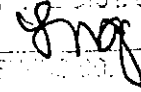


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KOLEN HEDERWAGEL
CLERK OF DISTRICT COURT



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

PLAINTIFFS' PRETRIAL QUESTIONNAIRE

1. **The name of the party you represent:** Opal Littell and Cherry Rider, co-trustees of the Opal Littell Family Trust, and Bonnie Beelman, individually and on behalf of Plaintiff Class (collectively "Plaintiffs").

2. **Contentions and theories of recovery:**

A. **Theory of your claim or defense and supporting factual contentions** (including, if applicable, grounds of negligence or comparative negligence against parties and non-parties, and affirmative defenses):

Plaintiffs are owners of mineral interests in lands within the areal confines of the Kansas Hugoton Field burdened by oil and gas leases owned in whole or in part by OXY USA, Inc. ("OXY"), which have produced gas from above the base of the Panoma-Council Grove Field. As certified by this Court on March 13, 2001, the Plaintiff Class consists of mineral interest owners whose royalty payments have been reduced by a "gathering/compression" deduction or a "marketing deduct" identified on the monthly gas revenue detail sent by OXY to members of the Class.

Plaintiffs contend that OXY has failed to properly calculate and pay royalty under their respective oil and gas leases, by deducting from such payments expenses incurred to produce the gas and/or expenses incurred to make the gas marketable. This lawsuit does not raise any other possible claim Plaintiffs may have against OXY including, but not limited to, (1) any claim that OXY has not used the proper starting point for calculation of royalty payments, (2) any claim that OXY has failed to make proper royalty payments in connection with any extracted liquid hydrocarbons, and (3) any claim that the deductions from royalty payments are unreasonable in amount.

OXY's wells are located in various portions of the Kansas Hugoton Field. As a result, different groups of OXY's wells are connected to different gathering systems. In addition to gathering systems owned and operated by OXY, OXY wells are connected to gathering systems owned by the following third parties: Duke Energy Field Services; Anadarko Gathering Company; El Paso Field Services; ONEOK Field Services; Pioneer Natural Resources; and Williams Field Services/Amoco Production Company. OXY has gathering agreements with each of those third-parties to provide gathering services for OXY's gas, including compression, dehydration, and delivery to a processing plant for further processing and treatment. Gas from OXY's own gathering systems also flows onto third-party gathering systems: OXY's East Kinsler Gas Gathering System is connected to the Anadarko gathering System; OXY's Ulysses Gas Gathering System is connected to the Mobil Hickock Facility (jointly owned by OXY and Exxon-Mobil) which is connected to a gathering line upstream of the Amoco Jayhawk Plant. Except for gas delivered into an intrastate pipeline owned by Kansas Power and Light (and small quantities consumed locally), the gas from OXY's wells flows through a gathering system to a processing plant, and is compressed, dehydrated, and processed before being delivered into an interstate transmission pipeline.

In calculating royalty payments, OXY begins with the weighted average price received by OXY for the gas (including residue and liquids) at the sales points. From this weighted average price, OXY deducts: (1) a proportionate share of any third-party gathering charges applicable to the gas delivered at the particular sales point, including a proportionate share of applicable fuel charges; (2) a proportionate share of any transmission charges including a portion of applicable fuel charges; and (3) a proportionate share of any applicable taxes. In addition, for gas on OXY's East Kinsler Gas Gathering System and Ulysses Gas Gathering System, OXY subtracts a proportionate share of its per mcf gathering charges (\$0.164 and \$0.15, respectively) and fuel charges for those systems.

OXY is breaching its contractual obligations under the expressed and implied terms of its oil and gas leases, by deducting expenses incurred to produce gas and to place it in marketable condition from their royalty payments.

In the absence of a provision to the contrary in the underlying lease, Kansas law flatly prohibits a lessee from deducting expenses incurred to compress gas, regardless of whether such compression is performed on the lease premises or on the gathering system. This is true whether

the purpose of such compression is to lower the pressure at the wellhead and thereby increase the rate at which the gas is produced and the amount of recoverable reserves which the well is capable of producing or to move the gas through the gathering system by raising the pressure of the gas to the level required for entry into high-pressure, long-distance, transmission pipelines which serve the distant markets in which the great majority of gas produced in the Hugoton Field is actually consumed.

As confirmed by the Kansas Supreme Court in the *Sternberger* case, Kansas also prohibits lessees from deducting expenses incurred to place the gas in condition suitable for the market in which the lessee elects to sell it. The holding in *Sternberger* was derived, in part, from two earlier cases (*Gilmore* and *Schupbach*) which had already required producers to bear compression expenses in their entirety for more than 40 years. As stated in *Sternberger*, "Kansas does not permit deductions for compression costs." 257 Kan. at 341. In contrast to both *Gilmore* and *Schupbach*, there was no evidence that the producer in *Sternberger* was using compression. The absence of compression entered directly into the court's decision that the deductions in question were being taken solely for purposes of transporting the gas, as opposed to completing the process of producing and marketing it:

There is no evidence that Marathon engaged in any activity designed to enhance the product, such as *compression* There is no evidence that Marathon attempted to deduct any expenses in making the gas marketable other than those of constructing a pipeline to *transport* the gas to the purchaser or to a transmission pipeline. Therefore, the deductions made by Marathon are properly characterized as "transportation" rather than "gathering" or other production costs.

257 Kan. at 331 (emphasis added).

OXY is admittedly deducting expenses which it is incurring to compress, dehydrate and gather the gas involved in this litigation. It is undisputed that OXY is incurring these expenses for the purpose of producing and marketing the gas at the rate and in the manner selected by it, as well as increasing recoverable reserves. None of the leases held by Plaintiffs authorize OXY to take such deductions. *Sternberger* expressly found that the words "market value at the well" are silent with regard to the issue of whether a lessee can deduct expenses which it incurs off the lease premises and based its analysis of the deductions involved in that case on the purpose for which the expenses were being incurred. 257 Kan. at 322. OXY does not claim that any of the royalty instruments involved in this case contains language which limits or overrides its duty to produce and market the gas at its sole expense.

Having decided how to produce and market the gas involved in this litigation, OXY is obligated to account to Plaintiffs in accordance with such decisions—not on the basis of sales it did not make or might have made or on the theory that it could have sold the gas without incurring such expenses.

OXY cannot evade its duty to produce and market the gas at its sole expense by assigning these responsibilities to another party, i.e. third-parties operating gathering systems to which some of OXY's wells are connected. OXY's obligation to bear all expenses incurred to produce and market the gas does not automatically cease at the wellhead, as evidenced by its decision to rely upon the gatherings system involved in this case to perform activities essential to the fulfillment of such duties.

OXY attempts to characterize all of the gathering activities as "transportation" expenses. Such defense, however, is directly contradicted by its repeated admissions that it is compressing and dehydrating the gas and that such "gathering" activities are necessary to both produce the gas and place it in condition suitable for the interstate markets in which it is sold. These admissions appear in OXY's internal documents and in testimony given by its employees.

OXY acknowledges that it could not deduct any of the expenses involved in this litigation if the activities in question (compression and dehydration) were performed on the lease premises. OXY further admits that it has elected to perform such activities off the lease premises and on the gathering system due to economies of scale associated with the centralized locations of the equipment necessary to perform such services, thereby enabling it to secure substantially the same results in terms of both producing and marketing the gas as if such activities had been performed on the leases, but at a substantially reduced cost. Since the underlying purpose of such activities remains exactly the same—to produce and market the gas—performing them on the gathering system, instead of on the leases, does not convert them into deductible expenses. Likewise, OXY's decision to aggregate and commingle the gas for purposes of discharging its duty to produce and market gas from each of the leases involved in this litigation does not alter its obligation to perform such activities at its sole expense.

Plaintiffs have been damaged OXY's failure to pay the full amount of royalties properly due. Plaintiffs seek an accounting to determine the amount of such underpayment, and actual damages in such amount, together with prejudgment interest thereon. Plaintiffs also seek declaratory and injunctive relief providing that OXY's deduction of expenses from royalty payments was and is improper and prohibiting it from engaging in such conduct in the future.

B. List and itemize total damages claimed:

Plaintiffs pray for an accounting and for judgment for actual damages in such amounts determined by the Court to be due and owing pursuant to such accounting, together with prejudgment interest thereon, as well as appropriate declaratory relief and the costs of this action, and for such other and further relief as the Court may deem just and equitable.

3. Requests for amendments to your pleadings:

None.

4. **Requests for admissions and stipulations:**

- A. The Court has jurisdiction over the parties and the subject matter.
- B. Venue is proper in Stevens County, Kansas.
- C. Clear and accurate photocopies may be used in lieu of original documents in the trial of this matter.
- D. All documents which have been exchanged between the parties in formal or informal discovery are genuine, and are business records within the meaning of K.S.A. 60-460(m) and may be admitted into evidence without further foundation, subject only to objections to relevance.

5. **List names and addresses of all witnesses you intend to call at trial** (Identify as an expert any witnesses you intend to call as an expert):

(To be provided November 4).

6. **List all exhibits you intend to offer at trial and identify any which have not already been shown to opposing counsel:**

(To be provided November 4).

7. **Motions:**

A. Motions pending:

Defendant's Motion to Decertify Class.

B. Motions to be filed prior to trial and date by which you propose to file each motion:

Summary Judgment Motion, to be filed December 2, 2002.

Motions in Limine, to be filed February 14, 2002.

8. **Trial assignment:**

A. Is this trial to the Court or to a jury? Court.

- B. Will a jury of 6 members be accepted? N/A
- C. What is the estimated length of trial? 5 days
- D. Should case receive priority setting, and if so, why? (If due to out-of-town witnesses, please specify.)

The Court has already set this case for trial beginning March 31, 2003.

- 9. **Does party require a guardian ad litem?** N/A
- 10. **List request for limitation of cumulative or expert witnesses:** N/A
- 11. **Questions of fact:**
 - A. Whether OXY is deducting expenses incurred to compress the gas?
 - B. Whether all or a portion of such compression is being used to produce the gas in the first instance—cause it to flow out of the ground in a captive state?
 - C. Whether the gathering systems at issue in this case are being used since at least the commencement of the claim period to “produce” the gas—by means of compression and line sizing necessary to cause the gas to flow out of the wells at the rate desired by OXY?
 - D. Whether compression and dehydration on the subject gathering systems are being used to put OXY’s gas in marketable condition?
 - E. Whether the services required to meet the specifications of the interstate pipelines are necessary to put OXY’s gas in marketable condition?
 - F. What is the amount of actual damages and prejudgment interest to be recovered by Plaintiffs? (To be determined after an accounting)

12. **Questions of law:**

- A. Whether the gathering charges (including compression and fuel adjustments), dehydration, and other projects, such as line-looping, at issue in the instant case may, under Kansas law, be deducted prior to calculating royalty under the express and implied terms of the subject oil and gas leases and the facts of this case.
- B. How Kansas law defines "production."
- C. Whether the fact that OXY utilizes the services of third-parties, rather than providing those services itself, relieves OXY of its obligation to bear the expense of producing gas and putting it in marketable condition.
- D. Whether plaintiffs are entitled to declaratory relief.
- E. Whether OXY should be required to account to Plaintiffs.

13. **Unusual questions of evidence or procedure:**

- A. If OXY takes the position that a portion of the expenses are deductible under Kansas law, which party has the burden of coming forward with the evidence or of proof with regard to this issue?
- B. Which party has the burden of proving whether OXY has fully and accurately accounted to Plaintiffs?
- C. If OXY is entitled to deduct a portion, but not all, of the expenses at issue in this litigation, which party has the burdens of coming forward with evidence and of proving how such expenses should be divided?

14. **Anticipated problems relative to jury instructions:**

N/A

15. **Settlement:**

A. What are the prospects of settlement? Fair.

B. Would a settlement conference be of assistance? Maybe.

16. **Do you plan to file trial briefs? If so, set forth proposed time schedule for filing.**

Plaintiffs intend to file a trial brief on or before March 24, 2003.

17. **State any procedural problems or recommendations:**

None.

18. **Discovery:**

A. If further discovery is requested, specify what further discovery is necessary and state why:

OXY has not yet responded to all outstanding discovery, including Plaintiffs' Sixth Set of Interrogatories.

In addition, the parties request leave to complete the following by the dates indicated:

Expert reports to be exchanged by October 7.

Expert discovery to be completed by November 15.

Exchange reports of rebuttal experts by October 29.

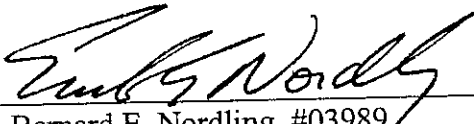
Exchange of final exhibit and witness lists by November 4.

B. State when it would be completed and request leave under Supreme Court Rule 136 to continue specified limited discovery:

See above, extensions requested by agreement of the parties.

Respectfully submitted,

KRAMER, NORDLING & NORDLING, LLC

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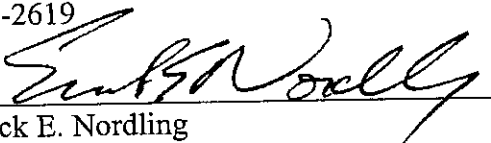
Attorneys for Plaintiffs and Plaintiff Class

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of October, 2002, I served a copy of the foregoing **Plaintiffs' Pretrial Questionnaire** by mailing same, postage prepaid and properly addressed to:

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T. Lane Wilson
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