

SHARP, McQUEEN, MCKINLEY,
DREILING & TATE, P.A.
419 N. Kansas - P.O. Box 2619
Liberal, KS 67905-2619
(620) 624-2548

FILED

02 OCT -4 PM 2:57

CLEARING HOUSE COURT
Handwritten signature

-and-

HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.
320 South Boston Avenue, Suite 400
Tulsa, Oklahoma 74103-3708
(918) 594-0400

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

OPAL LITTELL and CHERRY RIDER,)
co-trustee of the Opal Littell Family Trust,)
and BONNIE BEELMAN, individually and)
as representative plaintiffs on behalf of)
persons or concerns similarly situated,)

Plaintiffs,)

v.)

OXY USA INC.,)

Defendant.)

Case No. 98-CV-51

PRELIMINARY PRETRIAL QUESTIONNAIRE¹

1. The name of the party you represent: Defendant OXY USA Inc.
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):

¹ The parties have not yet completed discovery in this action and, thus, OXY reserves the right to supplement this Preliminary Pretrial Questionnaire.

- (1) OXY has denied each and every allegation by the plaintiffs that OXY has violated any duty owed to its royalty owners.
- (2) OXY has asserted, and continues to assert that certification of the plaintiff class is improper under the law of Kansas, because it necessarily is based on a contract "implied in fact" which must be inferred from the facts and circumstances that existed at the time the leases were entered into on a case-by-case basis. OXY further contends that the Court should grant OXY's pending Motion to Decertify Class, and allow this action to proceed, if at all, with respect to the named plaintiffs only.
- (3) OXY contends that its payments to its royalty owners have met or exceeded those called for by the express provisions of the subject written leases because the vast majority of the subject leases provide that, when gas is sold off the lease, royalty is based on the "market value of the gas at the well." OXY further contends that the gas produced has "market value at the well" and that OXY has paid royalty above the market value of the gas at the well. The market value of gas at the well is "the price which would be paid by a willing buyer to a willing seller in a free market." Holmes v. Kewanee Oil Co., 233 Kan 544, 551, 664 P.2d 1335 (1983). The express lease term—which requires payment of royalty based on the "market value of the gas at the well"—has been satisfied by OXY's method of royalty payment.
- (4) OXY contends that the royalty clauses of the subject leases contain provisions expressly stipulating the calculation and payment of royalty

thereby precluding the imposition of additional or inconsistent implied duties.

- (5) With respect to those of the subject leases that call for payment of royalty based on a stipulated percentage or fraction of actual proceeds obtained from the sale of the gas, OXY's payment of royalties have met or exceeded these obligations.
- (6) Plaintiffs cannot prevail merely by focusing on gathering and compression. Because, at base, plaintiffs claim that the royalty class has not been paid the full amount of royalty to which they are entitled, that issue is governed by the express requirements of the subject oil and gas leases. In order to prevail, plaintiffs must establish the amount of royalty to which he/she was entitled under the specific lease's language and further that he/she received less than that amount.
- (7) OXY contends that, in the vast majority of instances, the parties expressly agreed in the subject leases that royalty was to be valued "at the well." By contending that OXY cannot deduct the gathering fee in calculating royalty, plaintiffs are attempting to change the location where royalty is valued to the terminus of the gathering system—in most cases a distance of several miles from the subject leases—where the value of the gas has been enhanced by the gathering services performed rather than "at the well" as the parties expressly agreed in the leases. Deduction of these costs in calculating royalty is, thus, necessary to effectuate the express intent of the parties that royalty be valued "at the well."

- (8) With respect to those leases that stipulate royalty based on a percentage of the proceeds actually received by OXY from the sale of the gas, plaintiffs' contentions are similarly in derogation of the express terms of the subject leases (and, thus, the intent of the contracting parties).
- (9) OXY contends that the natural gas produced from the subject wells is marketable at the well. This contention is demonstrated by the existence of several factors including, but not limited to, the facts that: (a) the physical characteristics of this natural gas at the wellhead are such that it is readily "useable" by consumers of this product; (b) significant volumes of this natural gas have historically been sold at the wellhead not only by OXY, but by numerous other Hugoton field producers as well; (c) significant volumes of this natural gas are sold at the wellhead today, not only by OXY, but by numerous other producers as well; (d) all or substantially all of this natural gas could in fact be sold at the wellhead to non-affiliated purchasers; (e) the quality of this gas at the well is within a range of that considered in the industry to be marketable; (f) this natural gas is produced at naturally occurring pressures such that it will flow into gathering lines and away from the well without the aid of compression; and (g) this natural gas is produced at pressures far in excess of those necessary for use by consumers of this product.
- (10) The gathering and related compression and other services to which the natural gas is subjected downstream from the wellhead of the wells involved in this case (and the associated deductions in calculating royalty

payments to plaintiffs) enhance the value of already marketable gas. Moreover, these services (and the associated deductions) are for the purpose of transporting the gas to distant markets. In either case, OXY contends that the costs of these services are properly deductible in calculating royalty payments to plaintiffs.

- (11) Plaintiffs' contention that OXY is not entitled to deduct its gathering and related compression costs in computing royalty payments due would require OXY to pay royalty on the value of gathering and related compression service contrary to the express terms of the applicable leases.
- (12) OXY denies all allegations that the gathering systems or compression on the gathering systems servicing the subject wells are "production" costs and thus cannot be deducted in calculating plaintiffs' royalty payments. To the contrary, OXY contends that this natural gas is "produced" as a matter of law, at the wellhead, once it is severed from the earth. Further, the subject leases, as well as custom and usage in the industry, contemplate that the production process ceases once the gas has been brought to the surface and severed from the earth.
- (13) OXY contends that plaintiffs are unlawfully attempting to extend the implied covenant to market in a manner that has already been rejected twice (once by the Kansas Supreme Court and once by the U.S. District Court in Kansas) with respect to other Hugoton Field producers who sold gas off the lease through the use of gathering systems. Matzen v. Hugoton Production Co., 182 Kan. 456, 321 P.2d 576 (1958); Ashland Oil &

Refining Company v. Staats, Inc., 271 F. Supp. 571 (D. Kan. 1967). In finding that it was proper to deduct expenses related to gathering, processing and dehydrating, the Kansas Supreme Court stated:

It was as much [the lessee's] duty to find a market on the leased premises without cost to the plaintiffs as it was to find and produce the gas [citations omitted], but that duty did not extend to providing a gathering system to transport and process the gas off the leases at a large capital outlay with attending financial hazards in order to obtain a market at which the gas might be sold.

182 Kan. at 462-3 (emphasis added). Plaintiffs are wrongfully attempting to impose the costs of operating and paying for the gathering systems used to transport gas from the subject wells on OXY alone.

- (14) Alternatively, any further consideration of the obligations imposed by the implied covenant require the Court to examine the facts and circumstances by which each lease was made and the existence of any such obligations will require a finding, based on "the presumed intention of the parties as gathered from the [express lease terms]," that the parties intended the lessee to bear all costs to compress the gas and transport it to a distant pipeline at lessee's sole expense and that this intent "was so clearly within the contemplation of the parties that they deemed it unnecessary to express it . . ." Smith v. Amoco Production Co., ___ Kan. ___, 31 P.3d 255, (2001); Danciger Oil & Ref. Co. v. Powell, 137 Tex. 484, 490-92, 154 S.W.2d 632 (1941). The obligations sought to be here imposed fail that test.
- (15) OXY contends that plaintiffs' claims must be denied based on OXY's affirmative defenses of failure to state a claim, estoppel, waiver, statute of

limitations, laches, failure to join indispensable parties, agreement and course of dealing.

- (16) Plaintiffs' contention that marketability of the gas is determined by the market in which OXY sells its gas is contrary to Kansas law as stated in Sternberger v. Marathon Oil Co., 257 Kan. 315, 894 P.2d 788 (1995).
- (17) Plaintiffs' contention that marketability of the gas is determined by specification of the applicable interstate (transmission) pipeline is contrary to Kansas law as stated in Sternberger.
- (18) The language of the royalty clauses of the subject leases contain language expressly stipulating the manner of calculating royalty, thus, foreclosing any implied obligation on the subject.
- (19) The language of the royalty clauses in the vast majority of the subject leases expressly stipulates that the gas is to be valued at the well for purposes of determining royalty, thus, foreclosing plaintiffs' arguments that the gas is to be valued only after its value is enhanced by gathering and compression services procured at OXY's sole cost and further affirming OXY's deduction of gathering and compression in determining royalty.
- (20) Kansas' adoption, in Smith v. Amoco, of the implied-in-fact approach to the existence of implied covenants and Kansas' rejection, also in Smith v. Amoco, of Merrill's implied in law approach invalidates the marketable condition approach referred to in Gilmore v. Superior Oil Co., 192 Kan. 388, 388 P.2d 601 (1964) and Sternberger.

(21) OXY contends that the lease royalty clauses in this case (whether framed as a fraction of "market value" or "proceeds") are to be understood as contemplating a sale at the well and that when the sale is at a distant location OXY's costs of gathering and related compression, at a minimum, must be deducted to effect the parties' intent.

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. Subsequent to the exchange of exhibits identified in Section 6 below, all documents which have been exchanged between the parties in formal or informal discovery and identified as trial exhibits 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 for [hearsay and] relevance.

E. By separate stipulation, the parties have agreed that deposition and trial transcripts in other, related matters may be entered into evidence in this action and relied upon herein.

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):**

David L. Bushnell
OXY USA Inc.
5 Greenway Plaza
Houston, TX 77046

Ray Coover
OXY USA Inc.
5 Greenway Plaza
Houston, TX 77046

Larry E. Jenkins
Occidental Energy Marketing, Inc.
f/k/a OXY Energy Marketing, Inc.
5 Greenway Plaza
Houston, TX 77046

David L. Laughry
Occidental Energy Marketing, Inc.
f/k/a OXY Energy Marketing, Inc.
5 Greenway Plaza
Houston, TX 77046

Phyllis Merrill
OXY USA Inc.
5 Greenway Plaza
Houston, TX 77046

David Moore
OXY USA Inc.
5 Greenway Plaza
Houston, TX 77046

Kevin Moore
OXY USA Inc.
5 Greenway Plaza, Suite 2400
Houston, TX 77046

Damir Vrcek
OXY USA Inc.
5 Greenway Plaza
Houston, TX 77046

Corporate Representative
Occidental Energy Marketing, Inc.
f/k/a OXY Energy Marketing, Inc.
5 Greenway Plaza
Houston, TX 77046

Named Plaintiffs

Corporate Representative
Colorado Interstate Gas Company
Two North Nevada Avenue
P.O. Box 1087
Colorado Springs, CO 80901-1087

Corporate Representative
BP American Production Company
f/k/a Amoco Production Company
c/o E & Y Income Tax Outsourcing
P.O. Box 06325
Chicago, IL 60606-0325

Corporate Representative
Anadarko Gathering Company
17001 Northchase Drive
Houston, TX 77060

Corporate Representative
ONEOK Energy Marketing Company
100 W. 5th Street
Tulsa, OK 74103

Corporate Representative
Kansas Natural Gas Operating, Inc.
P.O. Box 818
Hays, Kansas 67601

Corporate Representative
Kinder Morgan, Inc.
f/ka KN Energy, Inc.
370 Van Gordon Street
Lakewood, CO 80228

Corporate Representative
Kansas Gas Service Company
100 West 5th
Tulsa, OK 74103

Corporate Representative
Anadarko Production Company

Corporate Representative
Anadarko Energy Service

Corporate Representative
Anadarko Natural Gas Company

Corporate Representative
City of Liberal

Corporate Representative

City of Hugoton

Corporate Representative
Devon Energy Corp.

Corporate Representative
Pritchard Energy Corp.

Corporate Representative
McCoy Petroleum Co.

Corporate Representative
Duke Energy Field Services

Corporate Representative
Trans-Canada

Corporate Representative
Borexco, Inc.

Corporate Representative
Mountain Energy, Inc.

Corporate Representative
Ocean Energy

Corporate Representative
Argent Energy

Corporate Representative
Western Resources

Corporate Representative
Peoples Natural Gas

Corporate Representative
Williams Natural Gas

Corporate Representative
Williams Energy Marketing & Trading Company

Corporate Representative
Pioneer Resources

Corporate Representative
Helmerich & Payne

Corporate Representative
Osborn Heirs

Corporate Representative
Williams Production Company (formerly Barrett Resources)

Corporate Representative
XTO Energy

Third-Party Marketing-Purchasers
(Bradley Dixon, Roy Robertson, April Inman, Danny Rea, Dan McNabb)

Representative(s) of Municipalities and Industrial users that purchase gas produced from the Kansas Hugoton Field.

Members of the Plaintiffs' Class that purchase irrigation gas

Member of the Plaintiff's Class that have household taps

Ronald Cook (Expert)

Joseph Kalt (Expert)

Stanley Kleinsteinber (Expert)

David Pierce (Expert)

Glenn Smith (Expert)

Additional witnesses as determined through the discovery process.

All witnesses necessary to rebut the evidence presented by Plaintiffs.

All witnesses listed by Plaintiffs and not objected to by OXY.

6. **List all exhibits you intend to offer at trial and identify any which have not already been shown to opposing counsel:** The parties have agreed that exhibit lists will be

exchanged between the parties no later than November 4, 2002, and copies of all trial exhibits will be exchanged no later than 45 days prior to trial.

7. **Motions:**

- A. Motions pending: Plaintiffs' Motion to Decertify.
- B. Motions to be filed prior to trial and date by which you propose to file each motion: OXY anticipates the filing of a motion for summary judgment within the time set by the Court's scheduling order.

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? Two weeks.
- D. Should case receive priority setting, and if so, why? (If due to out-of-town witnesses, please specify.) No.

9. **Does party require a guardian ad litem?** N/A

10. **List request for limitation of cumulative or expert witnesses:**

11. **Questions of fact²:**

- A. Is the natural gas produced from the subject wells "marketable" at the well?
- B. Does the gas produced from the subject leases constitute a marketable product?
- C. Irrespective of A., does the natural gas have "market value at the well?" If so, how is that value to be determined and what is that value?
- D. Has OXY's method of calculating its royalty payments resulted in a payment of royalty to royalty owners at or above the market value of the gas at the well?
- E. Whether plaintiffs' contentions are in derogation of the express terms of the subject leases (and, thus, the parties' intent at the time of contracting) to the extent that those leases entitle royalty owners to royalties based on market value at the well.

² To the extent that any questions of law identified in section 11 are deemed to be questions of fact, OXY incorporates those questions of law herein.

- F. Has OXY's method of calculating its royalty payments resulted in payments to royalty owners of an amount not less than required by the terms of the subject leases?
- G. Whether a royalty provision requiring the payment of royalties based on a stipulated percentage or fraction of the proceeds actually received by OXY from the sale of the gas precludes the implication of additional or inconsistent obligations for the calculation and payment of royalties.
- II. Whether a royalty provision requiring the payment of royalties based on a stipulated percentage or fraction of market value of the gas at the wellhead precludes the implication of additional or inconsistent obligations for the calculation and payment of royalties.
- I. Whether a royalty provisions stipulating that royalty is to be "at the well" authorizes OXY to deduct its gathering and related compression costs in this case when the gas is sold at a distant market.
- J. Whether any implied obligation can exist in the face of an express lease term disclaiming any implied covenants.
- K. Whether OXY has paid all the royalty owed to the members of the royalty owner class?
- L. Are the gathering systems, including compression on the gathering systems, used to transport marketable gas?
- M. Are the gathering systems, including compression on the gathering systems, used to carry marketable gas?
- N. Are the gathering systems, including compression on the gathering systems, used for the purpose of transporting gas?
- O. Do the gathering systems enhance the value of the gas over its value at the well by transporting the gas from the well to the interstate pipeline or beyond?
- P. Do the gathering systems, including compression on the gathering systems, enhance the value of the gas over its value at the well by aggregating the volume produced from many wells at a pressure needed to allow hydrocarbon liquids and helium to be removed?
- Q. Has OXY's use of the gathering systems, including compression on the gathering systems, enhanced the value of the gas produced over its value at the well?
- R. Are the gathering systems, including compression on the gathering systems, used by OXY to "produce" gas from the Hugoton Field?

- S. Is the physical condition of the gas at the well such that it can be commercially used?
- T. Are OXY's practices in calculating and paying royalties to plaintiffs consistent with industry customs and usage?
- U. Do the subject wells have sufficient reservoir pressure to produce gas at the well?
- V. What were the factual circumstances and intent of the parties with respect to the calculation and payment of royalties that existed at the time the subject leases were executed?
- W. Did such circumstances in U. above give rise to an obligation "implied in fact" that would impose a duty on OXY to incur 100% of the cost of operating gathering systems to transport gas off of the subject leases to a distant sales point?
- X. Whether the lease royalty clauses in this case (whether framed as a fraction of "market value" or "proceeds") are to be understood as contemplating a sale at the well and whether when the sale is at a distant location OXY's costs of gathering and related compression, at a minimum, must be deducted to effect the parties' intent.

12. **Questions of law³:**

- A. Does the gas produced from the subject leases constitute a marketable product?
- B. If the gas produced has "market value at the well," as a matter of law is it "marketable" at the well?
- C. Do the subject leases expressly provide that the location for valuation of royalty is "at the well" when gas is marketed off the lease?
- D. Whether plaintiffs' contentions are in derogation of the express terms of the subject leases (and, thus, the parties' intent at the time of contracting) to the extent that those leases entitle royalty owners to royalties based on market value at the well.
- E. Does the implied covenant to market override express lease provisions that provide royalty is to be determined "at the well" or based on the "market value of the gas at the well?"
- F. Whether a royalty provision requiring the payment of royalties based on a stipulated percentage or fraction of the proceeds actually received by OXY from the sale of the gas precludes the implication of additional or inconsistent obligations for the calculation and payment of royalties.

³ To the extent that any questions of fact identified above are deemed to be questions of law, OXY incorporates those questions of fact herein.

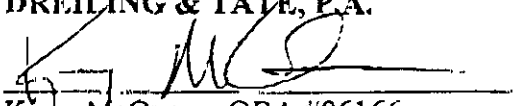
- G. Whether a royalty provision requiring the payment of royalties based on a stipulated percentage or fraction of market value of the gas at the wellhead precludes the implication of additional or inconsistent obligations for the calculation and payment of royalties.
- H. Whether a royalty provisions stipulating that royalty is to be "at the well" authorizes OXY to deduct its gathering and related compression costs in this case when the gas is sold at a distant market.
- I. Whether any implied obligation can exist in the face of an express lease term disclaiming any implied covenants.
- J. Does the implied covenant to market override express lease provisions calling for the payment of royalties based on a stipulated percentage or fraction of the proceeds actually received from the sale of the gas?
- K. Can any implied obligation exist in the face of an express lease term disclaiming any implied covenants?
- L. Whether the implied covenant to market imposes a duty on OXY to incur the cost of operating gathering systems to market gas off the subject leases and to carry this gas to a distant market at OXY's sole cost.
- M. Does the implied covenant to market require OXY to gather, transport and compress gas off the subject leases and deliver it to interstate pipelines miles from the subject leases at OXY's sole cost?
- N. Whether any contract "implied in fact" exists that imposes a duty on OXY to incur the cost of operating gathering systems to market gas off the subject leases at a distant market at OXY's sole cost.
- O. Do the statutes of limitations bar any of plaintiffs' claims?
- P. Are plaintiffs entitled to an accounting?
- Q. Are plaintiffs entitled to prejudgment interest?
- R. Do plaintiffs have the burden of proof on the issues raised herein?
- S. Are plaintiffs precluded under principles of judicial estoppel, collateral estoppel and res judicata from contending that the gas produced does not have "market value" at the well or is not "marketable" at the well based on the position they took in the market value royalty cases in Kansas and the decisions and judgments entered in those cases?
- T. Whether parties to leases requiring royalty to be calculated utilizing a share of "proceeds" but not expressly specifying "at the well" understood and intended that royalty would be computed "at the well."

- U. Whether the parties to all of the subject leases understood and intended that such leases would permit the amount of gathering and related compression costs to be used, by way of deduction, in order to calculate royalty when the gas is sold in a distant market.
- V. Does the implied duty to market require OXY to bear all costs necessary to deliver its gas to its chosen market without cost to lessors?
- W. Are gathering activities (including compression) necessary to make the gas suitable for use in the markets in which the gas is ultimately consumed?
- X. At what point in the extraction of gas from the reservoir is the gas considered to have been "produced?"
- Y. At what point in the extraction of gas from the reservoir is the gas considered to have been "produced if the lease expressly requires royalty to be calculated at the wellhead?"
- Z. Do the provisions of OXY's lease royalty clause stipulating the manner of calculation and payment of royalty foreclose any implied obligation requiring OXY to bear all cost to compress the gas and transport it to a distant market?
- AA. What requirements must gas meet to constitute a "marketable product" within the meaning of Sternberger?
- BB. Whether the express terms of the royalty clauses of the subject leases foreclose the imposition of any implied terms effecting the calculation of royalty.
- CC. Whether plaintiffs' contention that marketability of the gas is determined by the market in which OXY sells its gas is contrary to Kansas law as stated in Sternberger.
- DD. Whether Kansas' adoption, in Smith v. Amoco, of the implied-in-fact approach to the existence of implied covenants and Kansas' rejection, also in Smith v. Amoco, of Merrill's implied in law approach invalidates the marketable condition approach referred to in Gilmore v. Superior Oil Co., 192 Kan. 388, 388 P.2d 601 (1964) and Sternberger.
- EE. Whether plaintiffs' contention that marketability of the gas is determined by specification of the applicable interstate (transmission) pipeline is contrary to Kansas law as stated in Sternberger.
- FF. Whether the lease royalty clauses in this case (whether framed as a fraction of "market value" or "proceeds") are to be understood as contemplating a sale at the well and whether when the sale is at a distant location OXY's costs of gathering and related compression, at a minimum, must be deducted to effect the parties' intent.

13. **Unusual questions of evidence:** OXY reserves the right to raise such questions by motion in limine filed in accordance with the schedule established by the Court. At this time, OXY believes that the court will need to rule on the following in advance of trial:
- A. Do plaintiffs have the burden to prove that the gas is not "marketable at the well?"
 - B. Do plaintiffs have the burden to prove that the gas does not have "market value at the well?"
 - C. Do plaintiffs have the burden to prove that OXY paid royalty at less than the "market value of the gas at the well?"
 - D. If an implied covenant is allowed to exist in the face of the express terms of the subject leases, do plaintiffs have the burden of demonstrating the intent of the parties to each of the subject leases, with respect to the calculation of royalties, at the time of contracting, as well as OXY's performance (or breach) thereunder?
14. **Anticipated problems relative to jury instructions:** None.
15. **Settlement:**
- A. What are the prospects of settlement? Possible, but not likely.
 - B. Would a settlement conference be of assistance? OXY believes that a court-sponsored settlement conference might be of assistance to the parties.
16. **Do you plan to file trial briefs?** Yes. If so, set forth proposed time schedule for filing. March 14, 2003 (pursuant to Revised Scheduling Order).
17. **State any procedural problems or recommendations:**
18. **Discovery:**
- A. If further discovery is requested, specify what further discovery is necessary and state why: The parties are conducting discovery pursuant to the current scheduling order of the Court.
 - B. State when it would be completed and request leave under Supreme Court Rule 136 to continue specified limited discovery: The current scheduling order of the Court contemplates that all discovery (including experts) will be concluded by November 1, 2002.

Respectfully submitted,

**SHARP, MCQUEEN, MCKINLEY,
DREILING & TATE, P.A.**


By: Kerry McQueen, OBA #06166
419 N. Kansas - P.O. Box 2619
Liberal, Kansas 67905-2619
Telephone (620) 624-2548
Facsimile (620) 624-9526

-and-

**HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.**

James C. T. Hardwick, OBA #3845
Donald L. Kahl, OBA #4855
T. Lane Wilson, OBA #16343
320 South Boston Avenue, Suite 400
Tulsa, Oklahoma 74103-3708
Telephone (918) 594-0400
Facsimile (918) 594-0505

**ATTORNEYS FOR DEFENDANT,
OXY USA INC.**

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on the 4th day of October, 2002, a true and correct copy of the above and foregoing Pretrial Questionnaire was sent by U.S. Mail, with proper postage thereon fully paid, to:

Thomas D. Kitch, Esq.
Gregory J. Stucky, Esq.
Charles E. Millsap, Esq.
David G. Seely, Esq.
FLEESON, GOONG, COULSON
& KITCH, L.L.C.
125 North Market, Suite 1600
P.O. Box 997
Wichita, Kansas 67201

Bernard E. Nordling, Esq.
Erick E. Nordling, Esq.
KRAMER, NORDLING &
NORDLING
209 East Sixth Street
Hugoton, Kansas 67951

