

FILED

01 MAR -6 PM 3:46

IN THE DISTRICT COURT OF STEVENS COUNTY, KANSAS

ROSEEN ROSEKABEL
CLERK OF THE DIST. COURT

STEVENS CO. KS

OPAL LITTELL, CHERRY RIDER and
BONNIE BEELMAN, individually and
as representative plaintiffs on behalf
of persons or concerns similarly situated,
Plaintiffs

vs.

Case No. 98-CV-51

OXY USA, INC.,

Defendant

**JOURNAL ENTRY
OF DECISION BY THE COURT AND
ORDER OF THE COURT CERTIFYING CLASS**

This matter comes on before the Court upon Motion by the Plaintiffs for an Order to Certify this action as a class action pursuant to K.S.A. 60-223 et seq.

The Plaintiff's suit in this proceeding is based upon the claim that the Defendant has improperly deducted expenses from royalties paid to the Plaintiff class.

The Defendant refutes the claim made by the Plaintiffs and relies as authority for their position upon Sternberger vs. Marathon Oil Company, 257 Kan. 315.

Both parties in the Motion for Class Certification have spent a good deal of effort in expounding upon the issues of law that support their contrary positions upon the merits of the Plaintiffs' claims.

This Court finds that under K.S.A. 60-223(c)(1) before the Court can reach a decision on the merits of this action, the Court first has to determine whether the action should be maintained as a class action.

K.S.A. 60-223 is patterned on Federal Rules of Civil Procedure, Rule 23 and the decision if the Federal Courts interpreting Rule 23 are traditionally followed in this jurisdiction. Brueck vs. Krings, 6 Kan. App. 2d 622.

This Court has no authority to conduct a preliminary inquiry into the merits of a suit in order to determine whether or not the suit can be maintained as a class action. Eisen vs. Carlisle S. Jacqueling, 417 US 156. Shelter Realty vs. Allied Maintenance, 574 F 2d 656.

The Court has reviewed the briefs and arguments presented by both parties and finds as follows.

There is no dispute between the parties that the numerosity requirement of K.S.A. 60-223(a)(1) has been met.

The Defendant argues that the Plaintiffs are not able to satisfy class action requirements under K.S.A. 60-223(a)(2) which requires common issues of law and fact or under K.S.A. 60-223(b)(3) which require that common fact issues predominate over issues unique to each class member because the various royalty owners who would make up the Plaintiffs' proposed class have contracted with the Defendant, OXY, under two basic types of leases which are different in their method of calculation of royalties being paid.

This Court finds the Defendant engages in a uniform practice of allocating prorata shares of expenses to all of its royalty owners on the basis of volumes of gas produced from each well and, therefore, it is clear to this Court the Plaintiffs are presenting and can present a common claim on behalf of all the members of its proposed class and to which the Defendant is mounting a common defense that its expenses are proper deductions.

The Court finds the questions of law or fact are common to the Plaintiffs' proposed class and, therefore, the requirements of K.S.A. 60-223(a)(2) is met and, further, this

Court finds the common questions among the proposed class predominate over issues unique to each class member and, therefore, the requirements of K.S.A. 60-223(b)(3) are met.

The Court finds the questions of law or fact that are common to the Plaintiffs' proposed class include but are not limited to;

1. Whether using compression to enable the gas to enter transmission pipelines, which is the market in which it has elected to sell such gas, such activity is necessary to make the gas marketable.
2. Whether the lowering of pressure in the gathering system actually increases the amount of reserves that defendant is able to recover from the wells attached to the gathering systems.
3. Whether compression must enhance the amount of recoverable reserves before such activity can be deemed a production expenses.
4. Whether the issue of what expenses are being incurred by defendant to make the gas marketable can be answered apart from the requirements imposed by the market in which defendant has elected to sell such gas.
5. Whether sales are being made by other producers at the wellhead in the Hugoton Field and, if they are, whether such activity establishes that all gas in the Hugoton Field is "marketable" at the wellhead.
6. Whether the fact that all of the activities in question take place off the lease premises converts them from nondeductible expenses into deductible expenses.
7. Whether Kansas law prohibits producers from deducting expenses incurred to compress and dehydrate gas.

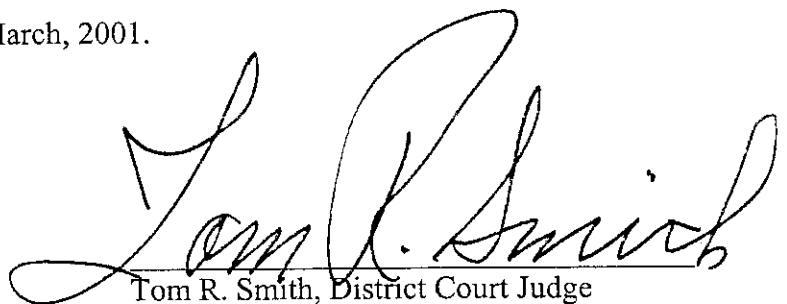
All persons or concerns owning mineral interest in land, burdened by oil and gas leases owned in whole or in part by defendant, insofar as such leases are productive of gas from above the base of the Panama Council Grove Field, which were at any time previously dedicated to that certain Gas Purchase Contract, dated June 23, 1950 between the predecessor of defendant and the predecessor of Williams Natural Gas Company, as amended, 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 interest are managed by the Mineral Management Service.

Subject to further order of the Court, Opal Littell, Cherry Rider, co-trustees of the Opal Littell Family Trust and Bonnie Beelman are designated the representative plaintiffs. The law firms of Fleeson, Goings, Coulson & Kitch, L.L.C. and Kramer, Nordling and Nordling, L.L.C. are designated as Class Counsel.

Within thirty (30) days from the date of this Order, Class Counsel shall submit to the Court a proposed Notice and a proposal for procedures in connection therewith. Within fifteen (15) days thereafter, defendant may respond to such filing by Class Counsel, and within fifteen (15) days thereafter, Class Counsel may reply to such response.

IT IS SO ORDERED.

Dated this 6th day of March, 2001.


Tom R. Smith, District Court Judge

8. Whether the outcome of this case in any way depends upon how defendant and other producers sold their gas in the Hugoton Field before they began taking the deductions in question, the manner in which such price was regulated by the federal government, and the way in which defendant accounted to its royalty owners prior to deregulation. If so, what the answers to such inquiries are.

This Court finds that the claims asserted by the representative Plaintiffs are typical of the claims of the class as required by K.S.A. 60-223(a)(3). This Court further finds the representative Plaintiffs will adequately and fairly protect the interest of the class pursuant to K.S.A. 60-223(a)(4).

The sole argument raised by defendant under K.S.A. 60-223(a)(4) is that proposed representative plaintiffs receive royalty payments under only “market value” leases and that they, therefore, may not, out of self interest, advance the interest of those members of plaintiff class who receive their royalty payments under “proceeds” leases. The Court notes that defendant itself does not distinguish between types of leases when making royalty payments, as it takes the same deductions about which the plaintiffs complain, from all lease types.

The Court further finds and concludes that under K.S.A. 60-223(b)(3) the common issues of fact and law predominate over any questions affecting only individual class members and the class action procedure is superior to other available remedies for adjudicating this controversy.

IT IS, THEREFORE, the order, judgment and decree of this Court this action shall be maintained as a class action pursuant to K.S.A. 60-223(b)(3) on behalf of the following class:

CERTIFICATE OF SERVICE

I, Renata McCulloch, hereby certify that I mailed a true and correct file-stamped copy of the above Journal Entry by United States mail, postage prepaid and properly addressed on the 6th day of March, 2001 to:

Donald L. Kahl
Attorney at Law
320 S. Boston Ave., Ste. 400
Tulsa, OK 74103-3708
Attorney for Defendant

C. T. Hardwick
Attorney at Law
320 S. Boston Ave., Ste. 400
Tulsa, OK 74103-3708
Attorney for Defendant

T. Lane Wilson
Attorney at Law
320 S. Boston Ave., Ste. 400
Tulsa, OK 74103-3708
Attorney for Defendant

Charles A. Purser
OXY USA, INC.
P.O. Box 300
Tulsa, OK 74102-0300
Defendant

Kerry E. McQueen
Attorney at Law
P.O. Box 2619
Liberal, KS 67905-2619
Attorney for Defendant

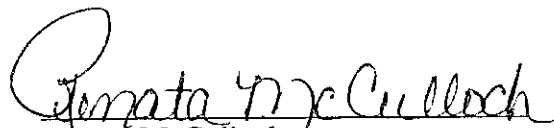
Thomas D. Kitch
Attorney at Law
P.O. Box 997
Wichita, KS 67201-0997
Attorney for Plaintiffs

Gregory J. Stucky
Attorney at Law
P.O. Box 997
Wichita, KS 67201-0997
Attorney for Plaintiffs

Erick E. Nordling
Attorney at Law
209 E. 6th Street
Hugoton, KS 67951
Attorney for Plaintiffs

and the original to:

Koleen Nosekabel
Clerk of the District Court
200 E. 6th Street
Hugoton, KS 67951


Renata McCulloch