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

WILLIE JEAN FARRAR and KEITH FARRAR, as Co-Trustees of the Keith Farrar Revocable Trust, dated October 22, 1999 and MARIE GREGG and KEITH THOMAS GREGG, as Co-Trustees of the Marie Gregg Trust u/A dated April 26, 1979, as amended,	)	
Plaintiffs,	)	
v.	)	Case No. 01 CV 12
MOBIL OIL CORPORATION,	)	
Defendant.	)	

Pursuant to Chapter 60 of Kansas Statutes Annotated

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR LEAVE TO FILE SECOND AMENDED PETITION

COME NOW the plaintiffs, and in support of their Motion For Leave To File Second Amended Petition, state as follows:

The Nature of the Requested Amendment

The First Amended Petition described the putative plaintiff class as follows:

> The plaintiff class is defined as all persons or concerns owning mineral interests in lands located in the areal confines of the Kansas Hugoton Gas Field, burdened by oil and gas leases owned in whole or in part by defendant insofar as such leases are productive of gas from above the base of the Panoma Council Grove Field, ***the gas from which is gathered by ONEOK***, including the instrumentalities of the United

> States of America and federally chartered corporations, such as, but not limited to, the Farm Credit Bank of Wichita and the Federal Land Bank, but excluding the United States of America insofar as its mineral interests are managed by the Mineral Management Service.

(Paragraph 5, emphasis added). The italicized language in the class definition was intended to exclude from this putative class action, the production that flows on the Hickok gathering system, which system serves approximately 450 Mobil wells in Grant and Stevens County, because that gathering system is owned by defendant–and not ONEOK. In the First Amended Petition, it is also alleged that

> Defendant has failed to pay royalties to members of plaintiff class in accordance with the express and implied covenants of their leases, by wrongfully allocating a pro rata share of fees paid to ONEOK for purpose of producing, gathering and placing the gas in a marketable condition ("marketing costs") to members of plaintiff class. ***In contrast, when defendant performs such field services itself, as it does for the wells attached to its Hickok gathering system, it does not charge any of such costs to its royalty owners.***

(Paragraph 9, emphasis added).

After filing the First Amended Petition and conducting some discovery, plaintiffs developed a more complete understanding of the manner in which defendant operated the Hickok gathering system. Before the late 1990s, as alleged in the First Amended Petition, defendant Mobil incurred expenses in conjunction with the operation of the Hickok gathering system, including compression expenses, but did not charge any of those expenses to its royalty owners. However, that changed after June 23, 1999, the date that defendant Mobil and ONEOK entered into an amendment of their gathering agreement. That amendment established the gathering rate to be paid by defendant Mobil to ONEOK for the compression and other installations then recently furnished by ONEOK to the Hickok gathering system. Thereafter, Mobil began to deduct the third-party expenses it reimbursed

to ONEOK from royalty payments to royalty owners receiving royalty for wells on the Hickok gathering system but did not alter its practice of not charging royalty owners for the expenses it incurred for similar activities it performed itself on the Hickok gathering system.

In their proposed Second Amended Petition, plaintiff expand their claims to include those ONEOK related expenses on the Hickok gathering system. In so doing, Plaintiffs made changes to the definition of the plaintiff class in the Second Amended Petition to provide:

> Plaintiffs are or at relevant times have been owners of mineral interests in lands, burdened by oil and gas leases owned in whole or in part by defendant, the production from which leases is collected in one or more gathering systems which are subject to that Gas Gathering Agreement, dated December 23, 1997, between K N Gas Gathering, Inc. (now ONEOK Field Services Company ["ONEOK"]) and Mobil Oil Corporation, as amended, including, specifically, that Amendment No. 2, dated June 23, 1999 ("the Gathering Agreement").

(Paragraph 3).

The proposed Second Amended Petition then defines the plaintiff class as follows:

> The plaintiff class is defined as all persons or concerns owning mineral interests in lands located in the areal confines of the Kansas Hugoton Gas Field, burdened by oil and gas leases owned in whole or in part by defendant insofar as such leases are productive of gas from above the base of the Panoma Council Grove Field, ***the gas from which is subject to the Gathering Agreement***, including the instrumentalities of the United States of America and federally chartered corporations, such as, but not limited to, the Farm Credit Bank of Wichita and the Federal Land Bank, but excluding the United States of America insofar as its mineral interests are managed by the Mineral Management Service.

(Paragraph 5, emphasis added).

Consistent with the inclusion of claims with respect to the Hickok gathering system, the proposed Second Amended Petition adds, as additional plaintiffs, Thomas L. Lahey and Patricia A. Lahey, who own royalty interests in gas production which flows through the Hickok gathering system.

Leave to Amend Should be Granted

K.S.A. 60-215(a) expressly provides that leave to amend "shall be given when justice so requires."

> "If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason–such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.–the leave sought should as the rules require, be 'freely given.'"

Johnson v. Board of Pratt County Comm'rs, 259 Kan. 305, 327, 913 P.2d 119 (1996), quoting *Foman v. Davis*, 371 U.S. 178, 182, 9 L.Ed.2d 222, 83 S.Ct. 227 (1962).

In this case, none of the factors that might justify denial of leave to amend are present. The motion is timely. Under the Case Management Order dated April 20, 2004, the time for filing motions to amend or to add parties has not yet commenced to run, much less expired. While some written discovery has occurred in this case, there have not yet been any depositions taken in this case, no substantive motions have been filed, and no pre-trial conferences have been held. Accordingly, there would be no prejudice to Defendant were the Court to grant Plaintiffs' motion.

The proposed amendment is necessary to obtain full relief for those persons who are affected by Mobil's decision to begin deducting expenses paid to ONEOK in connection with the Hickok gathering system.

The proposed amendment also serves the interest of judicial economy. If leave to amend were denied, Mr. and Mrs. Lahey would be forced to file a separate action to obtain relief on behalf of themselves and others similarly situated. By allowing the amendment, this Court can address the common and overlapping issues in a single proceeding.

Under all the circumstances, justice requires that leave to amend be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 15th day of July, 2004, a true and correct copy of the above and foregoing MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR LEAVE TO FILE SECOND AMENDED PETITION was and mailed, with postage fully prepaid thereon, to the following counsel for Defendant:

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