

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 PROPERLY)	
PLUG SEVEN WELLS, IMPOSING CIVIL)	
PENALTIES IN 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)	

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Oil Conservation Division

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

BEFORE: LORI WROTENBERY, CHAIRMAN
JAMI BAILEY, COMMISSIONER
ROBERT LEE, COMMISSIONER

February 27th, 2003

Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Commission, LORI WROTENBERY, Chairman, on Thursday, February 27th, 2003, 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
(505) 989-9317

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 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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FOR THE DIVISION:

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FOR KELLY H. BAXTER:

HOLLAND & HART, L.L.P., and CAMPBELL & CARR
110 N. Guadalupe, Suite 1
P.O. Box 2208
Santa Fe, New Mexico 87504-2208
By: WILLIAM F. CARR

* * *

ALSO PRESENT:

PATRICK LYONS
Land Commissioner
State of New Mexico

* * *

1 WHEREUPON, the following proceedings were had at
2 9:21 a.m.:

3 CHAIRMAN WROTENBERY: And that leaves us with two
4 cases related to inactive wells, and we'll start with Case
5 12,792, the Application of the New Mexico Oil Conservation
6 Division for an order requiring Kelly H. Baxter to properly
7 plug seven wells, imposing civil penalties in the event of
8 failure to comply, authorizing the Division to plug said
9 wells in default of compliance by Kelly H. Baxter or his
10 surety, and ordering a forfeiture of applicable plugging
11 bond, Lea County, New Mexico.

12 I'll call for appearances.

13 MR. BROOKS: Madame Chairman, honorable
14 Commissioners, I'm David Brooks of the Energy, Minerals and
15 Natural Resources Department of the State of New Mexico,
16 appearing for the New Mexico Oil Conservation Division.

17 I have three witnesses. Two of them are up in
18 the office, one of them is going to appear by telephone,
19 and I would accordingly request a brief continuance so the
20 Commission can set up the conference telephone equipment.

21 CHAIRMAN WROTENBERY: Okay, Mr. Brooks. Would it
22 be helpful to take up the next case first, before we --

23 MR. BROOKS: Well, the next case will not require
24 the conference telephone equipment if that would be
25 helpful, yes.

1 CHAIRMAN WROTENBERY: Well, why don't we do that,
2 then, go ahead and handle the next case and then come back
3 -- I'm sorry, Mr. Carr --

4 MR. CARR: No problem.

5 CHAIRMAN WROTENBERY: -- come back to the Kelly
6 H. Baxter case?

7 (Off the record at 9:22 a.m.)

8 (The following proceedings had at 10:31 a.m.)

9 CHAIRMAN WROTENBERY: Okay, are we ready to get
10 started again? Great.

11 Then we'll go back, then, to Case 12,792
12 concerning Kelly H. Baxter.

13 MR. BROOKS: Madame Chairman, honorable
14 Commissioners, I'm David Brooks, Energy, Minerals and
15 Natural Resources Department, appearing for the New Mexico
16 Oil Conservation Division.

17 I have three witnesses. Two of them are present
18 in the courtroom, one of them will be appearing by
19 telephone. And I believe the conference phone equipment is
20 set up.

21 CHAIRMAN WROTENBERY: Okay. Would like to come
22 here and get him connected?

23 (Off the record)

24 MR. PRICHARD: Hello?

25 MR. BROOKS: Billy?

1 MR. PRICHARD: Yes.

2 MR. BROOKS: We're here in the Commission room,
3 so you're on the speaker phone.

4 MR. PRICHARD: Okay.

5 CHAIRMAN WROTENBERY: Thank you, Mr. Prichard,
6 for being here. Hold on just a second and we'll get back
7 to you.

8 MR. PRICHARD: Okay.

9 CHAIRMAN WROTENBERY: Mr. Carr?

10 MR. CARR: My name is William F. Carr with the
11 Santa Fe office of Holland and Hart, L.L.P. We represent
12 Kelly H. Baxter in this matter.

13 I do not have a witness.

14 CHAIRMAN WROTENBERY: Thank you, Mr. Carr.

15 Okay, at this point we'll ask all three witnesses
16 to stand and be sworn. Mr. Prichard, that means you need
17 to stand too.

18 MR. PRICHARD: Yes, ma'am.

19 (Thereupon, the witnesses were sworn.)

20 CHAIRMAN WROTENBERY: Okay, thank you.

21 Okay, Mr. Brooks?

22 MR. BROOKS: So that -- Well, we'll examine the
23 other witnesses first. I will call Jane Prouty.

24 MR. BROOKS: Good morning.

25 MS. PROUTY: Good morning.

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JANE E. PROUTY,

the witness herein, after having been first duly sworn upon
her oath, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BROOKS:

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

A. Jane Prouty.

Q. And by whom are you employed?

A. The Oil Conservation Division.

Q. In what capacity?

A. I manage the group that processes the monthly
production reports.

Q. And in what office are you --

A. In Santa Fe.

Q. Call your attention to what has been marked as
OCD Exhibit Number 1, and I will ask you to identify OCD
Exhibit Number 1.

A. Yes, this is what I prepared. It's a report for
specific wells of Kelly H. Baxter, what they have reported
to us on their C-115s for five years.

Q. Now, this exhibit does not show any production
figures, correct?

A. That's correct.

Q. And what does that indicate to you with regard to

1 the wells that are the subject of this exhibit?

2 A. In most cases -- for example, on the first well
3 on the first page -- they have listed this well on their
4 C-115 every month, unless one of them -- looks like every
5 month is there -- through November, 2002. The well was
6 listed with a zero produced and zero injected.

7 But then if you go to the second page and you see
8 the very first well there, the Speight Number 2, this well
9 was not listed on their C-115 at all. So that's the
10 difference between the two types.

11 Q. Okay. Does this exhibit indicate that each of
12 these wells that are indicated here has not produced since
13 prior to 1997 -- or 1998, it looks like?

14 A. Yes, it looks like we didn't have C-115s in 1997
15 for these wells. Possibly Kelly H. Baxter didn't operate
16 those wells at that time. But yes, they have not produced.

17 Q. Okay. Now, at this time I will show you -- I
18 didn't put it up there but here it is, what has been marked
19 as Exhibit Number 27, and I had given you a copy of that
20 exhibit yesterday and asked you to verify the information
21 on that exhibit concerning date of last production. Did
22 you do so?

23 A. Yes.

24 Q. And are the dates of last production reflected on
25 that exhibit correctly.

1 A. You'll have to help me with that. I penciled
2 them in and gave it to you and didn't look at it again.

3 Q. Okay. You --

4 A. Every well was typed correctly except one. I
5 believe this State WES Number 1, I believe you've
6 corrected. It says no reported production there, yes.

7 MR. BROOKS: That is correct. Okay, thank you.

8 I believe some of these wells have been plugged,
9 but I will go into that with Mr. Prichard, so at this time
10 I will tender into evidence OCD Exhibit Number 1.

11 CHAIRMAN WROTENBERY: And Number 27, or just
12 Number 1?

13 MR. BROOKS: No, Number 27 has a bunch of other
14 information that Mr. Prichard will have to verify.

15 CHAIRMAN WROTENBERY: Okay. Any objection to the
16 admission of --

17 MR. CARR: I don't have any objection. I don't
18 have a set of the exhibits, but I assume that these are
19 only limited just to establishing that the wells have not
20 produced for some period of time, and we don't dispute that
21 fact.

22 MR. BROOKS: That is correct. I will furnish you
23 a set of the exhibits right here.

24 MR. CARR: I can probably work without them.

25 CHAIRMAN WROTENBERY: Thank you. OCD Exhibit

1 Number 1 is admitted into evidence.

2 MR. BROOKS: I have nothing further from this
3 witness.

4 CHAIRMAN WROTENBERY: Mr. Carr?

5 MR. CARR: I have no questions.

6 CHAIRMAN WROTENBERY: Commissioners?

7 COMMISSIONER BAILEY: No.

8 COMMISSIONER LEE: (Shakes head)

9 CHAIRMAN WROTENBERY: Thank you for your
10 testimony, Ms. Prouty.

11 MR. BROOKS: Well, call Dorothy Phillips.

12 Good morning.

13 MS. PHILLIPS: Good morning.

14 DOROTHY L. PHILLIPS,

15 the witness herein, after having been first duly sworn upon
16 her oath, was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. BROOKS:

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

20 A. Dorothy Phillips.

21 Q. And by whom are you employed?

22 A. By the New Mexico Oil Conservation Division.

23 Q. And in what capacity?

24 A. I am the plugging bond administrator.

25 Q. Do you maintain the files on the bonds that are

1 furnished by operators to secure their obligation to plug
2 the wells?

3 A. That's correct.

4 Q. Would you look at what has been marked as OCD
5 Exhibit Number 26 and identify it?

6 A. This is a copy of a \$50,000 blanket plugging bond
7 for Kelly -- I believe that's H. Baxter.

8 Q. And who is the surety on that bond?

9 A. Underwriters Indemnity.

10 Q. And what is the number of that bond?

11 A. B03872.

12 Q. Okay. Is this a copy of a bond that would be
13 maintained in your files in the ordinary course of business
14 of the OCD?

15 A. That's correct.

16 MR. BROOKS: We'll offer Exhibit 26.

17 CHAIRMAN WROTENBERY: Any objection?

18 MR. CARR: No objection.

19 CHAIRMAN WROTENBERY: OCD Exhibit Number 26 is
20 admitted into evidence.

21 MR. BROOKS: Pass the witness.

22 MR. CARR: No questions.

23 CHAIRMAN WROTENBERY: Any questions?

24 COMMISSIONER BAILEY: No.

25 COMMISSIONER LEE: (Shakes head)

1 CHAIRMAN WROTENBERY: Thank you very much, Ms.
2 Phillips.

3 MR. BROOKS: Okay, since we have no further cases
4 I would request Ms. Phillips and Ms. Prouty be excused to
5 return to their work.

6 CHAIRMAN WROTENBERY: Thank you.

7 MR. BROOKS: I would at this time request the
8 indulgence of the Commission, if I may go over and sit next
9 to Mr. Carr over here so I can use the microphone and be
10 heard by my witness.

11 CHAIRMAN WROTENBERY: Mr. Carr, any objection?

12 MR. CARR: And also I hope he appreciates the
13 indulgence of Mr. Carr.

14 (Laughter)

15 CHAIRMAN WROTENBERY: Okay, thank you.

16 MR. BROOKS: Good morning, Mr. Prichard.

17 MR. PRICHARD: Good morning.

18 MR. BROOKS: Can you hear me?

19 MR. PRICHARD: Yes, I can hear you fine.

20 CHAIRMAN WROTENBERY: Let me just ask Mr. Brenner
21 if he can hear.

22 COURT REPORTER: Maybe if you could turn it up
23 just a little bit.

24 CHAIRMAN WROTENBERY: Okay, let me turn up the
25 volume here a little bit, Mr. Prichard. Could you test for

1 us here?

2 MR. PRICHARD: Yes, ma'am, what do I need to do?

3 CHAIRMAN WROTENBERY: And that's great, thank
4 you.

5 Okay, Mr. Brooks?

6 BILLY PRICHARD (Present by telephone),
7 the witness herein, after having been first duly sworn upon
8 his oath, was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. BROOKS:

11 Q. Would you state your name, please, for the
12 record, Mr. Prichard?

13 A. Yes, Billy Prichard.

14 Q. By whom are you employed?

15 A. By the New Mexico Oil Conservation Division.

16 Q. And in what capacity?

17 A. I'm a compliance officer.

18 Q. And Mr. Prichard, did I send you a set of
19 exhibits for this hearing by Federal Express?

20 A. Yes, you did, David, and I'm holding them in my
21 hand.

22 Q. And that was going to be my next question, do you
23 have them in front of you?

24 A. Yes, I do, David.

25 Q. Thank you. Now, I'm not going to go through

1 these exhibits one by one, but I'm going to ask you to look
2 at certain of them, and we'll divide them here into two
3 stacks.

4 For the first part I'm going to ask you to look
5 at Exhibits 2, 3, 5, 6, 8, 9, 11, 12, 14, 15, 17, 18, 19,
6 20, 22, 23, 24 -- and that's all in the first package I'm
7 going to ask you this first question about.

8 CHAIRMAN WROTENBERY: Did you get that, Mr.
9 Prichard?

10 THE WITNESS: It was a little quick, but I think
11 I can keep up if we go slow.

12 CHAIRMAN WROTENBERY: Okay, would you like Mr.
13 Brooks to repeat the numbers?

14 THE WITNESS: No, I think if we just go through
15 them, rather than make two stacks I'll just go to that
16 exhibit.

17 CHAIRMAN WROTENBERY: Okay.

18 Q. (By Mr. Brooks) Okay. Exhibits 2 and 3 refer to
19 the State FP Well Number 1?

20 A. Yes, sir.

21 Q. Now, are those -- Well, first of all, let me ask
22 you, and that was the reason I did the two stacks here. My
23 question was going to be, globally, are each of these
24 exhibits that I identified for you copies -- and for
25 summary purposes that's all of the exhibits in the stack

1 with the exception of the plugging procedures and the
2 summary exhibit, Number 27 -- are each of those exhibits
3 copies of documents from the well files maintained in the
4 Hobbs office of the Oil Conservation Division for wells
5 which are identified on those exhibits?

6 A. David, yes, they are. I have gone through all
7 the exhibits, and they are forms maintained by the Hobbs
8 office, District 1.

9 Q. Okay. The purpose of doing that was to avoid
10 having to ask that question separately with regard to each
11 of those wells.

12 Now, there should be an exhibit with regard to
13 each of those wells, and let's start with Exhibit Number 3.
14 Exhibit Number 3 refers to the State FP Well Number 1,
15 correct?

16 A. Yes, it does.

17 Q. Does it identify Kelly H. Baxter as being the
18 present operator of that well?

19 A. Yes, it is.

20 Q. And that shows that he assumed operation of that
21 well, correct?

22 A. That's correct.

23 Q. And who was the former operator? It's usually on
24 there, but I'm not finding it.

25 A. I believe it's Amoco Production Company.

1 Q. Okay. Then let us go to Exhibit Number 6. That
2 refers to the Wallen Fee Well Number 1. Does that show
3 that Kelly H. Baxter is the operator of that well?

4 A. Number 6, yes, it does show Kelly Baxter as the
5 operator of the Wallen Fee Number 1.

6 Q. And who was the previous operator of that well?

7 A. Walter Krug of Wallen Production Company.

8 Q. Okay, Wallen Production Company was actually the
9 operator then, was it not? Mr. Krug signed for it.

10 A. (No response)

11 Q. Then would you go to Exhibit Number 9? That
12 refers to the Wallen Fee Well Number 2, correct?

13 A. Yes, Number 9 refers to the Wallen Fee Number 2.

14 Q. And who does it show to be the operator?

15 A. Kelly H. Baxter.

16 Q. And who does it show was the former operator?

17 A. Wallen Production Company.

18 Q. Okay. Then I'll ask you to go to Exhibit Number
19 15 and ask you, to what well does that relate?

20 A. Number 15 relates to the State WES Number 1.

21 Q. And who does it show to be the operator?

22 A. Kelly H. Baxter.

23 Q. Having assumed operations from whom?

24 A. Pogo Producing Company.

25 Q. Okay. Then let us go on, then, to Exhibit Number

1 20, and to what well does that refer?

2 A. Number 20 refers to the Speight Number 1.

3 Q. And who does it show to be the operator?

4 A. Kelly H. Baxter.

5 Q. And from whom did he assume operations? I'm not
6 sure that's on here, is it?

7 A. It's not on there, David.

8 Q. Okay.

9 A. I think he took it from Newhall Exploration.

10 Q. Okay. Then let us look at Exhibit Number 24. To
11 what well does that relate?

12 A. That relates to the Speight SWD Number 2.

13 Q. And as of what date -- I'm sorry, who does that
14 show to be the operator of that well?

15 A. Earl R. Bruno.

16 Q. That was the former operator.

17 A. Right.

18 Q. Who does it show to have assumed operations?

19 A. Kelly H. Baxter.

20 Q. Okay, thank you. I now call your attention to
21 Exhibits Numbers 4 -- Well, first of all, are you
22 personally familiar with these wells, Mr. Prichard --

23 A. Yes, I am.

24 Q. -- that are the subject of this proceeding?

25 And the wells have been identified in the various

1 exhibits, but the wells we're talking about are the Speight
2 Number 1, the Speight Number, the State FP Number 1, the
3 State 26 Number 1, the Wallen Fee Number 1 and the Wallen
4 Fee Number 2; is that correct?

5 A. Yes.

6 CHAIRMAN WROTENBERY: Did you miss the State WES
7 Number 1?

8 Q. (By Mr. Brooks) Yes, and the State WES Number 1?

9 A. Right.

10 Q. Has any of these wells been plugged since the
11 date of the Division Hearing?

12 A. Yes, they have, the Wallen Fee Number 1 and
13 Number 2 have been plugged and the State 26 Number 1 has
14 been plugged.

15 Q. Okay, that was the Wallen Fee Number 1 -- Which
16 others?

17 A. The Wallen Fee Number 1 and the Wallen Fee Number
18 2 --

19 Q. And one other --

20 A. -- and the State 26 Number 1.

21 Q. The State 26 Number 1?

22 A. Yes.

23 Q. Now, the State FP Number 1, that has not been
24 plugged?

25 A. No, it has not.

1 Q. Does it need to be plugged?

2 A. Yes, it does.

3 Q. The State WES Number 1, that has not been
4 plugged?

5 A. No, it hasn't been plugged.

6 Q. Does it need to be plugged?

7 A. Yes, it needs to be plugged.

8 Q. The Speight Number 1 and the Speight Number 2,
9 those have not been plugged?

10 A. No, they have not been plugged.

11 Q. Do they need to be plugged?

12 A. Yes, they do.

13 Q. Mr. Prichard, have you made some efforts to
14 contact Kelly H. Baxter about these wells?

15 A. Yes, prior to the first hearing I had made
16 several contacts with Kelly to try and get the wells
17 plugged or put back in service.

18 Q. And prior to that hearing you had been unable to
19 get him to do anything, correct?

20 A. Essentially unresponsive.

21 Q. But since that time apparently he has plugged
22 some wells?

23 A. Yes, that's right.

24 Q. Okay. I'll now call your attention to what's
25 been marked as Exhibits Numbers 4, 7 -- well, we're going

1 to have to -- First of all, let's go through them one by
2 one, because there are several wells that have been taken
3 out.

4 Look at Exhibit 4 if you would, please.

5 A. Okay.

6 Q. Is that a plugging procedure prepared by you for
7 the State FP Number 1?

8 A. Yes, it is.

9 Q. If it were followed, in your opinion would the
10 State FP Number 1 be properly plugged and abandoned in
11 accordance with OCD Rules and Regulations?

12 A. Yes, it would.

13 Q. Now we'll pass over the Wallen Fee Number 1
14 because that's already been plugged, pass over the Wallen
15 Fee Number 2 because that also has already been plugged,
16 and the State 26 likewise. And so we'll go on to Exhibit
17 Number 16.

18 Is Exhibit Number 16 a plugging procedure
19 prepared by you for the State WES Number 1?

20 A. Yes, it is.

21 Q. If -- Well, before I ask that question I'll ask
22 you to look at Exhibit Number 21. Is Exhibit Number 21 a
23 copy of the plugging procedure prepared by you for the
24 Speight Well Number 1?

25 A. Just one second, David. Yes, it is.

1 Q. And I'll ask you to look at Exhibit Number 25.
2 Is Exhibit Number 25 a copy of a plugging procedure
3 prepared by you for the Speight Well Number 2?

4 A. Yes, it is.

5 Q. If the State WES Number 1 and the Speight Number
6 1 and the Speight Number 2 were plugged in accordance with
7 Exhibits 16, 21 and 25 respectively, would they be properly
8 plugged and abandoned in accordance with OCD Rules?

9 A. Yes, they would.

10 Q. Now I'll ask you to look at what's been marked as
11 OCD Exhibit Number 27.

12 A. Okay.

13 Q. Ms. Prouty has verified the last reported
14 production for each of the wells as indicated there. Can
15 you verify the remaining information as being accurate
16 historical information about these wells?

17 A. Yes, in a quick review of it everything seems to
18 be true and correct, you know, with our forms.

19 Q. Okay. Now, in regard to the State FP Number 1
20 there was a notice of intent to -- well, in regard to each
21 of these wells there was a notice of intent to temporarily
22 abandon filed 9-5 of '00. Were any of those temporary
23 abandonments actually affected by doing the proper tests
24 and reporting the results?

25 A. No, they weren't. Now, there was some TA work

1 started, and there was some cast-iron bridge plugs set on
2 the Speight Number 1, and attempted to set one on the State
3 FP. They were unable to set the one on the State FP. They
4 did get the one set on the Speight 1, but part of the TA
5 procedure is to pressure test the well for mechanical
6 integrity, and that part was never completed.

7 Q. And with regard to none of these wells was
8 temporary abandonment ever approved, correct?

9 A. That's correct.

10 Q. Okay. Are Exhibits -- Well, I believe we've
11 already stated that these exhibits, the first set of
12 exhibits I asked you about, were from the well files, and
13 the second set were prepared by you.

14 So I will now offer into evidence Exhibits 2
15 through 24 inclusive and 27.

16 MR. CARR: No objection.

17 CHAIRMAN WROTENBERY: Okay, Exhibits 2 through 24
18 and 27 are admitted into evidence.

19 MR. BROOKS: Pass the witness.

20 EXAMINATION

21 BY MR. CARR:

22 Q. Mr. Prichard, this is Bill Carr. In your work as
23 a compliance officer for the Oil Conservation Division do
24 you witness the plugging of wells?

25 A. Yes, I do.

1 Q. Are you familiar with a company called Mayo-Marrs
2 Casing Pulling of Kermit, Texas?

3 A. Yes, I am.

4 Q. In fact, they do work for the State of New Mexico
5 on occasion, do they not?

6 A. Yes, they do.

7 Q. And that is an acceptable service company to use,
8 in your opinion, to plug abandoned wells?

9 A. Yes, it is.

10 Q. Are you also familiar with a company called Basic
11 Energy Services of Odessa, Texas?

12 A. Yes, I am.

13 Q. Would you also feel like they were an acceptable
14 service company to use for the plugging of wells?

15 A. Yes, I would.

16 MR. CARR: Okay, that's all I have. Thank you,
17 Mr. Prichard.

18 CHAIRMAN WROTENBERY: Thank you.

19 Commissioner Bailey?

20 COMMISSIONER BAILEY: I have no questions.

21 CHAIRMAN WROTENBERY: Commissioner Lee?

22 COMMISSIONER LEE: (Shakes head)

23 EXAMINATION

24 BY CHAIRMAN WROTENBERY:

25 Q. Mr. Prichard, just to update, the Exhibit Number

1 27, you had testified that the Wallen Fee Number 1 was
2 P-and-A'd. What was the date that that well was P-and-A'd?

3 A. You know, I don't have the date in front of me.
4 I'd have to go pull the well file.

5 Q. Okay. But you have personal knowledge that --

6 A. Yes, ma'am --

7 Q. -- was P-and-A'd?

8 A. -- I witnessed the plugging of the Wallen B
9 Number 1, and I also witnessed the plugging of the State 26
10 Number 1. Now, I was not there during the plugging of the
11 Wallen State Number 2, but one of the other field reps was,
12 or one of the other compliance officers were.

13 Q. Okay. And this plugging took place sometime in
14 the last couple of months; is that --

15 A. Yes, ma'am. More like the last four months.

16 Q. Okay. And you testified that all of these wells
17 need to be plugged, and I was just curious why you are
18 testifying that they need to be plugged. Could it also be
19 that they could be tested and temporarily abandoned or
20 brought back into production and through that --

21 A. Yes, ma'am.

22 Q. -- process be brought back into compliance?

23 A. I would prefer that myself.

24 Q. That they be brought back into production?

25 A. That they be brought back into production.

1 CHAIRMAN WROTENBERY: Thank you, those are all
2 the questions I had.

3 Oh, I'm sorry, Steve Ross has a question.

4 EXAMINATION

5 BY MR. ROSS:

6 Q. Mr. Prichard, just a quick question. You have
7 Exhibit 27 in front of you?

8 A. Yes, I do.

9 Q. Where did the information on that exhibit come
10 from?

11 A. All of this information on this is from records
12 and forms maintained by the NMOCD.

13 Q. So you went through the well files and kind of
14 compiled this information in a useful form?

15 A. Somebody else put this summary together. All of
16 the forms and stuff that were in the Exhibits 2 through 24,
17 other than the plugging procedures, were sent by me out of
18 this office to David Brooks.

19 Q. So you provided the information that's reflected
20 on the exhibit?

21 A. The reported production stuff came from Jane
22 Prouty's group, but --

23 Q. Oh, sure, we understand that. But you provided
24 the other information that's on this?

25 A. Right, that's correct.

1 MR. ROSS: Nothing further, thank you.

2 CHAIRMAN WROTENBERY: Okay. Thank you, Mr.
3 Prichard.

4 Any follow-up Mr. Brooks?

5 MR. BROOKS: Nothing.

6 CHAIRMAN WROTENBERY: Mr. Carr?

7 MR. CARR: No.

8 CHAIRMAN WROTENBERY: Okay. Thank you for your
9 testimony, Mr. Prichard. Could you hang on here just a
10 minute in case we need you again?

11 MR. PRICHARD: Yes, ma'am, I sure will.

12 CHAIRMAN WROTENBERY: Thank you.

13 Mr. Brooks?

14 MR. BROOKS: Madame Chairman, honorable
15 Commissioners, I think that the evidence in this case
16 indicates that Mr. Baxter -- at least to a certain extent
17 we did get his attention when the Division Order was
18 entered. I don't know what type of order the Commission is
19 disposed to enter in this case. It does appear that more
20 activity is needed, the job is not completed, and we need
21 to enter an order of some kind to make sure that it does
22 get completed.

23 On the other hand, this was brought originally as
24 a conventional plugging case where we asked that it be
25 plugged by a specified time, and if not that the bond would

1 be forfeited and proceed to plug with State funds.

2 I'm aware that it's the Commission's desire that
3 we not plug with State funds unless it's absolutely
4 necessary, so I believe that we should enter an order that
5 is designed to seriously achieve compliance. And I don't
6 know exactly what kind of order that is, but I believe you
7 should give Mr. Baxter a specific time to plug these wells
8 and perhaps assess a penalty if he fails to do so within
9 that period of time. That might be a better approach than
10 what was originally asked for in the Application, because
11 it seems that if he is in a position to plug these wells it
12 would be inappropriate to do so with State funds.

13 But he has not been totally compliant heretofore,
14 and I don't want to lose his attention now that we perhaps
15 have gotten it.

16 Thank you.

17 CHAIRMAN WROTENBERY: Thank you, Mr. Brooks.

18 Mr. Carr?

19 MR. CARR: May it please the Commission, I'd like
20 to make a statement on behalf of Mr. Baxter, and if you
21 want to continue the case and have Mr. Baxter here
22 personally we can do that. I talked to him last yesterday
23 afternoon, and he was trying to get here from east Texas
24 and there was an ice storm.

25 But I have discussed this with Mr. Baxter five,

1 six times over the last probably two months, and I think
2 with your permission I'll make this statement. If there's
3 concerns about my going beyond what is appropriate and you
4 want to call him, we can do that. But with your permission
5 -- and I think most of this you can draw from the records
6 of the OCD.

7 The case was originally docketed last January,
8 and I appeared for Mr. Baxter. There were seven wells that
9 needed to be plugged. And the Division was kind enough to
10 give us until September to get the well work actually done.

11 In March of last year, Mr. Baxter advised that he
12 had arranged to have the plugging done by a company called
13 Mayo-Marrs Casing Pulling, Inc., in Kermit, Texas. And at
14 that point in time I closed the file.

15 The next thing I knew was, we had a plugging
16 order and penalties staring us in the face, and I received
17 that sometime, I believe, in November -- October, I think,
18 and contacted Mr. Baxter.

19 I can tell you that following the hearing last
20 January, that Mr. Baxter solicited bids to do the plugging.
21 The low bidder was Mayo-Marrs. The second low bidder was
22 Basic Energy Services of Odessa, Texas. And he reached an
23 agreement with Mayo-Marrs to actually do this work.

24 When the Order was entered, still no work had
25 been done by Mayo-Marrs, and this is in October.

1 Following that time, he contacted the Division
2 and advised that there were three wells that he would
3 immediately have plugged, two that he was pursuing with
4 Mayo-Marrs, and two -- the Speight 1 and 2 -- that he hoped
5 to return to production.

6 Since that time he was able to have the first
7 three wells, the wells that had been plugged, plugged and
8 abandoned by a company called Fleet Cementing, I believe,
9 and that work was done. He used the Order in an effort to
10 try and push Mayo-Marrs, but Mayo-Marrs was frankly unhappy
11 because they had a contract to plug five, and now there
12 were only two wells left, and we were unable to get them to
13 commit to get them plugged prior to this point in time.

14 In the meantime, you need to also be advised that
15 Mr. Baxter has lost the leases on which the Speight 1 and 2
16 are located, and he is now looking at having to plug four
17 wells.

18 And so that's where we stand as of this moment.
19 Three have been plugged, four need to be plugged, and the
20 lease on two of those wells has been lost. He's contacted
21 both Mayo-Marrs and Basic in the last -- the last contacts
22 were actually Monday, trying to get a commitment as to a
23 definite time, and neither of those companies are willing
24 to do it.

25 The reason he has not used Fleet Cementing is,

1 Fleet Cementing does not have the ability to pull the
2 casing. And Mr. Baxter is a small operator and he's trying
3 to pay to get this done, and he gets a credit of, I think
4 -- and don't hold me to this, but I think it's \$1.06 or
5 something a foot for the pulled casing. And in these four
6 wells that's a fairly -- it may be \$50,000 that he would
7 have available to him to offset the cost of plugging the
8 wells. And he would prefer, obviously, to do that.

9 He asked me to state that he intends to perform
10 to meet his obligations. He of course needs additional
11 time, and he recognizes that you have already walked with
12 him down this path for a year.

13 And so basically where he stands at this point
14 is, he would like to ask you for additional time, some
15 period of time. Does not have to be long. He would like
16 to use that to try and get one of these companies out there
17 with the time frame staring him in the face.

18 He would also like to propose that, one, he
19 requests that penalties not be imposed if he complies with
20 the Order that results from this Hearing. And if he is
21 unable to meet the time window set by your Order, would
22 request that he be permitted, perhaps, to submit a signed
23 agreement with a plugging company to do this work and
24 evidence that he's made a deposit so that he is committed
25 to get this thing going and to see if you might consider

1 that as an alternative.

2 But he wants -- has asked me to tell you that
3 whatever your order says, that he will do his best to
4 comply with it. And that's where we stand.

5 MR. BROOKS: May I make an additional statement?

6 CHAIRMAN WROTENBERY: Yes, Mr. Brooks.

7 MR. BROOKS: Madame Chairman, honorable
8 Commissioners, now that I think about it I think an
9 appropriate procedure to follow might be -- and I would
10 suggest this -- the Commission could assess a penalty, I
11 believe, for his past conduct, failure to plug. I believe
12 that was asked for in the original Application, although I
13 don't have it in front of me and would have to review it.

14 Although we often enter plugging orders that
15 state that penalties will accrue from the date of the
16 failure to plug, if it hasn't been done I'm not sure that
17 we could really force those penalties unless we filed a
18 subsequent application and we got a hearing on whether or
19 not there was, in fact, compliance with the original Order
20 of the Commission in that case.

21 Therefore a viable option might be to assess a
22 penalty for past failure to comply but put essentially a
23 suspended sentence provision, providing that that penalty
24 would be remitted if the plugging were completed within a
25 prescribed period of time.

1 Thank you.

2 CHAIRMAN WROTENBERY: Thank you, Mr. Brooks.

3 Anything else, Mr. Carr?

4 MR. CARR: No, that concludes my statement.

5 Thank you.

6 CHAIRMAN WROTENBERY: Okay, thank you, Mr. Carr.

7 And at this point I believe we're ready to take
8 this case under advisement.

9 COMMISSIONER BAILEY: Could I ask Mr. Prichard --

10 CHAIRMAN WROTENBERY: Oh, I'm sorry.

11 COMMISSIONER BAILEY: -- one more question?

12 CHAIRMAN WROTENBERY: Yes, certainly,

13 Commissioner Bailey.

14 COMMISSIONER BAILEY: Mr. Prichard are you there?

15 MR. PRICHARD: Yes, ma'am, I am.

16 EXAMINATION

17 BY COMMISSIONER BAILEY:

18 Q. We've heard discussion about two particular
19 plugging companies, Mayo-Marrs and Basic Energy. Are there
20 many plugging companies in your area that are available to
21 do this type of work?

22 A. In the Permian Basin there are quite a few
23 plugging companies. I'm going to give you a rough number,
24 probably six to eight different plugging companies in the
25 Midland-Odessa area.

1 Q. And those companies regularly do plugging
2 operations in your district?

3 A. Yes, ma'am, they sure do.

4 Q. Okay, so if agreements can't be reached with
5 these two particular companies, then there are optional
6 four to five other companies to work with, right?

7 A. Yes, ma'am, that's correct.

8 COMMISSIONER BAILEY: That's all I needed. Thank
9 you.

10 CHAIRMAN WROTENBERY: Thank you, Mr. Prichard.
11 Anything else?

12 Okay, we'll take this case under advisement.

13 And I might suggest rather than moving into
14 closed session today, that we take that up at the next
15 Commission meeting, just because of the time, is what I'm
16 thinking about today, if that would be okay with the
17 Commissioners.

18 COMMISSIONER BAILEY: Sure.

19 CHAIRMAN WROTENBERY: In that case, I'll
20 entertain a motion to adjourn.

21 COMMISSIONER BAILEY: I move we adjourn.

22 COMMISSIONER LEE: Second.

23 CHAIRMAN WROTENBERY: All in favor say aye.

24 COMMISSIONER BAILEY: Aye.

25 COMMISSIONER LEE: Aye.

1 CHAIRMAN WROTENBERY: Aye. Thank you.

2 Thank you, Mr. Carr.

3 Mr. Prichard, thank you very much for being here.

4 MR. PRICHARD: Yes, ma'am.

5 (Thereupon, these proceedings were concluded at
6 11:10 a.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 February 28th, 2003.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 16th, 2006