

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 NO. 25244
CIVIL & PROBATE & CRIMINALS

NOV 10 2003

Barlene Fetter
CLERK OF DISTRICT COURT
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MOTION FOR CONDITIONAL CONSIDERATION OF SETTLEMENT AGREEMENT
AND PROVISIONAL CERTIFICATION OF THE PENNACO SETTLEMENT CLASS

COME NOW, Plaintiffs, on behalf of themselves and as representatives of all similarly situated persons, by and through their undersigned attorneys, and hereby move this Court for an "Order on Plaintiffs' Motion for Preliminary Approval, Hearing and Provisional Certification of the Pennaco Settlement Class," and respectfully request this Court to order that:

1. The above entitled action involving Pennaco Energy, Inc., a subsidiary of Marathon Oil Company, and Marathon Oil Company (collectively "Pennaco"), which was severed from an action that also included numerous co-defendants, can and should proceed as a settlement class action pursuant to Wyo.R.Civ.P. 23 on a provisional basis;

2. The settlement of the potential class claims, including those brought under the Wyoming Royalty Payment Act (W. S. § 30-5-301, *et seq.*), in accordance with the Settlement Agreement dated November 10, 2003 ("Settlement Agreement") together with all exhibits thereto (a copy of which is attached hereto as Exhibit 1), appears to be fair, reasonable and equitable; and

3. Dates shall be set by which class members may opt out of the class, file objections and revoke prior elections to opt out as well a final hearing.

In support of this Motion, the Plaintiffs present to the Court as evidence in this matter: (1) the Settlement Agreement - Exhibit 1 and all exhibits attached thereto; (2) a copy of the Notice of Proposed Class Action Settlement to be sent to settlement class members - Exhibit 2; and (3) a copy of the proposed newspaper notice - Exhibit 3.

I. INTRODUCTION AND BACKGROUND

Plaintiffs, on behalf of themselves and on behalf of those similarly situated, filed an Amended Complaint on November 10, 2003, against Pennaco Energy, Inc. and Marathon Oil Company, the Defendants in this action, challenging deductions in volume and deductions of costs from their royalties on natural gas and associated hydrocarbons from coal bed seams ("Shallow Gas") in Campbell, Johnson and Sheridan Counties, Wyoming, for items disallowed by the standard forms of Producers 88 Lease and/or W. S. § 30-5-304(a)(vi) of the Wyoming Royalty Payment Act ("Royalty Payment Act"), including those for the costs of gathering, compressing, dehydrating, separating or transporting gas into the market.

In the Amended Complaint, the Plaintiffs, on behalf of themselves and a class of royalty payees, sought declaratory and injunctive relief as well as monetary damages for Pennaco's alleged violations of the Wyoming Royalty Payment Act's reporting requirements and provisions prohibiting the deduction of costs of

production from royalties.

Commencing in May of 2003, Pennaco and the Plaintiffs began settlement negotiations. Subsequent to the execution of a Confidentiality Agreement dated June 23, 2003, and receipt from Pennaco of substantial data and information, those settlement negotiations accelerated over the next several months. In early October 2003, attorneys for the parties reached a Proposed Settlement Framework for the compromise of disputed claims, which the attorneys then presented to their respective clients for consideration and general approval. Plaintiffs' counsel presented the Proposed Settlement Framework to the named plaintiffs (as well as the named plaintiffs in Docket No. 23706) in a general meeting in Gillette, Wyoming and two separate telephone conference calls in which all but two Plaintiffs participated. Without exception, the named Plaintiffs participating directed Plaintiffs' counsel to go forward with the Proposed Settlement Framework.

The Settlement Agreement, as presented to the Court:

- (1) establishes the potential class members;
- (2) provides for each class member's recovery of substantially all of the underpayment of royalty resulting from the alleged Disputed Deductions, Under-Valuation Claims, Interest and Reporting Assessments, as defined in the Settlement Agreement;
- (3) provides for Pennaco to pay an additional amount in settlement of Attorneys Fees and Administration Costs, as defined in the Settlement Agreement;
- (4) provides a Future Royalty Payment Methodology by which Pennaco will pay class members' royalties for future gas, condensate and natural gas liquids produced from Pennaco wells based on the total proceeds received from the first arms-length sale of the gas, condensate or liquids;

(5) sets forth specifically defined and limited Permitted Deductions applicable to future royalty payments and provides for the reimbursement of most future deductions that were alleged to be Disputed Deductions; and

(6) provides for a Future Royalty Reporting Format from which Plaintiffs believe class members will have what is a more useful and complete understanding of the royalties paid for gas from Pennaco wells.

In addition to the benefits to class members stated in the Settlement Agreement, the agreement also contains provisions for all members of the class to release Pennaco for Settled Claims, excluding those claims that could arise out of any clerical errors in accounting for the volumes, price, value or decimal interest reported by Pennaco. The entire terms of the release are contained in the Settlement Agreement. However, the release may be summarized as releasing Pennaco for: (1) all past Gas Royalty Claims; (2) past Reporting Claims; (3) Future Gas Royalty Claims, contingent upon Pennaco's compliance with the Future Royalty Payment Methodology; (4) future Reporting Claims contingent upon Pennaco's compliance with the Future Royalty Payment Format; and (5) Attorney's Fees and Administration Costs.

Plaintiffs and Pennaco have agreed that Six Million Nine Hundred and Twenty-Six Thousand Dollars (\$ 6,926,000.00) shall be the Settlement Amount consisting of: (1) Five Million Eight Hundred Eighty-Seven Thousand One Hundred and Three Dollars (\$5,887,103.00) to be distributed to class members, and (2) One Million Thirty-Eight Thousand Eight Hundred and Ninety-Seven Dollars (\$1,038,897.00) to be distributed to Class Counsel in complete payment of Attorney's Fees and Administration Costs. The additional royalty to be distributed to class members consists of: (a) an amount attributable to reimbursement of gathering expenses, which shall be distributed pro rata based on the royalty amount originally paid in that month; (b) an amount

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attributable to adding back gas volume for off-lease gas use, which shall be distributed pro rata based on the volumes originally used for payment in that month; and (c) an amount attributable to a gas bonus when the gas price for royalty calculation purposes exceeds \$2.70 per MMBtu for a particular month, which shall be distributed pro rata based on the Btus originally used for payment in that month.

The benefits of the Settlement Agreement will vary for each class member based on their individual royalty interest, whether such persons only owned an interest for a short period of time and others have succeeded to their interests, or whether production has occurred for only a short period of time. While the additional royalty will range from minimal to very substantial based on the foregoing factors, the average amount of additional royalty for each class member is estimated to be approximately \$4,700.00. On a million Btu ("MMBtu") basis, which is slightly larger than one MCF, average additional royalty (based on September 2002 through August 2003) is Six and Eight-Tenths Cents per MMBtu. The additional royalty, as a percentage increase over the original royalty paid varies by the price of gas for the month: when gas is at \$2.50 per MCF, the additional royalty payment is estimated to be approximately thirty-six percent higher than the amount originally paid, and when gas is at \$4.50 per MCF or higher, the additional royalty payment is estimated to be approximately eleven percent higher than the amount originally paid.

Upon the occurrence of the Approval Event and within two business days following written notice from Plaintiffs' counsel that distribution checks are ready to be mailed to Settlement Class Members, Pennaco shall wire transfer the Settlement Amount to a trust checking account designated by Plaintiffs' counsel. The distribution calculations shall be prepared by Plaintiffs' counsel, Pennaco shall provide the data necessary to make such

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calculations, and Pennaco shall be consulted regarding the calculations. The costs of check preparation and mailing shall be paid by class counsel, and the preparation and mailing of any required 1099s shall be paid by class counsel. Any interest earned in the trust checking account, if any, shall be paid over as IOLTA funds. Should there be a change in the law regarding the interpretation of the *Wyoming Royalty Payment Act* either by the Wyoming Legislature or Supreme Court, Pennaco can not recover retroactively any Disputed Deductions or other Settled Claims.

II. POTENTIAL MEMBERS OF THE SETTLEMENT CLASS AND JURISDICTION

With regards to the identity of potential members of the Settlement Class, counsel for Plaintiffs obtained from Pennaco a list of royalty payees that Pennaco has paid since January 1, 1999, as well as lessors or overriding interest owners that Pennaco expects to pay in the future. That list was reviewed by the parties to remove: (a) governmental entities; (b) royalty payees also having working interests deemed to be potentially antagonistic to the other class members; (c) royalty payees having explicit lease modifications to the standard form of Producers 88 which allowed for less deductions than the standard form of Producers 88; and (d) royalty payees having explicit lease modifications to the standard form of Producers 88 which allowed for more deductions than the standard form of Producers 88. A list of the remaining royalty payees constituting the proposed Settlement Class is attached to the Settlement Agreement as Exhibit A and Exhibit B. Exhibit A is a listing of those class members that Pennaco has actually paid royalties to during the period January 1, 1999 through November 30, 2003; and Exhibit B is a listing of those class members that Pennaco may commence paying royalties to after November 30, 2003. Pennaco also provided electronic information regarding the gas production from Pennaco production areas attributable to those royalty payees and

the deductions made for alleged Disputed Deductions. The electronic data covers production from January of 1999 through November of 2003 (volume and average weighted sales price estimated for November 2003). Pennaco has represented and warranted that the electronic data that it has produced is true and accurate to the best of Pennaco's knowledge. Should the Court grant Plaintiffs' Motion, notices substantially in the form of Exhibit 2 to this Motion will be sent to each potential class member by priority mail with provision for electronic confirmation that the Notice of Potential Class Action Settlement has been delivered to the specified address. Inquiry notice will be provided by publishing a newspaper notice substantially in the form of Exhibit 3 to this Motion once a week for two weeks in the Gillette News-Record, the Casper Star-Tribune, the Buffalo Bulletin, the Sheridan Press and the Billings Gazette.

III. THE REQUIREMENTS OF RULE 23(a) AND (b).

A. Numerosity

Wyo.R.Civ.P. 23(a)(1) requires "[t]he class [be] so numerous that joinder of all members is impracticable." As identified in Exhibit A to the Settlement Agreement, there are over 1,100 potential members of the Settlement Class who are in an actual pay status and there are over approximately 400 potential members of the Settlement Class who are in a potential pay status. This number of potential members of the Settlement Class meets the numerosity requirement. There is no fixed number of class members that is *per se* "numerous," but it was held in a pre-amendment case that a class of only 11 mineral owners was sufficiently numerous. Jones Oil Corp. v. Claro, 459 P.2d 858, 862 (Okla. 1969). On the other hand, 3 HERBERT B. NEWBERG AND ALBA CONTE, NEWBERG ON CLASS ACTIONS § 3.05 (3rd ed. 1992) advises that the numerosity test is satisfied by numbers alone when the size of the class is in the hundreds. See also Rex v. Owens, ex. rel State of Oklahoma, 585 F.2d 432, 436 (10th Cir. 1978) (citing

Arkansas Educational Ass'n. v. Board of Education, 446 F.2d 763 (8th Cir 1971) (17 to 20 persons are identified as a class), Afro American Patrolmen's League v. Duck, 503 F.2d 294 (6th Cir. 1974) (35 members are a class), McCown v. Heidler, 527 F.2d 204 (10th Cir. 1975) (262 lot purchasers are a class), or Penn v. San Juan Hospital, Inc., 528 F.2d 1181 (10th Cir. 1975)).

B. Commonality

Wyo.R.Civ.P. 23(a)(2) requires that "[t]here are questions of law or fact common to the class." The Rule 23(a)(2) "commonality" requirement is merely that there are common questions of law and fact, not that all issues need to be identical or even that the common issues predominate. As cases have stated, the Rule 23(a)(2) commonality requirement is satisfied if at least one question of law or fact is shared by the named plaintiff(s) and the prospective class members. Baby Neal v. Casey, 43 F.3d 48, 56 (3d Cir. 1994); Krell v. The Prudential Insurance Company of America, 148 F.3d 283, 300 (1998); and Tana Oil and Gas Corporation v. Bates, 978 S.W.2d 735 (Tex. App. 1998).

Here, Pennaco acknowledges treating royalty owners within the Settlement Class similarly for the purposes of settlement. There are also common questions of law that have governed the settlement. Specifically, in the absence of addendums to the standard Producer 88 Lease forms which allow or prohibit the Disputed Deductions, the provisions of the standard Producer 88 Lease forms and/or the Royalty Payment Act, allegedly disallow such deductions for purposes of computing royalties payable to the Settlement Class. Lease Oil Antitrust Litigation, 186 F.R.D. 403, 420-421 (S.D. Tex. 1999). For a class to be certified, the legal and remedial theories for the class representatives and the proposed class members' claims must be similar, i.e., there must be a nexus between the injuries suffered by the representative and the injuries suffered by other members of the class. Lobo

Exploration Company v. Amoco Production Company, 991 P.2d 1048 (Ok. App. 1999); Dresser Industries, Inc. v. Snell, 847 S.W.2d 367, 372 (Tex. App. 1993).

As part of the settlement, each member's claims are being resolved in a similar manner. Recoveries for Gas Royalties Claims are computed and distributed among class members based upon the amounts withheld from each member's royalties. Distribution is done on a proportionate basis. Therefore, for settlement purposes, Plaintiffs claims are common and typical.

D. Adequacy of the Named Class Representatives

Another requirement under Rule 23(a) is that the representative parties fairly and adequately protect the interests of the class. The "adequacy" element is comprised of essentially two parts: (1) class counsel must be qualified and experienced; and (2) the proposed representative(s) must not have interests antagonistic to the proposed class members. 1 HERBERT B. NEWBERG AND ALBA CONTE, NEWBERG ON CLASS ACTIONS AT § 3.21 AT 1-113 (3rd ed. 1992).

1. The Named Plaintiffs and Designated Class Representatives

All of the named Plaintiffs in this case own royalty interests in Pennaco Wells in Campbell County and some of the named Plaintiffs own royalty interests in Pennaco wells in Johnson and Sheridan Counties. The named Plaintiffs are receiving their settlement under the same formula that will be employed to determine payments due to any other potential class member.

The Designated Class Representatives, Patsy Larson, Middle Fork Land & Livestock, L.P. (through its manager, Joy Voiles), and Duane Odegard, one or more of them, are the owners of mineral royalties and/or overriding royalties, reside within northeastern Wyoming, and are fairly representative of the Settlement Class.

2. Plaintiff's Counsel

Plaintiffs' attorneys have each been admitted to practice in Wyoming in excess of twenty-five years, and have been extensively involved in oil and gas valuation issues for more than fifteen years. Freudenthal, Salzburg & Bonds, P.C. has represented numerous governmental entities in tax valuation disputes with oil and gas producers. Mr. Schrinar served as Commissioner of Public Lands for the State of Wyoming for approximately ten years where he had responsibility for administering the leasing of state minerals and royalty collections for state leases. In that capacity, Mr. Schrinar participated substantially in the drafting of the Royalty Payment Act. Mr. Freudenthal served as a member of the Wyoming House of Representatives in 1989 when the Royalty Payment Act was debated and adopted. Both Mr. Freudenthal and Mr. Salzburg were active participants in the statutory class action proceedings for the Big Horn Adjudication. The Plaintiffs request that their attorneys be designated as Class Counsel.

E. The Superiority of a Class Action as a Fair and Effective Means of Settlement and Adjudication of This Controversy

Since the Plaintiffs have sought class certification against Pennaco both under Rule 23(b)(2) and Rule 23(b)(3), and the settlement provides for the distribution of the proceeds of the settlement, it is important to discuss the requirements of Rule 23(b)(3). The important considerations here are whether common issues predominate and whether a class action is superior to alternative methods of adjudication. As noted above, the distribution of settlement funds based on each member's Disputed Deductions and checks received necessarily involves an equitable resolution of the common issues from which the common settlement funds were developed. The royalty payment methodology and reporting format will provide potential class members larger

royalty payments and significantly better information concerning the calculation of their royalties in the future. These benefits extend to more than 1,500 royalty payees. A class settlement is simply the only way such results can be obtained for such a significant group of individuals.

The questions of law and fact common to the members of the Settlement Class predominate over any questions affecting only individual members, a settlement class action under Wyo.R.Civ.P. 23 is superior to other available methods for the fair and effective settlement and adjudication of the controversy. For the purposes of this Motion, the Parties would ask that the Court find this matter meets the numerosity, commonality, adequacy and typicality requirements of Wyo.R.Civ.P. 23(a) as well as the requirements set forth in Rule 23(b)(3).

IV. Fairness and Reasonableness of the Settlement

Plaintiffs' counsel believe the issues before the Court are complex, and there is an uncertainty as to the outcome of the litigation should it proceed to trial or to the Wyoming Supreme Court. Should this matter proceed to trial, it is believed that many issues will be contested making the litigation of this matter extremely time consuming and costly. Pursuant to the terms of the Settlement Agreement, each potential member of the Settlement Class who elects to participate in the Settlement will receive amounts for the Gas Royalties Claims that approximate almost all of the portions of the alleged Disputed Deductions that reduced that member's royalty payments. This amount will not be reduced by attorneys fees, costs or settlement administration expenses which are being paid by Pennaco in addition to the additional royalty payments. For purposes of achieving settlement, Plaintiffs' attorneys have reduced the thirty percent (30%) contingent fee to an amount not to exceed fifteen percent of the total recovery (including costs and administration expenses). While a number of class members in the

Pennaco Settlement Class will receive a minimal amount of damages as their interests are either very small, or such individuals only owned an interest for a short period of time and others have succeeded to their interests, or production has occurred for only a short period of time, in the absence of a class settlement, they would be unlikely to recover anything because no single member's interest is large enough to justify the time and expense involved in pursuing the matter. The class members will receive their settlement amount after attorneys' fees, costs and settlement administration expenses which are stated in the Settlement Agreement and shall not exceed 15% of the Pennaco Settlement Amount.

As set forth above, the Plaintiffs and Pennaco believe the settlement is fair and reasonable considering the inherent risks of litigation and the probable delays to be encountered.

The certification of the Settlement Class and the Settlement Agreement, however, is only for the purpose of settlement and not for any other purpose in this litigation. This Court's certification would be subject to its further review of objections, if any, filed with regard to the class settlement. If settlement of the class claims is not finalized, the certification shall be void and have no further effect. As a result, Plaintiffs and Pennaco would ask the Court to recognize the contingent effect of the Settlement.

VI. Notice to Potential Members of the Settlement Class

Attached as Exhibit 2 is a proposed "Notice of Proposed Class Action Settlement" ("Notice") for the Court's review and approval. Should the Court enter the Order sought by Plaintiffs, Wyo.R.Civ.P. 23 requires each potential member of the Settlement Class receive the "best notice practicable under the circumstances." The Notice attached hereto as Exhibit 2 assures that each potential class member will receive the individual information necessary to effectuate proper notice. The notice,

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among other things, (1) describes the terms of the settlement as well as provides an opportunity for class members to receive relevant documents either electronically or in paper copy; (2) describes the release that Pennaco will be given; (3) provides class members an opportunity to either opt out of the class or object to the settlement; and (4) provides that attorney's fees, costs and settlement administration expenses will not exceed 15% of the gross Pennaco Settlement Amount. Plaintiffs submit that the proposed Notice complies with Wyo.R.Civ.P. 23 and should be sent via priority mail to all potential members of the Settlement Class as identified in Exhibits A and B to the Settlement Agreement.

VII. Conclusion

For the reasons described herein, the Plaintiffs respectfully request that the Court find and order as follows:

1. Plaintiffs filed a suit against Pennaco alleging individual claims and class action claims. After extensive negotiations and exchange of information, the parties agreed to settle this action on the terms now memorialized in the Settlement Agreement, executed by and between the parties (the "Settlement Agreement"). The Settlement Agreement shall be attached to the Order as Exhibit 1, and incorporated fully therein. All capitalized terms used in the Order and not defined therein shall have the meanings set forth in the Settlement Agreement. In the event of any conflict between the descriptions in these paragraphs and the more detailed terms of the Settlement Agreement, the Settlement Agreement shall govern.

2. This suit includes claims brought under the Wyoming Royalty Payment Act, Wyo. Stat. §§ 30-5-301, et seq. for Disputed Deductions, Interest, Reporting Assessments, Under-Valuation Claims and Attorneys' Fees, as those terms are defined in the Settlement Agreement.

3. The Court has jurisdiction and venue over this suit and

the Settlement Class. Under Wyo.R.Civ.P. 23(e), this Court's approval of any settlement is required.

4. The Settled Claims as defined in the Settlement Agreement all arise from the same nucleus of operative facts and form part of the same case or controversy as alleged against Pennaco in Plaintiffs' Complaint so that all of the claims approved for settlement by this Order were or could have been asserted as class claims in this Action.

5. There are in excess of 1,500 Settlement Class Members and they are so numerous that joinder is impractical.

6. There are questions of law and fact common to the Settlement Class Members and Plaintiffs.

7. The questions of law and fact common to the Settlement Class Members predominate over any questions affecting only individual members, and in the context of this settlement only, the settlement of Settlement Class Members' claims by a class action under Wyo. R. Civ. Proc. 23 is superior to other available methods for the fair and effective settlement and adjudication of this controversy.

8. Plaintiffs' claims are typical of the Settlement Class Members' claims.

9. Plaintiffs and Designated Class Representatives are appropriate representatives of the Settlement Class and have and will adequately represent the interests of the Settlement Class Members.

10. Settlement Class Members have no special interest in individually controlling the prosecution of separate actions.

11. Class Counsel is experienced and fully qualified.

12. No significant difficulties are likely to be encountered in the management of the action as a class action for settlement purposes only.

13. Pennaco has acted or refused to act on grounds generally applicable to the class, thereby making appropriate

final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

14. Subject to the provisions of Paragraph 17 of this Order and in accordance with the provisions of Wyo.R.Civ.P. 23, the Court certifies as potential members of the Pennaco Settlement Class the Royalty Payees as set forth in Exhibit 2 to this Order ("Settlement Class").

15. The Court approves the Designated Class Representatives as representative of this Settlement Class and appoints Plaintiffs' counsel to represent the Settlement Class ("Class Counsel").

16. The Court finds that the proposed settlement as provided in the Settlement Agreement is fair and reasonable under the circumstances. This finding and determination is subject to the Court's further review of objections, if any, filed with regard to the class settlement according to the terms of the Settlement Agreement.

17. The certification of the Settlement Class is only for the purpose of settlement and not for any other purpose in this litigation. This certification is subject to the Court's further review of objections, if any, filed with regard to the class settlement according to the terms of the Settlement Agreement. If the settlement is not finalized, the certification provided herein shall be void and have no further effect.

18. The Court finds that reasonable and adequate notice will be given to potential Settlement Class Members by providing the notice found in Exhibit 2 attached to this Order ("Notice") and publishing the newspaper notice found in Exhibit 3 attached to this Order ("Newspaper Notice") once a week for two weeks in the Gillette News-Record, the Casper Star-Tribune, the Buffalo Bulletin, the Sheridan Press and the Billings Gazette.

19. The Court finds that reasonable and adequate notice of the settlement will be given to potential members of the

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Settlement Class if the Notice is sent by priority mail(with electronic confirmation of delivery) to each Potential Class Member's last known address.

20. A hearing to consider objections, if any, to the Settlement Class and to finally determine if the Settlement Agreement is fair and equitable shall be heard at the Campbell County Courthouse on the 31st day of December, 2003, located at Gillette, Wyoming, commencing at 10:00 a.m. ("Final Settlement Hearing").

21. Any Potential Class Member who desires to be excluded from the Settlement Class shall deliver in writing that Member's election to be excluded to Class Counsel and Pennaco's Counsel on or before December 18, 2003 ("Deadline for Exclusion"). Any Potential Class Member may revoke that Member's election to be excluded from the Settlement Class by delivering such written revocation to Class Counsel in writing at least three (3) days prior to the Final Settlement Hearing. Class Counsel shall file with the Court a report ("Class Counsel's Report") three (3) days before the Final Settlement Hearing to provide to the Court a compilation of (a) all Potential Class Members who have opted out of the Settlement Class ("Opt Out Claimants"), (b) all Opt Out Claimants who have properly revoked their election to opt-out, (c) all Potential Class Members requiring exclusion because of the refusal of other working interest owners to participate under this settlement, and (d) those Potential Class Members who shall constitute the Settlement Class if finally approved by the Court at the Final Settlement Hearing.

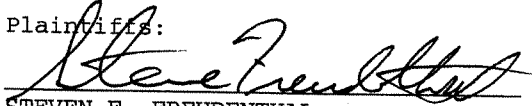
22. Any objections to the Settlement Agreement or the Settlement Class shall be in writing and delivered to Class Counsel and Pennaco's Counsel on or before December 18, 2003. Class Counsel shall file with the Court as part of Class Counsel's Report a compilation of the objections and Class Counsel's responses to the objections, if any.

WHEREFORE, the Plaintiffs respectfully request that the Court grant this motion and enter its "Order on Plaintiffs' Motion for Conditional Consideration of Settlement Agreement and Provisional Certification of the Pennaco Settlement Class."

DATED this 10th day of November, 2003.

Plaintiffs:

BY:


STEVEN F. FREUDENTHAL
BRUCE A. SALZBURG
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ATTORNEYS FOR PLAINTIFFS

Exhibit 1-Settlement Agreement with attached exhibits
Exhibit 2-Notice
Exhibit 3-Newspaper Notice

All exhibits referenced in this document may be reviewed as attachments to the Motion for Conditional Consideration of Settlement Agreement and Provisional Certification of the Pennaco Settlement Class on file at the office of Clerk of the District Court, Campbell County, Wyoming at 500 South Gillette Avenue, Suite 348, Gillette, Wyoming.