

**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. 12862

**IN THE MATTER OF THE APPLICATION OF
THE NEW MEXICO OIL CONSERVATION DIVISION
FOR AN ORDER REQUIRING N. DALE NICHOLS
TO BRING EIGHT (8) WELLS INTO COMPLIANCE
WITH RULE 201(B) AND ASSESSING APPROPRIATE
CIVIL PENALTIES; CHAVES COUNTY, NEW MEXICO.**

ORDER NO. R-11859-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 and March 20, 2003 at Santa Fe, New Mexico on application of the Oil Conservation Division (hereinafter referred to as "the Division") for an order requiring N. Dale Nichols (hereinafter referred to as "the operator" or as "N. Dale Nichols") to bring eight (8) wells in Chavez County, New Mexico into compliance with Rule 201(B), 19.15.4.201(B) NMAC, and assessing civil penalties, and the Commission, having carefully considered the evidence, the pleadings and other materials submitted by the parties hereto now, on this 7th day of April, 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 eight (8) wells in Chavez County, New Mexico operated by N. Dale Nichols:
 - (a) the Lewis Neff Well No. 4 (**API No. 30-005-00224**), located 330 feet from the South line and 2310 feet from the East line (Unit O) of Section 32, Township 7 South, Range 27 East, NMPM (hereinafter referred to as "the Lewis Neff No. 4");

(b) the Lewis Neff Well No. 3 (API No. 30-005-10432), located 660 feet from the South and East lines (Unit P) of Section 32, Township 7 South, Range 27 East, NMPM (hereinafter referred to as "the Lewis Neff No. 3");

(c) the Alma Shields Well No. 7 (API No. 30-005-62567), located 990 feet from the South line and 1650 feet from the West line (Unit N) of Section 33, Township 7 South, Range 27 East, NMPM (hereinafter referred to as "the Alma Shields No. 7");

(d) the Avalanche Journal State Well No. 4 (API No. 30-005-10471), located 2310 feet from the South line and 1650 feet from the West line (Unit K) of Section 4, Township 8 South, Range 27 East, NMPM (hereinafter referred to as "the Avalanche Journal No. 4");

(e) the Standard State Well No. 3 (API No. 30-005-10429), located 990 feet from the North line and 1650 feet from the East line (Lot 2/Unit B) of Section 5, Township 8 South, Range 27 East, NMPM (hereinafter referred to as "the Standard State No. 3");

(f) the Standard State Well No. 6-Y (API No. 30-005-10513), located 2310 feet from the North and East lines (Unit G) of Section 5, Township 8 South, Range 27 East, NMPM (hereinafter referred to as "the Standard State No. 6-Y");

(g) the State "A" Well No. 2 (API No. 30-005-00232), located 660 feet from the South and East lines (Unit P) of Section 7, Township 8 South, Range 27 East, NMPM (hereinafter referred to as "the State "A" No. 2"); and

(h) the Lynx Well No. 1 (API No. 30-005-62160), located 1815 feet from the North line and 1980 feet from the East line (Unit G) of Section 19, Township 8 South, Range 29 East, NMPM (hereinafter referred to as "the Lynx Well No. 1").

4. In this matter, the Division originally sought an order directing the operator to bring all of the above-described wells into compliance with Rule 201(B) either by restoring the wells to production or other Division-approved beneficial use, properly plugging and abandoning the wells in accordance with Rule 202.B (19.15.4.202(B) NMAC), or obtaining permission to maintain the wells in temporary abandonment status in accordance with Rule 203 (19.15.4.203 NMAC).

5. However, since the application was filed, the operator has brought all of the wells except the Lynx Well No. 1 into compliance with the rules and regulations of the Division. The Division still seeks a compliance order concerning the Lynx Well No. 1, and also seeks imposition of civil penalties based upon the failure of the operator to comply with the rules and regulations of the Division when first notified of the violations.

6. The Division's filing, insofar as it related to the Lynx Well No. 1, was mistakenly severed and dismissed during the Division's proceedings upon the belief that production from the well had resumed; as the evidence described herein indicates that production from the well has not in fact resumed, it will also be considered here.

7. The Division indicated during the hearing of this matter that notice concerning the Alma Shields No. 7 was defective, and notes that the Division's application concerning this well was dismissed and is not before the Commission. This well will not be considered here and the Division's dismissal of the application insofar as it pertains to this well should be affirmed.

8. The Division appeared through its counsel and presented evidence and the testimony of several witnesses. The operator appeared through its counsel and presented evidence and testimony.

9. The Division's filing in this matter originates from a project of the Division referred to as the "Inactive Well Project." The Inactive Well 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.

10. Rule 201 specifies that any well that is no longer usable for beneficial purposes, 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).

11. N. Dale Nichols was first notified pursuant to the Inactive Well Project that the wells described above were inactive and therefore subject to the provision of Rule 201(B) on May 11, 2000. The operator did not respond to the May 11, 2000 letter, and on September 8, 2000, the Division directed the operator to bring the wells into compliance within sixty days or submit a plan to do so. N. Dale Nichols, a principal of the operator, visited the Artesia District Office on December 23, 2000 and proposed such a plan, which was submitted to the Division in written form on January 8, 2001. The Artesia District Office approved the plan and informed the operator that it must complete the plan no later than January 1, 2002.

12. As noted, of the group of seven wells before the Commission in this matter, one well remains out of compliance with Rule 201(B), the Lynx Well No. 1. The operator has reported zero production of oil or gas from the well since 1997. It appears

therefore that the well has been continuously inactive for over five years in violation of Rule 201(B). *See* 19.15.4.201(B)(B)(1) NMAC. The operator filed a Notice of Intent to plug and abandon the well on November 28, 2001, and it appears from this filing that the well is no longer usable for beneficial purposes. *See* 19.15.4.201(B)(2) NMAC.

13. The remaining wells appear to be in compliance with Rule 201(B) at this time, although they were not compliance for a substantial amount of time. The operator was notified on May 11, 2000 that each well was inactive and needed to be addressed and had previously been notified on November 5, 1997 that the Lewis Neff No. 3 was inactive and should be addressed.

14. In its January 8, 2001 correspondence to the Division, the operator promised to bring all the wells back into compliance by particular dates; in each case, the operator failed to meet deadlines it had proposed and agreed to. For example, the operator proposed to restore production from the Avalanche Journal No. 4 no later than May 1, 2001, but production was not restored until July 2002. The operator proposed to temporarily abandon the Lewis Neff No. 3 no later than June 15, 2001, but the well was not placed in temporarily abandoned status until December 3, 2002. The operator proposed to restore production from the Lewis Neff No. 4 no later than October 1, 2001, but production was not restored until April 2, 2002. The operator proposed to restore production from the Standard State No. 3 no later than April 1, 2001, but production was not restored until August or September 2002. The operator proposed to plug and abandon the Standard State No. 6-Y no later than September 1, 2001, but the well was not plugged and abandoned until June 3, 2002 (the Division was not notified that the well had been plugged and abandoned until after October 28 or 29, 2002, and it was subsequently inspected by the Division and the plugging and abandonment approved on December 17, 2002). The operator proposed to restore production from the State "A" No. 2 no later than August 1, 2001, but production was not restored until April 2002.

15. The operator presented testimony that it is a father-son operation and both father and son have been ill during the past one and one-half years, and these health problems have been the cause of the delay in responding to the Division's directives. The operator commented that it has made a good faith effort to bring the wells into compliance within a reasonable time, and its good faith is demonstrated by the work performed.

16. While the Commission appreciates the operator's efforts to comply with the directives of the Division and the Inactive Well Project and certainly empathizes with the health problems suffered by its principals, the Commission must also consider the potential threat to fresh water and other strata posed by inactive wells. It is important that wells be properly serviced and be plugged and abandoned promptly when no longer useful for the production of oil or gas.

17. The Lynx Well No. 1 is of particular concern. As noted, the well is the only well out of compliance and the operator made an unsuccessful attempt in 2001 to plug and abandon the well. The operator's attorney stated during the hearing of this matter that the well suffered serious mechanical problems during the plugging attempt and the casing collapsed preventing the tubing from being removed, which of course is necessary

before the well can be properly plugged and abandoned. He also stated that a significant amount of additional work will be required to remedy the situation including fishing the tubing from the well, milling and swedging the casing, and taking other measures to ensure that tools can be taken to the bottom of the well to facilitate plugging. The Division's witness testified that a packer is stuck in the well and 31 joints of tubing are cut off and remain in the well above the packer, but the casing has not collapsed making removal of the tubing and plugging comparatively easier.

18. To further confuse the situation, the operator's witness presented a copy of a C-103 (Exhibit N-2) that had been prepared and submitted to the Division just prior to the hearing. From this document, the operator seemed to argue that the Lynx Well No. 1 has in fact been plugged and abandoned except for placement of a dry hole marker and surface clean up. But, Exhibit N-2 is inherently inconsistent. The document seems to be a notice of intent to plug and abandon the well, but also seems to indicate that the well has already been plugged and abandoned. A Division witness testified that the only plugging and abandonment procedure that had been approved by the Division was the procedure that had been unsuccessful in the 2001 attempt, and no plugging procedure had been approved to remedy the serious mechanical problems resulting from the 2001 plugging attempt. No evidence was presented concerning how the serious mechanical problem had been resolved, and the Division is presently unable to determine whether the well presents a danger to fresh water and other strata. Questions concerning the present status of the well must be resolved promptly.

19. The Lynx Well No. 1 is not in compliance with Rules 201(B), 202 and/or 203 and a compliance order should be issued with respect to this well.

20. Moreover, it appears from the foregoing that serious violations of Rule 201(B) have occurred, and all seven wells were out of compliance with Rule 201(B) for many years each, and that the operator was notified repeatedly about the violations and the violations persisted.

21. On this basis, the Division has requested imposition of a civil penalty in the amount of fifteen thousand dollars (\$15,000) in this matter, based upon the failure of the operator to bring the wells into compliance within a reasonable time of being informed of the situation. The Division proposes that a reasonable civil penalty for enforcement cases under the Inactive Well Project should be one thousand dollars per year from the date an operator is notified that a particular well is inactive until the date the well is actually brought into compliance.

22. Thus, the Division urges that an appropriate penalty should be computed from the date the operator was first notified that the wells were out of compliance (May 11, 2000 for all the wells except for the Lewis Neff No. 3, where the operator was notified that it was inactive in 1997) to the date when the wells were actually brought into compliance. Accordingly, the Division recommends a civil penalty of \$2,000 for the Avalanche Journal No. 4, \$5,000 for the Lewis Neff No. 3, \$1,000 for the Lewis Neff No. 4, \$2,000 for the Lynx Well No. 1, \$2,000 for the Standard State No. 3, \$2,000 for the Standard State No. 6-Y, and \$1,000 for the State "A" No. 2.

23. The Oil and Gas Act, NMSA § 70-2-31(A), provides for a civil penalty up to \$1,000 per violation for knowingly or willfully violating any provision of the Oil and Gas Act or regulations of the Oil Conservation Division:

Any person who knowingly and willfully violates any provision of the Oil and Gas Act or any provision of any rule or order issued pursuant to that act shall be subject to a civil penalty of not more than one thousand dollars (\$1,000) for each violation.

24. It is apparent that the operator knowingly and willfully failed to comply with Rule 201(B) by permitting its wells to become inactive for more than five years each, disregarding the directives of the Division, and failing to act consistent with the work plan the operator proposed. A civil penalty should therefore be assessed against N. Dale Nichols in the amount of fifteen thousand dollars (\$15,000).

25. The overarching goal of the Inactive Well Program is to achieve compliance with the rules and regulations of the Division. Therefore, the civil penalty referred to in the previous paragraph should be suspended if N. Dale Nichols brings the Lynx Well No. 1 into full compliance with rules and regulations of the Division no later than November 15, 2003 (including satisfying the Artesia District Office that the well has been in fact plugged and abandoned, that the plugging and abandonment was done properly and in a manner that will assure protection of fresh water, that a proper marker has been set, that the surface is cleaned-up and remediated as appropriate, and that any required documents are filed and approved).

IT IS THEREFORE ORDERED THAT:

1. The Application insofar as it relates to the Alma Shields No. 7 shall be and hereby is dismissed.

2. The operator, N. Dale Nichols of Midland, Texas is hereby ordered, no later than November 15, 2003, to bring the Lynx Well No. 1 into compliance with the rules and regulations of the Division, particularly Rule 201(B)(19.16.4.201(B) NMAC), Rule 202 (19.15.4.202 NMAC) and Rule 203 (19.15.4.203 NMAC). If the well has already been plugged and abandoned, the operator shall satisfy the Artesia District Office that the plugging and abandonment was done properly and in a manner that will assure protection of fresh water, that a proper marker has been set and that any required document is filed and approved. If the well has not been plugged and abandoned, the operator is ordered to comply with Rule 202(B) (19.15.4.202 NMAC) and satisfy the Artesia District Office that the plugging procedure chosen will fully resolve the mechanical problems present in the well. The operator shall have one year after completion of plugging operations to fill all pits, level the location, remove deadmen and other junk and take other measures as Directed by the Division to restore the location to a safe and clean condition as provided in Rule 202(B)(3) (19.15.4.202(B)(3) NMAC).

3. If the operator fails or refuses to bring the Lynx Well No. 1 into compliance as described in the previous paragraph by November 15, 2003, the supervisor of the Artesia District Office of the Division and Division legal counsel shall commence proceedings to

order that the well be permanently plugged and abandoned by the operator or by the Division and forfeit the financial assurance, if any, provided by the operator pursuant to NMSA 1978, § 70-2-14 and Division Rule 101 (19.15.3.101 NMAC), or take such other and further action as they appropriate.

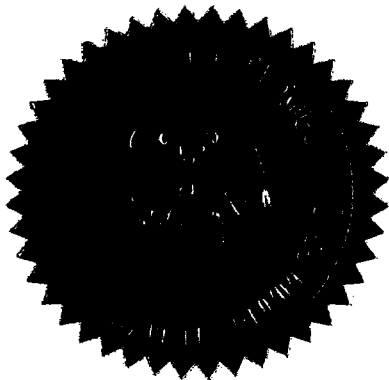
4. An administrative penalty shall be and hereby is assessed against N. Dale Nichols in this matter in the amount of fifteen thousand dollars (\$15,000.00).

5. The civil penalty referred to in the previous paragraph shall be suspended if N. Dale Nichols brings the Lynx Well No. 1 into compliance with the rules and regulations of the Division in accordance with decretal paragraph 2 no later than November 15, 2003.

6. If not suspended by operation of the previous paragraph, the civil penalty herein assessed shall be paid no later than December 15, 2003, by certified or cashier's check made payable to the "New Mexico Oil Conservation Division," and mailed or hand-delivered to the New Mexico Oil Conservation Division, Attention: Lori Wrotenbery, Director, 1220 South St. Francis Drive, Santa Fe, New Mexico 87505.

8. Jurisdiction of this case is retained for the entry of such further orders as the Commission may deem necessary.

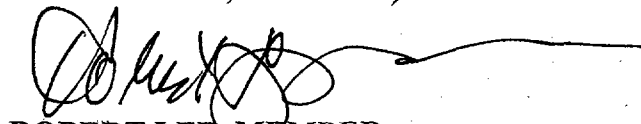
DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.



SEAL

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION


JAMI BAILEY, MEMBER


ROBERT LEE, MEMBER


LORI WROTENBERY, CHAIR