

44-1844 (1)

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SECURITIES DIVISION  
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ARIZONA CORPORATION COMMISSION

February 6, 1991

Alberta S. Breston, Esq.  
Butler & Binion  
1600 First Interstate Bank Plaza  
1000 Louisiana  
Houston, Texas 77002-5093

RE: American National Petroleum Company No-Action Request;  
A.R.S. § 44-1844(A)(1)

Dear Ms. Breston:

On the basis of the facts set forth in your letter of December 21, 1990 and in reliance upon your opinion as counsel, the Securities Division will not recommend enforcement action for violation of the Securities Act of Arizona should the transaction take place as set forth in your letter.

As this position is premised upon the facts set forth in your letter, it should not be relied on for any other set of facts or by any other person. Please also note that this position applies only to the registration requirements of the Act; the anti-fraud provisions of the Act continue to be applicable.

We have attached photocopies of your letter. By doing this we are able to avoid having to recite or summarize the facts set forth therein.

Very truly yours,

DEE RIDDELL HARRIS  
Director of Securities

DRH:sw

enclosure

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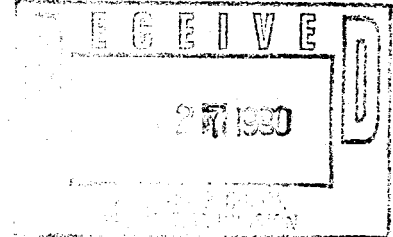
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December 21, 1990

BY FEDERAL EXPRESS

Ms. Katrina Rogers  
General Counsel  
Arizona Corporation Commission  
Securities Division  
1200 West Washington Street  
Phoenix, Arizona 85007



Re: No-Action Request for American National Petroleum Company

Dear Ms. Rogers:

We are counsel to American National Petroleum Company, a Delaware corporation ("ANPC"). In connection with the settlement of a class action lawsuit against ANPC which is described in more detail below, ANPC plans to contribute oil and gas properties to a limited partnership and transfer limited partnership interests in such partnership to the plaintiffs. On behalf of ANPC, we hereby request confirmation from the Arizona Securities Division that the Board will recommend no enforcement action if ANPC, in accordance with the terms of a judicially approved settlement, distributes limited partnership interests to the plaintiffs as described herein without registration in Arizona, such distribution being exempt from registration by Section 44-1844(1) of the Arizona Securities Act (the "Act").

Description of Litigation

In 1982 and 1983, ANPC organized three oil and gas limited partnerships: ANPC 1982 Oil & Gas Fund, ANPC 1983 Oil & Gas Fund, Ltd., and Oil Investments, Ltd. (the "Partnerships"). The Partnerships sold limited partnership interests to approximately 400 limited partners. ANPC served as the Managing General Partner and Thomson McKinnon Energy Management Inc. ("Thomson Energy") served as the Administrative General Partner of each of the Partnerships.

In August 1985, certain limited partners (the "Plaintiffs") of the Partnerships sued ANPC, the Partnerships, Thomson Energy, Thomson McKinnon Securities, Inc. ("Thomson Securities") and certain individuals in the United States District Court for the Southern District of New York (the "Court") alleging, among other things, that the defendants had committed securities fraud when the partnership interests were sold to the Plaintiffs (the "Litigation"). Ultimately, the Plaintiffs sought to rescind their investment, damages in an unspecified amount and to certify themselves as a class. ANPC and the other defendants denied all of the material allegations against them and counterclaimed against the Plaintiffs for misrepresentation, breach of contract and abuse of process.

On March 28, 1990, Thomson Securities filed a Chapter 11 Bankruptcy which automatically stayed the Plaintiffs' prosecution against Thomson Securities. Thomson Energy is also

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expected to file a Chapter 11 proceeding which will also cause the Plaintiffs' claims to be stayed against Thomson Energy, as well as Thomson Securities.

On September 28, 1990, ANPC, the Partnerships, David G. Eller and Kenneth J. Loep (collectively, the "ANPC Defendants") agreed to settle this lawsuit with respect to the claims against them. Such settlement does not affect any claims of the Plaintiffs against Thomson Securities or Thomson Energy. The settlement is subject to court approval and provides among other things, for the transfer to the Plaintiff's of limited partnership interests in a newly formed partnership containing oil and gas properties.

#### The Settlement Agreement

The Stipulation of Settlement dated September 28, 1990 (the "Settlement Agreement"), a copy of which is attached hereto as Exhibit I, provides, among other things, for the Plaintiffs and the ANPC Defendants to request the Court to do the following:

A. Sever the Plaintiffs' and the ANPC Defendants' claims against each other from any other claims asserted in the Litigation (the "Severed Litigation");

B. Conditionally certify that the Severed Litigation may be maintained as a class action, pursuant to Rule 23(c) of the Federal Rules of Civil Procedure, with the Plaintiffs as the class representatives of purchasers of limited partnership interests in one or more of the Partnerships (the "Class Members"); and

C. Direct that a settlement hearing, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, be held to determine: (i) whether the settlement should be approved as fair, reasonable, and adequate, and in the best interests of the Class; (ii) whether the terms and conditions of the Settlement Agreement are fair for the purposes of Section 3(a)(10) of the Securities Act of 1933, as amended, (the "1933 Act") so that ANPC will not be required to register under the 1933 Act, any securities to be issued pursuant to the Settlement Agreement; and (iii) whether judgment should be entered dismissing the Severed Litigation on the merits and with prejudice.

The Settlement Agreement further provides for ANPC to form a new Delaware limited partnership (the "New Limited Partnership"). ANPC will be the general partner of the New Limited Partnership with a 1% interest and the Class Members with allowed claims will be the limited partners with a 99% interest. ANPC will contribute to the New Limited Partnership proved developed and proved undeveloped oil and gas properties which Huddleston & Co., Inc., an independent petroleum engineering firm, has estimated to have future net revenues, discounted at 10% using escalated pricing, of \$1,008,271. ANPC will also pay \$500,000 in cash which will be used (i) first, to pay Plaintiffs' Counsel for their fees and disbursements, to the extent approved by the Court, and (ii) second, if the allowed fees and disbursements are less than \$500,000, as a capital contribution to the New Limited Partnership for working capital.

The Plaintiffs will send a notice (the "Notice") to each Class Member prior to the settlement hearing before the Court with information about the terms of the Settlement Agreement. Each Class Member will be required to submit a Proof of Claim to participate in the

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settlement and will be given the opportunity to "opt out" of the Class. The Settlement Agreement will most likely be finalized and approved in early 1991. Each Class Member will have the right to appear at the settlement hearing.

#### Summary of Terms of the New Limited Partnership

The New Limited Partnership will be formed under the Delaware Revised Uniform Limited Partnership Act (the "Act"). Each Class Member will receive a limited partnership interest in the New Limited Partnership proportionate to the amount his allowed claim bears to the total of allowed claims of all Class Members. The New Limited Partnership will continue until the earlier of (i) 10 years from the date of its formation or (ii) until it is dissolved pursuant to the Act or any provision of the Agreement of Limited Partnership (the "Partnership Agreement"). A copy of the Partnership Agreement is attached as Exhibit A to the Settlement Agreement.

The New Limited Partnership will be formed primarily to own, operate, explore, develop and sell the oil and gas properties being contributed to the New Limited Partnership by ANPC. The Limited Partners will not be required to make any capital contribution to the New Limited Partnership nor will the General Partner be required to make any additional capital contributions after the initial contribution. The Limited Partners will have no voting power with respect to the New Limited Partnership except as may be required by Delaware state law, and will have no rights with respect to the management of the New Limited Partnership. The General Partner will manage the New Limited Partnership in all respects and will send audited financial statements to the Limited Partners each year together with a list of the wells drilled and the results thereof and a description of any material changes of the properties owned by the New Limited Partnership.

The limited partnership interests in the New Limited Partnership to be distributed to the Class Members will be evidenced solely by an entry in the books and records of the New Limited Partnership and certificates or other tangible evidence of such interest shall not be issued. Interests in the New Limited Partnership will not be transferable except in the event of a death of a Class Member who is an individual, or by the issuance of a compelling order of a court of competent jurisdiction. Accordingly, there will be no potential for public trading of such interests.

#### Exemption From Federal Securities Law Registration

The issuance of the limited partnership interests in the New Limited Partnership will be exempt from the registration requirements of the 1933 Act under Section 3(a)(10) of the 1933 Act. Section 3(a)(10) exempts from registration:

"any security which is issued in exchange for one or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash, where the terms and conditions of such issuance and exchange are approved, after a hearing upon the fairness of such terms and conditions at which all persons to whom it is proposed to issue securities in such exchange shall have a right to appear, by any court...."

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In accordance with the requirements of Section (3)(a)(10), under the Settlement Agreement, the Class Members with allowed claims will receive, in exchange for the release and discharge of any outstanding claims they may have against the ANPC Defendants in the Litigation, limited partnership interests in the New Limited Partnership. The issuance by ANPC of the 99% limited partnership interest in the New Limited Partnership will be effectuated as a part of the Settlement Agreement, which is conditioned upon the Court's approval, after a hearing upon the fairness of the terms and conditions of the Settlement Agreement at which all Class Members will have the right to appear.

The Court will supervise communications to the Plaintiffs regarding the Settlement Agreement, including the distribution of the Notice to the Class Members. Under these circumstances, as Section 3(a)(10) contemplates, there is no need for the protection afforded by the registration requirements of the 1933 Act. The rationale for the exemption afforded by Section 3(a)(10) is that court examination and approval of the issuance of a security, following a fairness hearing at which all persons to whom it is proposed to issue securities have a right to appear, is a substitute for the protection afforded to the investor by the information which would otherwise be made available through registration.

#### Analysis

On the basis of the facts presented above, we believe that the interests in the New Limited Partnership should be exempt from registration under Section 44-1844(1) of the Arizona Securities Act. Section 44-1844(1) exempts from registration "[t]ransactions by an issuer not involving any public offering." In a telephone conversation with Ms. Susan Baker, of the Division, Ms. Baker stated that ANPC's distribution fits within this exemption because it is only open to Class Members and not the general public. There are two reasons for our reliance on this exemption.

First, in Arizona there are located five (5) Class Members. The issuance of the interests in the New Limited Partnership will be effectuated as a part of the Settlement Agreement, which is conditioned upon court approval. After court approval of the Settlement Agreement, a fairness hearing will be held at which each Class Member may appear and be heard, thus providing further judicial supervision and protects the Class Members from any risk of inadequate investment disclosure. Accordingly, the Court's examination and approval of the Settlement Agreement followed by a fairness hearing at which all the Class Members will have a right to appear, will act as a substitute for the protection which would otherwise be made available through registration.

Second, pursuant to the Settlement Agreement, the five (5) Class Members located in Arizona will receive in exchange for the release of their claims against the ANPC Defendants, limited partnership interests in the New Limited Partnership. In accordance with the Settlement Agreement, the interests will be nontransferable, except upon the death of an individual Class Member or by court order, and no certificates representing these interests will be issued. Accordingly, no potential for public trading exists, and the interests will be held by the Class Members for investment purposes only.

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For the foregoing reasons, we are of the opinion that registration of the interests in the New Limited Partnership should not be required under the Arizona Securities Act to provide protection to the five (5) Class Members located in Arizona.

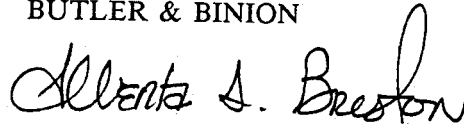
Conclusion

We respectfully request that the staff of the Arizona Securities Division confirm to us that no enforcement action will be taken by the Board against ANPC if, subject to the Court's approval of the Settlement Agreement, ANPC transfers the interests in the New Limited Partnership to the Class Members located in Arizona in accordance with the terms of the Settlement Agreement, and without registration under the Act by reason of the provisions of Section 44-1844(1). If for any reason you do not concur in any of the views discussed above, we respectfully request the opportunity to discuss the matter with you before you issue any written response.

If you have any questions or require any further information regarding this request, please call the undersigned at (713) 237-2011 or Paul E. Pryzant at (713) 237-3683. We appreciate your assistance with this matter.

Very truly yours,

BUTLER & BINION



Alberta S. Breston

ASB:mjc  
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