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

OPAL LITTELL and CHERRY RIDER, co-trustees of the Opal Littell Family Trust, and BONNIE BEELMAN, individually and as representative plaintiffs on behalf of persons or concerns similarly situated, Plaintiffs, vs. OXY USA INC., Defendant.	Case No. 98-CV-51

MEMORANDUM IN SUPPORT OF
MOTION FOR CLASS CERTIFICATION

COME NOW the plaintiffs and in support of their motion for class certification state as follows:

INTRODUCTION

This is a plaintiff class action.

The putative plaintiff class consists of the following:

> 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 with respect to gas production from above the base of the Panoma-Council Grove

Field, whose royalty payments have been reduced by a "gathering/compression" deduction or "marketing deduct" identified on the monthly gas revenue detail sent by defendant to each such member. Plaintiffs exclude from the plaintiff class the United States of America insofar as its mineral interests are managed by the Mineral Management Service but otherwise include the instrumentalities of the United States of America and federally chartered corporations, including, but not limited to, the Farm Credit Bank of Wichita and the Federal Land Bank.

SUMMARY OF LAWSUIT

This case challenges the propriety of deductions being taken by OXY from its royalty payments for what are known as "gathering" activities. The deductions being contested by plaintiffs are being taken by OXY primarily for compression and dehydration which occur on the gathering lines serving its wells in the Hugoton Field.[1]

It is uncontested that if the activities in question were occurring on the leased premises rather than on a gathering system, OXY and its working interest owners would be required to bear all expenses associated therewith and could not impose any portion thereof on their royalty owners. Thus, the fundamental issue raised by this case is whether such expenses can be deducted from royalty payments simply because the underlying activities are performed off the leased premises.

I.
THE LEGAL CONTEXT IN WHICH THIS LITIGATION IS BEING BROUGHT

In *Sternberger v. Marathon Oil Co.*, 257 Kan. 315, 894 P.2d 788 (1995), the Kansas Supreme Court stated, in Syllabus ¶ 2: "The lessee under an oil and gas lease has the duty to produce a marketable product, and the lessee alone bears the expense in making the product marketable." This

[1] As indicated in the description of the Plaintiff Class, this action is limited to gas produced from above the base of the Panoma-Council Grove Field. The Kansas Hugoton Gas Field is the principal source of such gas. "Hugoton Field" is a short-hand reference to both the Kansas Panoma-Council Grove Field and the Kansas Hugoton Gas Field.

succinct holding expresses the duties which a lessee has always owed to its lessor under Kansas law. In order to produce the gas and thereby keep the lease in effect, the lessee must both bring the gas to the surface in a captive state and place it in marketable condition so that the gas can be sold in the market prudently selected by the producer, thereby generating royalties for the lessor.[2]

In *Sternberger,* the Court expressly recognized that "gathering" is a "production" cost. 257 Kan. at Syl. ¶ 3. In so doing, the Court distinguished "gathering" from the "transportation" of gas after it has been placed in marketable condition. *Id.* at 331. This distinction has long been recognized in the industry itself, where it is commonly understood that "[g]athering includes those acts necessary to prepare gas for transmission and consumption, both from a volume and quality standpoint . . .." John C. Jacobs, *Problems Incident to the Marketing of Gas*, 5 INST. ON OIL & GAS L. & TAX'N 271, 273 (1954). In contrast, "transportation" begins when the gathering process has been completed and consists solely of moving gas, "usually in large volumes and at high pressure, from the outlet of the gathering facilities to the distribution facilities"[3] by means of a market or transmission pipeline. *Id.*

The result in *Sternberger* hinged upon the proper characterization of the line amortization charges being assessed against royalty owners by the producer. If the activity performed by such facilities was "gathering," it was not deductible. If, on the other hand, such activity constituted "transportation," it was deductible. In examining this distinction, the Court observed that gathering is usually accompanied or characterized by such activities as compression and dehydration. 257 Kan. at 331. Under the facts presented in *Sternberger*, because the gas at issue flowed *without*

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[2] Plaintiffs are not challenging the manner in which OXY has elected to market the gas involved in this case. The only issue is whether OXY must bear any expenses it incurs to place the gas in a condition suitable for sale in such market.

[3] The "distribution facilities" are the means by which the gas is taken from the transmission line and distributed to end-users, such as residences, office buildings and factories.

compression or dehydration directly from the wellhead to (and into) the transmission pipeline, the Court concluded "the deductions made by [the producer] are properly characterized as 'transportation' rather than 'gathering' or other production costs." 257 Kan. at 331. In contrast, as explained below, it is plaintiffs' contention that the gathering systems involved in the case at bar are used to produce the gas and to put it in marketable condition.

The Court in *Sternberger* also recognized that the lessee's duty to produce gas and its duty to make that gas marketable by preparing it for transmission in a high-pressure pipeline are interrelated, if not inseparable. In its discussion of the law of Texas, the Court acknowledged that that jurisdiction distinguishes between compression on a gathering line used to enhance the flow of gas from a well, and compression on a gathering line used to push the gas into a high-pressure transmission pipeline. 257 Kan. at 339-41. The Court noted that in Texas the producer cannot charge its royalty owner for the compression used to produce the gas in the first instance, but can charge the royalty owner for compression costs incurred to gain access to the market through a transmission pipeline. The Kansas Court refused to draw the distinction that Texas makes. Instead, based upon Kansas precedent, the Court held that the producer cannot charge any compression costs on the gathering line to the royalty owner. As succinctly stated by the Court, "Kansas does not permit deductions for compression costs." 257 Kan. at 341. This result follows directly from the Court's broader holding that the producer must produce the gas and make it marketable without cost to the royalty owner.

In summary, *Sternberger* prohibits producers from charging their royalty owners for gathering expenses, such as compression and dehydration, because those expenses arise from the producer's fulfillment of its duty to produce the gas and make it marketable.

II.
THE CONTENTIONS OF THE PARTIES

This case is not about OXY's right to deduct from royalty any "transportation" expenses it incurs to move the gas through high-pressure transmission pipelines to markets outside the Hugoton Field.[4] Nor does it challenge OXY's right to deduct expenses associated with the removal of natural gas liquids and resulting in the payment of additional royalties to plaintiffs.

A. Plaintiffs' Contentions

Plaintiffs claim that OXY cannot deduct "gathering" expenses which are being incurred to produce and market the gas.

B. Defendant OXY's Contentions

OXY contends that the deductions in question are proper because all gas in the Hugoton Field is in "marketable" condition at the wellhead and that all costs incurred after the gas is severed from the ground constitute "transportation" expenses.

C. The Basic Facts Giving Rise to this Litigation

In direct contrast to the situation in *Sternberger*, in this case there are significant operations—such as compression and dehydration—occurring on the lines that connect the wells to the transmission pipeline. In this case, unlike in *Sternberger*, compression is required both to produce the gas and to enable it to enter the transmission pipeline by means of which OXY markets the gas.

The compression necessary to produce and market OXY's gas is located on the gathering systems that serve its wells. The compression on these gathering systems is designed to affect (and

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[4] But before being able to transport gas out of the Hugoton Field on such pipelines, producers must meet the specifications set forth in the applicable pipeline tariff. These specifications include maximum limits on water content and minimum pressures required to enter the pipeline. The expenses incurred in meeting these specifications are among those at issue here.

does affect) the performance of all wells connected thereto. In fact the rate at which such wells produce gas is directly controlled by the amount of compression and the location of that compression on the gathering system.

Gathering systems have always existed in the Hugoton Field. In the earlier days of the Hugoton Field the volumes of gas flowing out of the Field were much larger than they are today, even though there was little or no compression located on the gathering systems to which the wells were connected. In other words, the lines themselves, many of which are still in use today, were like the lines involved in *Sternberger* to the extent that the reservoir pressure was sufficient to enable the gas to be produced and to flow to the end of the gathering system without the assistance of compression.[5]

More recently, compression has been steadily added to these gathering systems. The need for such additional compression is not attributable to increased production from the Hugoton Field. In fact such volumes have been declining, even with the addition of in-fill wells. Instead, additional compression has been needed to lower pressures in the vicinity of each well as the result of reservoir pressures that have been slowly declining as the Field has been depleted. This compression enables gas to flow out of the well and be captured in the gathering system.

OXY sells the great majority of the gas involved in this litigation in and to markets which can only be accessed by transmission pipelines which carry the gas outside the Hugoton Field. These pipelines require gas received from producers such as OXY to meet certain specifications,

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[5] There was usually booster compression at the end of the gathering lines to push the gas into the transmission pipeline. The transmission pipeline generally provided such compression and included the costs associated with it in its rate base which it passed on to its customers. Therefore, historically, the producer rarely bore that expense. In the limited circumstances where the producer, instead of the transmission pipeline company, bore that expense, it could not in turn charge the royalty owner with that expense. *Gilmore v. Superior Oil Co.*, 192 Kan. 388, 388 P.2d 602 (1964); *Schupbach v. Continental Oil Co.*, 193 Kan. 401, 394 P.2d 1 (1964). In *Sternberger*, there was not even such booster compression.

including maximum water content and minimum pressures necessary to enter the transportation system. Since all of the gas at issue in the lawsuit is water-saturated and has low wellhead pressures, it must be compressed and dehydrated in order to make the gas marketable and gain access to the markets served by such interstate pipelines. Thus, it is undisputed that the gathering activities are necessary to make the gas suitable for the market in which OXY itself has elected to sell such gas.

OXY identifies the deductions at issue in this lawsuit on its royalty check stubs as "gathering/compression" deductions or "marketing deduct." OXY has only recently begun to take deductions from royalty payments for gathering services. During federal price regulation, the pipelines performed these gathering services, such as any compression or dehydration that may have been required, at no cost to the producer or royalty owner. When a producer owned the gathering system, as was the case with OXY's Ulysses Gathering System, it usually did not charge its royalty owners for those gathering services.

OXY uses the same method to compute deductions for all gas involved in this case, regardless of which gathering system is being used to produce and market the gas or the identity of the individual well for which such royalty payments are being calculated. When calculating such deductions, OXY makes no distinction whatever among its leases with respect to (1) the composition of the gaseous streams emerging from the wells (except for MMBTU adjustments); (2) the reservoir pressures; (3) the reserves associated with particular wells; (4) the volumes of gas produced from the wells or (5) any other possible factor that might vary from well to well. Nor does it distinguish among the wells on the basis of the relative distance the gas travels on a particular gathering system. All such deductions are based solely on the relative volume of gas, measured in terms of MMBtu's, produced from each well, so that the costs in question are allocated among all members of the putative class on the basis of the ratio of the production from any given well in any given month to

the entire production from all wells connected to each gathering system during such accounting period. In other words, OXY charges its royalty owners on each gathering system the same rate on a volumetric basis.

As stated above, plaintiffs believe that these facts squarely support their contention that OXY is using the gathering systems to both assist in the production of the gas in the first instance and to complete the process of capturing the gas by placing it in marketable condition. As is explained below, however, since OXY is relying on the very same set of undisputed facts to support its claim that it is simply "transporting gas that is already in marketable condition," the contours of this litigation compel certification of a class under K.S.A. 60-223.[6]

ARGUMENT AND AUTHORITIES

This judicial district has supervised many class actions, the size and complexity of which have equaled or exceeded the action at bar. For example, this district was the venue for sixteen class actions brought by oil and gas lessors against their lessees, involving thousands of plaintiff class members and several defendants, which were consolidated on appeal as *Matzen v. Cities Service Oil Company*, 233 Kan. 846, 667 P.2d 337 (1983).

The appellate courts of Kansas have consistently recognized the propriety and desirability of the class action procedure to resolve controversies between a class of lessors and their lessee, and have repeatedly approved the use of the class action device in cases similar to the one at bar. *See, e.g., Shutts v. Phillips Petroleum Co.*, 235 Kan. 195, 679 P.2d 1159 (1984) ("*Shutts II*"), *aff'd in*

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[6] As the Court is undoubtedly aware, it is not required to and is, in fact, normally prohibited from, considering the merits of the positions taken by the parties when deciding whether to certify a class. The positions taken by the parties, including the claims raised, the defenses asserted, the relief sought and the facts to be established, provide the basis for the Court's analysis—not who may or win or lose when the case goes to trial.

part, rev'd in part, 472 U.S. 797 (1985), *on remand*, 240 Kan. 764, 732 P.2d 1286 (1987) ("*Shutts III*"), *cert. denied*, 487 U.S. 1223 (1988); *Waltrip v. Sidwell Corp.*, 234 Kan. 1059, 678 P.2d 128 (1984); *Shutts v. Phillips Petroleum Co.*, 222 Kan. 527, 567 P.2d 1292 (1977) ("*Shutts I*"), *cert. denied*, 434 U.S. 1068 (1978); *Gray v. Amoco Production Co.*, 1 Kan.App.2d 338, 564 P.2d 579 (1977), *aff'd in part, remanded in part*, 223 Kan. 441, 573 P.2d 1080 (1978); *Helmly v. Ashland Oil, Inc.*, 1 Kan.App.2d 532, 571 P.2d 345, *rev. denied*, 222 Kan. 749 (1977).

Sternberger v. Marathon Oil Co., 257 Kan. 315, 894 P.2d 788 (1995), is the most recent case in which the Kansas Supreme Court applied the Kansas class action statute to the relationship between a lessor and its lessees. As in the instant case, the plaintiff royalty owners in *Sternberger* asserted that their producer, Marathon, was wrongfully deducting certain expenses from their royalty payments. The district court certified the action as a class action and the Kansas Supreme Court affirmed that determination. There is no reason why there should be any different result in this case.[7]

In *Shutts I*, the Kansas Supreme Court expressed its conviction that like treatment by a defendant lessee of its lessors, regardless of any peculiarities in lease provisions or royalty agreements, presents a sterling example of the proper implementation of the class action procedure. 222 Kan. at 557. As in *Shutts I*, since OXY is treating each class member exactly the same way, "it would be difficult to imagine a more manageable plaintiff class action." 222 Kan. at 557.

I.
THE FOUR PREREQUISITES OF K.S.A. 60-223(A) ARE SATISFIED

K.S.A. 60-223, the Kansas Class Action Statute, establishes four prerequisites to the maintenance of any class action:

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[7] The order certifying the class in Sternberger covered activities by the same lessee in different gas fields in three states. Here, the task facing the court is much simpler, since it must only apply the law of Kansas to the same activities in the same field.

> One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

K.S.A. 60-223(a). As is demonstrated below, the facts of this case satisfy the four prerequisites under K.S.A. 60-223(a).

A. Numerosity

K.S.A. 60-223(a)(1) requires that the proposed class be sufficiently numerous to make joinder of all potential members impracticable. In considering this numerosity requirement in *Shutts I* the Kansas Supreme Court commented:

> Phillips contends the members of the class within the court's jurisdiction are not so numerous as to make their joinder impracticable. Phillips argues only 218 class members are Kansas residents and of this number only 128 signed a gas royalty agreement of the same type under which Althea Shutts was paid her money in December of 1972. Phillips does not indicate, nor does the record disclose, how many gas royalty leases covering Kansas land are involved. In view of what has heretofore been said, there is no need to examine this contention. (However, see *Williams v. Humble Oil and Refining Co.*, 234 F.Supp. 985 [E. D.La. 1964] [joinder of 76 persons impracticable]; *Fox v. Prudent Resources Trust*, 69 F.R.D. 74 [E.D.Pa. 1976] [joinder of 148 limited partners impracticable]; *Sabala v. Western Gillette, Inc.*, 362 F.Supp. 1142 [S.D.Tex. 1973] [class began with 39 and 12 opted-out]; and *Republic Nat. Bank of Dallas v. Denton and Anderson Co.*, 68 F.R.D. 208 [N.D.Tex. 1975].)

222 Kan. at 558.

For purposes of determining numerosity, the named plaintiffs need present only a "reasonable estimate of the number of class members possibly involved." *McCauley v. Bowen*, 659 F.Supp. 292,

295 (D.Kan. 1986).[8] OXY knows the exact number of members of the plaintiff class. OXY operates approximately 1,200 wells in the Kansas Hugoton and Panoma Council Grove Fields. It is reasonable to assume that the members of the class equal or exceed the number of wells operated by OXY.[9] A class comprising more than 1,200 members clearly satisfies the numerosity requirement of K.S.A. 60-223(a)(1).

B. Commonality

K.S.A. 60-223(a)(2) requires that questions of fact or law must exist which are common to the class as a whole. Kansas courts have liberally construed this subsection in favor of the class. *Gray*, 1 Kan.App.2d at 345. Subsection (a)(2) requires only that *some* issues of fact or law be common to the class. *See, e.g., Watson v. Branch County Bank*, 380 F.Supp. 945, 955 (W. D.Mich. 1974) (cited with approval in *Gray*, 1 Kan.App.2d at 345); *Adamson v. Bowen*, 855 F.2d 668 (10th Cir. 1988); *Penn v. San Juan Hospital, Inc.*, 528 F.2d 1181 (10th Cir. 1975).

The claims and defenses asserted herein raise numerous common questions of law and fact concerning the nature and extent of the duties owed by defendant OXY to all of its Kansas royalty owners. These common questions include the manner in which OXY should be required to account to the putative class members, the purposes for which it is performing the activities underlying the deductions in question, and whether Kansas law prohibits the deduction of such expenses if they are incurred for the purpose of producing and marketing the gas.

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[8] The Kansas Supreme Court has expressly recognized that, because of the similarity between K.S.A. 60-223 and its federal counterpart, Fed.R.Civ.P. 23, the decisions of the federal courts interpreting Federal Rule 23 are traditionally followed by Kansas courts in construing K.S.A. 60-223. *See Brueck v. Krings*, 6 Kan.App.2d 622, 624, 631 P.2d 1233, 1235 (1981), *rev'd on other grounds*, 230 Kan. 466, 638 P.2d 904 (1982).

[9] In *Sternberger*, there were 19 wells at issue and 38 class members. 257 Kan. at 343.

As is reflected in the uniform manner in which OXY produces, markets and accounts for the gas in question, the material facts regarding the claims of all royalty owners appear to be exactly the same. This standardized treatment of both the gas and the putative class members, which alone is sufficient to justify certification, simply reflects reality in the Hugoton Field: the requirements for producing gas and the activities necessary to prepare the gas for pipeline transmission and marketing are the same for all the wells involved in this case.

OXY's decision to use the same method to compute royalty payments for all the wells from which the putative class members receive royalty payments directly contradicts any claim that common questions of law and fact do not exist in this case. In effect, OXY's own conduct estops it from advancing such an argument to avoid class-wide liability for any impropriety inherent in such methodology. The commonality requirement is satisfied.

C. Typicality

K.S.A. 60-223(a)(3) requires that the named plaintiffs' claims or defenses must be typical of the claims or defenses of the class. To satisfy this requirement "[t]he named plaintiffs need not be in a position identical to that of every member of the putative class." *Aguinaga v. John Morrell & Co.*, 602 F.Supp. 1270, 1279 (D.Kan. 1985). Factual variations among the situations of the individual members of the class may exist "so long as the claims of plaintiffs and the other class members are based on the same legal or remedial theory." *Penn*, 528 F.2d at 1189.

Another court stated the standard somewhat differently:

> So long as there is a nexus between the class representatives' claims or defenses and the common questions of fact or law which unite the class, the typicality requirement is satisfied.

> "A sufficient nexus is established if the claims or defenses of the class and the class representatives arise from the same event or pattern or practice and are based on the same legal theory."

Joseph v. General Motors Co., 109 F.R.D. 635, 640 (D.Colo. 1986) (quoting *Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332 [11th Cir. 1984], *cert. denied*, 470 U.S. 1004 [1985]).

The named plaintiffs and class members in this action have been injured by the "same pattern or practice"—namely OXY's deduction from royalty payments of expenses to produce and market gas. The plaintiffs' and class members' claims for damages and equitable relief arise as a direct consequence of this set of circumstances and are based upon the same legal theories of recovery. Thus, the typicality requirement of K.S.A. 60-223(a)(3) has been satisfied.

D. Adequacy of Representation

"The law does not require that a named plaintiff be the perfect class member or even the best available." *Shutts II*, 235 Kan. at 207. K.S.A. 60-223(a)(4) merely requires that the representative plaintiffs possess the ability to fairly and adequately protect the interests of the class.

> In determining the adequacy of the representative, the trial court should consider: (1) whether there is adequate competent counsel; (2) whether the litigants are involved in a collusive suit; (3) whether the interests of the named parties are conflicting with or are antagonistic in any way to the interests of the other members of the class; (4) whether the named representatives' interests are coextensive with the interests of the other members of the class; (5) the quality of the named representative, not the quantity; and (6) the extent of the named representatives' interests in the suit's outcome.

Shutts II, 235 Kan. at 207.

All of these elements are satisfied in this case. Plaintiffs' counsel have demonstrated themselves to be competent to represent the class in this case.[10] With respect to the remaining

[10] The law firms of Fleeson, Gooing, Coulson & Kitch, L.L.C. and Kramer, Nordling & Nordling, L.LC. have participated as class counsel in numerous class actions over several decades.

elements enumerated in *Shutts II*, recitation of a few facts demonstrates that the representative plaintiffs satisfy the requirements of K.S.A. 60-223(a)(4).

The representative plaintiffs own or have owned lands or minerals in Kansas which are burdened by oil and gas leases held by defendant OXY productive from the Hugoton Field. Their interest in this litigation is, therefore, coextensive with and compatible with the interests of all of the class members whom they represent. "The coextensiveness requirement does not mandate that the positions of the representative and the class be identical; rather, only that the representative and class members 'share common objectives and legal or factual positions.'" *Helmly*, 1 Kan.App.2d at 536 (quoting 7 CHARLES ALAN WRIGHT AND ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1769 (1977)). As has been previously discussed, the representatives and class members share the common objectives of establishing the liability of OXY for breach of its duties as a lessee.

The named plaintiffs will clearly provide representation of the highest quality. "Generally the representatives must be of such a character as to assure the vigorous prosecution or defense of the action so that the member's rights are certain to be protected." *Shutts II*, 235 Kan. at 208-09.

Under all the circumstances, the representative plaintiffs are suitable and proper plaintiff representatives under K.S.A. 60-223(a)(4).

II.
THIS IS A 60-223(b)(3) CLASS ACTION

Having satisfied each of the four prerequisites of K.S.A. 60-223(a), plaintiffs must establish that this case falls into one of the three categories described in K.S.A. 60-223(b). Plaintiffs respectfully submit that this case fits readily within the scope of K.S.A. 60-223(b)(3).

There are two basic requirements for class certification under K.S.A. 60-223(b)(3). First, questions of law or fact common to the class must predominate over any questions affecting only

individual class members. Second, a class action must provide a superior method of fairly and efficiently resolving the controversy at issue. Both of these requirements are met here.

As stated above, OXY's wells in the Hugoton Field utilize the same gathering systems to produce and prepare its gas for market. All of that gas has the same characteristics: It is water-saturated and has a low-pressure. Consequently, the same activities—compression and dehydration—take place on all the gathering systems. OXY calculates its royalty payments, including the deductions in question, for each class member in exactly the same way. The only variation in such payments and deductions is based upon the total volume of MMBtu's produced by each well each month. The manner in which such individual well volumes are computed is not in dispute and has no direct bearing on the issues in this case, as is reflected in OXY's defense of its uniform treatment of all class members—that such deductions are proper because all of the gas is "marketable" at the wellhead and all expenses incurred after the gas is severed from the ground constitute "transportation," as defined by the Kansas Supreme Court in *Sternberger*. Common questions of law and fact not only predominate; there are no known issues which affect only individual plaintiffs in the lawsuit.

The class action is superior to other available devices for fair and efficient adjudication of this controversy, as it is the only method that will insure adequate legal redress for each member of the proposed class. The Kansas Supreme Court in *Shutts I* asked the rhetorical question:

> [C]an the 'small man' find legal redress in a modern society which increasingly exposes people to group injuries for which they are individually unable to get adequate legal redress, either because they did not know enough or because such legal redress is disproportionately expensive?

222 Kan. at 545. The response by the court in *Shutts I* was to approve the case's maintenance as a class action.

K.S.A. 60-223(b)(3) sets forth three factors which are relevant when examining whether class action treatment is a superior method of resolving this controversy. The first factor is the interest of the class members in prosecuting separate actions. If each potential plaintiff were to bring a separate action against OXY, there would be over 1,200 such actions—one for each person owning a royalty interest affected by OXY's conduct. But individual plaintiffs would undoubtedly question the wisdom of bringing their own lawsuits, due to the technical nature of this dispute, as well as the tenacity with which OXY would pursue its defense. Most royalty interest owners simply lack the individual financial resources necessary to pursue such litigation.

The second factor to be considered under K.S.A. 60-223(b)(3) is the nature and extent of any other litigation involving the same controversy. As far as plaintiffs know, there are no other cases brought by Kansas royalty owners in Kansas against OXY making the same claims as those herein. Therefore, the Court will not have to deal with any procedural issues that might arise in instances where there are overlapping claims in different lawsuits.

The third and final factor is the appropriateness of this Court as a forum for this suit and the procedural measures which will be necessary to manage this litigation. This judicial district, recognizing the propriety and utility of class actions involving claims by plaintiff-lessors, has certified a number of class actions involving claims similar to those asserted here. *See, e.g., Youngren v. Amoco Production Co.,* No. 89-C-30 (Stevens Co. Dist. Ct.); *Smith v. Amoco Production Co.*, No. 93-CV-207 (Finney Co. Dist. Ct.); *Genevieve L. Combes, et al. v. Northern Natural Gas Producing Co.*, No. 78-C-7 (Stevens Co. Dist. Ct.); *Wachter v. Amoco Production Co.*, No. 4656 (Stevens Co. Dist. Ct.); *Hennigh v. Atlantic Richfield Co.*, No. 2498 (Grant Co. Dist. Ct.); *Larrabee v. Panhandle Eastern Pipeline Co.*, No. 4950 (Stevens Co. Dist. Ct.); *Larrabee v.*

Panhandle Eastern Pipeline Co., No. 5188 (Stevens Co. Dist. Ct.); *Hennigh v. Western Natural Gas Co.*, No. 2523 (Grant Co. Dist. Ct.).

This Court is the ideal forum for this litigation. Furthermore, the class is well-defined, and there are no procedural impediments to proceeding as a class action. As stated by the Kansas Supreme Court:

> One of the principal purposes of class action litigation is to avoid a multiplicity of actions when conditions exist that will allow all claims of numerous potential plaintiffs to be determined in a single action.

Waltrip, 234 Kan. at 1064.

In sum, a class action would allow the members of the class to present in one cooperative lawsuit their best possible case for establishing the liability of defendant OXY.

CONCLUSION

A "small man," in the language of the Kansas Supreme Court in *Shutts I*, could not reasonably decide to bring this suit in any form other than as a class action. A class action is not only superior to other available methods for the fair and efficient adjudication of this controversy, but it is the only method by which individual class members can be assured of adequate legal redress. This action presents the ideal forum for the efficient, consistent, and convenient resolution of the claims of the class members.

For all the foregoing reasons, plaintiffs respectfully request that their motion for class certification be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of August, 2000, I served a copy of the foregoing **Memorandum in Support of Motion for Class Certification** by mailing same, postage prepaid and properly addressed to:

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