

Donald L. Pitts, No. 12576
Assistant Attorney General
Kansas Judicial Center, 2d Floor
301 SW Tenth Avenue
Topeka, KS 66612-1597
(785) 296-2215

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

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

Case No. 98-1413-WEB

STATE OF KANSAS' UNOPPOSED MOTION TO INTERVENE

COMES NOW, the State of Kansas (Kansas) by and through Attorney General Carla J. Stovall and moves, pursuant to F.R.C.P. §24(b), for permissive intervention in this action. In support of this motion, Kansas states:

1. Defendant in this action has filed a counterclaim alleging that,

The Federal Energy Regulatory Commission and the federal courts have ordered defendant to make refunds to third parties to reimburse those third parties for pass-throughs of State ad valorem taxes assessed against plaintiffs and the counterclaim defendant class, e.g. Public Service company of Colorado v. Federal Energy Regulatory Commission, 91 F.3d 1478 (D.C. Cir 1996)

And that,

By virtue of the reimbursement orders described in Paragraph 20, above, defendant has overpaid royalties to plaintiffs and to the counterclaim defendant class, and plaintiffs and the counterclaim defendant class have accordingly been unjustly enriched in an amount exceeding \$3.6 million.

Defendant's Answer and Counterclaim, ¶¶20 and 21.

2. The Federal Energy Regulatory Commission's order regarding refund of Kansas *ad valorem* tax brings into issue recovery of refunds of an estimated \$395 million dollars from producers and royalty owners in the State of Kansas similarly situated to the plaintiffs and defendant in this case.

3. By order of this Court dated April 13, 1999, the plaintiffs in this action were permitted to file their Second Amended Reply to Counterclaim which provided in the third defense:

The Counterclaim is barred by the applicable statute of limitations or repose (including K.S.A. 1998 Supp. 55-1624, and K.S.A. 60-511, 60-512, 60-513), under the doctrine of laches, or under other such principles of law or equity.

4. F.R.C.P §24(b) provides:

Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. **When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action.** In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties. (Emphasis added.)

5. The plaintiffs are relying upon the statutes of the State of Kansas set forth in paragraph 3 above for its third defense and the Attorney General of the State of Kansas has the constitutional

and statutory responsibility for the enforcement of the laws of the State of Kansas.

6. The issue regarding the applicability of the statutes of limitations which have been pled as a defense in this case are questions of Kansas law that control substantive legal issues of defendant's counterclaim and plaintiffs' defense thereto.

7. There has been no judicial determination by any Kansas court concerning the applicability and effect of K.S.A. §55-1624, which was promulgated by the Kansas legislature with the intent of clarifying the applicable statute of limitations for claims regarding the refund of passed through *ad valorem* taxes. The statute was an effort by the legislature to avoid unnecessary litigation between producers and royalty owners for any refund claim for passed through ad valorem taxes, since any such claims will have a substantial impact on numerous producers and royalty owners similarly situated to the plaintiffs and defendant in this case.

8. There has been no judicial determination by any Kansas court concerning the applicability and effect of the Kansas statutes of limitations found at K.S.A. §60-511, 512 & 513 in the context of facts similar to those presented in this case.

9. The requested intervention of the State of Kansas is for the specific and limited purpose of moving, pursuant to the Uniform Certification of Questions of Law Act, K.S.A. §60-3201 *et seq.*, for certification of questions of law to the Kansas Supreme concerning the applicability and effect of K.S.A. §55-1624 or, alternatively, the Kansas statutes of limitations found at K.S.A. §60-511, 512 & 513.

10. The intervention of the State of Kansas for the purpose of seeking certification of questions of law to the Kansas Supreme Court will not unduly delay the adjudication of the rights

of the parties in this action insomuch as K.S.A. §60-3204 provides, in pertinent part that,

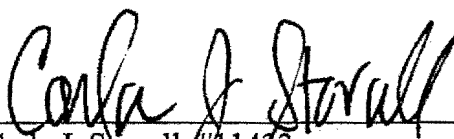
. . . The proceedings in the Kansas supreme court shall have precedence over all other hearings therein, except those of like character.

11. The intervention of the State of Kansas for the purpose of seeking certification of questions of law to the Kansas Supreme Court will not prejudice the adjudication of the rights of the original parties in this action as reflected by the acquiescence of all parties to this motion.

WHEREFORE, the State of Kansas respectfully moves the Court to allow permissive intervention in this action pursuant to F.R.C.P §24(b) for the purpose of filing its Motion for Certification of Questions of Law pursuant to the Uniform Certification of Questions of Law Act, K.S.A. §60-3201 *et seq* and for such further relief as the Court deems equitable under the premises.

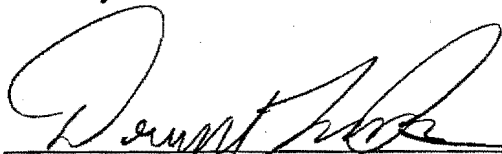
Respectfully Submitted,

OFFICE OF THE ATTORNEY GENERAL



Carla J. Stovall, #11433

Attorney General



Donald L. Pitts, No. 12576

Assistant Attorney General

Kansas Judicial Center, 2d Floor

301 SW Tenth Avenue

Topeka, KS 66612-1597

(785) 296-2215

Assistant Attorney General

John McNish
Advisory Counsel
Kansas Corporation Commission
1500 S.W. Arrowhead Rd.
Topeka, Kansas 66604-4027
(785) 271-3218

CERTIFICATE OF SERVICE


This is to certify that a copy of the foregoing STATE OF KANSAS' UNOPPOSED MOTION TO INTERVENE was served by depositing the same in the United States mail, first class postage prepaid, addressed to:

Robert J. O'Conner, Esq.
Morrison & Hecker, L.L.P.
600 Commerce Building
150 Main
Wichita, Kansas 67202-1320;

Thomas D. Kitch
Gregory J. Stucky
Charles E. Milsap
David G. Sealy
Fleeson, Gooing, Coulson & Kitch, L.L.C.
P.O. Box 997
Wichita, Kansas 67201

Bernard E. Nordling
Erick E. Nordling
Kramer, Nordling & Nordling
209 East Sixth Street
Hugoton, Kansas 67951

on this 9th day of July, 1999.

By: 
Donald L. Pitts