

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

**CASE NO. 12792
ORDER NO. R-11840-B**

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 OF THE OIL CONSERVATION COMMISSION

BY THE COMMISSION:

THIS MATTER came before the Oil Conservation Commission (the Commission) for hearing on June 15, 2006 at Santa Fe, New Mexico on the motion of the Oil Conservation Division (the Division) to re-open Case No. 12792 for entry of an order assessing civil penalties and finding Kelly H. Baxter (Baxter) in violation of an order requiring corrective action. The Commission, having heard the evidence and arguments of counsel and carefully considered the same, now, on this 15th day of June, 2006,

FINDS,

1. Notice has been given of the motion and the hearing of this matter, and the Commission has jurisdiction of the parties and the subject matter.

2. In Order No. R-11840-A, issued by the Commission in Case No. 12792 on May 15, 2003, Baxter was directed to take the following corrective actions by November 15, 2003:

- A) plug and abandon the following wells:

State FP #001	30-025-21925
State Wes #001	30-025-28227
- B) 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 following wells:

State 26 #001	30-025-27961
Wallen Fee #001	30-025-25238
Wallen Fee #002	30-015-25283

3. Order No. R-1 1840-A also addressed two other wells, which Baxter has since transferred to Sunlight Exploration. Therefore, they are not subject to this Order.

4. Order No. R-1 1840-A further provided, "should the operator not properly plug and abandoned (sic) 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. Order No. R-1 1840-A also provided that the Commission would retain jurisdiction of the case for the entry of such further orders as it may deem necessary.

6. The Division presented the testimony of Daniel Sanchez, the Division's Enforcement and Compliance Manager. Mr. Sanchez testified that

- A. to date, Baxter has not performed the corrective action required by Order No. R-1 1840-A, and the wells identified in Findings Paragraph 2, above, remain out of compliance;
- B. the Division is proceeding to plug the wells and perform the other corrective action required on the wells identified in Findings Paragraph 2, above; and
- C. the estimated cost of plugging the wells and performing the other corrective action required by Order No. R-1 1840-A on the wells identified in Findings Paragraph 2, above, exceeds the \$50,000 surety bond posted by Baxter.

7. Baxter appeared at the hearing through counsel, but did not present testimony.

8. OCD Rule 40.A [19.15.1.40.A NMAC] provides, in relevant part, that an operator is out of compliance with its provisions if an order is issued after notice and hearing finding the operator to be in violation of an order requiring corrective action.

9. NMSA 1978, Section 70-2-31(A) provides, in relevant part, that any person who knowingly and willfully violates any provision of any order issued pursuant to the Oil and Gas Act shall be subject to a civil penalty of not more than \$1,000 for each violation, and that in the case of a continuing violation, each day of violation shall constitute a separate violation.

10. By failing to take the corrective action required in Order No. R-1 1840-A as to the wells identified in Findings Paragraph 2, above, Baxter knowingly and willfully violated Order No. R-1 1840-A, an order issued by the Commission pursuant to the Oil and Gas Act,

11. Pursuant to NMSA 1978, Section 70-2-31(A), as amended, civil penalties should be assessed against Baxter for knowingly and willfully violating a Commission Order issued pursuant to the Oil and Gas Act.

IT IS THEREFORE ORDERED THAT :

1. A civil penalty is hereby assessed against Baxter, in accordance with NMSA 1978 Section 70-2-31.A, as amended, in the amount of \$5,000 for knowingly and willfully violating Order No. R-1 1840-A during the period from November 16, 2003 through June 15, 2006 as to the wells identified in Findings Paragraph 2, above. Baxter shall deliver payment of such civil penalty to the Division no later than thirty (30) days from the issuance of this order.

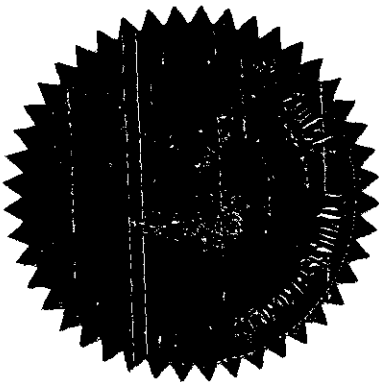
2. The Commission has determined that Baxter is out of compliance with OCD Rule 40.A [19.15.1.40.A NMAC] because it has failed to take the corrective action required by Order No. R-1 1840-A as to the wells identified in Findings Paragraph 2, above.

3. Baxter may comply with Rule 40 by reimbursing the Division for the Division's actual costs of completing those actions on Baxter's behalf as required by Order No. R-1 1840-A as to the wells identified in Findings Paragraph 2, above, minus any amounts recovered by the Division on Baxter's financial assurance.

4. When Baxter reimburses the Division for the Division's actual costs of completing those actions on Baxter's behalf as required by Order No. R-1 1840-A as to the wells identified in Findings Paragraph 2, above, and pays the civil penalty in Order No. R-1 1840-B, Paragraph 1, above, it may file a motion with the Commission to declare Order No. R-1 1840-A and Order No. R-1 1840-B satisfied.

5. Jurisdiction is hereby 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.



SEAL

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION


MARK E. FESMIRE, P.E., CHAIR


JAMIBAILEY, CPG, MEMBER


WILLIAM OLSON, MEMBER