

FILED

IN THE DISTRICT COURT OF STEVENS COUNTY, KANSAS

GILBERT H. COULTER and
ELIZABETH S. LEIGHNOR, individually
as represented plaintiffs on behalf of
persons or companies similarly situated,
Plaintiff

8/19/98 PM 3:11
KOLEEN HOEKARTEL
CLERK OF THE DIST. COURT
STEVENS CO. KS

vs.

Case No. 98-C-40

ANADARKO PETROLEUM CORPORATION,
Defendant

**JOURNAL ENTRY OF DECISION BY THE COURT ON DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

The Defendant, Anadarko Petroleum Corporation, has filed its Motion for Summary Judgment alleging that based upon the uncontroverted facts in this proceeding the gas from the wells owned and produced by Anadarko Petroleum Corporation, of which the Plaintiff class has a royalty interest, is marketable at the wellhead and that all deductions made by Anadarko Petroleum Corporation from the royalties paid to the royalty owners are just as a matter of law. It is the claim of Anadarko Petroleum Corporation that they did not violate the implied duty to market gas by deducting a proportionate share of the transportation and gathering costs and fuel expenses utilized for compression when calculating the royalties due to the Plaintiff class.

At the heart of the Defendant's Motion for Summary Judgment is their claim that the gas produced and sold by them is marketable at the wellhead.

Their evidentiary basis for this position is that because they sell the gas at the wellhead to Anadarko Energy Services Company a wholly owned subsidiary of Anadarko Petroleum Corporation, that it is a bonafide transaction and, therefore, that proves the gas is marketable at the wellhead.

It is the claim of Anadarko Petroleum Corporation that because their wholly owned subsidiary purchases the gas at a point on their gathering system which is owned and operated by Anadarko Gathering Company, another wholly owned subsidiary of the Defendant, that all of the gas produced by the Defendant which the Plaintiff class has a royalty interest is marketable at the wellhead.

If, indeed, the gas is marketable at the wellhead, then any costs incurred to further enhance the value of the gas or any costs incurred in transporting the gas to a distant market would be borne proportionately by the royalty owners. Sternberger v. Marathon Oil Company, 257 Kan. 315.

The sale at the wellhead of which the Defendant contends is controlling in this case is accomplished as follows.

For approximately the last seven years all of the gas produced by Anadarko Petroleum Corporation, excepting only some small amounts that is sold to irrigation farmers off of taps located between the wellhead and the metering point on the gathering line operated by Anadarko Gathering Company, has been sold to Anadarko Energy Services Company.

Once the gas is sold to Anadarko Energy Services Company, Anadarko Gathering Company transports the gas to a marketing point on an interstate transmission pipeline or to some other commercial users.

Compressors have been placed upon the gathering system that are operated by Anadarko Gathering Company.

Along the gathering system liquid hydrocarbons are trapped out of the gas stream and dehydration takes place.

Anadarko Energy Services Company pays a fee to Anadarko Gathering Company for this gathering and transportation cost and this includes a fuel charge for the operation of the compressors that are owned and operated by Anadarko Gathering Company.

It is not clear from the facts established that the gathering fee charged by Anadarko Gathering Company includes charges for dehydration and removal of liquid hydrocarbons from the gas stream produced from Anadarko Petroleum Corporation wells.

Anadarko Energy Services Company pays Anadarko Petroleum Corporation for the gas produced by using an industry index price from which Anadarko Energy Services Company deducts the cost it paid to Anadarko Gathering Company which includes costs of operation of the compressors and costs incurred for the operation of the gathering system.

This price then paid to Anadarko Petroleum Corporation is the price Anadarko Petroleum Corporation uses as a basis to pay its royalty owners.

There are other wells that are not owned by Anadarko Petroleum Corporation that are hooked to the gathering line from which gas is also purchased by Anadarko Energy Services Company. These purchases by Anadarko Energy Services Company are upon the same terms and conditions as the purchases of gas from Anadarko Petroleum Corporation.

There are sales of gas made by Anadarko Petroleum Corporation to some irrigation farmers. These sales are made off of the wellhead before the point of transfer between Anadarko Petroleum Corporation and Anadarko Energy Services Company. There are other

sales made by Anadarko Energy Services Company off of the gas gathering system. This gas is treated or processed prior to delivery to customers.

These sales are to irrigation cooperatives, a large industry, and a utility company. This gas is dehydrated before it is sold to these buyers. It is claimed by the Defendant that there is no requirement for dehydration in the sale contracts between Anadarko Energy Services Company and these purchasers.

The question in this Court's mind is whether or not the cost of dehydration of this gas so sold is charged against the royalty owners or not. Also, it is questionable as to why the dehydration occurs if it is not needed to make the gas stream usable by these purchasers.

Anadarko Petroleum Corporation has in excess 1,100 wells connected to the Anadarko Gathering Company, Hugoton gas gathering system that sell its gas to Anadarko Energy Services Company. Of these wells there are approximately 57 irrigation gas taps in addition to domestic gas taps of approximately 200 in number.

The large share of the gas produced by Anadarko Petroleum Corporation that is sold to its subsidiary goes to a distant market.

The claim of Anadarko Petroleum Corporation that its gas is marketable at the wellhead is based upon the fact there are sales to these few customers in some limited amount and that all of the rest of its gas is sold to its wholly owned subsidiary at the wellhead.

The Defendant is correct in its proposition that if the gas is marketable at the wellhead, it is permitted to deduct from the royalty paid to the Plaintiff class the gathering/transportation and/or fuel charges for compression that are at issue in this case.

This Court finds that the facts as established by the Defendant do not in and of themselves make the gas that is sold by Anadarko Petroleum Corporation to Anadarko Energy Services Company marketable at the wellhead. It is a question of fact as to whether or not this gas is in a marketable condition at the wellhead.

No Kansas court has ever defined at what point or what steps are required to create marketable gas.

It is a question of fact as to whether or not the gas in question in this case is acceptable for a commercial market.

The uncontroverted facts do not establish that the gas produced by Anadarko Petroleum Corporation and sold to its wholly owned subsidiary is marketable at the well.

Questions of fact remain upon this issue, which can only be determined upon a trial of all factual issues.

Secondary to this Motion for Summary Judgment, the Defendant seeks an order defining the precise parameters or definition of the marketable product approach to the deductibility to the costs in issue that the Court intends to use in this case.

The Court cannot predict in advance such "precise parameters" until all evidence has been presented to the trier of fact.

The Court has noted that the best case for definition upon this issue is Rogers v. Westerman Farm Company, a Supreme Court decision of the state of Colorado filed July 2, 2001.

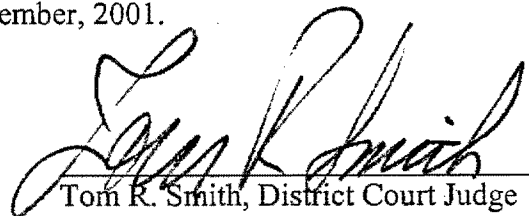
Anadarko Petroleum Corporation seeks an order as a matter of law that it has paid royalties to the Plaintiff class in accordance with the express terms of the subject oil and gas leases.

It is clear that the Defendant is deducting costs from the proceeds that are paid to the Plaintiff class.

If the trier of fact does not find that the gas stream in question is marketable at the wellhead, then the reasons for the costs deducted by the Defendant must be determined.

IT IS, THEREFORE, the Order, Judgment and Decree of this Court that the Defendant's Motion for Summary Judgment shall be and is hereby denied.

Dated this 20th day of November, 2001.



Tom R. Smith, District Court Judge

CERTIFICATE OF SERVICE

I, Renata McCulloch, hereby certify that I mailed a true and correct copy of the above Journal Entry by United States mail, postage prepaid and properly addressed on the 30th day of November, 2001 to:

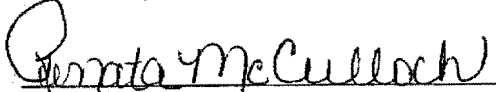
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