

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION FOR THE PURPOSE OF
CONSIDERING:

CASE NO. 12792

THE APPLICATION OF THE NEW MEXICO OIL
CONSERVATION DIVISION FOR AN ORDER REQUIRING
KELLY H. BAXTER TO PROPERLY PLUG (7) SEVEN WELLS,
IMPOSING CIVIL PENALTIES IN THE EVENT
OF FAILURE TO COMPLY, AUTHORIZING THE DIVISION TO
PLUG SAID WELLS IN DEFAULT OF COMPLIANCE
BY KELLY H. BAXTER OR HIS SURETY, AND
ORDERING A FORFEITURE OF APPLICABLE PLUGGING BOND,
LEA COUNTY, NEW MEXICO.

ORDER NO. R-11840-A

ORDER OF THE OIL CONSERVATION COMMISSION

BY THE COMMISSION:

THIS MATTER, having come before the Oil Conservation Commission (hereinafter referred to as "the Commission") on February 27, 2003 at Santa Fe, New Mexico on the application of the Oil Conservation Division (hereinafter referred to as "the Division") for an order requiring Kelly H. Baxter (hereinafter referred to as "the operator" or "Kelly H. Baxter") to properly plug and abandon inactive wells in Lea County, for an order authorizing the Division to plug the wells in the event the operator or its surety fails to do so, providing for forfeiture of the plugging bond if necessary and requesting assessment of civil penalties, and the Commission, having carefully considered the evidence, the pleadings and other materials submitted by the parties hereto, now, on this 15th day of May, 2003,

FINDS,

1. Notice has been given of the application and the hearing of this matter, and the Commission has jurisdiction of the parties and the subject matter herein.
2. This matter is before the Commission on application of the operator for review *de novo*.

3. This matter concerns seven (7) inactive wells in Lea County, New Mexico operated by Kelly H. Baxter:

<u>API Number</u>	<u>Well Name & Number</u>	<u>Well Location</u>
30-025-21925	State "FP" No. 1	Unit O, Section 23, T-16S, R-33E*
30-025-25238	Wallen Fee No. 1	Unit D, Section 28, T-20S, R-34E
30-025-25283	Wallen Fee No. 2	Unit C, Section 28, T-20S, R-34E
30-025-27961	State "26" No. 1	Unit B, Section 26, T-12S, R-32E
30-025-28227	State "WES" No. 1	Unit A, Section 20, T-14S, R-33E*
30-025-29664	Speight No. 1	Unit A, Section 15, T-13S, R-38E*
30-025-29935	Speight No. 2	Unit H, Section 15, T-13S, R-38E*

4. The Division originally sought plugging and abandonment of all the wells listed in paragraph 3. The Division now seeks plugging and abandonment of four wells (those marked in paragraph three with an asterisk), as the remaining wells have been plugged and abandoned. The Division seeks forfeiture of the relevant financial assurance in the event the operator fails to plug and abandon the remaining four wells, and seeks civil penalties for failure to comply with the lawful orders and directives of the Division, but the Division suggests that such penalties be suspended if the operator plugs the remaining four wells within a reasonable time.

5. The Division appeared through its counsel and presented evidence. The operator appeared through his counsel who made a statement on his behalf.

6. The Division's filing in this matter originates from a project of the Division referred to as the "Inactive Well Project." This project seeks to identify wells that have not produced for two years or more and have not complied with the requirements for temporary abandonment or plugging and abandonment. The operator is notified of the discrepancy by letter and is requested to bring the wells into compliance with the rules and regulations of the Division.

7. Rule 201 of the rules and regulations of the Division specifies that any well that is no longer usable for beneficial purposes or that has been continuously inactive for a period of one year or that has not produced sixty days after the suspension of drilling operations, must be properly plugged or temporarily abandoned:

B. A well shall be either plugged and abandoned or temporarily abandoned in accordance with these rules within ninety (90) days after: (1) a sixty (60) day period following suspension of drilling operations, or (2) a determination that a well is no longer usable for beneficial purposes, or (3) a period of one (1) year in which a well has been continuously inactive.

19.15.4.201 (B) NMAC (12-14-01).

8. The evidence presented by the Division indicates that the operator reported no production from any of the wells listed above since 1998 and no production reports were

filed at all on any of the wells in 1997, and that no permit for temporary abandonment has been requested by the operator or approved by the Division.

9. Division employees attempted to persuade the operator to properly plug and abandon the wells. Correspondence between the Division and the operator regarding the wells began in August 1998. Prior to the hearing before the Division, Division employees contacted the operator on numerous occasions, but the operator was essentially unresponsive.

10. Despite his failure to communicate with Division personnel, the operator has nevertheless made some attempts to correct the situation. Of the wells that are the subject of the Division's application, three, the Wallen Fee No. 1, the Wallen Fee No. 2 and the State "26" No. 1 were voluntarily plugged and abandoned prior to the date of the hearing. Division personnel witnessed the operation and were apparently satisfied with the quality of the work.

11. The operator also apparently performed some work on the Speight No. 1 and the State "FP" several years ago in an attempt to bring those wells into compliance as well. However, the work was never completed and required testing was not accomplished.

12. The operator's statement to the Commission during the hearing of this matter (made on the operator's behalf by its attorney) seems to indicate that he understands his obligations to plug the remaining wells and intends to do so, but needs additional time to complete the work. The operator's statement indicates that a contractor was hired to complete the plugging and abandonment but the contractor (who also performs work under contract with the State on occasions) had not plugged the wells as of the date of the hearing, and the contractor was unwilling to commit to a date certain when the work could be completed. Another contractor contacted by the operator could possibly do the work more quickly, but that contractor is unable to pull casing, and the operator desires to recover the casing so as to ameliorate the cost of plugging. The operator suggested in his statement that the Commission issue an order that provides him a specified time to complete the remaining work, and also suggests that penalties not be imposed if he complies.

13. The operator's statement indicates that the operator agrees the wells should be plugged and abandoned. It appears from the statement that the operator also agrees that the wells are no longer usable for beneficial purposes. *See* 19.15.4.201(B)(2)NMAC. There being no dispute concerning the plugging and abandonment of these wells, they should be plugged and abandoned forthwith. The dispute with the operator's present plugging contractors should not affect this finding. A Division witness testified that other plugging contractors exist besides those referred to by the operator; if the present contractors will not agree to perform the work, other contractors should be arranged to complete it. The four (4) wells described should be plugged and abandoned by the operator in accordance with a program approved by the supervisor of the Division's Hobbs District Office, on or before November 15, 2003.

14. The evidence presented by the Division indicates that the operator has on deposit with the Division a \$50,000 blanket plugging bond, No. B03872, issued by Underwriter's Indemnity. The blanket plugging bond is conditioned upon compliance with the statutes of the State of New Mexico and the rules of the Division with respect to the proper plugging and abandonment of the wells operated by the operator. The record of these proceedings indicates that Underwriter's Indemnity was served with notice of these proceedings.

15. Should the operator not properly plug and abandon the above-referenced wells by November 15, 2003, the Division Director should then be authorized to take such action as is deemed necessary to plug and abandon these wells, to declare forfeiture of the bond furnished by the operator to the extent necessary to fully reimburse the Division for its expenses incurred in accomplishing the foregoing, and to recover from the operator any costs of plugging the wells in excess of the amount of the bond.

16. Should the operator not properly plug and abandoned the above-referenced wells by November 15, 2003, the Division should file a supplemental proceeding that seeks imposition of civil penalties upon the operator pursuant to NMSA Section 70-2-31(A).

IT IS THEREFORE ORDERED THAT :

1. The operator is hereby ordered to plug and abandon the State "FP" No. 1, the State "WES" No. 1, the Speight No. 1 and the Speight No. 2, described more fully above, no later than November 15, 2003. In addition, the operator is hereby ordered to perform any remaining matters (such as site clean up, remediation, etc.) and properly complete and file with the Division remaining documentation concerning the plugging and abandonment of the State "26" No. 1, the Wallen Fee No. 1 and the Wallen Fee No. 2, by this date.

2. Prior to plugging and abandoning the above-described wells, the operator shall obtain from the supervisor of the Division's Hobbs District Office an approved plugging program and shall notify the supervisor of the Division's Hobbs District Office of the date and time this work is to commence so that the Division may witness the work.

3. Should the operator fail or refuse to carry out such provisions in accordance with the terms of this Order, the Division Director shall then take such action as is deemed necessary to plug and abandon these wells, to declare forfeiture of the bond furnished by the operator to the extent necessary to fully reimburse the Division for its expenses incurred in accomplishing the foregoing, and to recover from the operator any costs of plugging the wells in excess of the amount of the bond.

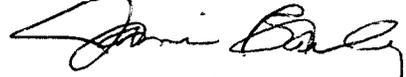
4. In addition, should the operator not properly plug and abandoned the above-referenced wells by November 15, 2003, the Division shall file a supplemental proceeding that seeks imposition of civil penalties upon the operator pursuant to NMSA Section 70-2-31(A).

5. Jurisdiction of this case is retained for the entry of such further orders as the

Commission may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

**STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION**



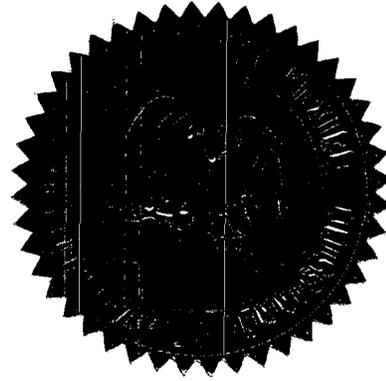
JAMI BAILEY, MEMBER



ROBERT LEE, MEMBER



LORI WROTENBERY, CHAIR



SEAL