages to be reported on an IRS Form W-2, and one for non-wages to be reported on an IRS Form 1099.

v. **“Settlement Class”** or **“Settlement Class Members”** means the approximately 1,192 individuals who were supplied by one or more of the Vendor Companies (as defined herein) to work on any of the Kinder Morgan Entities’ projects during the Class Period.

w. **“Settlement Award Checks”** means the checks for each Settlement Class Member’s Settlement Award.

x. **“Vendor Companies”** means (i) 3B Inspection, LLC; (ii) International Inspecting, Inc. d/b/a 3I; (iii) FIS Operations, LLC d/b/a Frontier Integrity Solutions; (iv) Table Rock Survey, LLC d/b/a Integrated Consulting & Inspection LLC; (v) Natural Energy Field Services, LLC; (vi) NV5, LLC; (vii) Onshore Quality Control Specialists, LLC; (viii) Platte River Inspection Services; and (ix) Kestrel Field Services, Inc.

### **RELEASES**

10. **Release.** In consideration of the benefits to be received by Oates and the Participating Settlement Class Members under this Settlement Agreement, Oates and the Participating Settlement Class Members shall be deemed to have released and discharged the Releasees from the Released Claims upon the Effective Date.

a. Notwithstanding any other provision of this Settlement Agreement, this release does not (i) waive or release any claim for breach or enforcement of this Settlement Agreement; (ii) waive or release any right or claim that may not be waived or released by applicable law; or (iii) prevent Oates or any Participating Settlement Class Member from pursuing any administrative claim for unemployment compensation or workers’ compensation benefits. Nothing in this Settlement Agreement precludes Oates or any Participating Settlement Class



Member from (i) reporting to, responding to an inquiry from, filing a charge or complaint with, communicating with or providing information to, contacting, or cooperating with an investigation conducted by, the Equal Employment Opportunity Commission, the Department of Labor, the National Labor Relations Board, the Occupational Safety and Health Administration, the Securities and Exchange Commission, or any other federal, state, or local governmental agency, commission, or regulatory body; (ii) providing information about this Settlement Agreement to his/her spouse, attorney, or accountant, or tax advisor (if any); (iii) making disclosures or giving truthful testimony as required by law or valid legal process (such as by a subpoena or administrative order); or (iv) engaging in any concerted or other legally-protected activities.

### **CERTIFICATION, NOTICE, AND SETTLEMENT IMPLEMENTATION**

11. The Parties agree to the following procedures for obtaining approval of the Settlement Agreement, certifying the Settlement Class for the purpose of settlement only, and notifying the Settlement Class of this settlement:

a. **Request for Preliminary Collective Action Certification and Approval Order.** No later than three (3) business days following the execution of this Agreement, Oates shall file an Unopposed Motion for Conditional Certification of the Proposed Settlement Class and for Preliminary Approval of the Parties' Proposed Settlement Agreement, requesting that the Court (i) preliminarily approve the Settlement, (ii) conditionally certify the Settlement Class pursuant to 29 U.S.C. § 216(b) for settlement purposes only, and (iii) approve the Notice form attached as Exhibit A.

b. **Class Data.** Kinder Morgan requested from the Vendor Companies the Settlement Class Members' names, last known addresses, phone numbers, email addresses, and dates of work, including the weeks worked (herein after, "**Class Data**"). Kinder Morgan shall not oppose or otherwise object to Class Counsel's reasonable efforts to subsequently secure the Class Data from the Vendor Companies through subpoena or otherwise if necessary. The Parties will work cooperatively to timely provide the Class Data to the Settlement Administrator. With the exception of first name, middle initial and last name, dates of employment, Vendor Companies, last known phone number and the data necessary to calculate damages, the Settlement Members' contact information for purposes of providing Notice herein for Settlement Class Members shall be provided to the Settlement Administrator, and not Class Counsel.

c. **Verification of Class Data.** In order to provide the best notice practicable, the Settlement Administrator and Class Counsel, prior to the Settlement Administrator mailing the Notice of Settlement, shall take all steps reasonably necessary to verify the Class Data, including utilizing skip tracing, running the list of Settlement Class Members through the U.S. Postal Service's National Change of Address database ("NCOA"), conducting online research, and making phone calls to Settlement Class Members.

d. **Notice.** The Settlement Administrator shall be responsible for preparing, printing, and sending the Notice of Settlement to all Settlement Class Members. By no later than **ten (10) business days** following any Preliminary Approval Order, Kinder Morgan shall provide the Settlement Administrator the Class Data received in response to its requests under paragraph 11(b) above. As soon as practicable after Kinder Morgan provides the Settlement Administrator

with the Class Data, the Settlement Administrator shall calculate each Settlement Class Member's pro rata share of the Net Settlement Amount and shall provide such calculations to the Parties. The Parties will have **fourteen (14) calendar days** after receipt of the calculations to review the Settlement Administrator's calculations and to propose any corrections and/or revisions. Within **fifteen (15) business days** after receiving the Parties' approval of the Settlement Administrator's calculations of each Settlement Class Member's pro rata share of the Net Settlement Amount, the Settlement Administrator shall send the Court-approved Settlement Notice to all Settlement Class Members via First Class U.S. Mail, email, and text message. **Thirty (30) calendar days** after the initial mailing and **sixty (60) calendar days** after the initial mailing, the Settlement Administrator shall send an identical reminder Settlement Notice to all Settlement Class Members via First Class U.S. Mail, email, and text message. The Settlement Administrator shall ensure that automated reminder features associated with the notices described herein are deactivated. Class Counsel shall also be permitted to make a single scripted telephone call to the Settlement Class Members to confirm receipt of the Settlement Notice. *See* Exhibit B. Any Notice of Settlement and Settlement Award Checks returned to the Settlement Administrator with a forwarding address shall be re-mailed by the Settlement Administrator within **five (5) calendar days** following receipt of the returned mail. If any Notice of Settlement is returned to the Settlement Administrator without a forwarding address, the Settlement Administrator shall undertake reasonable efforts such as skip traces to search for the correct address within **five (5) calendar days** and shall re-mail the Notice of Settlement to any newly found addresses within **five (5) calendar days** of finding the new address(es).

e. The Settlement Administrator will provide weekly reports to counsel for the Parties regarding the status of the mailing of the Notice of Settlement and the claims administration process.

f. Class Counsel and Kinder Morgan's Counsel have the right to make inquiries and receive any information from the Settlement Administrator related to the claims administration process.

12. **Interim Report by the Settlement Administrator.** Within **five (5) calendar days** after the Notice Deadline, the Settlement Administrator shall confirm (i) the total number of Settlement Class Members who were sent the Notice of Settlement; and (ii) the total number of Settlement Class Members who timely returned a Consent to Join and Claim Form.

13. **Request for Final Collective Action Certification and Approval Order.** No later than **twenty-one (21) calendar days** following the close of the Notice Deadline, Oates shall file a Motion for Final Collective Action Certification and for Final Approval of the Parties' Proposed Settlement Agreement, requesting final collective action certification and final approval of the Settlement pursuant to 29 U.S.C. § 216(b) for settlement purposed only.

14. **Dismissal of the Action.** Upon the entry of the Approval Order, Class Counsel will move to dismiss all of the claims alleged by individuals supplied by the Vendor Companies to Kinder Morgan during the Class Period in this Action with prejudice, and Kinder Morgan shall be unopposed to such dismissal.

**SETTLEMENT FUNDS AND AWARD CALCULATION**

15. **Gross Settlement Amount.**

a. **Funding.** No later than **thirty (30) calendar days** after final approval of the settlement by the Court following the court-ordered fairness hearing, Kinder Morgan shall wire to the Settlement Administrator the Gross Settlement Amount up to **\$3,556,286.00** plus any amounts necessary to fund the employer's share of payroll taxes.

b. **Disbursement by Settlement Administrator.** All disbursements shall be made from an IRS-qualified settlement fund set up by the Settlement Administrator (hereinafter, "**Qualified Settlement Fund**"). The Settlement Administrator shall be the only entity authorized to make withdrawals or payments from the Qualified Settlement Fund.

c. **Interest.** The interest on the funds deposited by Kinder Morgan will inure *pro rata* to the party or persons to whom the underlying funds are ultimately paid out.

d. **Payroll Taxes.** Kinder Morgan's share of federal and state payroll taxes shall be determined and paid by the Settlement Administrator.

16. **Payments.** Subject to the Court's Approval Order, the following amounts shall be paid by the Settlement Administrator from the Gross Settlement Amount:

a. **Service Award to Plaintiff Oates.** Plaintiff David Oates shall receive **\$7,500.00** for his efforts in bringing and prosecuting the Action, and in consideration of the general release set forth above in Paragraph 10(a). The Qualified Settlement Fund shall issue an IRS Form 1099 for this payment. Oates shall be solely and legally responsible for all taxes on this service award. The Settlement Administrator shall pay the Court-awarded Service Award to Oates no later than **five (5) calendar days** following Kinder Morgan funding the Gross Settlement Amount.

b. **Attorneys' Fee Award.**

(i) Class Counsel shall receive attorneys' fees in an amount of **\$1,244,700.10**, which is 35% of the Gross Settlement Amount and will compensate Class Counsel for all work performed in the Action as of the date of this Settlement Agreement as well as all of the work remaining to be performed, including but not limited to documenting the settlement, securing Court approval of the settlement, making sure that the settlement is fairly administered and implemented, and obtaining final dismissal of the settled claims.

(ii) The attorneys' Fees Award paid by Kinder Morgan pursuant to this Settlement Agreement shall constitute full satisfaction of Kinder Morgan's obligations to pay amounts to any person, attorney or law firm for attorneys' fees in the Action on behalf of Oates and/or any Participating Settlement Class Member, and shall relieve Kinder Morgan from any other claims or liability to any other attorney or law firm for any attorneys' fees or costs to which any of them may claim to be entitled on behalf of Oates or any Participating Settlement Class Member.

(iii) An IRS Form 1099 shall be provided to Class Counsel for the Attorneys' Fee Award payment made to Class Counsel. Each firm constituting Class Counsel shall be solely and legally responsible to pay any and all applicable taxes on the payment made to that firm.

(iv) The Settlement Administrator shall pay the Court-awarded Attorneys' Fee Award to Class Counsel no later than **five (5) calendar days** following Kinder Morgan funding the Gross Settlement Amount.

c. **Case Expenses.** Class Counsel's out-of-pocket costs are estimated not to exceed **\$30,000.00** and shall be paid from the Gross Settlement Amount. In the event Class Counsel's out-of-pocket costs are less than \$30,000.00, the difference shall be redistributed and paid on a *pro rata* basis to the Participating Settlement Class Members. An IRS Form 1099 shall be provided to Class Counsel for the Case Expenses payment made to Class Counsel. The Settlement Administrator shall pay the Court-awarded Case Expenses to Class Counsel no later than **five (5) calendar days** following Kinder Morgan funding the Gross Settlement Amount.

d. **Settlement Administration Costs.** The Settlement Administration Costs to be paid to the Settlement Administrator shall not exceed **\$30,000.00**. The Parties agree to cooperate in the settlement administration process and to make all reasonable efforts to control and minimize the costs incurred in the administration of the settlement.

e. **Settlement Awards to Participating Settlement Class Members.** Settlement Awards shall be made to Participating Settlement Class Members as set forth below.

### **CALCULATION AND DISTRIBUTION OF SETTLEMENT AWARDS**

17. **Settlement Award Eligibility.** All Participating Settlement Class Members shall be paid a Settlement Award from the Net Settlement Amount. The Settlement Award Calculations are based on the fact there are approximately 1,192 Class Members who worked an estimated 45,351 overtime weeks during the Class Period. The Settlement Award will be based on each Settlement Class Members' overtime weeks multiplied by the fixed work week value. The fixed work week value will be determined by dividing the Net Settlement Amount by the 45,351 overtime work weeks at issue. The estimated fixed work week value will average approximately \$49.48. This represents the net value of each overtime work week for Defendant's share of potential damages.

18. Fifty percent (50%) of each Settlement Award to Participating Settlement Class Members shall be treated as back wages, and accordingly, on each Settlement Award, the Settlement Administrator shall effectuate federal and applicable state income and employment taxes and withholdings as required by law with respect to 50% of each Settlement Award distributed, and the Settlement Administrator shall pay Kinder Morgan's customary employer share of all required federal and state payroll taxes on such amounts. Federal withholding shall be at the 22% supplemental wage tax rate. The remaining 50% of each Settlement Award shall be treated as non-wage penalties and liquidated damages, to be reported on an IRS Form 1099, and shall not be subject to federal or state withholdings. Each Participating Settlement Class Member

shall be solely and legally responsible to pay all taxes on the non-wage penalties and liquidated damages portion of the Settlement Award.

19. The Settlement Administrator shall provide counsel for the Parties with a final report of all proposed Settlement Awards, no more than **five (5) calendar days** following the completion of Funding.

20. The Settlement Administrator shall mail all Settlement Awards to Participating Settlement Class Members within **sixty (60) calendar days** of the Notice Deadline. The Settlement Administrator shall then provide a written certification of such payments to counsel for the Parties within **five (5) calendar days** of mailing all Settlement Awards to Participating Settlement Class Members.

21. All Settlement Award checks shall remain valid and negotiable for **ninety (90) days** from the date the Settlement Administrator sends the Settlement Award Checks to the Participating Settlement Class Members and may thereafter automatically be canceled if not cashed within that time, at which time the right to recover any Settlement Award will be deemed void and of no further force and effect. All funds from checks not cashed will revert to the Qualified Settlement Fund. The Settlement Administrator will include with each mailed check a letter stating that the check must be cashed or deposited within **ninety (90) days** or it will be cancelled and deemed void and of no further effect.

22. **Remaining Monies.** If at the conclusion of the 90-day check void period set forth in Paragraph 21 there are any monies remaining in the Qualified Settlement Fund, those remaining monies shall be paid to Kinder Morgan within **fifteen (15) business days** following that check void period.

23. **No Claim Based Upon Distributions or Payments in Accordance with this Settlement Agreement.** No person shall have any claim against the Releasees, Oates, the Settlement Class Members, Class Counsel, Kinder Morgan's Counsel, or the Settlement Administrator based on distributions or payments made in accordance with this Settlement Agreement.

#### **MISCELLANEOUS**

24. **Kinder Morgan's Legal Fees.** Kinder Morgan's legal fees and expenses in the Action shall be borne by Kinder Morgan.

25. **Acknowledgement.** Class Counsel acknowledges that they currently do not represent individuals who are seeking to recover damages against Kinder Morgan Entities, other than those covered by this Agreement, or individuals who performed services for Kinder Morgan Entities provided through Cleveland Integrity Services.

26. **Nullification of the Settlement Agreement.** In the event: (a) the Court does not approve the Settlement Agreement as provided herein; or (b) the Settlement Agreement does not become final for any other reason; this Settlement Agreement shall be null and void and the Parties shall be returned to their respective statuses as of the date immediately prior to the execution of



this Settlement Agreement. If this occurs, the Parties shall make reasonable efforts to cure the alleged deficiencies in this Settlement Agreement identified by the Court and resubmit a revised Settlement Agreement to the Court for approval.

27. **Inadmissibility of Settlement Agreement.** Except for purposes of settling the Action, neither this Settlement Agreement, nor its terms, nor any document, statement, proceeding or conduct related to this Settlement Agreement, nor any reports or accounts thereof, shall be construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to the Parties, including, without limitation, evidence of a presumption, concession, indication or admission by any of the Parties of any liability, fault, wrongdoing, omission, concession or damage.

28. **Computation of Time.** For purposes of this Settlement Agreement, if the prescribed time period in which to complete any required or permitted action expires on a Saturday, Sunday, or legal holiday (as defined by FED. R. CIV. P. 6(a)(6)), such time period shall be continued to the following business day.

29. **Tax Indemnification.** Oates and Participating Settlement Class Members agree to pay any taxes found to be owed from payments made pursuant to this Settlement Agreement and to indemnify and hold the Releasees harmless from any claims, assessments, demands, penalties and interest found to be owed as a result of any payment made pursuant to this Settlement Agreement. Oates and the Participating Settlement Class Members do not indemnify and hold harmless the Releasees from any claims, assessments, demands, penalties and interest found to be owed for time worked for Kinder Morgan arising out of payments/compensation previously made.

30. **Amendment or Modification.** This Settlement Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors in interest.

31. **Entire Settlement Agreement.** This Settlement Agreement constitutes the entire agreement among the Parties, and no oral or written representations, warranties or inducements have been made to any party concerning this Settlement Agreement other than the representations, warranties, and covenants contained and memorialized in such documents. All prior or contemporaneous negotiations, memoranda, agreements, understandings, and representations, whether written or oral, are expressly superseded hereby and are of no further force and effect. Each of the Parties acknowledges that they have not relied on any promise, representation or warranty, express or implied, not contained in this Settlement Agreement.

32. **Authorization to Enter Into Settlement Agreement.** Counsel for all Parties are expressly authorized by the Parties whom they represent to enter into this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties and their counsel shall cooperate with each other and use their best efforts to effect the implementation of the Settlement Agreement.

33. **Binding on Successors and Assigns.** This Settlement Agreement shall be binding upon, and inure to the benefit of Oates, Kinder Morgan, and the Participating Settlement Class

Members and their heirs, beneficiaries, executors, administrators, successors, transferees, successors, assigns, or any corporation or any entity with which any party may merge, consolidate or reorganize.

34. **Counterparts.** This Settlement Agreement may be executed in one or more counterparts, including by facsimile, email, and/or electronic signature. All executed counterparts and each of them shall be deemed to be one and the same instrument.

35. **Cooperation and Drafting.** The Parties have cooperated in the drafting and preparation of this Settlement Agreement; hence the drafting of this Settlement Agreement shall not be construed against any of the Parties. The Parties agree that the terms and conditions of this Settlement Agreement were negotiated at arms' length and in good faith by the Parties and reflect a settlement that was reached voluntarily based upon adequate information and sufficient discovery and after consultation with experienced legal counsel.

36. **Offset & Contribution Protection.** The Parties agree that if one or more Participating Settlement Class Members asserts a claim against one or more Vendor Companies for the same inspector work performed during the Class Period for the benefit of Kinder Morgan Entities, the amount of such damages sought or recoverable from one or more Vendor Companies shall be reduced by the sum of any payment made to such Participating Settlement Class Members herein. The Parties agree that this Settlement Agreement is intended to constitute a complete discharge of any and all liability of Kinder Morgan Entities to Participating Settlement Class members and result in a reduction of the damages recoverable from the Vendor Companies to the fullest extent permitted by applicable law.

37. **Jurisdiction of the Court.** The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Settlement Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel submit to the jurisdiction of the Court for this purpose.

39. **Non-Publicity.** The Parties and their counsel agree not to publicize or publish the fact or terms of this settlement via television, radio newspaper, internet, social media,<sup>1</sup> web, magazine, journal, report, pamphlet, book, news/press release, billboard, public posting, or any other media outlet.


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<sup>1</sup> "Social Media" means any form of electronic communication (such as Web sites for social or professional networking and blogging) through which users create online communities to share information, ideas, personal messages, opinions and other content, such as videos. This includes, without limitation, Facebook, Twitter, LinkedIn and Instagram.

IN WITNESS WHEREOF, the Parties and their counsel have executed this Settlement Agreement as follows:

**NAMED PLAINTIFF:** David Oates  
David Oates (Oct 3, 2023 17:07 CDT)  
Date: Oct 3, 2023  
David Oates

**CLASS COUNSEL:**   
Date: October 3, 2023  
By: Michael A. Josephson

**DEFENDANT KINDER MORGAN:** \_\_\_\_\_  
Date: \_\_\_\_\_  
By: \_\_\_\_\_

**KINDER MORGAN'S COUNSEL:** \_\_\_\_\_  
Date: \_\_\_\_\_  
By: \_\_\_\_\_



IN WITNESS WHEREOF, the Parties and their counsel have executed this Settlement Agreement as follows:

**NAMED  
PLAINTIFF:**

\_\_\_\_\_  
David Oates

Date: \_\_\_\_\_

**CLASS  
COUNSEL:**

\_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

**DEFENDANT  
KINDER  
MORGAN:**

\_\_\_\_\_  
*Corey Staab*

Date: 10/3/2023

By: Corey Staab

**KINDER  
MORGAN'S  
COUNSEL:**

\_\_\_\_\_  
*[Signature]*

Date: 10/3/23

By: *[Signature]*

# Exhibit 2

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**THIS NOTICE IS NOT AN ADVERTISEMENT FROM A LAWYER. THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA HAS AUTHORIZED THIS NOTICE. AS SET FORTH IN THE NOTICE, THE COURT HAS NOT MADE ANY DECISION REGARDING THE MERITS OF ANY CLAIMS OR DEFENSES IN THIS ACTION. INSTEAD, THE NOTICE IS TO ADVISE YOU OF CERTAIN RIGHTS YOU MAY HAVE, INCLUDING THE RIGHT TO PARTICIPATE IN A PROPOSED SETTLEMENT REGARDING OVERTIME PAY FROM KINDER MORGAN ENERGY PARTNERS, LP.**

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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF OKLAHOMA**

DAVID M. OATES, Individually and on  
Behalf of Others Similarly Situated,

v.

KINDER MORGAN ENERGY  
PARTNERS, L.P.

Case No.: 5:19-CV-01171-SLP

Jury Trial Demanded

**To:**    «First\_Name» «Last\_Name»

**Re:**    Your Right to Overtime Pay from a Settlement with Kinder Morgan Energy  
Partners, LP

**NOTICE OF COLLECTIVE ACTION SETTLEMENT AND YOUR OPT-IN RIGHTS**

TO:    [Class Member Name]  
       [Address]  
       [Address]

**PLEASE READ THIS NOTICE CAREFULLY.**

This Notice tells you about the proposed settlement of a Fair Labor Standards Act (“FLSA”) collective action lawsuit from which you are eligible to receive a payment should you choose to participate. You received this Notice because you have been identified as a current or former Inspector who was provided to work on Kinder Morgan projects by one or more of the Vendor Companies listed below and allegedly paid a day rate while working on Kinder Morgan’s projects. This Notice is intended to provide you with information in connection with the current settlement of the above-captioned Lawsuit against Kinder Morgan Energy Partners, LP (“Kinder Morgan”).

Vendor Companies include: (i) 3B Inspection, LLC; (ii) International Inspecting, Inc. d/b/a 3I; (iii) FIS Operations, LLC d/b/a Frontier Integrity Solutions; (iv) Table Rock Survey, LLC d/b/a Integrated Consulting & Inspection LLC; (v) Natural Energy Field Services, LLC; (vi) NV5, LLC; (vii) Onshore Quality Control Specialists, LLC; (viii) Platte River Inspection Services; and (ix) Kestrel Field Services, Inc.

This Notice is intended to advise you of how your rights under the FLSA may be affected by this Lawsuit and describe how to join this FLSA collective action and participate in this settlement if you want to.

**BECAUSE YOU FIT THE CLASS DEFINITION, YOU ARE ELIGIBLE TO JOIN THIS FLSA COLLECTIVE ACTION AND RECEIVE MONEY FROM THE SETTLEMENT IN THIS CASE, AS DESCRIBED BELOW, IN THE SUM OF [SETTLEMENT SHARE]. IF YOU WISH TO PARTICIPATE IN THIS COLLECTIVE ACTION AND SETTLEMENT, YOU MUST RETURN THE ATTACHED CONSENT TO JOIN, CLAIM FORM, AND SUBSTITUTE W-9 BY [75 DAYS FROM MAILING].**

## **1. Why Should You Read This Notice?**

This Notice explains the Lawsuit, how to participate in this FLSA collective action, the key settlement terms, your right to share in the monetary proceeds of this settlement, and your right to disagree with the settlement. The United States District Court for the Western District of Oklahoma has preliminarily approved the settlement as fair and reasonable, but it is not an expression of any opinion by the Court as to the merits of the claims or defenses asserted by the Parties.

## **2. What Is the Lawsuit About and Why Was this Notice Sent?**

The FLSA is a federal law that provides remedies for minimum wage and overtime violations. The FLSA allows a single employee to bring claims against an employer on behalf of himself and other similarly situated employees. This is referred to as a collective action.

A former Inspector who performed services for Kinder Morgan filed this Lawsuit on behalf of himself and other Inspectors who worked on Kinder Morgan projects who were allegedly paid a day rate with no overtime. Plaintiff alleges that Kinder Morgan violated the FLSA because it was his employer under the FLSA and did not pay him or other Inspectors the proper amount of overtime for all hours worked over forty hours each week. In addition to unpaid overtime, Plaintiff through the Lawsuit is seeking liquidated (double) damages equal to his unpaid overtime, attorneys' fees, and costs.

Kinder Morgan denies Plaintiff's allegations and has asserted various defenses. Kinder Morgan denies all liability but believes this settlement is a business solution to this dispute. The Court has not made any decision as to which side is right.

The Parties investigated the facts and have made a thorough study of the legal principles applicable to the claims asserted in the litigation. Based upon their investigation, legal evaluation, and taking into account the contested legal and factual issues involved, including the assessment of the

uncertainties of litigation and the relative benefits conferred upon the Plaintiff and the putative class pursuant to the attached Settlement Agreement, the Parties concluded that the settlement on the terms set forth in the attached Settlement Agreement are fair, reasonable, adequate, and in the best interests of the Plaintiff and the putative class.

The Court preliminarily approved this Settlement and authorized this Notice be sent to you and other eligible workers to inform you of your rights related to this lawsuit and your ability to join this collective action lawsuit and, by joining, participate in the Settlement. After the deadline to consent to join this collective action lawsuit and to participate in the Settlement expires, the Court will decide whether to give final approval to the proposed Settlement.

**3. What are the Terms of the Settlement and How Much Can I Expect to Receive if I Opt-In to this Collective Action Lawsuit and Agree to be Bound by the Settlement?**

If the Settlement receives final approval, Kinder Morgan will pay a gross settlement amount of \$3,556,286.00 to settle this lawsuit. After subtracting the Settlement Administration costs (an amount not to exceed \$30,000.00), attorney's fees and out-of-pocket expenses for the attorneys representing Plaintiff and the Settlement Class Members who elect to participate in the Settlement (an amount not to exceed \$1,274,700.10), and a Service Award to the Plaintiff (an amount not to exceed \$7,500.00), the remaining settlement fund (also known as the Net Settlement Amount) will be allocated among the Settlement Class Members on a pro rata basis. Any unclaimed Settlement Awards will revert back to Kinder Morgan.

All Settlement Class Members are eligible to receive a *pro rata* share of the Net Settlement Amount. Your share of the Settlement ("Settlement Award") has been calculated to be [insert settlement share]. Your Settlement Award was calculated using your Vendor Company's payroll and time records, to the extent available, for the Class Period covered by the Settlement, which is three years plus an additional 87 days that preceded the earlier of (a) the date you filed or otherwise opted-in to the lawsuit, or (b) May 31, 2021. Your Settlement Award is based on the number of overtime weeks you worked during the Class Period multiplied by a fixed work week value of [insert settlement share], which was determined by dividing the Net Settlement Amount by the total overtime weeks all eligible Settlement Class Members worked during the Class Period.

Should you choose to opt-in to this collective action lawsuit and participate in the Settlement, any Settlement Award will consist of two checks. One check represents the portion of the Settlement Award allocated to claims of unpaid overtime and other claims for unpaid wages and will be subject to authorized or required deductions, including employee-paid payroll tax withholdings required by law, garnishments, and tax liens. You will receive an IRS Form W-2 from this payment. The other check represents the portion of the Settlement Award allocated to the payment of liquidated damages, interest, and other non-wage recovery and will not be subject to any payroll or income tax withholding or deductions. You will receive an IRS Form 1099 for this amount.

If you submit a Consent to Join, Claim Form, and Confidential W-9 by [75 DAYS FROM MAILING] and agree to participate in the Settlement, you will receive a Settlement Award so long as the Settlement receives final approval. You will have 90 days to cash your checks that will

be sent to you by the Settlement Administrator. If at the conclusion of the 90-day check void period, there are any uncashed checks, the monies will be returned to Kinder Morgan.

By submitting your Consent to Join and Claim Form and agreeing to participate in the Settlement, you will be agreeing to release the following claims:

Any and all state, local or federal claims, obligations, demands, actions, rights, causes of action and liabilities against Releasees (as defined below) for alleged unpaid wages, liquidated or other damages, unpaid costs, penalties (including late payment penalties), premium pay, interest, attorneys' fees, litigation costs, restitution or any other compensation and relief arising under the FLSA and any other state or local wage-related law applicable to the work performed for Kinder Morgan Entities through one or more of the Vendor Companies during the Class Period wherein you were paid an alleged day-rate without overtime for hours worked over 40 in a week. Released Claims expressly do not include any claims that you may have related to work performed on Kinder Morgan Entities' projects on behalf of a vendor other than the Vendor Companies as defined herein. Kinder Morgan Entities, and all of their past, present, and future officers, owners, directors, principals, agents, employees, representatives, parents, shareholders, partners, subsidiaries, holding companies, affiliates, predecessors, successors, assigns, insurers, joint venture parties, and related companies, in their individual and corporate capacities that could be regarded, alleged or determined to be a joint employer for the services provided on behalf of the Vendor Companies during the Class Period. Releasees expressly excludes the Vendor Companies (as defined herein). "Kinder Morgan Entities" means Kinder Morgan Contracting Services, LLC, Gulf Coast Express Pipeline LLC, Kinder Morgan CO2 Company, L.P., Kinder Morgan CO2 Construction Inspection Services, Natural Gas Pipeline Company of America, LLC, KMGP Contracting Services LLC, EPBGP Contracting Services LLC, El Paso Energy Service Company, LLC, Kinder Morgan Inc. and Permian Highway Pipeline LLC.

**If you elect to join this FLSA collective action and to participate in the Settlement, you will only be releasing Kinder Morgan from liability. You will not be releasing any of the Vendor Companies from liability for unpaid overtime wages. This means that you might be able to pursue any remaining wage and hour claims for additional compensation due to you against any of the Vendor Companies in a separate proceeding subject to any offset for settlement funds that you received from Kinder Morgan in this lawsuit.**

**It is your responsibility to keep a current address on file with the Settlement Administrator to ensure receipt of your Settlement Award. If you fail to keep your address current, you may not receive your Settlement Award.**

If the Court does not finally approve the Parties' proposed Settlement, or if the Parties terminate the Settlement due to material modification of its terms by the Court or due to the occurrence of conditions authorizing the Parties to terminate the Settlement, no payments will be made under the Settlement. The rights and duties of the Parties will revert to their status prior to the execution of

the Settlement, you will not be deemed to have joined this lawsuit for any other purpose, and the Settlement Class Members will have no rights to a Settlement Award pursuant to the Settlement.

#### **4. What Are My Options?**

- Participate in this collective action lawsuit and, by so joining, participate in the Settlement and receive a Settlement Award by returning a fully executed Consent to Join and Claim Form and Confidential W-9 by **[75 DAYS FROM MAILING]** via mail, fax, or email to: **[SETTLEMENT ADMIN CONTACT INFO]**
- If you decide to participate in this collective action lawsuit, you may disagree with the Settlement or some part of it by sending a letter via first class U.S. Mail to the Settlement Administrator identifying the specific reasons for your disagreement by **[40 DAYS FROM MAILING]**. If you do so, you may represent yourself *pro se*, or use your own separate attorney to assist you with your objection. If you decide to send a letter disagreeing with the Settlement, you should not submit the attached Consent to Join and Claim Form to the Settlement Administrator.
- Do nothing and not be deemed to be a part of this collective action lawsuit and you will not be permitted to participate in the Settlement or receive payment of any Settlement Award.
- Pursue an independent action against Kinder Morgan if you choose not to participate in this collective action lawsuit. Pursuit of an individual action is available only if you do not opt in to the collective action.
- Even if you opt in, you have a right to not accept any settlement offer. If you opt in to the collective action lawsuit, but do not agree to be bound by the Settlement advocated by Plaintiff, you will not be eligible to receive the Settlement Award described above and must independently pursue your claims against Kinder Morgan either *pro se* or using separate counsel. To do so, you must inform the Settlement Administrator by U.S. mail and independently file a consent form in the United States District Court Western District of Oklahoma for this collective action within **[40 DAYS FROM MAILING]**. If you decide to opt-in to the law suit but not be bound by the Settlement Award described above, you should not submit the attached Consent to Join and Claim Form to the Settlement Administrator.
- Although not required, you may attend an in-person fairness hearing regarding the final disposition of this Settlement. The hearing will be held on \_\_\_\_\_, at \_\_\_\_\_.

#### **5. Can Kinder Morgan Retaliate Against Me for Participating in this Lawsuit?**

No. Your decision as to whether or not to participate in this FLSA collective action and Settlement will in no way affect your ability to perform work for Kinder Morgan.

**6. Who Are the Attorneys Representing Plaintiff and the Settlement Class?**

The following attorneys represent Plaintiff and the Settlement Class (“Class Counsel”):

Michael Josephson  
Lindsay Itkin Reimer  
Josephson Dunlap, LLP  
11 Greenway Plaza  
Suite 3050  
Houston Texas 77046  
Phone: 1-888-992-2990  
Email: Info@mybackwages.com

Rex Burch  
Bruckner Burch, P.L.L.C.  
11 Greenway Plaza  
Suite 3025  
Houston, Texas 77046  
Phone: 713-877-8788  
Email: frontdesk@brucknerburch.com

You also have the right to proceed with independent counsel or *pro se*.

**7. How Will the Attorneys for the Settlement Class Be Paid?**

Kinder Morgan has agreed to pay the fees and costs of Class Counsel’s attorneys identified above. You will not have to pay Class Counsel any money for their attorneys’ fees or costs directly. This amount is being paid to Class Counsel as a part of the settlement approved by the Court.

**8. Additional Information**

If you need more information or have any questions about the Settlement, or would like to review the Settlement Agreement, you may contact the Class Counsel at the telephone number or email listed in the preceding section. Please refer to the Kinder Morgan Settlement. This Notice only summarizes the Lawsuit, the Settlement, and related matters.

**THIS SETTLEMENT NOTICE IS AUTHORIZED BY UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA. PLEASE DO NOT CONTACT THE COURT REGARDING THIS NOTICE**



**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF OKLAHOMA**

DAVID M. OATES, Individually and on  
Behalf of Others Similarly Situated,

v.

KINDER MORGAN ENERGY  
PARTNERS, L.P.

Case No.: 5:19-CV-01171-SLP

Jury Trial Demanded

**OFFICIAL UNPAID OVERTIME CONSENT TO JOIN FLSA COLLECTIVE ACTION  
AND CLAIM FORM, AND CONFIDENTIAL W-9 APPROVED BY THE COURT**

**In order to join this FLSA collective action and be eligible to receive a Settlement Award, you must provide all of the information requested on this Consent to Join and Claim Form, AND the Substitute W-9, sign and date them, and return them to the Settlement Administrator postmarked on or before [75 DAYS FROM MAILING]. Any Consent to Join and Claim Form, and Substitute W-9 postmarked or received without a postmark after [75 DAYS FROM MAILING] will not be valid. You should mail, fax, or email these forms to the Settlement Administrator at the following address:**

**Overtime Lawsuit Against Kinder Morgan  
[SETTLEMENT ADMIN CONTACT INFO]**

Unless you indicate otherwise as specified below, by completing and signing this Consent to Join and Claim Form and in exchange for \$ \_\_\_\_\_, you hereby consent and agree to join this lawsuit and, by so joining, to participate in the Settlement entered into by Plaintiff and Kinder Morgan, subject to final approval by the Court. You also consent and agree to be bound by any adjudication of this action by the Court. I hereby designate Michael A. Josephson and Lindsay Itkin Reimer of Josephson Dunlap LLP and Richard J. Burch, of Bruckner Burch PLLC, to represent me in this action.

You understand that by joining this FLSA collective action and, by so joining, accepting this settlement, You are agreeing to the following release of claims:

Any and all state, local or federal claims, obligations, demands, actions, rights, causes of action and liabilities against Releasees (as defined below) for alleged unpaid wages, liquidated or other damages, unpaid costs, penalties (including late payment penalties), premium pay, interest, attorneys' fees, litigation costs, restitution or any other compensation and relief arising under the FLSA and any other state or local wage-related law applicable to the work performed for Kinder Morgan through one or more of the Vendor Companies during the Class Period wherein you were paid a day-rate without overtime for hours worked over 40 in a

week. Released Claims expressly do not include any claims that you may have related to work performed on Kinder Morgan’s projects on behalf of a vendor other than the Vendor Companies as defined herein. “Releasees” means Kinder Morgan Energy Partners, LP, and its past, present, and future officers, owners, directors, principals, parents, subsidiaries, and predecessors, in their individual and corporate capacities. Releasees expressly excludes the Vendor Companies.

If you would rather participate in this collective action lawsuit, but you **disagree** with the Settlement or some part of it, you should not return this Consent to Join and Claim Form. Instead, you must send a letter via first class U.S. Mail to the Settlement Administrator identifying the specific reasons for your disagreement by **[40 DAYS FROM MAILING]**. If you do so, you may represent yourself *pro se*, or use your own separate attorney to assist you with your objection.

If you would rather participate in this collective action lawsuit but you do not want to be bound by the Settlement advocated by Plaintiff, you may independently pursue claims yourself *pro se*, or use your own separate attorney to assist you with your own independent prosecution of a claim against Kinder Morgan. If you want to do so, you should not return this Consent to Join and Claim Form. Instead, you must inform the Settlement Administrator by U.S. mail and independently file a consent form in the United States District Court Western District of Oklahoma for this collective action within **[40 DAYS FROM MAILING]**.

I further represent and warrant that nothing that would otherwise be released by signing this Consent to Join and Claim Form has been assigned, transferred, or hypothecated or purportedly assigned, transferred, or hypothecated to any person or entity, including, but not limited to, any interest in the Lawsuit or any related action.

I understand that **ONLY** the Settlement Administrator will use the personal information supplied on my Consent to Join and Claim Form to make settlement payments from the settlement of the Lawsuit and that it may verify the accuracy of certain facts represented on my Claim Form with information provided by the Parties in the Lawsuit.

I understand that I must keep the Settlement Administrator informed of my current home address and of any change in my address. If I do not do so, I understand that I may not receive the settlement payment that I might otherwise be entitled to receive.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
City, State



**CONFIDENTIAL W-9 FORM**

**In order to receive a Settlement Award, you must timely complete and return this Substitute W-9 Form and the Consent to Join and Claim Form.**

**Substitute W-9  
Taxpayer Identification Number Certification**

Enter your Social Security Number (taxpayer identification number): \_\_\_\_\_

Print name and address as shown on your income tax return:

\_\_\_\_\_

First Name & Middle Initial: \_\_\_\_\_ Last Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP Code: \_\_\_\_\_

Under penalties of perjury, I certify that:

1. The taxpayer identification number shown on this form is my correct taxpayer identification number, **and**
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, **and**
3. I am a U.S. citizen or other U.S. person (including a U.S. resident alien).

**Note:** If you have been notified by the IRS that you are subject to backup withholding, you must cross out item 2 above.

Signature  
of U.S. Person: \_\_\_\_\_ Date: \_\_\_\_\_

**RETURN THIS SIGNED SUBSTITUTE W-9 AND CLAIM FORM TO:**

**Overtime Lawsuit Against Kinder Morgan**  
**[SETTLEMENT ADMIN CONTACT INFO]**  
**Kinder Morgan Overtime Settlement**

**THIS FORM AND THE CONSENT TO JOIN AND CLAIM FORM MUST BE  
COMPLETED IN FULL AND MAILED, EMAILED, OR FAXED TO THE  
SETTLEMENT ADMINISTRATOR POSTMARKED ON OR BEFORE [75 DAYS  
AFTER MAILING]**

# Exhibit 3

**E-MAIL TO SETTLEMENT CLASS MEMBERS**

**Subject: Notice of Collective Action Lawsuit and Settlement and Your Opt-in Rights**

Dear Current or Former Inspector Provided to Work on Kinder Morgan Projects:

Attached is a notice regarding the proposed settlement of a Fair Labor Standards Act (“FLSA”) collective action lawsuit from which you are eligible to join and receive a payment should you choose to participate. The United States District Court for the Western District of Oklahoma has authorized this notice. As set forth in the attached notice, the court has not made any decision regarding the merits of any claims or defenses in this action. Instead, the attached notice is to advise you of certain rights you may have, including the right to participate in a proposed settlement regarding overtime pay from Kinder Morgan Energy Partners, LP. The Court in charge of this lawsuit preliminarily approved the settlement. You received this email because you were identified as a current or former inspector who was provided to work on Kinder Morgan Projects by one or more of the Vendor Companies subject to the settlement and allegedly paid a day rate while working on Kinder Morgan’s projects.

The attached notice explains your options and the steps you need to take if you want to join this FLSA collective action and participate in the settlement. You can review and sign the forms to join the case [here](#) (hyperlink). If you have any questions, please feel free to contact me at «telephone number» or by e-mail at «email».

«Signature Block»

**PROPOSED TELEPHONE SCRIPTS**

**LIVE CALLS (BOTH DIRECT AND RETURN CALLS)**

Hello, my name is \_\_\_\_\_ and I work for \_\_\_\_\_. I am calling to confirm that you received the notice of the proposed settlement of a Fair Labor Standards Act (“FLSA”) collective action lawsuit against Kinder Morgan from which you are eligible to join and to receive a payment should you choose to participate in the settlement. The Court in charge of this lawsuit preliminarily approved the settlement. I am calling because you were identified as a current or former inspector who was provided to work on Kinder Morgan Projects by one or more of the Vendor Companies subject to the settlement and allegedly paid a day rate while working on Kinder Morgan’s projects. Have you received this notice by mail and/or e-mail?

**If yes:** Thank you, have a good day.

**If no:** What is the best method for me to send you the notice? (mail/e-mail). This information will only be used to send you a copy of the notice. Thank you, have a good day.

**If potential class member asks what the case is about:** I cannot discuss the case with you. The notice that will be sent to you will provide information regarding the case. If you have additional questions, the notice explains your options for obtaining additional information.

**MESSAGES (VOICEMAIL OR OTHER)**

Hello. This message is for «Name of Potential Settlement Class Member». My name is \_\_\_\_\_ and I work for \_\_\_\_\_. I am calling to confirm that you received the notice of the proposed settlement of a Fair Labor Standards Act (“FLSA”) collective action lawsuit against Kinder Morgan from which you are eligible to join and to receive a payment should you choose to participate in the settlement. You were identified as a current or former inspector who was provided to work on Kinder Morgan Projects by one or more of the Vendor Companies subject to the settlement and allegedly paid a day rate while working on Kinder Morgan’s projects. If you have not received the notice, please call \_\_\_\_\_ between the hours of \_\_\_\_\_ to provide the representative with your current contact information so that a notice can be sent to you. Any information you provide will only be used to send you the notice. Thank you and have a good day.

**PROPOSED TEXT MESSAGE SCRIPT**

Dear Current or Former Inspector Provided to Work on Kinder Morgan Projects:

Attached is the Court-authorized Notice regarding the proposed settlement of a Fair Labor Standards Act (“FLSA”) collective action lawsuit from which you are eligible to join and receive a payment should you choose to participate. The Court in charge of this lawsuit preliminarily approved the settlement. You received this text message because you were identified as a current or former inspector who was provided to work on Kinder Morgan Projects by one or more of the Vendor Companies subject to the settlement and allegedly paid a day rate while working on Kinder Morgan’s projects.

The attached Notice explains your options and the steps you need to take if you want to join this FLSA collective action and participate in the settlement. You can review and sign the forms to join the case [here](#) (hyperlink). If you have any questions, please feel free to contact me at «telephone number» or by e-mail at «email».

«Signature Block»