

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

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APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION, THROUGH THE SUPERVISOR OF DISTRICT I, FOR AN ORDER ENFORCING THE PENALTY ASSESSMENT PROVISION OF ACOI 80, AND FOR FURTHER ORDER REQUIRING McDONNOLD OPERATING INC. TO BRING ELEVEN WELLS INTO COMPLIANCE WITH 19.15.4.201 NMAC; AUTHORIZING THE DIVISION TO PLUG THE WELLS AND FORFEIT THE APPLICABLE SECURITY IN THE EVENT THE OPERATOR FAILS TO COMPLY; AND ASSESSING AN APPROPRIATE CIVIL PENALTY; LEA AND ROOSEVELT COUNTIES, NEW MEXICO.

CASE NO. 13979

**APPLICATION FOR ORDER ENFORCING PENALTY
ASSESSMENT OF ACOI 80 & FOR COMPLIANCE ORDER
AGAINST McDONNOLD OPERATING INC.**

COMES NOW the Oil Conservation Division, and respectfully Presents this, its Application for an Order enforcing the penalty assessment provided for in ACOI 80, and for an Order further requiring Operator McDonnold Operating Inc. to bring eleven (11) wells into compliance, or alternatively authorizing the division to plug the wells and forfeit the applicable security in the event that the operator fails to comply, and assessing an appropriate civil penalty. In support of these requests, the Division states as follows:

1. The records of the Oil Conservation Division (“Division”) identify McDonnold Operating Inc. (“McDonnold”), operating under OGRID No. 14372, as the operator of record for the following wells, located in New Mexico (hereinafter the “subject wells”):

30-025-04408	BAY FEDERAL #003	D-35-20S-36E	Lea County
30-041-20349	CITGO STATE #001	M-16-08S-38E	Roosevelt County
30-025-11277	JACK A 29 #002	I-29-24S-37E	Lea County
30-025-11279	JACK A 29 #004	O-29-24S-37E	Lea County
30-025-11174	LANGLIE JACK UNIT #004	B-20-24S-37E	Lea County
30-025-11173	LANGLIE JACK UNIT #006	D-20-24S-37E	Lea County
30-025-11172	LANGLIE JACK UNIT #007	F-20-24S-37E	Lea County
30-025-11268	LITIE WOOLWORTH #004	L-28-24S-37E	Lea County
30-025-30870	RED CLOUD #002	M-3 -25S-37E	Lea County
30-025-24814	STATE A 16 #001	M-16-24S-37E	Lea County
30-041-20325	STATE CO #001	L-16-08S-38E	Roosevelt County

2. McDonnold posted a \$50,000 bond, number RLB0006958, through RLI Insurance Company, to secure its obligation to plug and abandon wells in compliance with Division rules.

3. Division rule 19.15.4.201 NMAC requires an operator to plug and abandon or temporarily abandon a well in accordance with Division Rules within ninety (90) days after a period of one (1) year of continuous inactivity.

4. In 2005, it was determined by the Division that, together with four (4) additional wells, the eleven (11) subject wells had all been inactive for a continuous period exceeding one (1) year plus ninety (90) days, and had neither been plugged and abandoned pursuant to 19.15.4.202 NMAC nor temporarily abandoned pursuant to 19.15.4.203 NMAC.

5. The Division made repeated requests to McDonnold at that time to bring the wells into compliance with 19.15.4.201 NMAC, to no avail.

6. Because the Division was unable to obtain cooperation from McDonnold regarding these wells, the Division ultimately filed an Application for Hearing on August 10, 2005 (*Case No. 13549*), requesting a finding that the subject wells were not in

compliance with 19.15.4.201 NMAC, and an Order requiring McDonnold to bring said wells into compliance by a date certain. The Application further sought penalties, and authorization for the Division to plug the wells and forfeit McDonnold's bond should McDonnold failed to comply.

7. The Division ultimately agreed to withdraw its Application due to the fact that McDonnold finally agreed to enter into an Agreed Compliance Order regarding the subject inactive wells.

8. The Agreed Compliance Order (ACOI 80) between McDonnold and the OCD, Attached as **Exhibit A** hereto, was executed by the Operator on August 26, 2005, and by the Division Director on August 30, 2005. ACOI 80 (pages 2-3) Ordered that McDonnold restore the subject wells to production, secure OCD approval for temporary abandonment status or plug the wellbore of each of the subject wells by December 31, 2006, with remediation for all plugged wells to be performed within a year of the plugging of the wellbore. The schedule provided by ACOI 80 required that McDonnold plug, restore or properly temporarily abandon at least one well per month beginning in October, 2005.

9. ACOI 80 further required that McDonnold file monthly reports, documenting the progress with regard to the plugging, restoration or temporary abandonment of the wells, and provided for penalties should McDonnold fail to comply with the timeline established by the agreement. (**Exhibit A** at p. 4). Specifically, Paragraph 8 of the "Order" portion of ACOI 80 (**Exhibit A** at p. 5) provided that:

If Operator fails to plug, temporarily abandon or restore to production or other approved beneficial use all the wells identified in Exhibit "A" by December 31, 2006, Operator shall pay a penalty of \$2000 per well for

each full month the well remains out of compliance with this order after that date. No grace period applies.

10. The ACOI also provided a mechanism for the Operator to address scheduling issues and/or request extensions to accommodate any unanticipated circumstances (such as inclement weather) affecting the schedule of operations. **Exhibit A** at pages 5-6, "Order" Paragraphs 9, 9(a), 9(b) and 9(c).

11. Operator McDonnold failed to meet the December 31, 2006 deadline established by ACOI 80 with regard to the eleven (11) subject wells, and, to date, all eleven (11) wells remain inactive. At no time did McDonnold contact the Division to request an extension pursuant to the terms of the Agreement.

12. NMSA 1978, Section 70-2-14(B) provides:

If any of the requirements of the Oil and Gas Act [70-2-1 NMSA 1978] or the rules promulgated pursuant to that act have not been complied with, the oil conservation division, after notice and hearing, may order any well plugged and abandoned by the operator or surety or both in accordance with division rules. If the order is not complied with in the time period set out in the order, the financial assurance shall be forfeited.

13. The Oil and Gas Act ("Act") provides that any person who knowingly and willfully violates any provision of the Act, or any rule or order issued pursuant to the Act, shall be subject to a civil penalty of not more than one thousand dollars per day for each violation. NMSA 1978, section 70-2-31(A).

14. NMSA 1978, Section 70-2-33(A) defines "person" as used in the Oil and Gas Act to include corporations.

WHEREFORE, the Supervisor of District I of the Division hereby applies to the Director to enter an Order:

- A. Determining that as to the subject eleven (11) wells, Defendant failed to meet the terms of ACOI 80, and, specifically, failed to meet the December 31, 2006 deadline established therein;
- B. Determining that the subject eleven (11) wells were inactive prior to, and have remained inactive since the December 31, 2006 deadline set out in ACOI 80;
- C. Directing Operator McDonnold to comply with the penalty assessment terms of ACOI 80. (ACOI 80 calls for the remittance of \$2,000.00 per well for each full month that has elapsed since the December 31, 2006 deadline, which at the time of the filing of this Application totals \$132,000.00 for eleven {11} wells for six {6} full months).
- D. Determining that, in addition to not complying with ACOI 80, the subject eleven (11) wells are not in compliance with 19.15.4.201 NMAC;
- E. Determine that Operator McDonnold's non-compliance with 19.15.4.201 NMAC as to these eleven (11) wells, given the facts of this case, was both knowing and willful;
- F. Requiring McDonnold to bring each of the subject wells into compliance with 19.15.4.201 NMAC by a date certain by plugging and abandoning the well in accordance with 19.15.4.202 NMAC, securing temporary abandonment status for the well in accordance with 19.15.4.203 NMAC, or returning the well to a Division-approved beneficial use;
- G. Further, if the subject wells are not brought into compliance with 19.15.4.201 NMAC by the date set by the order:

- (1) Assessing a penalty against McDonnold of not less than \$1,000.00 per well for each full week of non-compliance with the Order;
 - (2) Authorizing the Division to plug the subject wells in accordance with a Division-approved plugging program;
 - (3) Authorizing the Division to forfeit the applicable security; and
- H. For such other and further relief as the Director deems just and proper under the circumstances.

RESPECTFULLY SUBMITTED,
this 27th day of July, 2007 by



Mikal M. Altomare
Assistant General Counsel
Energy, Minerals and Natural
Resources Department of the State of
New Mexico
1220 S. St. Francis Drive
Santa Fe, NM 87505
(505) 476-3451
Attorney for The New Mexico Oil
Conservation Division

Case No. 13979. Application of the New Mexico Oil Conservation Division for a Compliance Order against McDonnold Operating Inc. The Applicant seeks an Order requiring McDonnold Operating Inc. to remit payment of the penalty assessment provided for by ACOI 80, and seeks further Order requiring McDonnold Operating Inc. to bring eleven (11) wells into compliance with 19.15.4.201 NMAC; authorizing the Division to plug said wells in the event of noncompliance and forfeit the applicable financial assurance; imposing civil penalties, and for such other relief as the Director deems appropriate. The wells involved in this matter include the following:

30-025-04408	BAY FEDERAL #003	D-35-20S-36E	Lea County
30-041-20349	CITGO STATE #001	M-16-08S-38E	Roosevelt County
30-025-11277	JACK A 29 #002	I-29-24S-37E	Lea County
30-025-11279	JACK A 29 #004	O-29-24S-37E	Lea County
30-025-11174	LANGLIE JACK UNIT #004	B-20-24S-37E	Lea County
30-025-11173	LANGLIE JACK UNIT #006	D-20-24S-37E	Lea County
30-025-11172	LANGLIE JACK UNIT #007	F-20-24S-37E	Lea County
30-025-11268	LITIE WOOLWORTH #004	L-28-24S-37E	Lea County
30-025-30870	RED CLOUD #002	M-3 -25S-37E	Lea County
30-025-24814	STATE A 16 #001	M-16-24S-37E	Lea County
30-041-20325	STATE CO #001	L-16-08S-38E	Roosevelt County

The two wells in Roosevelt County are located approximately fifteen (15) miles East of Milnesand, New Mexico. The *Bay Federal #003* well is located approximately five (5) miles South of Monument, New Mexico. The remaining eight (8) wells are located approximately three (3) to ten (10) miles north of Jal, New Mexico.

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

NMOCD – ACO 05 - 80

IN THE MATTER OF *McDonnold Operating Inc.*

Respondent.

AGREED COMPLIANCE ORDER

Pursuant to the New Mexico Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38, as amended ("Act"), the Director of the Oil Conservation Division ("OCD") and *McDonnold Operating Inc.* ("Operator") enter into this Order under which Operator agrees that the wells identified herein shall be brought into compliance with the Act and OCD Rule 201 [19.15.4.201 NMAC] in accordance with the following agreed schedule and procedures, and agrees to pay penalties as set out below if it fails to meet the schedule set out in this Order:

FINDINGS

1. The OCD is the state division charged with administration and enforcement of the Act, and rules and orders adopted pursuant to the Act.
2. Operator is a corporation doing business in the state of New Mexico. SCC # 1496389
3. Operator is the operator of record for the wells identified in Exhibit "A," attached, under OGRID 143372.
4. The wells identified in Exhibit "A":
 - (a) have been continuously inactive for a period of one year plus ninety days;
 - (b) are not properly plugged and abandoned under OCD Rule 202 [19.15.4.202 NMAC]; and
 - (c) have not been placed on temporary abandonment status under OCD Rule 203 [19.15.4.203 NMAC].
5. OCD Rule 201 [19.15.4.201 NMAC] states, in relevant part:

"A. The operator of any well drilled for oil, gas or injection; for seismic, core or other exploration, or for a service well, whether cased or uncased, shall be responsible for the plugging thereof.

Exhibit
A

B. A well shall be either properly plugged and abandoned or temporarily abandoned in accordance with these rules within ninety (90) days after:

.....
.....
(3) a period of one (1) year in which a well has been continuously inactive.”

6. NMSA 1978, Section 70-2-31(A) authorizes the assessment of civil penalties of up to one thousand dollars per day per violation against any person who knowingly or willfully violates any provision of the Oil and Gas Act or any rule or order adopted pursuant to the Act.

7. OCD Rule 7.P (2) [19.15.1.7.P (2) NMAC] defines “person” as

“an individual or any other entity including partnerships, corporation, associations, responsible business or association agents or officers, the state or a political subdivision of the state or any agency, department or instrumentality of the United States and any of its officers, agents or employees.”

CONCLUSIONS

1. The OCD has jurisdiction over the parties and subject matter in this proceeding.
2. As operator of the wells identified in Exhibit “A,” Operator is responsible for bringing those wells into compliance with Rule 201.
3. Operator is a “person” as defined by OCD Rule 7.P(2) subject to civil penalties for knowing and willful violations of the Oil and Gas Act or rules or orders adopted pursuant to the Act.

ORDER

1. Operator is hereby directed to bring each of the wells identified in Exhibit “A” into compliance with OCD Rule 201 by either:
 - (a) restoring such well to production or other OCD-approved beneficial use by December 31, 2006;
 - (b) causing the wellbore to be plugged in accordance with OCD Rule 202 by December 31, 2006, and causing the site to be remediated in accordance with OCD Rule 202 within one year of plugging the wellbore; or
 - (c) securing OCD approval for temporary abandonment of the well in accordance with OCD Rule 203 by December 31, 2006.

2. Operator shall, beginning with the month of October 2005, plug, temporarily abandon or restore to production or other approved beneficial use at least 1 of the wells identified in Exhibit "A" per calendar month, and bring all 15 wells into compliance no later than December 31, 2006. If more than 1 well is plugged, temporarily abandoned or restored to production or other approved beneficial use during any month, the wells in excess of the number agreed to herein shall be credited to Operator's obligation hereunder for succeeding months, provided that all of the wells identified in Exhibit "A" shall be plugged, temporarily abandoned or restored to production or other approved beneficial use by December 31, 2006, according to the following schedule (hereinafter "schedule"):

<u>Date:</u>	<u>Number of Wells from Exhibit "A"</u>	
	<u>Per Month</u>	<u>Total</u>
October 31, 2005	1	1
November 30, 2005	1	2
December 31, 2005	1	3
January 31, 2006	1	4
February 28, 2006	1	5
March 31, 2006	1	6
April 30, 2006	1	7
May 31, 2006	1	8
June 30, 2006	1	9
July 31, 2006	1	10
August 31, 2006	1	11
September 30, 2006	1	12
October 31, 2006	1	13
November 31, 2006	1	14
December 31, 2006	1	15
Total		15

3. A well shall be considered "plugged" for purposes of the schedule set out in paragraph 2. above, when the Operator has plugged the wellbore in accordance with Rule 202.A and B (1) and (2), and filed a sundry notice with the appropriate district office notifying them that the wellbore has been plugged. The wellsite must be remediated in accordance with Rule 202.B(3) within one year of plugging the wellbore. Upon completion of the remediation, the Operator must contact the appropriate district office to arrange for an inspection of the well and location.
4. A well shall be considered "temporarily abandoned" for purposes of the schedule set out in paragraph 2. above, when the well has successfully passed the mechanical integrity test required by Rule 203 and the Operator has filed the request for temporary abandonment with the appropriate district office.

5. A well shall be considered "restored to production or other approved beneficial use" for purposes of the schedule set out in Paragraph 2, above, when actual production or other approved beneficial use has commenced.
6. Operator shall file a written compliance report with the appropriate district office, and send a copy to the OCD's attorney, by the 10th day of each month starting with November 2005, listing the wells identified in Exhibit "A" that it has plugged, temporarily abandoned or restored to production or other approved beneficial use. For each well listed, the Operator shall identify whether that well was plugged, temporarily abandoned or restored to production or other approved beneficial use, and the date that work was completed. Operator shall file monthly compliance reports until all wells identified in Exhibit "A" have been plugged, temporarily abandoned or restored to production or other approved beneficial use. If, at any time, the OCD determines that a well identified in the Operator's compliance report is not plugged, temporarily abandoned or restored to production or other approved beneficial use according to the definitions set out in this agreement, the OCD shall promptly notify the Operator, and those wells shall not be credited toward the Operator's obligations under this Order until they are plugged, temporarily abandoned or restored to production or other approved beneficial use as defined in this agreement.
7. If, at the end of any month, the total number of wells the Operator has plugged, temporarily abandoned or restored to production or other beneficial use is less than the number required under the schedule, Operator shall have a one-month grace period in which to become current. If, at the end of that one-month grace period, Operator has not become current under the schedule, Operator shall pay a penalty of \$1000 times the number of wells it is short of the total required for the current month. Payment shall be made by certified or cashier's check made payable to the "New Mexico Oil Conservation Division," and mailed or hand-delivered to the appropriate district office with the next month's report. Penalties are calculated, and payable, each month.

Example A: ABC Company's agreed compliance order requires it to plug, temporarily abandon or restore to production or other approved beneficial use a minimum of 6 wells each month. ABC Company meets or exceeds its obligations in months 1-4. The agreed schedule calls for a total of 30 wells to be plugged, temporarily abandoned or restored to production or other approved beneficial use by the end of month 5. But at the end of month 5, ABC Company is two wells behind schedule. ABC Company will have a one-month grace period in which to become current. At the end of month 6, however, ABC Company has plugged, temporarily abandoned or restored to production or other approved beneficial use a total of 35 wells: one well short of the 36 required by the schedule. ABC Company must pay a penalty of \$1000 when it files its report for month 6. At the end of month 7, ABC Company is 4 wells short of the 42 required by the schedule. ABC Company must pay a penalty of \$4000 when it files its report for month 7.

Example B: XYZ Company's agreed compliance order requires it to plug, temporarily abandon or restore to production or other approved beneficial use a minimum of 5 wells each month. XYZ Company files compliance reports each month indicating that it is meeting its agreed schedule. In month 3, the OCD inspects the site of one of the wells listed as "plugged" in XYZ Company's compliance report for month 1, and determines that the wellbore has not been properly plugged under Rule 202.B(2) because the marker has not been placed on the site. Because the well has not been properly "plugged" as defined by this agreement, it will not count towards fulfilling XYZ Company's obligations under the schedule. XYZ Company will be responsible for calculating, and paying, any additional penalties that apply.

8. If Operator fails to plug, temporarily abandon or restore to production or other approved beneficial use all the wells identified in Exhibit "A" by December 31, 2006, Operator shall pay a penalty of \$2000 per well for each full month the well remains out of compliance with this order after that date. No grace period applies. Payment shall be made by certified or cashier's check made payable to the "New Mexico Oil Conservation Division," and mailed or hand-delivered to the appropriate district office with the next month's report. Penalties are calculated, and payable, each month.
9. In the event Operator encounters shortages of labor or equipment or unanticipated circumstances (including, but not limited to inclement weather), which, in the reasonable opinion of the Operator, are likely to significantly disrupt or suspend the schedule of operations set forth in Ordering Paragraph (2) above, then Operator shall have the right to notify the OCD in writing of such circumstances and request an amendment to this Order. Such notification ("notice") shall:
 - (a) reasonably describe the circumstances likely to significantly disrupt or suspend the schedule, and if the circumstances include shortages of labor or equipment, describe the efforts taken by the Operator to obtain labor and equipment;
 - (b) identify those wells on Exhibit "A" affected or expected to be affected; and
 - (c) set forth a revised schedule, which, in the reasonable and prudent opinion of the Operator, is necessary to plug, temporarily abandon or restore to production or other approved use those wells on Exhibit "A" affected or expected to be affected by such circumstances.

Within ten (10) days of receipt of this notice, the OCD shall either (A) approve a written amendment to this Order incorporating the revised schedule submitted by Operator, or (B) notify Operator that the revised schedule is not acceptable, but in such event promptly agree to meet with Operator at the OCD district office and

negotiate in good faith in an attempt to reach a reasonable resolution of the situation. If the Operator and the OCD are unable to agree to amend this Order, the Operator may apply for a hearing before an OCD examiner and request an amendment to the Order revising the schedule. The Operator may also request that the examiner waive penalties accrued pursuant to this Order after the filing of the Notice as to those wells identified in the Notice.

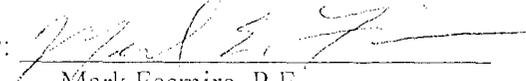
Operator and the OCD each recognize that the purpose of this provision is to address shortages of labor and equipment and unanticipated circumstances which the Operator, acting in good faith and as a reasonably prudent operator, could not reasonably expect to remedy under the thirty (30) day grace provision described in Ordering Paragraph (7) above.

10. For each plugged well, if the Operator fails to remediate the site and request inspection by the appropriate district office within one year of plugging the wellbore, the Operator shall pay a penalty of \$1000 for each full month that the well remains out of compliance with the remediation requirements of Rule 202.B(3). No grace period applies. Payment shall be made by certified or cashier's check made payable to the "New Mexico Oil Conservation Division," and mailed or hand-delivered to the appropriate district office. Penalties are calculated, and payable, each month.
11. By signing this Order, Operator expressly:
 - (a) acknowledges the correctness of the Findings and Conclusions set forth in this Order;
 - (b) agrees to plug, temporarily abandon or restore to production or other approved beneficial use the wells identified in Exhibit "A" under the schedule set out in Ordering Paragraph (2) or an amended schedule issued pursuant to Ordering Paragraph (9) above, and remediate plugged wells within one year of plugging the wellbore as set out in Ordering Paragraph (3);
 - (c) agrees to file monthly compliance reports as required in Ordering Paragraph (6);
 - (d) agrees to pay penalties as set out in Ordering Paragraphs (7), (8) and (9) if it fails to meet the schedule set out in Ordering Paragraph (2) or an amended schedule issued pursuant to Ordering Paragraph (9) above, or the remediation requirements set out in Ordering Paragraph (3);
 - (e) waives, subject to the provisions of Ordering Paragraph (9) above, any right, pursuant to the Oil and Gas Act or otherwise, to a hearing either prior or subsequent to the entry of this Order or to an appeal from this Order;
 - (f) agrees that the Order and amendments to the Order issued pursuant to Paragraph (9) above may be enforced by Division or Oil Conservation Commission Order, by suit or otherwise to the same extent and with the same effect as a final Order of the Division or Oil Conservation

Commission entered after notice and hearing in accordance with all terms and provisions of the Oil and Gas Act; and

- (g) agrees that if it fails to pay penalties assessed pursuant to this Order, upon application by the Division the district court may enter judgment against Operator in the amount of the penalties assessed and the district court may, in its discretion, impose additional penalties against the Operator for violating the payment terms of this Order.
12. If the Operator complies with the terms of this Order and any amendments to the Order issued pursuant to Paragraph (9) above, the Division will not seek penalties beyond those applicable under the terms of this Order or any amendments to this Order for Operator's failure to bring the wells identified in Exhibit "A" into compliance with Rule 201 prior to the deadlines set by this Order.
13. This Order applies only to those wells identified in Exhibit "A." Other wells operated by Operator out of compliance with Rule 201 may be subject to immediate enforcement action under the Oil and Gas Act.

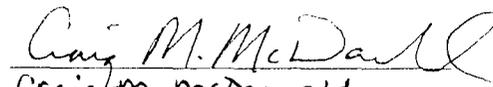
Done at Santa Fe, New Mexico this 20th day of Aug, 2005

By: 
Mark Fesmire, P.E.
Director, Oil Conservation Division

ACCEPTANCE

McDonnold Operating, Inc. hereby accepts the foregoing Order, and agrees to all of the terms and provisions set forth in that Order.

McDonnold Operating Inc.

By: 
Craig M. McDonnold
Title: President
Date: 8/26/05

[Operator] Agreed Compliance Order Well List:

McDonhold Operating Inc. Ogrid 14372
Exhibit A List of Inactive wells

	Well Name and Number	API #	Date of Last Prod/Injec
1	Bay Federal # 3	3002504408	Jan-96
2	Citgo State # 1	3004120349	Aug-00
3	Citgo State # 2	3004120467	Aug-00
4	Jack A 29 # 2	3002511277	Mar-95
5	Jack A 29 # 4	3002511279	Mar-98
6	Jack A 29 # 8	3002524788	Aug-02
7	Jack A 29 # 9	3002532643	Never
8	Langlie Jack Unit # 4	3002511174	Jun-91
9	Langlie Jack Unit # 7	3002511172	Dec-92
10	Langlie Jack Unit # 6	3002511173	Jan-95
11	Lite Woolworth # 4	3002511268	Oct-93
12	Red Cloud # 2	3002530870	Apr-01
13	State A 16 # 1	3002524814	Apr-03
14	State CO # 1	3004120325	Dec-92
15	George L. Erwin #3	3002511361	

BY Craig M. McDonhold

TITLE President

Signed: 5/26/05

EXHIBIT "A"