

**FILED**  
U.S. DISTRICT COURT  
DISTRICT OF KANSAS

DEC 18 3 32 PM '98

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

GILBERT H. COULTER and )  
ELIZABETH S. LEIGHNOR, )  
individually and as representative )  
plaintiffs on behalf of persons or )  
companies similarly situated, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
ANADARKO PETROLEUM CORPORATION, )  
 )  
Defendants. )

Case No. 98-1413-WEB

ANSWER TO  
COUNTERCLAIM

In answer to Defendant's Counterclaim, Plaintiffs states:

First Defense

1. Paragraph 16 of the Counterclaim states a legal assertion to which no response is necessary, but to the extent a response is required Plaintiffs deny the same.
2. Plaintiffs admit the allegations of Paragraph 17 of the Counterclaim.
3. Paragraphs 18 and 19 of the Counterclaim state of legal assertion to which no response is necessary, but to the extent a response is required Plaintiffs deny the same.
4. In response to Paragraph 20 of the Counterclaim, Plaintiffs admit that the Federal Energy Regulatory Commission and certain federal courts have taken the position that the Kansas ad valorem tax is not a tax recoverable under Section 110 of the Natural Gas Policy Act of 1978

(NGPA); and that, in instances, between October 3, 1983 and June 28, 1988, where producers passed that tax through to third parties purchasers of gas and to the extent that pass-through resulted in the payment by those third parties of a price for gas in excess of the applicable Maximum Lawful Price under the NGPA, producers are required to make refunds of such excess, unless relieved of that requirement under lawful orders. Plaintiffs deny the allegations of Paragraph 20 of the Counterclaim which are inconsistent with the above admission.

5. Plaintiffs deny the allegations of Paragraph 21 of the Counterclaim.

6. In response to the first sentence of Paragraph 22 of the Counterclaim, Plaintiffs admit that, between October 3, 1983 and June 28, 1988, defendant owned many, if not most, of the oil and gas leases which are the subject matter of the claims made against defendant by Plaintiffs, individually and as representatives of the plaintiff class. In response to the second sentence of Paragraph 22 of the Counterclaim, Plaintiffs deny that defendant's voluntary payment of Kansas ad valorem taxes otherwise payable by Plaintiffs constitutes "royalties." Plaintiffs deny the allegations of the third and fourth sentences of Paragraph 22 of the Counterclaim.

7. Paragraphs 23 and 24 of the Counterclaim state of legal assertion to which no response is necessary, but to the extent a response is required Plaintiffs deny the same.

#### Second Defense

8. The Counterclaim is barred by principles of estoppel, quasi-estoppel, and waiver.

#### Third Defense

9. The Counterclaim is barred by the applicable statute of limitations or repose, under the doctrine of laches, or under other such principles of law or equity.

#### Fourth Defense

10. Because the putative counterclaim defendant class, defined in Paragraph 19 of the Counterclaim, is composed of different members than the plaintiff class described in the Petition and the Counterclaim is different from and unrelated to the claims asserted in the petition, the Counterclaim and Plaintiffs' claims are not part of the same case or controversy under Article III of the United States Constitution. Defendant having failed to plead that the amount in controversy with respect its Counterclaim is sufficient to meet the jurisdictional requirements of this Court, this Court lacks jurisdiction over both the Plaintiffs with respect to the Counterclaim and over the putative counterclaim defendant class.

#### Fifth Defense

11. The putative counterclaim defendant class is not maintainable under Rule 23.

#### Sixth Defense

12. This Court lacks subject matter jurisdiction of the Counterclaim.

#### Seventh Defense

13. Defendant is not entitled to any recovery based on the theories of restitution or unjust enrichment because: (a) defendant has not yet made irretrievable payment of refunds to third parties; (b) pursuant to K.S.A. 79-3330 or otherwise defendant voluntarily consented to and paid the entire assessment of that tax, including the share otherwise payable by defendant's royalty owners; and (c) defendant's payments of ad valorem taxes, if wrong or unintended, were made due to a mistake of law.

THEREFORE, Plaintiffs demand that judgment be entered in their favor on the Counterclaim, and that they receive such further relief as the Court deems just and equitable.

FLEESON, GOOING, COULSON & KITCH, L.L.C.

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

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and Plaintiff Class

Certificate Of Service

I certify that on December 18, 1998, a copy of this Answer To Counterclaim was placed in the United States mail in Wichita, Kansas, first class postage prepaid, addressed to Jim H. Goering, Esq., Foulston & Siefkin, L.L.P., 700 NationsBank Financial Center, Wichita, Kansas 67202.

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

Gregory J. Stucky (#9674)

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