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IN THE TWENTY-SIXTH JUDICIAL DISTRICT  
DISTRICT COURT, STEVENS COUNTY, 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, )  
Defendant. )

Case No. 98-CV-40

**DEFENDANT'S RESPONSE TO  
PLAINTIFFS' MOTION FOR LEAVE TO  
ASSERT A CLAIM FOR PUNITIVE DAMAGES**

Plaintiffs' attempt to [mis]characterize their breach of contract claims as torts to support a claim for punitive damages must be rejected. All of the Plaintiffs' various allegations can be summed up into one question: Did Anadarko Petroleum Corporation ("Anadarko") pay the royalty required by its contracts with its royalty owners? Thus, the instant case is one solely for breach of the applicable oil and gas lease contracts and pooling agreements. Plaintiffs have not and cannot allege any truly separate and independent tort claims that are required to support a claim for punitive damages.

8-28-00

Further, the Court should reject and ignore Plaintiffs' attempt to "smear" Anadarko with their "alter ego" allegations. The sale of the gas in issue at the wellhead to Anadarko's wholly owned subsidiary is a proper, arm's length transaction. Plaintiffs' attempt to characterize that transaction as either a sham, wrongful or fraudulent is without any basis in fact. The Court should ignore Plaintiffs' attempt to mischaracterize that transaction. When all of the facts are known, Anadarko will reveal that Plaintiffs are simply seeking a financial windfall due to the restructuring of the gas industry.

**I. Punitive Damages are Not Proper in this Breach of Contract Action**

**A. Applicable Kansas Law**

Under Kansas law, Plaintiffs may not recover punitive damages in a breach of contract action unless (1) there is some independent tort amounting to malice, fraud or wanton conduct; and (2) that independent tort results in some injury additional to the injury from the breach of contract. Guarantee Abstract & Title Co. v. Interstate Fire & Casualty Co., 232 Kan. 76, 652 P.2d 665 (1982).<sup>1</sup> The existence of a contractual relationship between the parties bars the assertion of tort claims covering the same subject matter governed by the contract. Atchison Casting Corp. v. Dofasco, Inc., 889 F. Supp. 1445, 1461 (D. Kan. 1995); Woodmont Corp. v. Rockwood Center Partnership, 852 F. Supp. 948, 956 (D. Kan. 1994). This rule is intended to prevent the evil of allowing parties to turn what are ordinary breach of contract actions into fraud or other tort claims that open the door to more lucrative awards of damage. See Atchison Casting Corp., 889 F. Supp. at 1462. Thus, to prevail on the instant motion, Plaintiffs must

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<sup>1</sup> Significantly, Plaintiffs ignore and do not address the separate damages requirement.

demonstrate that they have pled some independent tort claim and that additional damages resulted from that tort. In the absence of either element, punitive damages are not recoverable.

**B. Plaintiffs Have Not Stated an Independent Tort Claim**

Plaintiffs base their claim for punitive damages on the alleged “tort” claims of constructive fraud and breach of fiduciary duty. Upon close examination, however, the only duties that Plaintiffs claim Anadarko breached are based solely from the oil and gas lease contract between the parties. Thus, those are not true independent tort claims that will support a claim for punitive damages.

Consistently throughout this case, the Plaintiffs have characterized their case as one grounded solely on Anadarko’s alleged breach of the oil and gas leases. Specifically, Plaintiffs’ claims are based solely on Anadarko’s alleged wrongful calculation of royalties due them under the terms of their oil and gas leases. In the beginning, when this case was pending in U.S. District Court in Wichita, Plaintiffs characterized their claims against Anadarko as follows:

This is an action brought by two Kansas citizens who own mineral interests in lands subject to oil and gas leases owned by Anadarko Petroleum Company [sic] (Anadarko). Plaintiffs contend that Anadarko has breached its obligations under oil and gas leases by failing to properly account for and pay royalties, as a result of its improper deduction of production-related expenses and expenses to make the gas marketable.

Plaintiffs’ Memorandum in Support of Their Motion to Remand dated June 16, 1999, p. 1 (emphasis added). Next, in this Court, Plaintiffs reiterated that description of their claims in a brief filed in support of a motion to compel Anadarko to respond to discovery:

In this putative class action, plaintiffs essentially claim that defendant has wrongfully calculated and made royalty payments to members of the plaintiff class by (1) using, as a starting point, a value that is not the same as the proceeds received by defendant's wholly-owned subsidiary for the sale of the gas and (2) by deducting from that value expenses incurred to produce the gas and place it in a marketable condition.<sup>2</sup>

Memorandum in Support of Plaintiffs' Motion to Compel Answers to Interrogatories and Production of Documents dated November 24, 1999, p. 1 (emphasis added). Most recently, in the Notice of Class Action that was drafted and approved by Plaintiffs' counsel, Plaintiffs described their claims as follows:

The Named Plaintiffs claim that Anadarko has failed to properly calculate and pay royalty under oil and gas leases covering mineral interests in lands located within the areal confines of the Kansas Hugoton Field insofar as those leases are productive of gas from above the base of the Panoma Council Grove Field by deducting from such payments expenses incurred to produce the gas and/or expenses incurred to make the gas marketable. This lawsuit does not raise any other possible claim the Named Plaintiffs or members of the class may have against Anadarko . . .

Order on Class Certification, Exhibit 1, Notice of Class Action, p. 2 (emphasis added). Thus, Plaintiffs have consistently characterized their claims as ones for breach of the oil and gas lease. Their present attempt to [mis]characterize those claims as "tort claims" to support their motion to amend to add a claim for punitive damages is wrong and must be rejected.

Furthermore, simply labeling their claims as "tort" claims does not make them so. In fact, a cursory review of those claims clearly reveals their true character as breach of contract claims. The relationship between Anadarko and the Plaintiffs is governed exclusively by the

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<sup>2</sup> Recently, Plaintiffs stipulated that they are not making "any claim that Anadarko has not used the proper starting point for calculation of royalty payments." Order on Class Certification, Exhibit 1, Notice of Class Action, p. 2.

express and implied terms of the oil and gas leases and related agreements in issue. Anadarko's obligation to pay royalties on the gas produced pursuant to those leases is governed by the terms of those leases, and by other contractual agreements between the parties, such as division orders and pooling agreements. In the instant case, the lease between Coulter and Anadarko provides, in relevant part:

4. The lessee shall monthly pay lessor as royalty on gas marketed from each well where gas only is found, one-eighth ( $\frac{1}{8}$ ) of the proceeds if sold at the well, or if marketed by lessee off the leased premises, then one-eighth ( $\frac{1}{8}$ ) of its market value at the well.

A true copy of that oil and gas lease is attached hereto as Exhibit "A." Moreover, under the terms of the oil and gas lease, the lessor-royalty owner does not actually own any share of the gas when it is produced. "If the lessor has a right to payment of the proceeds or market value on production, title to the substance is in the lessee when produced, subject to the contractual claim of the lessor for payment of royalty." Vol. I, Kansas Oil and Gas Handbook § 9.45, p. 9-64 (D. Pierce ed. 1986). Instead, the lessor-royalty owner has a contractual right to receive a fractional royalty share from the sale of that gas. All of the rights and obligations surrounding the calculation and payment of royalty arise solely from the terms of the oil and gas lease.

In their effort to create a tort claim out of their breach of contract claims, Plaintiffs make two separate arguments:

First, Plaintiffs contend that they have stated an independent tort claim for breach of fiduciary duty. Memorandum in Support of Motion for Leave to Assert Claim for Punitive Damages ("Plaintiffs' Memorandum"), pp. 4-5. Specifically, Plaintiffs contend that Anadarko has breached a fiduciary duty arising from its allegedly improper payment of royalties. These

arguments are directly contrary to well established Kansas law. In Waechter v. Amoco Production Company, 217 Kan. 489, 537 P.2d 228 (1975), the Supreme Court clearly stated that:

We know of no . . . reason why an oil and gas lessee should be declared a fiduciary. It seems well established that a lessee under an oil and gas lease is not a fiduciary to his lessor; his duty is to act honestly and fairly under a contractual relationship.

Waechter, 217 Kan. at 510. The lessor – lessee relationship does not give rise to a fiduciary duty, but only contractual duties. Thus, no independent tort claim can arise from any aspect of that relationship.

Although Plaintiffs appear to recognize the law stated in Waechter, they nonetheless argue that “one aspect” of the lessor – lessee relationship gives rise to a fiduciary obligation -- “the producer’s handling of moneys belonging to the lessor-royalty owner.” Plaintiffs’ Memorandum, p. 4. And when Anadarko allegedly failed to properly calculate and pay royalties to Plaintiffs, they contend that Anadarko breached a fiduciary duty owed to them.

The fundamental premise upon which Plaintiffs’ argument is based is wrong. The money received by the lessor (Anadarko) from the sale of the gas belongs solely to Anadarko. As stated by Professor Pierce, “title to the substance produced is in the lessee when produced.” Kansas Oil and Gas Handbook, *supra*. The royalty owner has only a contractual right to receive the agreed upon royalty portion of those funds. The lessor does not have title to any portion of the gas when produced and does not have title to any segregated funds resulting from the sale of that gas. The lessor only has a contractual claim, based on the terms of the oil and gas lease, to a royalty percentage share of those funds. Any miscalculation or incorrect payment of royalty is a breach of those contractual obligations.

Overall, the right to receive royalties on gas produced by the lessor is purely a contractual right governed by the express terms of the oil and gas lease. Anadarko has the contractual duty

to pay and Plaintiffs have a contractual right to receive the specific share of royalty due under the terms of the contract. No fiduciary obligations arise from that process.

Second, Plaintiffs claim that Anadarko is guilty of “constructive fraud.” Plaintiffs’ Memorandum, pp. 6-7. This claim is allegedly based on Anadarko’s failure to reveal certain information in its royalty remittances that Plaintiffs claim “misled” them and concealed Anadarko’s alleged breaches of its contractual duties. Plaintiffs’ Memorandum, pp. 6-7. Specifically, Plaintiffs claim that Anadarko failed to report several categories of information on its royalty remittances, and that Anadarko’s subsidiaries Anadarko Energy Services Company (“AES”) and Anadarko Gathering Company (“AGC”) were merely Anadarko’s “alter egos.” *Id.*, pp. 2-3. Just how those alleged omissions defrauded the Plaintiffs is not explained and is left entirely to speculation.

Significantly, the Court should ignore one alleged basis for this misrepresentation claim. Plaintiffs contend that this claim is based, in part, upon Anadarko’s failure to reveal that its royalty payments were based on an “artificial index price.” Plaintiffs’ Memorandum, p. 7. Recently, Plaintiffs stipulated that Anadarko’s use of an index price was not at issue in this case. In the Notice of Class Action, Plaintiffs stipulated that “[t]his lawsuit does not raise . . . any claim that Anadarko has not used the proper starting point for calculation of royalty payments . . .” Order on Class Certification, Exhibit 1, Notice of Class Action, p. 2.

Plaintiffs do not cite any cases that suggest that Anadarko had an independent legal duty to disclose this allegedly omitted information. Anadarko is not aware of any such authority. Under Kansas law, the only information that is required to be given is set forth in K.S.A. § 55-1620 (1999 Supp.). That statute provides as follows:

When a payment is made for proceeds attributable to oil or gas production, the payment shall be accompanied by the following

information, or the following information shall be calculable from the information provided with the payment:

(a) The lease, property, or well name or any lease, property, or well identification number used to identify the lease, or well;

(b) the month and year during which the sale occurred for which payment is being made;

(c) . . . the total volume of either wet or dry gas, attributable to such payment, measured in thousand cubic feet;

(d) the price per . . . thousand cubic feet of gas sold;

(e) total amount of state severance and production taxes;

(f) payee's interest in the sale expressed as a decimal;

(g) payee's share of the sale before any deductions or adjustments;

(h) payee's share of the sale after deductions or adjustments;

(i) an address and telephone number from which additional information may be obtained and any questions answered.

Anadarko's royalty remittance, an example of which is attached to the Affidavit of Gregory J. Stucky as Exhibit A to Plaintiffs' Memorandum, clearly provided all of the information required by that statute. Plaintiffs do not contend otherwise. Thus, Anadarko fulfilled the only duty to disclose information in connection with its payment of royalties. Plaintiffs' attempt to create a duty to disclose additional information is unsupported and improper.

Moreover, as stated above, Plaintiffs' claims are exclusively that Anadarko underpaid royalties because it improperly deducted certain post-production costs. Anadarko's obligation to pay royalties is exclusively contractual in nature. Thus, any and all claims relating to the rights and obligations imposed on the parties by the respective oil and gas leases to pay royalties are purely contractual, and do not give rise to any independent tort claim.

**C. Plaintiffs Have Not Alleged and Cannot Allege Any Separate, Distinct Damages Arising from these Alleged Independent Torts.**

Even if the Court finds that Plaintiffs have pled independent tort claims (which Anadarko denies), their attempt to amend to assert a claim for punitive damages fails for another reason — Plaintiffs have not and cannot allege any separate and distinct damages arising from those claims. Plaintiffs do not specifically identify any such additional damages. In fact, no such damages exist. The only damages arising from those claims are the same damages that result from the Plaintiffs' breach of contract claim, i.e., the allegedly improper deductions from Plaintiffs' royalties.

**II. Anadarko's Transactions with Affiliated Entities**

In their memorandum, Plaintiffs spend the majority their time attempting to "smear" Anadarko with the fact that the gas in issue is sold by Anadarko at the wellhead to AES and that the gas is transported in a gathering system owned by AGC — both of which are wholly owned subsidiaries of Anadarko. Without any factual support, Plaintiffs refer to this as a "sham transaction" that results in some type of fraud or injustice. Plaintiffs' Memorandum, pp. 7-10. Apparently, Plaintiffs contend that the mere fact that a corporate entity does business with a wholly owned subsidiary is inherently improper. That myopic viewpoint is specious. "[M]ere single ownership of a corporation is not sufficient to justify a disregard of the corporate veil." Farmland Industries, Inc. v. State Corporation Commission, 24 Kan. App. 2d 172, 189, 943 P.2d 470 (1997). Plaintiffs also argue that Anadarko is relying upon its sale of gas at the wellhead to AES as a defense to their claims. Nothing could be farther from the truth.

Contrary to Plaintiffs' allegations, Anadarko has not and is not using those inter-company transactions either as a defense or as an attempt to limit its contractual obligations to its royalty

owners. The Court should reject Plaintiffs' attempt to influence its decision on the instant motion based on these misleading and misguided arguments. The facts will demonstrate that the transactions between Anadarko and its affiliates are consistent with similar bona fide transactions between un-related parties that occur in the free and open marketplace.

Anadarko has the right to conduct its gas marketing activities through a corporate affiliate to the same extent that it could conduct those activities through unrelated third parties. The mere fact that Anadarko sells gas to AES and that gas is transported on a gathering system owned by AGC does not, by itself, make those transactions fraudulent, deceptive or wrong. The test for the propriety of Anadarko's transactions with its affiliates is whether those transactions are consistent with similar arm's length transactions between unrelated parties in the marketplace.

Plaintiffs attempt to deny Anadarko the right to conduct its operations through subsidiaries on the same terms that it could conduct them through unrelated third parties. Thus, Plaintiffs deny that Anadarko's gas is a marketable product when sold at the wellhead to AES, even though historically that gas was sold at the wellhead to an unrelated third party for decades, under substantially the same terms and conditions, without challenge. Plaintiffs deny that Anadarko has the right to charge them their proportionate share of gathering and compression costs when charged by AGC, despite the fact that such costs have been proportionately borne by the royalty owners for decades when those gathering facilities were owned by third parties. Plaintiffs seek to have their royalty calculated on the gross proceeds from the sale of the gas in issue by AES at points other than the wellhead and after the value of that gas has been materially enhanced as a result of AGC's and AES's post-wellhead activities.

Plaintiffs seek to have their royalty based on the "beyond the wellhead" price received by AES despite the fact that never during the period of time when Anadarko sold its production at

the wellhead to PEPL was royalty calculated on that basis or one that approximated it. The only difference between now and then is that now the gas is sold at the wellhead to AES and gathering by AGC, instead of being sold at the wellhead to and gathered by PEPL. Other than the difference in the identity of the entities, nothing else has changed. The gas is marketable and is marketed at the wellhead. The gas is gathered, compressed and transported to the same markets, and the physical characteristics of that gas are essentially unchanged. The only thing that has changed is the identity of the wellhead purchaser. Under the old regulatory system, that purchaser was PEPL – an unrelated third party. Under the new regulatory scheme, that purchaser is AES. Somehow, however, Plaintiffs contend that due only to the fact that AES is the purchaser, that transaction is somehow a “sham” and fraudulent. To the contrary, Anadarko submits that Plaintiffs’ true motive is to reap a windfall resulting solely from the change in the regulatory scheme.

Basically, by this lawsuit, Plaintiffs seek a royalty windfall from the post-FERC restructuring of the natural gas market. Anadarko is confident that this Court will not allow that to happen, either as a result of this case overall, nor as a result of transparently improper schemes such as the instant motion to add punitive damages.

**III. Conclusion**

For the reasons set forth above, Plaintiffs' motion to amend their Petition to include a claim for punitive damages must be denied.

Respectfully submitted,



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Attorneys for Defendant Anadarko  
Petroleum Corporation

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing was served via U.S. mail, first class postage prepaid, on this 25th day of August 2000, addressed to:

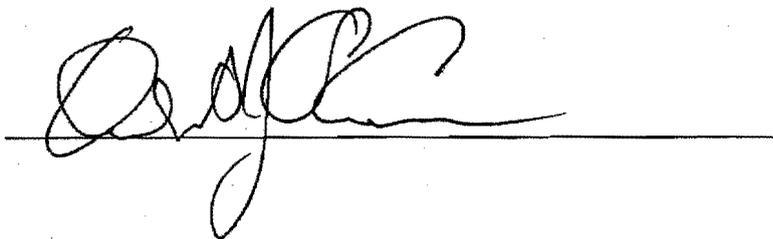
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and

The Honorable Tom R. Smith  
District Court Judge  
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Hugoton, Kansas 67951

A handwritten signature in black ink, appearing to be 'Tom R. Smith', is written over a horizontal line.

500-2-418

# OIL AND GAS LEA



Form L. B. 88 Revised

THIS AGREEMENT, Entered into this the 14th day of August 1943, between C. E. Coulter and Della G. Coulter, his wife,

and The Stevens County Oil and Gas Company, a corp'n., hereinafter called lessor, does witness:

1. That lessor, for and in consideration of the sum of One - - - - - Dollars (\$1.00), in hand paid, and of the covenants and agreements hereinafter contained to be performed by the lessee, has this day granted and leased and hereby grants, leases and lets unto the lessee for the purpose of mining and operating for and producing oil and gas, casinghead gas and casinghead gasoline, laying pipe lines, building tanks, storing oil, building power stations, telephone lines and other structures thereon to produce, save, take care of and manufacture all of such substances, and for housing and boarding employees, the following described tract of land in Stevens County, Kansas to-wit:

South-west Quarter (SW/4)  
In Section 10 Township 34S Range 38W and containing 160 acres, more or less

2. This lease shall remain in force for a term ending August 14th, 1953 and as long thereafter as oil, gas, casinghead gas, casinghead gasoline, or any of them is produced.

3. The lessee shall deliver to the credit of the lessor as royalty, free of cost, in the pipe line to which lessee may connect its wells the equal one-eighth part of all oil produced and saved from the leased premises, or at the lessee's option may pay to the lessor for such one-eighth royalty the market price for oil of like grade and gravity prevailing at the time each oil is run into the pipe line, or into storage tanks.

4. The lessee shall monthly pay lessor as royalty on gas marketed from each well where gas only is found, one-eighth (1/8) of the proceeds if sold at the well, or if marketed by the lessee, then one-eighth (1/8) of its market value at the well. The lessee shall pay the lessor: (a) one-eighth (1/8) of the proceeds received by the lessee from the sale of casinghead gas, produced from any oil well; (b) one-eighth (1/8) of the value, at the mouth of the well, computed at the prevailing market price, of the casinghead gas, produced from any oil well and used by lessee on the leased premises for any purpose or used on the leased premises by the lessee for purposes other than the development and operation thereof. Lessor shall have no privilege at his own risk and expense of using gas from any gas well on said land for stoves and inside lights in the principal dwelling located on the leased premises by making his own connections thereto.

Where gas from a well or wells, capable of producing gas only, is not sold or used for a period of one year, lessee shall pay or tender as royalty, an amount equal to the daily rental as provided in paragraph 5 hereof, payable monthly at the end of each year during which such gas is not sold or used, and while said royalty is so paid or tendered this lease shall be held as a producing property under paragraph numbered two hereof.

5. If operations for the drilling of a well for oil or gas on said land or for gas, on a consolidated leasehold estate of which this land is a part thereof, as contemplated in paragraph 9, are not commenced on or before August 14th, 1944 this lease shall terminate as to both parties unless the lessee shall on or before that date, pay or tender to the lessor, or to the lessor's credit in the

Citizens State Bank at Hugoton, Kansas or its successors, which bank and its successors are the lessor's agent and shall continue as the depository of any and all sums payable under this lease, regardless of change of ownership in said land or in the oil and gas, or in the rentals to accrue thereunder, the sum of

One Hundred Sixty Dollars (\$1.160.00) which shall operate as rental and cover the privilege of deferring the commencement of drilling operations for a period of one year. In like manner and upon like payments or tenders, the commencement of drilling operations may be further deferred for like periods successively. All payments or tenders may be made by check or draft of lessor or any assignor thereof, mailed by delivery on or before the rental paying date. Notwithstanding the death of the lessor, or his successor in interest, the payment or tender of rentals in the manner provided above shall be binding on the heirs, devisees, executors, and administrators of such person.

6. If at any time prior to the discovery of oil or gas on this land and during the term of this lease, the lessee shall drill a dry hole, or holes, on this land, this lease shall not terminate, provided operations for the drilling of a well shall be commenced by the next ensuing rental paying date, or provided the lessee begins or resumes the payment of rentals in the manner and amount herein above provided; and in this event the preceding paragraphs hereof governing the payment of rentals and the manner and effect thereof shall continue in force.

7. In case said lessor owns a fee interest in the above described land then the entire and undivided fee simple estate therein, then the royalties and rentals herein provided for shall be paid, the said lessor only in the proportion which his interest bears to the whole and undivided fee.

8. The lessee shall have the right to use free of cost, gas, oil and water found on said land for its operations thereon, except water from the wells of the lessor. When required by lessee, the lessee shall bury pipe lines below plow depths and shall pay for damage caused by its operations to growing crops on said land. No well shall be drilled nearer than 200 feet to the house or barn now on said premises without written consent of the lessor. Lessee shall have the right at any time during or after the expiration of this lease to remove all machinery, fixtures, houses, buildings and other structures placed on said premises, including the right to draw and remove all casing.

9. As to the gas leasehold estate hereby granted (excluding casinghead gas produced from oil wells), lessee is expressly granted the right and privilege to consolidate said gas leasehold with any other adjacent or contiguous gas leasehold estates to form a consolidated gas leasehold estate which shall not exceed a total area of 640 acres; and in the event lessee exercises the right and privilege of consolidation, as herein granted, the consolidated gas leasehold estate shall be deemed, treated and operated in the same manner as though the entire consolidated leasehold estate were originally covered by and included in this lease, and all royalties which shall accrue on gas (excluding casinghead gas produced from oil wells), produced and marketed from the consolidated estate, including all royalties payable hereunder, shall be prorated and paid to the lessors of the various tracts included in the consolidated estate in the same proportion that the acreage of each said lease bears to the total acreage of the consolidated estate, and a producing gas well on any portion of the consolidated estate shall operate to continue the oil and gas leasehold estate hereby granted so long as gas is produced therefrom.

10. If the estate of either party hereto is assigned (and the privilege of assigning in whole or in part is expressly allowed), the covenants hereof shall extend to the heirs, executors, administrators, successors and assigns, but no change of ownership in the land or the royalty or rentals shall be binding on the lessee until after notice to the lessee and it has been furnished with the written transfer or assignment or a certified copy thereof.

11. If the leased premises shall hereafter be owned in severalty or in separate tracts, the premises, nevertheless, shall be developed and operated as one lease and all royalties accruing hereunder shall be treated as an entirety and shall be divided among and paid to such separate owners in the proportion that the acreage owned by each such separate owner bears to the entire leased acreage. There shall be no obligation on the part of the lessee to affect wells on separate tracts into which the land covered by this lease may be hereafter divided by sale, devise, or otherwise, or to furnish separate measuring or receiving tanks. It is hereby agreed that, in the event this lease shall be assigned as to a part or as to parts of the above described lands, and the holder or owner of any such part or parts shall fail or make default in the payment of the proportionate part of the rent due from him or them, such default shall not operate to defeat or affect this lease in so far as it covers a part or parts of said land upon which the said lessee or any assignee hereof shall make due payment of said rentals. If at any time there be as many as four parties entitled to rentals or royalties, lessee may without payment thereof unless and until all parties designate, in writing, in a recordable instrument to be filed with the lessee, a common agent to receive all payments due hereunder, and to execute division and transfer orders on behalf of said parties, and their respective successors in title.

12. Lessor hereby warrants and agrees to defend the title to the land herein described and agrees that the lessee, at its option, may pay and discharge any taxes, mortgages, or other liens existing, levied, or assessed on or against the above described lands and, in event it exercises such option, it shall be subrogated to the rights of any holder or holders thereof and may reimburse itself by applying to the discharge of any such mortgage, tax or other lien, any royalty or rentals accruing hereunder.

13. Notwithstanding anything in this lease contained to the contrary, it is expressly agreed that if lessee shall commence drilling operations at any time while this lease is in force, this lease shall remain in force and its term shall continue so long as such operations are prosecuted and, if production results therefrom, then as long as production continues.

14. If, within the primary term of this lease, the well or wells on the leased premises, or on the consolidated gas leasehold estate, shall cease to be productive, this lease shall not terminate, provided operations for the drilling of a well on the leased premises, or on the consolidated gas leasehold estate, shall be commenced before or on the next ensuing rental payment date; or, provided lessee begins or resumes the payment of rentals in the manner and amount herebefore provided. It is agreed, however, that the completion of a well producing or capable of producing gas, upon the property herebefore described, or the inclusion of such property in a consolidation and production as provided by paragraph number 9 hereof, shall constitute full and complete development with respect to the gas leasehold estate hereby granted, if, upon, or after the expiration of the primary term of this lease, the well or wells on the leased premises, or on the consolidated gas leasehold estate, shall be incapable of producing, this lease shall not terminate provided lessee resumes operations for drilling a well on the leased premises or on the consolidated gas leasehold estate within one hundred twenty (120) days from such cessation, and this lease shall remain in force during the prosecution of such operations and, if production results therefrom, then as long as production continues.

15. It is contemplated and agreed by both lessor and lessee that this lease shall at all times and in all respects be subject to valid orders, rules and regulations of any duly constituted authority having jurisdiction of the subject matter hereof.

16. This lease and all its terms, conditions, and stipulations shall extend to and be binding on all the heirs, grantees, administrators or assigns of said Lessor or Lessee.

IN WITNESS WHEREOF, we sign the day and year first above written.  
Witness: C. E. Coulter  
Della G. Coulter

APC-965  
Coulter v. APC

15-189-0418



STATE OF Kansas } ss. ACKNOWLEDGMENT FOR INDIVIDUAL (Oklahoma and Kansas)  
 COUNTY OF Stevens }  
 Before me, the undersigned, a Notary Public, within and for said County and State, on this 24th  
 day of February, 1944, personally appeared C. E. Coulter  
 and Della G. Coulter, his wife,

to me personally known to be the identical person E who executed the within and foregoing instrument and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.  
 IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above written.  
 My commission expires Nov. 14th, 1944.

*[Signature]*  
 Notary Public

STATE OF \_\_\_\_\_ } ss. ACKNOWLEDGMENT FOR INDIVIDUAL (Oklahoma and Kansas)  
 COUNTY OF \_\_\_\_\_ }  
 Before me, the undersigned, a Notary Public, within and for said County and State, on this \_\_\_\_\_  
 day of \_\_\_\_\_, 19\_\_\_\_, personally appeared \_\_\_\_\_  
 and \_\_\_\_\_

to me personally known to be the identical person \_\_\_\_\_ who executed the within and foregoing instrument and acknowledged to me that \_\_\_\_\_ executed the same as \_\_\_\_\_ free and voluntary act and deed for the uses and purposes therein set forth.  
 IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above written.  
 My commission expires \_\_\_\_\_

Notary Public

STATE OF \_\_\_\_\_ } ss. ACKNOWLEDGMENT FOR CORPORATION  
 COUNTY OF \_\_\_\_\_ }  
 Be it remembered that on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, the undersigned, a  
 Notary Public, duly commissioned, in and for the county and state aforesaid, came \_\_\_\_\_  
 \_\_\_\_\_ president of \_\_\_\_\_

a corporation of the State of \_\_\_\_\_ personally known to me to be such officer, and to be the same person who executed as such officer the foregoing instrument of writing in behalf of said corporation, and he duly acknowledged the execution of the same for himself and for said corporation for the uses and purposes therein set forth.  
 IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the day and year last above written.  
 My commission expires \_\_\_\_\_

Notary Public

No. 22684

**OIL AND GAS LEASE**

FROM C. E. Coulter et al

TO Stevens Oil & Gas Co.

Date \_\_\_\_\_ 19\_\_\_\_

Section \_\_\_\_\_ Twp \_\_\_\_\_ Rge \_\_\_\_\_

No. of Acres \_\_\_\_\_ Term \_\_\_\_\_ County \_\_\_\_\_

STATE OF Kansas } ss.  
 County of Stevens }

This instrument was filed for record on the 31 day of July, 1944  
 at 10 o'clock A.M., and duly recorded  
 in Book 2012 Page 487 of  
 the records of this office.  
 By W. H. Hamman  
June 220 Register of Deeds.

When recorded, return to \_\_\_\_\_

THE KANSAS BLUE PRINT CO.  
 141 NORTH MARKET ST. WICHITA, KANSAS  
 PHOTO-DUPLICATION SERVICE UP-TO-DATE OIL MAPS

*[Signature]*

NOTE: When signature by mark in Kansas, said mark to be witnessed by at least one person and also acknowledged. For acknowledgment by mark, use regular Kansas acknowledgment.

STATE OF \_\_\_\_\_ } (Oklahoma, Kansas and Colorado)  
 COUNTY OF \_\_\_\_\_ } ss. ACKNOWLEDGMENT FOR INDIVIDUAL  
 Before me, the undersigned, a Notary Public, within and for said County and State, on this \_\_\_\_\_  
 day of \_\_\_\_\_, 19\_\_\_\_, personally appeared \_\_\_\_\_  
 and \_\_\_\_\_

to me personally known to be the identical person \_\_\_\_\_ who executed the within and foregoing instrument and acknowledged to me that \_\_\_\_\_ executed the same as \_\_\_\_\_ free and voluntary act and deed for the uses and purposes therein set forth.  
 IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above written.  
 My commission expires \_\_\_\_\_

Notary Public