

STATE OF WYOMING )  
 )  
COUNTY OF CAMPBELL )

IN THE DISTRICT COURT  
SIXTH JUDICIAL DISTRICT

Civil Action No. 23706

RODNEY R. ADDISON AND MYRA MAE )  
ADDISON, HUSBAND AND WIFE; CORAELNE )  
ALBRECHT; DONALD L. AND BETTY J. BROWN )  
FAMILY TRUST; JACQUELINE CROWLEY; )  
LINETTE GAVIN; G-P INDUSTRIES, INC.; LOIS )  
GRIFFITHS; BERNICE HAMPTON; ISORA C. )  
HECKEL; LAWRENCE E. KLUNENBERG; )  
MICHAEL J. KLUNENBERG; PATSY L. LARSON; )  
CHARLES LEHMKUHL; GARY LEHMKUHL; )  
KURT LEHMKUHL; NEALE LEHMKUHL; )  
NICHOLAS B. LOUNDAGIN; B. NADINE )  
MCKENZIE-MCCREERY; MCGEE MINERAL )  
TRUST, JOHN E. OR BETTY A. MCGEE, )  
TRUSTEES; JOHN E. MCGEE; MIDDLE PRONG )  
LAND & LIVESTOCK, L.P.; DUANE D. )  
ODEGARD LIFE ESTATE; DUANE D. ODEGARD; )  
DUANE D. AND MARY K. ODEGARD, HUSBAND )  
AND WIFE; BYRON F. OEDEKOVEN; BYRON )  
AND MARJORIE OEDEKOVEN, HUSBAND AND )  
WIFE; FREDERICK L. AND MARY ANN )  
OEDEKOVEN FAMILY TRUST; OLIN O. )  
OEDEKOVEN; OEDEKOVEN WATER & HOT )  
OIL, INC.; VALERIE PLEMEL; SAM R. )  
RATCLIFF; CHRISTINE ROGERS; JAMES F. )  
"BOB" ROURKE AS TRUSTEE OF THE ANNE )  
ROSE ROURKE REVOCABLE TRUST; SAMCO, )  
INC.; VICKI L. SCHLAUTMANN ACTING UNDER )  
POA FOR LOUISE V. STEINHOEFEL; MARION H. )  
SCOTT AND MARY C. SCOTT, HUSBAND AND )  
WIFE; SPEAR LAZY "S" LAND COMPANY; )  
DANIEL A. STARR; STAR INVESTMENT CORP.; )  
ARTHUR VARNEY ESTATE; CAROLINE )  
VARNEY; CHARLES M. VARNEY; LYNN )  
CHARLES VARNEY; MARK OWEN VARNEY; )  
CHARLES M. VARNEY, ACTING UNDER POA )  
FOR MYRTLE VARNEY; JOY L. VOILES; FRED )  
C. WILSON; AND WILLIAM R. WRIGHT, FOR )  
THEMSELVES, AND ON BEHALF OF ALL )  
OTHERS SIMILARLY SITUATED, )

Plaintiffs, )

v. )

ANCHOR BAY CORPORATION; ANTERO )  
ENERGY, LLC; BARRETT RESOURCES )  
CORPORATION n/k/a WILLIAMS PRODUCTION )  
RMT COMPANY; BIG BASIN PETROLEUM, )  
LLC, FOR ITSELF AND AS CONTRACT )  
OPERATOR FOR PETROLEUM DEVELOPMENT )  
CORPORATION; CITATION OIL & GAS CORP.; )

CMS OIL AND GAS COMPANY; DEVON )  
 ENERGY PRODUCTION COMPANY, L.P. d/b/a )  
 DEVON ENERGY PRODUCTION COMPANY, )  
 LIMITED PARTNERSHIP; DEVON ENERGY )  
 PARTNERS, A LIMITED PARTNERSHIP; DEVON )  
 ENERGY MANAGEMENT COMPANY, L.L.C.; )  
 DUNCAN OIL, INC.; DUNCAN OIL )  
 PROPERTIES, INC.; THE FARLEIGH )  
 CORPORATION d/b/a FARLEIGH OIL )  
 PROPERTIES, A SOLE PROPRIETORSHIP; )  
 HEADINGTON OIL COMPANY, L.P., d/b/a )  
 HEADINGTON OIL COMPANY, LIMITED )  
 PARTNERSHIP; J.M. HUBER CORPORATION; )  
 INDEPENDENT PRODUCTION COMPANY, INC., )  
 FORMERLY CAGLE PETROLEUM CORP.; )  
 KENNEDY OIL; LANCE OIL & GAS COMPANY, )  
 INC.; MAJESTIC PETROLEUM OPERATIONS, )  
 LLC; PENNACO ENERGY, INC.; PETROLEUM )  
 DEVELOPMENT CORPORATION; PRIMA OIL & )  
 GAS; REDSTONE RESOURCES, INC.; )  
 REDSTONE RESOURCES OF WYOMING, INC.; )  
 RIM OPERATING, INC.; WESTPORT OIL & GAS )  
 COMPANY, INC.; AND YATES PETROLEUM )  
 CORPORATION, )  
 )  
 )  
 Defendants. )

**ANSWER OF PENNACO ENERGY, INC. TO PLAINTIFFS' COMPLAINT FOR DAMAGES, DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

COMES NOW Defendant Pennaco Energy, Inc., by and through its counsel and for its answer to Plaintiffs' Complaint, states and alleges as follows:

**PLAINTIFFS**

1. In response to paragraph 1 and all subparagraphs thereto of Plaintiffs' Complaint, Defendant lacks sufficient information to form a belief as to the truth of the matters asserted therein and, therefore, denies each and every allegation contained in said paragraph and subparagraphs.

2. In response to paragraphs 2, 3 and 4 of Plaintiffs' Complaint, Defendant lacks sufficient information or knowledge to form a belief as to the truth of the matters asserted therein and, therefore, denies each and every allegation set forth in said paragraphs.

**DEFENDANTS**

3. In response to paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26 and 27 of Plaintiffs' Complaint, Defendant lacks sufficient

information to form a belief as to the truth of the matters asserted therein and, therefore, denies each and every allegation contained in said paragraphs.

4. In response to paragraph 21 of Plaintiffs' Complaint, Defendant Pennaco Energy, Inc. denies that it is a Nevada corporation and affirmatively states that it is a Delaware corporation with its principal place of business located in Denver, Colorado.

5. In response to paragraph 28 and all subparagraphs thereto, with the exception of subparagraph 28 q. of Plaintiffs' Complaint, Defendant Pennaco lacks sufficient knowledge or information to form a belief as to the truth of the matters asserted therein and, therefore, denies each and every allegation contained in said paragraph and subparagraphs.

6. In response to paragraph 28 subparagraph q, Defendant Pennaco admits that it has an individual agreement or instrument pursuant to which royalties are paid to those identified individuals on the production of Coalbed Methane gas. Defendant Pennaco denies each and every remaining allegation contained paragraph 28 q.

#### **JURISDICTION AND VENUE**

7. Paragraphs 29, 30 and 31 of Plaintiffs' Complaint contain legal conclusions to which no answer is required. To the extent any answer is required, Defendant denies each and every allegation set forth in said paragraphs.

#### **CLASS ACTION ALLEGATIONS**

8. Defendant denies each and every allegation contained in paragraphs 32, 33, 34, 35, 36, 37, 38, 39, 40 and 38 [sic] and all subparagraphs thereto of Plaintiffs' Complaint.

#### **COUNT ONE - UNDERPAID ROYALTIES**

9. In response to paragraph 39 [sic] of Plaintiffs' Complaint, Defendant hereby incorporates by reference its answers to paragraphs 1 through 40 [sic] of Plaintiffs' Complaint.

10. In response to paragraph 40 [sic] of Plaintiffs' Complaint, Defendant admits that, for those individuals pursuant to which an individual agreement or an instrument has been entered into for which it pays royalty proceeds from the sale of

production of Coalbed Methane gas, Defendant does have an obligation to pay royalties in accordance with the terms of each individual agreement or instrument.

11. In response to paragraphs 41, 42 and 43 of Plaintiffs' Complaint, Defendant denies each and every allegation set forth therein.

#### **COUNT TWO - PREJUDGMENT/STATUTORY INTEREST**

12. In response to paragraph 44 of Plaintiffs' Complaint, Defendant hereby incorporates by reference its answers to paragraphs 1 through 43 of Plaintiffs' Complaint.

13. In response to paragraph 45 of Plaintiffs' Complaint, Defendant denies each and every allegation contained therein.

#### **COUNT THREE - MONTHLY ASSESSMENT**

14. In response to paragraph 46 of Plaintiffs' Complaint, Defendant hereby incorporates by reference its answers to paragraphs 1 through 45 of Plaintiffs' Complaint.

15. In response to paragraph 47 of Plaintiffs' Complaint, Defendant admits that it is legally responsible for payment of royalty on production of Coalbed Methane gas in accordance with the terms of the individual instrument or agreement entered into between Defendant and that individual. Defendant denies each and every remaining allegation contained in said paragraph.

16. Paragraph 48 of Plaintiffs' Complaint states legal conclusions to which no answer is required. To the extent any answer is required, Defendant denies each and every allegation contained therein and affirmatively states that Wyo. Stat. § 30-5-301, *et seq.* speaks for itself.

17. In response to paragraphs 49, 50 and 51 of Plaintiffs' Complaint, Defendant denies each and every allegation set forth therein.

#### **COUNT FOUR - DECLARATORY JUDGMENT**

18. In response to paragraph 52 of Plaintiffs' Complaint, Defendant hereby incorporates by reference its answers to paragraphs 1 through 51 of Plaintiffs' Complaint.

19. In response to paragraph 53 of Plaintiffs' Complaint, Defendant lacks sufficient knowledge and information to form a belief as to the truth of the matters alleged therein and, therefore, denies the same.

20. Defendant denies each and every allegation set in paragraph 54 of Plaintiffs' Complaint.

**COUNT FIVE - INJUNCTIVE RELIEF**

21. In response to paragraph 55 of Plaintiffs' Complaint, Defendant hereby incorporates by reference its answers to paragraphs 1 through 54 of Plaintiffs' Complaint.

22. Defendant denies each and every allegation set forth in paragraph 56 of Plaintiffs' Complaint.

**COUNT SIX - COSTS AND ATTORNEYS FEES**

23. In response to paragraph 55 of Plaintiffs' Complaint, Defendant hereby incorporates by reference its answers to paragraphs 1 through 56 of Plaintiffs' Complaint.

24. Defendant denies each and every allegation set forth in paragraph 58 of Plaintiffs' Complaint.

25. With respect to Plaintiffs' Prayer for Relief and all paragraphs set forth therein, Defendant denies that Plaintiffs are entitled to any of the relief requested therein and further denies each and every allegation set forth therein.

26. To the extent not expressly admitted herein, Defendant denies each and every allegation set forth in Plaintiffs' Complaint.

**AFFIRMATIVE DEFENSES**

1. Plaintiffs' Complaint fails to state a cause of action against this Defendant upon which relief can be granted and, therefore, Plaintiffs' Complaint should be dismissed.

2. In accordance with the Wyoming Royalty Payment Act, and in particular, Wyo. Stat. § 30-5-303 this Court is without jurisdiction with regard to claims made for payments on royalties for any well located outside Campbell County, Wyoming.

4. Plaintiffs' claims are barred or limited by one or more of the following limitations on actions:

(a) The one-year statute for claims upon a statute for a penalty or a forfeiture, Wyo. Stat. § 1-3-105(a)(v)(D);

- (b) The four-year statute upon an action for recovery of personal property or conversion, Wyo. Stat. § 1-3-105(a)(iv);
- (c) The eight-year statute upon a liability created by statute other than for a forfeiture or penalty, Wyo. Stat. § 1-3-105(a)(ii)(B);
- (d) The ten-year statute for an action upon a written contract, Wyo. Stat. § 1-105(a)(i).
- (e) The eight-year statute upon a liability on a contract other than a written contract under Wyo. Stat. § 1-3-105(a)(ii)(A).

5. The Wyoming Royalty Payment Act - Wyo. Stat. § 30-5-301, *et seq.*, insofar as it attempts to modify or abrogate contracts, agreements, leases or division orders entered into prior to July 1, 1989 is in violation of § 35 of Article I of the Constitution of the State of Wyoming and due process clause of the United States Constitution.

6. Plaintiffs' claims are barred by the equitable doctrines of waiver, estoppel, laches and/or ratification, therefore, Plaintiffs' claims against this Defendant should be dismissed.

7. Plaintiffs' claims for class action do not meet the requirements for class actions and, therefore, should be dismissed.

8. Plaintiffs have failed to join indispensable parties.

9. This Defendant is not responsible for any liabilities of its predecessors or successors in interest.

10. Plaintiffs' claims are barred by accord and satisfaction.

11. The Wyoming Royalty Payment Act, specifically § 30-5-305, insofar as it attempts to abrogate, modify and or void leases, amendments, assignments or other contractual agreements between parties is in violation of § 35 Article 1 of the Constitution of the State of Wyoming and due process clause of the United States Constitution. Pursuant to Wyo.Stat. § 1-37-113, a copy of this pleading has been served upon the Wyoming Attorney General.

12. The requirement imposed under Wyo. Stat. § 30-5-305(b) and the penalties issued under Wyo. State. § 30-5-303(c) are unconstitutionally void for vagueness.

13. In the event that it is determined that this Defendant failed to pay any amount of royalties due, then this Defendant is entitled to a set-off for all royalties or other payments under or associated with the lease that were erroneously paid or otherwise not owed.

14. Plaintiffs' Complaint improperly seeks to join into one action numerous Defendants and Plaintiffs with wholly separate and individual agreements unrelated to any other Defendant(s) or Plaintiff(s) and therefore fail to meet the requirements under Rule 20(a), Wyo.R.Civ.P.

15. Defendant reserves to assert additional affirmative defenses as they become known through the course of discovery.

**DATED** this 25th day of March, 2002.

PENNACO ENERGY, INC., Defendant

By: \_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing ANSWER OF PENNACO ENERGY, INC. TO PLAINTIFFS' COMPLAINT FOR DAMAGES, DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF was served this 25 day of March, 2002, as follows:

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/s/ Frank D. Neville