

STATE OF WYOMING)
) ss.
COUNTY OF CAMPBELL)

IN THE DISTRICT COURT
SIXTH JUDICIAL DISTRICT
Civil Action No. 25244

William L. and Bernadette L. Barlow)
Trust; G-P Industries, Inc.; Groves)
Ranch LTD now known as Groves)
Investments I Limited Partnership;)
Groves Minerals LLC;)
Beverly O. Landrey; Beverly O. Landrey)
Life Estate; Landrey Mineral Trust;)
Patsy L. Larson; Nicholas B. Loundagin;)
B. Nadine McKenzie-McCreery;)
Middle Prong Land & Livestock, L.P.;)
Mullinnix LLC; Duane D. Odegard)
Life Estate; Duane D. and Mary K.)
Odegard, husband and wife;)
James F. "Bob" Rourke as trustee)
of the Anne Rose Rourke Revocable Trust;)
Paul D. Rourke; James F. Rourke)
Revocable Trust; Vicki L. Schlautmann)
acting under POA for Louise V.)
Steinhofel; and Star Investment)
Corporation,)

Plaintiffs,)

vs.)

Pennaco Energy, Inc., a subsidiary of)
Marathon Oil Company; and Marathon)
Oil Company,)

Defendants.)

FILED IN
CIVIL ACTION NO. 25244

NOV 10 2003

Barlene Jettens
CLERK OF DISTRICT COURT

**AMENDED COMPLAINT FOR DAMAGES, DECLARATORY
JUDGMENT AND INJUNCTIVE RELIEF**

COME NOW PLAINTIFFS, by and through their undersigned attorneys, and for themselves and all other members of the class hereinafter described state and allege as follows:

PLAINTIFFS

1. The named Plaintiffs in this action are:
 - a. William L. and Bernadette L. Barlow Trust, resident of Gillette, Campbell County, Wyoming.
 - b. G-P Industries, Inc., an Arizona corporation qualified to conduct business in Wyoming, with its principal place of business at Maricopa County, Scottsdale, Arizona.
 - c. Groves Ranch LTD now named Groves Investments I Limited Partnership, a Wyoming limited partnership with its principal place of business at Gillette, Campbell County, Wyoming.

d. Groves Minerals LLC, a Wyoming limited liability company with its principal place of business at Gillette, Campbell County, Wyoming.

e. Beverly O. Landrey, Beverly O. Landrey Life Estate and Landrey Mineral Trust, resident of Arvada, Sheridan County, Wyoming.

f. Patsy L. Larson, a resident of Gillette, Campbell County, Wyoming.

g. Nicholas B. Loundagin, a resident of Casper, Natrona County, Wyoming.

h. B. Nadine McKenzie-McCreery, a resident of Gillette, Campbell County, Wyoming.

i. Middle Prong Land & Livestock, L.P., a Wyoming limited partnership with its principal place of business at Arvada, Sheridan County, Wyoming.

j. Mullinnix LLC, a Wyoming limited liability company with its principal place of business at Douglas, Converse County, Wyoming.

k. Duane D. Odegard Life Estate, a resident of Arvada, Sheridan County, Wyoming.

l. Duane D. and Mary K. Odegard, husband and wife, residents of Arvada, Sheridan County, Wyoming.

m. James F. "Bob" Rourke as trustee of the Anne Rose Rourke Revocable Trust, a resident of Gillette, Campbell County, Wyoming.

n. Paul D. Rourke, a resident of Gillette, Campbell County, Wyoming.

o. James F. Rourke Revocable Trust, a resident of Gillette, Campbell County, Wyoming.

p. Vicki L. Schlautmann acting under POA for Louise V. Steinhofel, a resident of Gillette, Campbell County, Wyoming.

q. Star Investment Corporation, a Wyoming corporation, with its principal place of business at Scottsdale, Maricopa County, Arizona.

2. Each of the Plaintiffs is the lessor under oil and gas leases and/or the owner of related overriding interests (derived or carved out of such leases) creating non-working royalties with respect to shallow gas from coal bed seams ("Coal Bed Methane"), or the successor to such interest(s), under which a Defendant is the lessee and/or operator (or successor thereto) with the legal obligation and duty to pay to the respective Plaintiff(s) royalties on the Coal Bed Methane produced from wells subject to the lease.

3. Each of the Plaintiffs is a member of one or more of the following classes:

a. A mineral owner royalty plaintiff and/or overriding royalty plaintiff whose right to receive royalties with respect to Coal Bed Methane is based on instrument(s) dated on or after July 1, 1989 with production of Coal Bed Methane occurring from January 1, 1995 through December 31, 2003 ("Royalty Payment Act Plaintiffs");

b. A mineral owner royalty plaintiff and/or overriding royalty plaintiff whose right to receive royalties with respect to Coal Bed Methane is based on instrument(s) dated prior to July 1, 1989 with production of Coal Bed Methane occurring from January 1, 1995 through December 31, 2003 ("Pre-Royalty Payment Act Plaintiffs"); and

c. A mineral owner royalty plaintiff and/or overriding royalty plaintiff whose right to receive royalties with respect to Coal Bed Methane is based on instrument(s) dated prior to or on or after July 1, 1989, for which no production of Coal Bed Methane has occurred prior to December 31, 2003 ("Non-Producing Royalty Plaintiffs").

The three classes are collectively referred to as "Royalty Plaintiffs" or "Interest Owners."

4. The leases, interests derived or carved out of such leases and any wells producing Coal Bed Methane in which the Royalty Plaintiffs hold interests ("Leases") are all located in

Campbell County, Johnson County, or Sheridan County, Wyoming, and one or more of each such interest is located in each county.

DEFENDANTS

5. Defendant Pennaco Energy, Inc. ("Pennaco") is a Delaware corporation with its principal place of business located in Denver, Colorado, qualified and authorized to conduct business in Wyoming as a foreign corporation.

6. Defendant Marathon Oil Company ("Marathon") is an Ohio corporation with its principal place of business located in Findlay, Ohio, qualified and authorized to conduct business in Wyoming as a foreign corporation.

7. The named Defendants, one or more of them, have the obligation and duty to pay royalties to the Royalty Plaintiffs pursuant to the Leases and, with respect to the Royalty Payment Act Plaintiffs, the Wyoming Royalty Payment Act, W.S. 30-5-301 et seq.

JURISDICTION AND VENUE

8. WYO. CONST. art. V, § 10 and W. S. § 30-5-303(b) confers jurisdiction on this Court.

9. The amount of damages sought to be recovered by each plaintiff exceeds seven thousand dollars (\$7,000.00), exclusive of court costs; or, in the alternative, jurisdiction exists in this Court without regard to the amount of damages under W. S. § 30-5-303(b).

10. Venue for this matter is in Campbell County, Wyoming pursuant to W. S. §§ 1-5-107 and 1-5-108 and BP America Production Company v. Madsen, 53 P.3d 1088 (2002).

CLASS ACTION ALLEGATIONS

11. This action is brought by Plaintiffs as a class action, on their own behalf and on behalf of all others similarly situated, under the provisions of Rules 23(a) and 23(b)(1)(A), 23(b)(1)(B), 23(b)(2) and 23(b)(3) of the Wyoming Rules of Civil Procedure, for damages, injunctive and declaratory relief, and

relief incident and subordinate thereto, including prejudgment/statutory interest, costs and attorney fees.

12. The class so represented by Plaintiffs in this action, and of which Plaintiffs are themselves members, consists of the three sub-classes defined in paragraph 3, supra, and are further defined as follows:

a. The Royalty Payment Act Plaintiffs have Leases that are under a form of lease generally identified as a "Producers 88-Paid Up" lease or variants or modifications thereof, all sharing the common characteristics that they were entered into subsequent to the effective date of the Mineral Royalty Payment Act and do not expressly contain specific language altering the definitions of "royalty" and "overriding royalty" provided in W. S. § 30-5-304;

b. The Pre-Royalty Payment Act Plaintiffs have Leases that are under a form of lease generally identified as a "Producers 88-Paid Up" lease or variants or modifications thereof, all sharing the common characteristics that they were entered into prior to the effective date of the Mineral Royalty Payment Act and do not contain language inconsistent or contrary to the definitions of "royalty" and "overriding royalty" provided in W. S. § 30-5-304; and

c. The Non-Producing Plaintiffs have Leases defined under either paragraph 11.a or 11.b, but the Leases have not yet gone into production.

13. The exact number of members of each class, as hereinabove identified and described, is not known, but it is estimated that there are not less than 3,000 members collectively. The classes are so numerous that joinder of individual members herein is impracticable.

14. There are common questions of law and fact in the action that relate to and affect the rights of each member of both classes and the relief sought is common to all of the members of both classes, namely:

a. Whether the Leases allow the Defendants to deduct costs of production/gathering in calculating royalties payable to the Interest Owners;

b. Whether the Leases allow the Defendants to reduce the volumes of gas on which royalties are calculated by off-lease gas use; and

c. What constitutes costs of production under the terms of the Leases and/or the Wyoming Royalty Payment Act.

15. The claims of Plaintiffs, who are representatives of the class herein, are typical of the claims of the class, in that the claims of all members of the class, including Plaintiffs, depend on a showing of the acts and omissions of Defendants giving rise to the right of Plaintiffs to the relief sought herein. There is no conflict as between any individual named plaintiff and other members of the class with respect to this action, or with respect to the claims for relief herein set forth.

16. The named Plaintiffs are the representative parties for the class, and are able to, and will, fairly and adequately protect the interests of the class.

17. This action is properly maintained as a class action under W.R.C.P. 23(b)(1)(A) in that the prosecution of separate actions by individual members of the class would create a risk of varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the Defendants herein.

18. This action is properly maintained as a class action under W.R.C.P. 23(b)(1)(B) in that the prosecution of separate actions by individual members of the class would create a risk of adjudications with respect to individual members of the class which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications, or would substantially impair or impede their ability to protect their interests, specifically, but not limited to, royalty

interest owners under the same lease and/or wells as the named Plaintiffs.

19. This action is properly maintained as a class action under W.R.C.P. 23(b)(2) inasmuch as the Defendants herein have acted or refused to act, as herein more specifically alleged, on grounds which are applicable to the class, and have by reason of such conduct made final injunctive relief or corresponding declaratory relief appropriate with respect to the entire class, as sought in this action.

a. Defendants have improperly deducted costs of production in computing the royalties due and payable to Interest Owners, and refuses to cease and desist from such improper deductions.

b. Defendants, in calculating the volumes on which royalties are paid to the Interest Owners, have improperly reduced the volumes of gas at the well-head for off-lease consumption of gas, and refuses to cease and desist from such improper reductions.

c. Defendants, in calculating the price on which royalties are paid to the Interest Owners, have made improper adjustments to the price paid, and refuses to cease and desist from such improper deductions.

20. This action is properly maintained as a class action under W.R.C.P. 23(b)(3) inasmuch as the questions of law and fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

COUNT ONE-UNDERPAID ROYALTIES

21. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs 1 through 20, supra.

22. The Defendants are legally responsible for payment of the royalty proceeds from the sale of production to the Plaintiffs.

23. Defendants have failed to pay the Plaintiffs the proceeds to which they are entitled as royalty owners, and has failed to pay the Plaintiffs a royalty on all gas produced from the wells.

24. The Defendants have breached the lease agreements with the Plaintiffs and, with respect to one of the classes, has violated the Wyoming Royalty Payment Act.

25. The Defendants' actions has damaged the Plaintiffs. The Defendants are liable to the Plaintiffs for the amount of underpaid royalty.

COUNT TWO-PREJUDGMENT/STATUTORY INTEREST

26. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs 1 through 25, supra.

27. Royalty Payment Act Plaintiffs are entitled to interest at the annual rate of eighteen percent (18%) per annum on all underpaid and late royalties.

28. Pre-Royalty Payment Act Plaintiffs are entitled to interest at the annual rate of eighteen percent (18%) per annum on all underpaid and late royalties arising on or after July 1, 1989 or, in the alternative, to prejudgment interest at the annual rate of seven percent (7%).

COUNT THREE-MONTHLY ASSESSMENT

29. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs 1 through 28, supra.

30. For all periods relevant hereto, Defendants are legally responsible to pay their share of all royalty and overriding royalty interests from their wells to those persons and entities owning such interests.

31. Under the reporting provisions of the Wyoming Royalty Payment Act, W. S. § 30-5-301, et seq., whenever Defendants make payments for Wyoming gas production from gas wells to an interest owner, all of the following information shall be included and labeled on the check stub or on an attachment to the form of

payment, unless the information is otherwise provided on a regular monthly basis:

- a. The lease, property or well name of any lease, property or well identification number used to identify the lease property or well;
- b. The month and year during which the sales occurred for which payment is being made;
- c. The total number of thousands of cubic feet of gas sold;
- d. The price per thousand cubic feet of gas sold;
- e. The total amount of state severance, ad valorem and other production taxes;
- f. An itemized list of any other deductions or adjustments;
- g. The net value of total sales after deductions;
- h. The owner's interest in sales from the lease, property or well expressed as a decimal;
- i. The owner's share of the total value of sales prior to any deductions;
- j. The owner's share of the sales values less deductions; and
- k. An address where additional information pertaining to the owner's interest in production may be obtained and questions answered.

32. For all relevant periods, the Defendants have failed to report one or more of the foregoing items of information, including but not limited to deductions for transportation charges, reductions in gas volumes for off-lease gas use, and other deductions either in-kind or in cash.

33. For all relevant periods, the Defendants have failed to report one or more of the statutorily required items with respect to each monthly statement.

34. Defendants are liable to each Plaintiff with respect to each defective statement in the amount of \$100.00 per well per Interest Owner per month per defective statement.

COUNT FOUR-DECLARATORY JUDGMENT

35. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs 1 through 34, supra.

36. The Plaintiffs presently dispute with Defendants the terms of their Leases with respect to computing royalties relating to properly deductible costs, volume determination, and price paid.

37. Plaintiffs and each of them are entitled to declaratory judgment declaring their rights under the leases, to-wit that the Defendants may not deduct any costs of production until the gas is delivered and sold into a market pipeline, that such royalties are to be paid on an arms-length fair market value price, and that the volume of gas on which royalties are to be paid shall not be reduced for other than gas actually used on the particular lease from which it originates.

COUNT FIVE-INJUNCTIVE RELIEF

38. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs 1 through 37, supra.

39. Plaintiffs and each of them are entitled to permanent injunctive relief prohibiting Defendants in calculating royalties from deducting any costs of production until the gas is delivered and sold into a market pipeline, requiring that such royalties are to be paid on an arms-length fair market value price, and requiring that the volume of gas on which royalties are to be paid shall not be reduced for other than gas actually used on the particular lease from which it originates.

COUNT SIX-COSTS AND ATTORNEY FEES

40. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs 1 through 39, supra.

41. Pursuant to W. S. § 30-5-303(b), Plaintiffs are entitled to costs and attorneys fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray, for themselves and all other members of the class:

1. That the rights of the class members in the calculations of royalties due and payable to them be adjudicated and declared: Plaintiffs be free of deductions for costs of production, Plaintiffs be free of any reduction for off-lease gas use, and the value of the gas be established as the arms-length price paid by third-party buyers at the market pipeline;

2. That Defendants, in the calculations of royalties due and payable to the class members, be permanently restrained and enjoined from deducting for costs of production, from reducing for off-lease gas use, and using any value other than the value of the gas as established as the arms-length price paid by third-party buyers at the market pipeline;

3. That Plaintiffs be awarded damages from Defendants in the amount of underpaid royalties;

4. That pursuant to W. S. § 30-5-303(a), Plaintiffs be awarded interest from Defendants at the rate of eighteen percent per annum on the amount of underpaid and late paid royalties from the due date specified in WYO. S. § 30-5-301(a) until paid or, in the alternative for Pre-Royalty Payment Act Plaintiffs, prejudgment interest at the rate seven percent per annum;

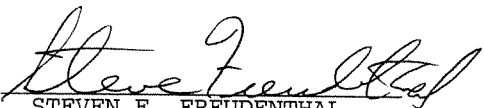
5. That pursuant to W. S. § 30-5-303(c) Plaintiffs be awarded from Defendants the amount of \$100.00 per month per well per Interest Owner that complete reporting as required by W. S. § 30-5-305(b) was not provided to an Interest Owner;

6. That Plaintiffs be awarded from Defendants court costs and reasonable attorney fees as provided in W. S. § 30-5-303(b); and

7. That Plaintiffs be granted such other and further relief as is just and equitable in the premises.

DATED this 10th day of November, 2003.

Plaintiffs:

By: 
STEVEN F. FREUDENTHAL
BRUCE A. SALZBURG
Freudenthal, Salzburg & Bonds, P.C.
123 East 17th Street
P.O. Box 387
Cheyenne, WY 82003
(307) 634-2240

ATTORNEYS FOR PLAINTIFFS