

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. 12,792

APPLICATION OF THE NEW MEXICO OIL)
CONSERVATION DIVISION FOR AN ORDER)
REQUIRING KELLY H. BAXTER TO PLUG)
SEVEN WELLS IN LEA COUNTY, NEW MEXICO)

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

BEFORE: MARK E. FESMIRE, CHAIRMAN
JAMI BAILEY, COMMISSIONER
WILLIAM C. OLSON, COMMISSIONER

June 15th, 2006

Santa Fe, New Mexico

2006 JUN 22 AM 10 08

This matter came on for hearing before the Oil Conservation Commission, MARK E. FESMIRE, Chairman, on Thursday, June 15th, 2006, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

* * *

STEVEN T. BRENNER, CCR
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I N D E X

June 15th, 2006
Commission Hearing
CASE NO. 12,792

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A P P E A R A N C E S

FOR THE COMMISSION:

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By: WILLIAM F. CARR

* * *

1 WHEREUPON, the following proceedings were had at
2 9:00 a.m.:

3 CHAIRMAN FESMIRE: Let's go on the record. We'll
4 now call to order the thursday, June 15th, 2006, meeting of
5 the New Mexico Oil Conservation Commission. This is a
6 regularly scheduled meeting.

7 Let the record reflect that Commissioner Olson,
8 Commissioner Bailey and Commissioner Fesmire are all
9 present. We therefore have a quorum.

10 Also let the record reflect that Commission
11 secretary Davidson and Commission counsel Bada are also
12 present, and that the court reporter, Mr. Steve Brenner, is
13 also here.

14 The first matter before the Commission is the
15 adoption of actually four sets of minutes. We'll take them
16 individually.

17 Have the Commissioners had the opportunity to
18 look at the minutes of the April 20th and 21st meeting of
19 the Commission?

20 COMMISSIONER BAILEY: Yes, I have, and I move we
21 adopt them.

22 CHAIRMAN FESMIRE: Is there a second?

23 COMMISSIONER OLSON: Second.

24 CHAIRMAN FESMIRE: Let the record reflect that
25 the Commission has adopted the minutes of the April 20th

1 and 21st meetings -- meeting, and that they will be signed
2 by the Chairman and conveyed to the secretary.

3 * * *

4
5 CHAIRMAN FESMIRE: Have the Commissioners had the
6 opportunity to look at the minutes of the May 4th meeting?

7 COMMISSIONER BAILEY: Yes, I have, and I move we
8 adopt them.

9 COMMISSIONER OLSON: Second.

10 CHAIRMAN FESMIRE: All those in favor?

11 COMMISSIONER BAILEY: Aye.

12 COMMISSIONER OLSON: Aye.

13 CHAIRMAN FESMIRE: Let the record reflect that
14 the Commissioners have adopted the minutes of the meeting
15 held May 4th through 6th, 2006. They will be signed by the
16 Chairman and conveyed to the secretary.

17 * * *

18
19 CHAIRMAN FESMIRE: Have the Commissioners had the
20 opportunity to look at the minutes of the meeting held May
21 18th?

22 COMMISSIONER BAILEY: Yes, I have, and I move we
23 adopt them.

24 COMMISSIONER OLSON: Second.

25 CHAIRMAN FESMIRE: All those in favor?

1 COMMISSIONER BAILEY: Aye.

2 COMMISSIONER OLSON: Aye.

3 CHAIRMAN FESMIRE: Let the record reflect that
4 minutes of the May 18th meeting have been adopted by the
5 Commissioners. They'll be signed by the Chairman and
6 conveyed to the secretary.

7 * * *

8
9 CHAIRMAN FESMIRE: And lastly, have the
10 Commissioners had the opportunity to look at the minutes of
11 the June 5th, 2006, meeting?

12 COMMISSIONER BAILEY: Yes, I have, and I move we
13 adopt them.

14 COMMISSIONER OLSON: I have one question first,
15 just to make sure. I had -- on the second page, I think it
16 might have got corrected, I just wanted to make sure it was
17 corrected from Mr. Bruce's witness was Kenneth Smith, not
18 Mark Smith.

19 CHAIRMAN FESMIRE: Yes.

20 COMMISSIONER OLSON: That got corrected, okay.

21 CHAIRMAN FESMIRE: That has been corrected.

22 COMMISSIONER OLSON: Okay, I'll second that.

23 CHAIRMAN FESMIRE: Okay, the motion has been made
24 to adopt the minutes, it's been seconded. All those in
25 favor?

1 COMMISSIONER BAILEY: Aye.

2 COMMISSIONER OLSON: Aye.

3 CHAIRMAN FESMIRE: Let the record reflect that
4 the minutes of the June 5th, 2006, meeting have been
5 adopted by the Commission, been signed by the Chairman and
6 conveyed to the secretary.

7 * * *

8
9 CHAIRMAN FESMIRE: The next issue before the
10 Commission is Case Number 12,792, the Application of the
11 New Mexico Oil Conservation Division for an order requiring
12 Kelly H. Baxter to plug seven wells in Lea County, New
13 Mexico.

14 Are there attorneys present for this cause?

15 MS. MacQUESTEN: May it please the Commission, my
16 name is Gail MacQuesten. I'm representing the Oil
17 Conservation Division in this action.

18 CHAIRMAN FESMIRE: Okay.

19 MR. CARR: May it please the Examiner, William F.
20 Carr with the Santa Fe office of Holland and Hart, L.L.P.
21 We represent Mr. Baxter in this matter.

22 CHAIRMAN FESMIRE: Okay. Ms. MacQuesten, I
23 understand that you have a witness; and I understand, Mr.
24 Carr, you have no witnesses?

25 MR. CARR: No witness, just a brief statement.

1 CHAIRMAN FESMIRE: Would your witness stand to be
2 sworn, please?

3 (Thereupon, the witness was sworn.)

4 CHAIRMAN FESMIRE: Ms. MacQuesten, do you have an
5 opening statement?

6 MS. MacQUESTEN: Just a very brief one, and I'd
7 like to also walk the Commission through a few of the
8 exhibits in the exhibit packet before I begin the
9 testimony.

10 CHAIRMAN FESMIRE: Okay.

11 MS. MacQUESTEN: We are here on a motion to
12 reopen Case 12,792, which was a compliance action against
13 Kelly H. Baxter. In this motion, we are seeking an order
14 finding Mr. Baxter to be in violation of the Commission
15 order issued in Case 12,792, requiring corrective action.
16 If such an order is issued, Mr. Baxter will be in violation
17 of Rule 40 until he returns to the Commission and convinces
18 you to release that order.

19 We are also seeking penalties. The order issued
20 in Case 12,792 stated that the Division should seek
21 penalties if Mr. Baxter failed to comply with the
22 Commission's order.

23 Before we begin with the testimony, I would like
24 to draw your attention to some of the exhibits in the
25 exhibit packet that you have in front of you.

1 The first exhibit, Exhibit A, is the affidavit of
2 service. We served the parties to the original case, Mr.
3 Baxter and Mr. Baxter's attorney, and the surety. Attached
4 to the affidavit are the return receipts showing service to
5 all three and a copy of the letter notifying them of the
6 hearing.

7 There's also, attached to Exhibit A, a copy of
8 the order that is at issue today. I'd like to draw your
9 attention to the first page of that order to show you that
10 the order was issued on May 15, 2003, over three years ago.

11 I would also like to draw your attention to page
12 4 of the order, which sets up the corrective action Mr.
13 Baxter is to take as to the seven wells. You'll note that
14 some of the wells required plugging, and on others the
15 wellbore was plugged but Mr. Baxter was to perform any
16 remaining matters such as site cleanup and remediation and
17 file the appropriate paperwork. The deadline for
18 completing all of the corrective action was November 15th,
19 2003.

20 And with that, I would like to present testimony.

21 CHAIRMAN FESMIRE: Okay. Mr. Carr, did you have
22 an opening statement, or would you like to reserve yours
23 for --

24 MR. CARR: No, Mr. Chairman, I have a -- simply a
25 statement and a letter from Mr. Baxter, and at the end of

1 the testimony --

2 CHAIRMAN FESMIRE: Ms. MacQuesten, you may call
3 your first witness.

4 MS. MacQUESTEN: I would call Daniel Sanchez.
5 Would you like Mr. Sanchez to sit at the front table?

6 CHAIRMAN FESMIRE: Please, just in case he gets
7 too comfortable where he's at.

8 DANIEL SANCHEZ,
9 the witness herein, after having been first duly sworn upon
10 his oath, was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MS. MacQUESTEN:

13 Q. Would you please state your name for the record?

14 A. Daniel Sanchez.

15 Q. And where are you employed?

16 A. I'm employed with the Oil Conservation Division.

17 Q. What is your title?

18 A. Compliance and enforcement manager.

19 Q. Do your duties include tracking compliance with
20 orders issued by the Division and Commission in enforcement
21 cases?

22 A. Yes, they do.

23 Q. And do your duties include supervising the
24 District Offices?

25 A. Yes, they do.

1 Q. Are you familiar with the order the Commission
2 issued to issued to Mr. Kelly Baxter in Case 12,792?

3 A. Yes, I am.

4 Q. Have you reviewed the well files of the wells
5 covered by that order and consulted with the District
6 Office regarding compliance with that order?

7 A. Yes, I did.

8 Q. I'd like to start by going through the current
9 status of the wells covered by the order. Could you turn,
10 please, to what has been marked as Exhibit B? Can you tell
11 us what this document is?

12 A. That's the well list showing all of Kelly H.
13 Baxter's wells.

14 Q. Where does this well list appear?

15 A. On the OCD website.

16 Q. Now two of the seven wells covered by the order
17 don't appear on this list, the Speight Number 1 and the
18 Speight Number 2. Did you review the well files of those
19 two wells?

20 A. Yes, I did.

21 Q. Can you tell us what happened to those wells and
22 why they don't appear on Mr. Baxter's list?

23 A. Yes, they were transferred to Sunlight
24 Exploration back in October of 2005.

25 Q. Did Sunlight Exploration return those wells to

1 compliance?

2 A. No, they're at the same status they were under
3 Kelly H. Baxter.

4 Q. But they're no longer Mr. Baxter's
5 responsibility?

6 A. No, they're not.

7 Q. Let's go through the wells that are still Mr.
8 Baxter's responsibility, and I'd like to go through them in
9 the order they appear on Exhibit B.

10 The first well is the State 26 Number 1. What
11 did the Commission order require Mr. Baxter to do for this
12 well?

13 A. It required it to properly complete and file with
14 the Division the remaining documentation concerning the
15 plugging and abandonment of the well, and the deadline for
16 that was November 15th of 2003?

17 Q. Did he do any of those things?

18 A. No.

19 Q. What is the most recent filing in the well file
20 for that well?

21 A. It was a C-103 showing that the well had been
22 plugged on November 14th of '02.

23 Q. Is that Exhibit Number C?

24 A. Yes, it is.

25 Q. Was this filing done before the Commission's

1 Order?

2 A. Yes, it was.

3 Q. So there's been no -- according to the well file,
4 there's been no action on this well after the issuance of
5 the Commission order?

6 A. There has not been.

7 Q. What is left to do on this well, according to the
8 District?

9 A. The sites where the wells -- where the well was
10 supposed to be plugged need to be cleaned up yet, and the
11 final paperwork submitted to the OCD.

12 Q. Let's move on to the next well, the State FP
13 Number 1. What did the Commission Order require Mr. Baxter
14 to do for that well?

15 A. To plug and abandon that well by November 15th of
16 2003.

17 Q. Did Mr. Baxter do that?

18 A. No.

19 Q. What is the most recent filing in the well file
20 for this well?

21 A. It was a C-103, a notice of intent to temporarily
22 abandon the well, and that was filed August 29th of 2000.

23 Q. So several years before the Commission order?

24 A. Yes.

25 Q. And nothing has been done -- nothing has been

1 filed in the well file since then?

2 A. No.

3 Q. And is that document Exhibit D?

4 A. Yes, it is.

5 Q. Let's move to the next well, the State Wes Number

6 1. What did the Commission order require Mr. Baxter to do
7 for this well?

8 A. Also to plug and abandon by November 15th of
9 2003.

10 Q. Did he do that?

11 A. No.

12 Q. What is the most recent filing in the well file
13 for this well?

14 A. It is a C-104 that was filed on February 1st of
15 1993, and that was a request for an allowable.

16 Q. So that was about 10 years before the Commission
17 Order was issued?

18 A. Yes.

19 Q. And nothing filed since then?

20 A. Nothing has been filed.

21 Q. And that's Exhibit E?

22 A. Yes, ma'am.

23 Q. Moving to the next well, the Wallen Fee Number 1,
24 what did the order require?

25 A. To properly complete and file with the Division

1 the remaining documentation concerning the plugging and
2 abandonment of that well, and that would be by November
3 15th of 2003.

4 Q. Did Mr. Baxter do that?

5 A. No, he didn't.

6 Q. What's the most recent filing in the well file
7 for this well?

8 A. That is also a C-103 showing a plugging and
9 abandonment, and that was on November 13th of '02.

10 Q. Is that Exhibit Number F?

11 A. Yes, it is.

12 Q. And that's the last filing in the well file?

13 A. Yes, it is.

14 Q. Let's move to the Wallen Fee Number 2. What did
15 the order require?

16 A. Same as the Wallen Number 1, properly complete
17 and file with the Division the remaining documentation
18 concerning plugging and abandonment.

19 Q. Did Mr. Baxter do that?

20 A. No.

21 Q. What is the most recent filing in the well file?

22 A. A C-103 on November 13th of '02.

23 Q. Is that Exhibit Number G?

24 A. Yes, it is.

25 Q. And this again was filed before the Commission

1 order?

2 A. Yes.

3 Q. So to summarize, all of the wells that were
4 subject to the Commission order are in the same state they
5 were in when the order was issued?

6 A. Yes, they are.

7 Q. Although two are now with a different operator?

8 A. Yes.

9 Q. The wells operated by Mr. Baxter, we have seen no
10 action at all on those wells?

11 A. No.

12 Q. Not a single document filed in the well files as
13 to any of those wells?

14 A. Nothing.

15 Q. After the Commission order was issued, did the
16 OCD have any contact with Mr. Baxter or his attorney
17 regarding efforts to comply with the order?

18 A. Yes, the OCD was sent a letter dated April 7th of
19 2004, stating that Mr. Baxter would be working with some
20 plugging company and that they would hope to have those
21 wells, the remaining wells, plugged within 90 days of that
22 letter, so that would have been in early July of 2004.

23 Q. Is that letter Exhibit H?

24 A. Yes, it is.

25 Q. Were they able to plug the wells by the date

1 indicated?

2 A. No.

3 Q. I note that this letter also indicates that --
4 the writer of this letter was Mr. Carr, Mr. Baxter's
5 attorney?

6 A. Yes, it was.

7 Q. And the letter indicates that Mr. Baxter believed
8 there were five wells that were already in compliance. Do
9 you agree with that statement?

10 A. No, I don't.

11 Q. Is the OCD taking any action regarding the five
12 wells still operated by Mr. Baxter?

13 A. Yes, we are. We currently have a contract to
14 plug those wells, or two of those wells, and that contract
15 begins next week.

16 Q. Do you have a cost estimate for how much it's
17 going to cost to plug those two wells?

18 A. Yes, it's \$87,860.

19 Q. Is Exhibit I an example of the cost estimates?

20 A. Yes, it is.

21 Q. Could you tell us who prepares these cost
22 estimates?

23 A. They're usually prepared by someone within the
24 Division or within the OCD's District Office that those
25 wells are going to be plugged. In this case it was the

1 Hobbs office, and it was Billy Prichard who put together
2 the estimate.

3 Q. What are these estimates used for?

4 A. To determine the cost of actual plugging of a
5 well, and to determine whether or not the bonding would be
6 adequate to cover that.

7 Q. Is the bonding adequate in this case?

8 A. No, it's not.

9 Q. How much financial assurance does Mr. Baxter
10 have?

11 A. \$50,000.

12 Q. What are you seeking in this action?

13 A. We're seeking two things. We're seeking
14 penalties as asked for in the previous case, or in this
15 case, and that penalty would be \$5000, \$1000 for each well
16 that remains out of compliance from the original order.

17 Q. That's what you're recommending --

18 A. That's what --

19 Q. -- to the Commission?

20 A. -- we're recommending. And secondly, we're
21 asking for a finding that the operator is in violation of
22 the order requiring corrective action in order to use that
23 for implementation of Rule 40.

24 Q. Is Mr. Baxter in compliance with Rule 40 right
25 now?

1 A. Yes, he is.

2 Q. How can that be, if he has every single well out
3 of compliance and he's in violation of a Commission order?

4 A. Currently he has five wells, and two of them have
5 not been plugged, temporarily abandoned, or whatever, as
6 required of Rule 40. But the other three are in compliance
7 with Rule 40, so he isn't out of compliance with Rule 40.

8 Q. So with only two wells appearing on the inactive
9 well list as having unplugged wellbores, he's within the
10 tolerance level for Rule 40?

11 A. Yes, he is.

12 Q. If an order is issued finding him in violation of
13 an order requiring corrective action, will that mean that
14 he is no longer in compliance with Rule 40?

15 A. Yes, that would take him out of compliance with
16 Rule 40.

17 Q. Now if the OCD goes ahead and plugs these two
18 wells, what could Mr. Baxter do to ever comply with this
19 order. How could he come back into compliance?

20 A. Well, he could petition the Commission to be
21 reinstated as an operator within the state.

22 Q. What would you like to see him do before the
23 Commission reinstated him?

24 A. We would like to see that he cover the remaining
25 dollar amount from the plugging of those wells that wasn't

1 covered by the financial assurance.

2 MS. MacQUESTEN: I would move for admission of
3 Exhibits A through I.

4 CHAIRMAN FESMIRE: Any objection, Mr. Carr?

5 MR. CARR: No objection.

6 CHAIRMAN FESMIRE: Commissioners?

7 COMMISSIONER BAILEY: No.

8 COMMISSIONER OLSON: (Shakes head)

9 CHAIRMAN FESMIRE: State Exhibits A through --
10 Oil Conservation Division Exhibits A through I are
11 admitted.

12 MS. MacQUESTEN: And that concludes the OCD's
13 case.

14 CHAIRMAN FESMIRE: Cross-examination, Mr. Carr?

15 MR. CARR: Just a couple of questions.

16 CROSS-EXAMINATION

17 BY MR. CARR:

18 Q. The Hobbs District Office has estimated the cost
19 of plugging these wells?

20 A. Yes, sir.

21 Q. What was your recommendation as to what Mr.
22 Baxter should do to come back into compliance at a later
23 date? What would he need to do?

24 A. He would need to, I guess, file a petition with
25 the Commission in order to come back and agree to pay the

1 balance of the cost to plug those wells.

2 Q. When you say the balance of the cost to plug
3 those wells, what would that be? That would be over and
4 above the bonded amount? Is that what you're talking
5 about?

6 A. Yes, sir, and that would be approximately
7 \$37,860.

8 Q. Is the \$87,000 figure -- has that been agreed to
9 in any contract with plugging company? Is that the source
10 of that number, or does it remain an estimate?

11 A. I believe that's part of the contract now.

12 MR. CARR: That's all I have. Thank you.

13 CHAIRMAN FESMIRE: Commissioner Bailey?

14 EXAMINATION

15 BY COMMISSIONER BAILEY:

16 Q. I'm a little confused. Is the \$5000 penalty
17 included in this \$87,860, or is that on top of?

18 A. That's on top of that.

19 COMMISSIONER BAILEY: Okay, that's all I had.

20 CHAIRMAN FESMIRE: Commissioner Olson?

21 EXAMINATION

22 BY COMMISSIONER OLSON:

23 Q. Yeah, I just wanted to clarify. That was -- you
24 said it was \$5000 per well you were recommending?

25 A. No, sir, \$1000 per well. Five wells for a total

1 of \$5000.

2 Q. I guess just -- what was the basis for picking
3 \$1000 per well?

4 A. That's pretty much what we're limited to in terms
5 of a fine. We could do it on a daily basis, but we didn't
6 think that that was necessary.

7 Q. You also mentioned that two of the wells were
8 sold to another company for noncompliance. Is there action
9 being taken on -- with that company, then, for those two
10 wells?

11 A. Not at this time, but we plan to.

12 COMMISSIONER OLSON: Okay, that's all I had.

13 CHAIRMAN FESMIRE: I don't have any questions.

14 Redirect, Ms. MacQuesten?

15 MS. MacQUESTEN: Yes.

16 REDIRECT EXAMINATION

17 BY MS. MacQUESTEN:

18 Q. Mr. Sanchez, the figure that you quoted was the
19 estimated cost of plugging the two wells that require the
20 wellbore plugged?

21 A. Yes, it was.

22 Q. And if we sought reimbursement from Mr. Baxter,
23 we would be seeking whatever the actual cost to the OCD was
24 to plug those wells, minus the \$50,000 bond?

25 A. Yes.

1 Q. The cost estimate that you gave us was just for
2 plugging the two wellbores, though; it did not include the
3 cost of cleaning up the three other wells that are under
4 Mr. Baxter's --

5 A. That is right, that is correct.

6 Q. So it's -- we have not yet contracted to clean up
7 those wells; is that true?

8 A. No, we have not.

9 Q. So it's possible that the reimbursement that we
10 would seek would be higher in that it would include
11 whatever cost is involved in cleaning up those three wells?

12 A. That's right.

13 MS. MacQUESTEN: Thank you, that's all.

14 CHAIRMAN FESMIRE: Are there any other questions
15 of this witness?

16 Ms. MacQuesten, have you prepared an order?

17 MS. MacQUESTEN: I haven't, but I can if you
18 would like.

19 CHAIRMAN FESMIRE: Okay. Is there any discussion
20 from the Commissioners --

21 MR. CARR: May it please the Commission, I do
22 have a statement.

23 CHAIRMAN FESMIRE: Oh, I'm sorry, sir, I -- Would
24 you like to read it now?

25 MR. CARR: Following receipt of notice of today's

1 hearing we attempted to contact Mr. Baxter, and several
2 days ago he did call.

3 He has sent to me a letter that he asked be
4 presented to the Commission, and it is a letter signed by
5 Ben C. Montgomery who's president of BC&M Associates [sic],
6 which is a plugging company, and in this Mr. Montgomery
7 indicates that they have a rig available and would be --
8 within 30 days they would start plugging the State WS
9 Number 1 and the State FP Number 1.

10 And it's got estimates that are significantly
11 lower in this letter -- I might as well give this to you --
12 than what has been testified to by Mr. Sanchez.

13 But in any event, I also have discussed with Mr.
14 Baxter the need to clean up these sites, and he has
15 indicated that within 60 days he can do that. I told him I
16 would deliver his letter to you, and have done that.

17 I also have discussed this with Ms. MacQuesten
18 and, if anyone with the Commission should decide, would be
19 willing to talk with Mr. Brooks, whoever is appropriate,
20 concerning reimbursement of costs to the Commission. Mr.
21 Baxter has indicated to me that he does now have the funds
22 to do this.

23 CHAIRMAN FESMIRE: Mr. Carr, Mr. Baxter hasn't
24 done this in -- When was the order? 2004? April of 2004?

25 MR. CARR: 2003.

1 CHAIRMAN FESMIRE: Okay. And I understand that
2 he -- from this letter, he does have a turnkey bid on
3 these?

4 MR. CARR: Well, if you look at the letter, Mr.
5 Chairman, this is the amount, but it does indicate that
6 it's on a cost-plus basis, down later in the letter. So I
7 think these are initial costs.

8 And I can't tell you beyond just the four corners
9 of the letter and my one conversation with Mr. Baxter where
10 he stands on this.

11 But I was his lawyer in 2003, and I think I still
12 am today.

13 CHAIRMAN FESMIRE: I was going to ask you a
14 rather delicate question: Has he paid his bill lately?

15 MR. CARR: Mr. Chairman --

16 CHAIRMAN FESMIRE: But I won't, sir.

17 (Laughter)

18 MR. CARR: Mr. Chairman, I will tell you, which
19 may speak poorly of me, I don't know.

20 (Laughter)

21 MR. CARR: I assume so.

22 CHAIRMAN FESMIRE: Okay. Is there --

23 COMMISSIONER OLSON: Mr. Chairman, I just have
24 one more question, I see, since we've still got the witness
25 sitting here.

FURTHER EXAMINATION

BY COMMISSIONER OLSON:

Q. I was noticing on the C-103s that it talks about the -- a couple of these as being the wellbore plug, but the bond retained till the surface restoration complete. Does the estimates on the plugging include surface restoration as well?

A. I don't -- I don't know the answer to that question. I'm not sure.

MS. MacQUESTEN: Mr. Commissioner, I can address that, I think. The contracts we do with the bonding -- with the plugging companies included minor surface restoration such as removing junk and so forth. If there's contamination at the site, that is not included in our plugging contracts and that would be additional.

Q. (By Commissioner Olson) Was there any indication of surface contamination at these sites that has to be addressed? Do you know?

A. From talking to the staff at the Hobbs Office, not anything that would really be bad in terms of cleanup. It's mainly the equipment on site.

COMMISSIONER OLSON: Okay, that's all I have. Thank you.

CHAIRMAN FESMIRE: Would the Commission care to address this now, or would you rather deliberate later?

1 COMMISSIONER OLSON: I'd rather deal with it now.

2 COMMISSIONER BAILEY: I'm prepared.

3 CHAIRMAN FESMIRE: I'm -- In spite of Mr.

4 Baxter's letter, I think he's had sufficient time to do
5 this in the past. There's no -- if these were solid
6 turnkey bids, I would be inclined to say give him a chance.
7 But they're subject to the same risks the OCD would take,
8 and the difference in cost to plug may or may not be real.
9 If it were up to me, I'd ask Ms. MacQuesten to present an
10 order requiring Mr. Baxter to perform as per her motion.

11 Comments from the Commission?

12 COMMISSIONER BAILEY: I agree with you. The man
13 has had ample time to get these done. The order was very
14 clear as to what was required, a last minute fax indicating
15 that an attempt would be made to plug the wells, but it's
16 not even a complete description of the work to be done. I
17 support Ms. MacQuesten's order.

18 CHAIRMAN FESMIRE: Commissioner Olson?

19 COMMISSIONER OLSON: Yeah, I think I'd agree, I
20 think they've had -- Mr. Baxter has had three years at this
21 point to be able to get these plugged. It seems like
22 that's adequate time. I don't think we really -- based on
23 that noncompliance, I don't think we have any indication
24 that he may actually do the work that he's proposing here,
25 since he has proposed to do it before. So I think I would

1 agree that OCD counsel could prepare an order, and then for
2 us to adopt their recommendations.

3 CHAIRMAN FESMIRE: Ms. MacQuesten, after these
4 two hearings, we have what's probably going to be a pretty
5 significant amount of time to do the deliberation on the
6 potash cases. Would you be able to prepare an order
7 pursuant to your motion that we could address at the end of
8 those deliberations?

9 MS. MacQUESTEN: Yes, I believe so.

10 CHAIRMAN FESMIRE: Okay. The Chair would
11 entertain a motion to that effect, if the Commission
12 would --

13 COMMISSIONER OLSON: So moved.

14 COMMISSIONER BAILEY: Second.

15 CHAIRMAN FESMIRE: All those in favor?

16 COMMISSIONER BAILEY: Aye.

17 COMMISSIONER OLSON: Aye.

18 CHAIRMAN FESMIRE: Let the record reflect that
19 the motion has passed and that the OCD counsel will draft
20 an order pursuant to her motion and present it to the
21 Commission later in the day.

22 MS. MacQUESTEN: May I ask, does the Commission
23 wish to include a penalty or not?

24 CHAIRMAN FESMIRE: That was my impression.
25 Commissioner Bailey?

1 COMMISSIONER BAILEY: That was the testimony, I
2 agree with it.

3 COMMISSIONER OLSON: Yes, that's mine as well,
4 and I'd like to say I thought the Division was quite
5 generous in their finding.

6 MS. MacQUESTEN: We're more than willing to yield
7 to the Commission in the amount of the penalty.

8 (Laughter)

9 COMMISSIONER OLSON: I think overall, I'd like to
10 see them pay for that remaining cost. That would -- you
11 know, I think that would be -- become an important issue
12 from the State, just to have their plugging fund
13 reimbursed, especially, so maybe they could focus on
14 reimbursing that as well, instead of the penalty that just
15 goes to the general fund anyways.

16 CHAIRMAN FESMIRE: Absolutely. I don't know how
17 we'd get it into the -- if it's not part of the reimbursed
18 costs, though, I'm not sure we could get it into the
19 plugging fund, could we?

20 MS. MacQUESTEN: I don't believe we can. I think
21 it would be treated separately.

22 CHAIRMAN FESMIRE: With that, we will continue
23 Cause Number 12,792 until later in the day, when Ms.
24 MacQuesten will present the Commission with an order.

25 (Off the record at 9:29 a.m.)

1 (The following proceedings had at 12:17 p.m.)

2 CHAIRMAN FESMIRE: The next cause coming before
3 the Commission will be Case Number 12,792. At this time
4 we'll go off the record and wait for the completion of the
5 order.

6 (Off the record at 12:17 p.m.)

7 (The following proceedings had at 12:28 p.m.)

8 CHAIRMAN FESMIRE: Let the record reflect that
9 this is the continuation of Case Number 12,792, the
10 Application of the New Mexico Oil Conservation Division for
11 an order requiring Kelly H. Baxter to properly plug seven
12 wells, imposing civil penalties in the event of failure to
13 comply, authorizing the Division to plug said wells in
14 default of compliance by Kelly H. Baxter or his surety, and
15 ordering a forfeiture of applicable plugging bond, in Lea
16 County, New Mexico.

17 Counsel Bada, is this order pursuant to the
18 request of the Commission and drafted to their
19 specifications?

20 MS. BADA: Yes, it is.

21 CHAIRMAN FESMIRE: Okay. Commissioner Bailey,
22 have you had a chance to look over the order?

23 COMMISSIONER BAILEY: Yes, I have, and I will
24 sign it.

25 CHAIRMAN FESMIRE: Okay, Commissioner Olson, have

1 you had a chance to look over the order?

2 COMMISSIONER OLSON: Yes, I've reviewed it as
3 well, and it appears to reflect our deliberations.

4 CHAIRMAN FESMIRE: Okay, I too have reviewed it,
5 and it appears to reflect the wishes of the Commission.

6 At this time the Chair would entertain a motion
7 to adopt -- adopt? -- adopt this order and -- as
8 representing the will of the Commission.

9 COMMISSIONER BAILEY: So moved.

10 COMMISSIONER OLSON: Second.

11 CHAIRMAN FESMIRE: All those in favor?

12 COMMISSIONER BAILEY: Aye.

13 COMMISSIONER OLSON: Aye.

14 CHAIRMAN FESMIRE: Aye. Let the record reflect
15 that the motion to adopt and sign this order has passed
16 unanimously. I'll sign it and transmit it to Commissioner
17 Bailey, and transmit to Commissioner Olson, and let the
18 record reflect that the order has been signed by all
19 Commissioners present and that all three Commissioners were
20 present.

21 Is there any other business before the
22 Commission?

23 With that, the Chair would entertain a motion to
24 adjourn for this date.

25 COMMISSIONER BAILEY: I move we adjourn.

1 COMMISSIONER OLSON: Second.

2 CHAIRMAN FESMIRE: All those in favor?

3 COMMISSIONER BAILEY: Aye.

4 COMMISSIONER OLSON: Aye.

5 CHAIRMAN FESMIRE: Let the record reflect that
6 the Commission adjourned at 12:30 p.m.

7 (Thereupon, these proceedings were concluded at
8 12:30 p.m.)

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CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Commission was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL June 17th, 2006.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 16th, 2006