

UNITED STATES DISTRICT COURT  
DISTRICT OF COLORADO  
Chief Judge Marcia S. Krieger

Case No. 09-cv-01114-MSK-KLM

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

WELLCO ENERGY, LLC,  
JUSTIN WILLIAM RIFKIN, and  
DUSTIN D. WHITE,

Defendants.

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ORDER APPROVING DISTRIBUTION PLAN

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The Court has reviewed the motion of the Securities and Exchange Commission (“Commission”) to approve a plan for distribution of funds to investors who were harmed by the defendants’ conduct alleged in the complaint (Doc. #97) (the “Distribution Plan”). In addition, the Court has considered the information provided at the hearing, and reviewed the revised plan submitted by the Commission, and it appearing for good cause shown,

IT IS HEREBY ORDERED, that:

1. Michael S. Lim, a Commission employee, is appointed as Plan Administrator. As a Commission employee, the Plan Administrator shall receive no compensation, other than his regular salary as a Commission employee, for his services in administering the Distribution Fund.
2. The Distribution Fund will consist of the \$39,751.67 paid into the registry of the Court by the defendants and any interest accrued on those funds, reduced by any Court registry fees, tax obligations, the expenses of the Tax Administrator, and any post-judgment interest that has

accrued (“Net Distribution Fund”). The staff of the Commission anticipates that no additional funds will be collected from the defendants and the proposed distribution will be the final distribution.

3. The Distribution Fund shall be distributed to the investors who acquired from Wellco Energy L.L.C. (“Wellco”) working interests in one or more of four oil and gas prospects: the Wilson Bend Well #1 from May 2007 through October 2007, the North Bounde Creek Well #1 from November 2007 through June 2008, and in the North Semitropic Well #1 from July 2008 through April 2009, or the Monument Junction Prospect from November 2008 through May 2009; and deposited funds into Wellco’s bank account ending with 8475 with Wells Fargo Bank, N.A (“Wellco’s bank account”) from May 2007 through May 2009.

4. The Plan Administrator shall identify the investors who are eligible to receive a distribution from the Distribution Fund (“Eligible Recipients”) by reviewing Wellco’s bank account statements and subscription agreements to determine the investors who acquired working interests in one or more of the four oil and gas prospects listed above from May 2007 through May 2009.

5. The Plan Administrator will determine the amount of each Eligible Recipient’s total investment, and calculate the Eligible Recipient’s *pro rata* share of the total amount that all the investors paid to Wellco from May 2007 through May 2009. The Plan Administrator will multiply each Eligible Recipient’s *pro rata* share times the Net-Distribution Fund to determine each Eligible Recipient’s share of the Distribution Fund. The Plan Administrator will prepare a list that identifies the name of each investor who is an Eligible Recipient (“Investor List”), the

investment amount, investment date, oil and gas prospect, and the pro rata share of the Distribution Fund that the Plan Administrator proposes to be distributed to each investor.

6. The Plan Administrator shall send a notice (“Notice”) to each Eligible Recipient by First Class U.S. Mail or United Parcel Service within thirty days of entry of this Order. The Notice shall include a copy of this Order Approving Distribution Plan and the Investor List identifying the proposed *pro rata* share to be paid to each investor. The Notice shall advise the Eligible Recipients that they may submit an objection the Distribution Plan to the Plan Administrator within thirty days from the date of service of the Notice.

7. Eligible Recipients will have 30 days from the date of service of the Notice to submit to the Plan Administrator any objections to the proposed Distribution Plan. Eligible Recipients must submit their objections, along with any supporting documentation, to the Plan Administrator via return receipt requested mail. The Plan Administrator will have forty-five (45) days from the date of the order approving the Distribution Plan to resolve any objections by Eligible Recipients.

8. The Plan Administrator shall submit a report within sixty days after the objection deadline to the Court stating whether any objections were submitted, the status of any unresolved objections, and the response of the Plan Administrator to any unresolved objections.

9. The Court may set a hearing date, if necessary, to resolve any unresolved objections, and the Plan Administrator will give notice to the Eligible Recipients of the date of the hearing.

10. After the Court has ruled upon any objections, or if there are no objections, the Plan Administrator shall submit an affidavit that addresses: all reasonable efforts made to identify and contact the Eligible Recipients, the number of investors that were located, whether any

objections have been raised and how they were resolved, and the names of Eligible Recipients and amounts of the Distribution Fund to be paid.

11. The Plan Administrator may accompany the affidavit with a motion requesting transfer of the Distribution Fund to the Commission for further distribution to the Eligible Recipients and payment of any tax obligations, fees, expenses, or post-judgment interest. After the Court receives the Plan Administrator's affidavit, the Court will issue an order for disbursement.

12. Pursuant to the disbursement order, the Plan Administrator will provide the Commission's Office of Financial Management with a list of Eligible Recipients containing the names, addresses and amounts to be paid. The Commission's Office of Financial Management shall promptly thereafter cause checks or bank wires to be issued to the Eligible Recipients in the amounts of their *pro rata* distribution. Each check issued to the Eligible Recipients will state on the face of the check that it is valid for one year. After one year from the date on the distribution check, the Commission's Office of Financial Management will notify the Plan Administrator of the amount of all uncashed checks. The amount of all uncashed checks shall be placed in the Distribution Fund as a residual.

13. Forty-five days after the remittance of the checks, the Plan Administrator shall obtain information from the Commission's Office of Financial Management concerning checks that have not been negotiated. The Plan Administrator shall then undertake good faith efforts for thirty days to locate and contact the intended recipients of the uncashed checks to ensure that the intended recipients have a reasonable opportunity to participate in the distribution.

14. The Plan Administrator will submit a final accounting to the Court prior to termination of the Distribution Fund. The final accounting shall include all monies received, earned, spent, and distributed in connection with the administration of the Distribution Fund.

15. The Distribution Fund shall be eligible for termination after all of the following have occurred: (1) the final accounting has been submitted and approved by the Court; (2) all taxes and fees and expenses have been paid; and (3) all remaining funds or any residual have been paid to the Commission for transfer to the U.S. Department of Treasury. After the Court has approved the final accounting, the Plan Administrator shall seek an order from the Court to terminate the Distribution Fund and to discharge the Plan Administrator.

16. The Plan Administrator shall perform such functions as are necessary to implement and administer the approved Distribution Plan, pursuant to which monies in the Distribution Fund, reduced by tax obligations and fees and expenses of the Tax Administrator and post-judgment interest, shall be distributed to Eligible Recipients as defined in the Distribution Plan.

17. The Plan Administrator shall be deemed to be acting within the scope of his employment with the Commission in administering this Distribution Fund. In carrying out his duties, the Plan Administrator may be assisted by other Commission staff acting under his supervision.

18. The Plan Administrator and his designees, agents and assistants are not required to post a bond, and shall not be liable to any person for their actions hereunder, except on a finding of willful disregard of duty.

19. The Plan Administrator shall coordinate with the court-appointed Tax Administrator, Damasco & Associates LLP, to ensure that the Distribution Fund, a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code, and related regulations pertaining

to QSF, 26 C.F.R. §§ 1.468B-1 through 65, complies with all related legal and regulatory requirements, including without limitation, satisfying any reporting or withholding requirements imposed on distributions from the Distribution Fund.

20. The Plan Administrator may be removed *sua sponte* at any time by the Court or upon motion of the Commission, and replaced with a successor.

DATED this 8<sup>th</sup> day of September, 2016.

**BY THE COURT:**

A handwritten signature in black ink that reads "Marcia S. Krieger". The signature is written in a cursive style and is positioned above a horizontal line.

Marcia S. Krieger  
United States District Court