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*[Signature]*  
STEVENS CO. KS

IN THE TWENTY-SIXTH JUDICIAL DISTRICT  
DISTRICT COURT, STEVENS COUNTY, KANSAS

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

Case No. 98-CV-40

**PLAINTIFFS' MOTION FOR TRIAL BY THE COURT**

COME NOW the plaintiffs, and move the Court, pursuant to K.S.A. 60-239(a)(2), for its order removing this case from the jury trial docket and setting the matter for trial by the Court.

In support of their motion, plaintiffs state that they hereby revoke and waive their earlier demand for trial by jury. Upon analysis of the claims and issues to be tried, it is evident that there is no right of trial by jury in this case.

This is an action for an equitable accounting. Numerous Kansas cases have recognized the validity of this remedy in actions for alleged underpayment of royalties, including claims of improper deductions. *E.g., Brubaker v. Branine*, 237 Kan. 488, 701 P.2d 929 (1985); *Lippert v. Angle*, 211 Kan. 695, 508 P.2d 920 (1973); *Ruthven & Co. v. Pan Am. Petroleum Corp.*, 206 Kan. 639, 482 P.2d 28 (1971); *Schupbach v. Continental Oil Co.*, 193 Kan. 401, 394 P.2d 1 (1964). There is no right

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to trial by jury in an action for an accounting. *Karnes Enterprises, Inc. v. Quan*, 221 Kan. 596, Syl. ¶5, 561 P.2d 825 (1977). Moreover, the fact that plaintiffs have asserted a claim for punitive damages does not give rise to a right to trial by jury. *Smith v. Printup*, 254 Kan. 315, 325-26, 866 P.2d 985 (1993).

WHEREFORE, for all the foregoing reasons, plaintiffs respectfully request that this case be tried by the Court sitting without a jury.

Respectfully submitted,

KRAMER, NORDLING & NORDLING, L.L.C.

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**CERTIFICATE OF SERVICE**

I certify that on September 25<sup>th</sup>, 2001, a copy of this **MOTION FOR TRIAL BY THE COURT** was placed in the United States mail in Wichita, Kansas, first class postage prepaid, addressed to:

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