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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

UNOPPOSED MOTION FOR CERTIFICATION OF QUESTIONS OF LAW

COMES NOW, intervenor, State of Kansas, by and through Attorney General Carla J. Stovall, and moves the Court for certification of questions of law to the Kansas Supreme Court pursuant to the Uniform Certification of Questions of Law Act, K.S.A. §60-3201 *et seq.* In support of this motion the State of Kansas shows the Court as follows:

- 1. K.S.A. 60-3201 provides:

The Kansas supreme court may answer questions of law certified to it by the supreme court of the United States, a court of appeals of the United States, a United States district court or the highest appellate court or the intermediate appellate court of any other state, when requested by the certifying court if there are involved in any proceeding before it questions of law of this state which may be determinative of the

cause then pending in the certifying court and as to which it appears to the certifying court there is no controlling precedent in the decisions of the supreme court and the court of appeals of this state. (Emphasis added.)

2. The 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.

3. The Federal Energy Regulatory Commission's (FERC) order regarding refund of 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.

4. Several parties in the FERC action filed a generic request for a waiver of the ad valorem tax refund liability based upon K.S.A. 55-1624. The request was denied by FERC. 85 FERC ¶ 61,176 (November 2, 1998).

5. The State of Kansas thereafter filed a petition for rehearing asking that FERC give full faith and credit to the Kansas legislative action. In its motion the State of Kansas presented an affidavit of Senator Morris, the Kansas senator who introduced the legislation which was

eventually codified as K.S.A. §55-1624. In that affidavit, Senator Morris stated that the purpose of the statute was to simplify, clarify and codify the existing five-year statute of limitations in order to prevent unnecessary litigation over any claims regarding the collection of ad valorem tax for the period from 1983 through 1988. He further stated that litigation by every producer and royalty owner in the State of Kansas over claims which are barred by the statute of limitations would needlessly expend substantial resources of Kansas citizens and courts. The request for rehearing was denied. 86 FERC ¶ 61,163 (February 16, 1999), appealed *sub nom*, *State of Kansas et al. v. FERC*, Case No. 99-1156 (transferred from 10th Circuit April 22, 1999).

6. The plaintiff has pled as a defense to defendant's counterclaim the statutes of limitations for the State of Kansas as follows:

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.


7. The law of Kansas controls substantive legal issues of defendant's counterclaim and plaintiffs' defense thereto since an affirmative determination of the applicability of the statutes of limitations, in particular, K.S.A. §55-1624, will be dispositive of the issues set forth in the counterclaim.

8. Neither the Kansas Supreme Court nor the Kansas Court of Appeals have issued opinions which determine the applicability, under similar facts, of the statutes relied upon in plaintiff's third defense to defendant's counterclaim.

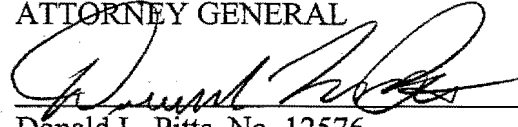
WHEREFORE, intervenor State of Kansas, moves the Court for issuance of an order certifying to the Kansas Supreme Court questions of law regarding the applicability of the Kansas statutes of limitations to the counterclaim of defendant pursuant to the Uniform

Questions of Law Act, K.S.A. §60-3201 *et seq.*

Respectfully Submitted,
OFFICE OF THE ATTORNEY GENERAL



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CERTIFICATE OF SERVICE

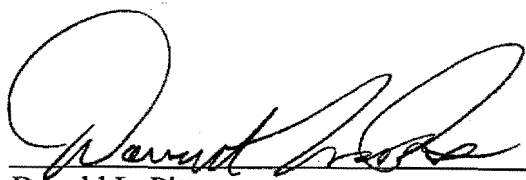
This is to certify that a copy of the foregoing MOTION FOR CERTIFICATION OF QUESTIONS OF LAW was served by depositing the same in the United States mail, first class postage prepaid, addressed to:

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on this 9th day of July, 1999.

By: 
Donald L. Pitts