

OIL & GAS DOCKET NO. 8A-0238733

ENFORCEMENT ACTION AGAINST KELLY H. BAXTER, SOLE PROPRIETOR, BAXTER, KELLY H. OIL AND GAS COMPANY (OPERATOR NO. 056536) FOR VIOLATIONS OF STATEWIDE RULES ON THE MELTON, J. D. (00291) LEASE, WELL NO. 1, ANTON, WEST FIELD, HOCKLEY COUNTY, TEXAS

OIL & GAS DOCKET NO. 03-0238763

ENFORCEMENT ACTION AGAINST KELLY H. BAXTER, SOLE PROPRIETOR, BAXTER, KELLY H. OIL AND GAS COMPANY (OPERATOR NO. 056536) FOR VIOLATIONS OF STATEWIDE RULES ON THE NEBLETT (23361) LEASE, WELL NO. 1, MARTIN PRAIRIE (WILCOX 4900) FIELD, GRIMES COUNTY, TEXAS

APPEARANCES:

FOR MOVANT:

Reese B. Copeland
Staff Attorney

MOVANT:

Enforcement Section
Railroad Commission of Texas

FOR RESPONDENT:

Jamie Nielson
Phil Gamble
Kelly H. Baxter

RESPONDENT:

Kelly H. Baxter D/B/A
Kelly H. Baxter Oil and Gas Company

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE COMPLAINTS FILED:

September 28, 2004

DATE OF HEARING:

December 2, 2004

HEARD BY:

James M. Doherty, Hearings
Examiner

DATE RECORD CLOSED:

January 18, 2005

DATE PFD CIRCULATED:

January 28, 2005

STATEMENT OF THE CASE

These proceedings were called by the Commission of the recommendation of the District Offices to determine the following:

1. Whether the respondent Kelly H. Baxter, Sole Proprietor, Kelly H. Baxter Oil and Gas Company (“Baxter”) should be required to plug or otherwise place in compliance with Statewide Rule 14(b)(2) [Tex. R. R. Comm’n., 16 TEX. ADMIN. CODE §3.14(b)(2)] the Melton, J. D. (00291) Lease (“Melton Lease”), Well No. 1, Anton, West Field, Hockley County, Texas, and the Neblett (23361) Lease (“Neblett Lease”), Well No. 1, Martin Prairie (Wilcox 4900) Field, Grimes County, Texas;
2. As to Oil & Gas Docket No. 8A-0238733, whether Baxter violated Statewide Rule 46(j) [Tex. R. R. Comm’n., 16 TEX. ADMIN. CODE §3.46(j)] by failing to demonstrate mechanical integrity of the Melton Lease, Well No. 1, Anton, West Field, Hockley County, Texas;
3. Whether Baxter has violated provisions of Title 3, Oil and Gas, Subtitles A, B, and C, Texas Natural Resources Code, Chapter 27 of the Texas Water Code, and Commission rules and laws pertaining to safety or prevention or control of pollution by failing to plug the subject wells or otherwise place the wells in compliance with Statewide Rule 14(b)(2) and Statewide Rule 46(j);
4. Whether Baxter should be assessed administrative penalties of not more than \$10,000 per day for each offense committed regarding the subject wells; and
5. Whether any violations of Statewide Rule 14(b)(2) and Statewide Rule 46(j) by Baxter should be referred to the Office of the Attorney General for further civil action pursuant to TEX. NAT. RES. CODE ANN. §81.0534.

These dockets were consolidated for the purpose of the hearing and issuance of this proposal for decision. The hearing was held on December 2, 2004. Reese B. Copeland, Staff Attorney, appeared representing the Enforcement Section of the Office of General Counsel (“Enforcement”). Phil Gamble, attorney, and Kelly H. Baxter appeared to represent Baxter¹ and presented evidence. With the consent of Enforcement, Kelly H. Baxter participated by telephone. Enforcement’s certified hearing files were admitted into evidence.

At the request of Baxter, and without opposition from Enforcement, the record was held open until January 18, 2005, to permit Baxter to plug the subject wells and achieve a settlement agreement with Enforcement. No such compliance or settlement was achieved on or before January 18, 2005.

¹ Subsequent to the hearing, Jamie Nielson was substituted as attorney for Baxter in these dockets.

Enforcement recommends that in Oil & Gas Docket No. 8A-0238733, a penalty of \$4,000.00 be assessed against Baxter and in Oil & Gas Docket No. 03-0238763, a penalty of \$2,000.00 be assessed against Baxter. The examiner agrees with Enforcement's recommendation.

APPLICABLE LAW

The operator of a well must properly plug the well when required and in accordance with the Commission's rules. *See* TEX. NAT. RES. CODE ANN. §89.011(a). The Commission's Statewide Rule 14(b)(2) provides that plugging operations on each dry or inactive well shall be commenced within a period of one year after drilling or operations cease and shall proceed with due diligence until completed. Statewide Rule 46(m) requires that injection wells be plugged, upon abandonment, in accordance with Statewide Rule 14.

Statewide Rule 14(c)(1) provides that the entity designated as the operator of a well specifically identified on the most recent Commission-approved operator designation form filed on or after September 1, 1997, is responsible for properly plugging the well in accordance with Rule 14 and all other applicable Commission rules and regulations concerning plugging of wells.

Statewide Rule 46(j) provides that the mechanical integrity of each injection well must be evaluated by conducting pressure tests to determine whether the well tubing, packer, or casing have sufficient mechanical integrity to meet the performance standards of Statewide Rule 46, or by alternative testing methods under Statewide Rule 46(j)(5). Mechanical integrity of each injection well must be demonstrated in accordance with Statewide Rule 46(j)(4) and (5). Each injection well completed with surface casing set and cemented through the entire interval of protected usable quality water must be tested for mechanical integrity at least once every five years.

If a person violates provisions of Title 3 of the Texas Natural Resources Code or a Commission rule pertaining to safety or the prevention or control of pollution, the person may be assessed a civil penalty by the Commission not to exceed \$10,000.00 a day for each violation. In determining the amount of the penalty, the Commission must consider the respondent's history of previous violations, the seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the respondent. *See* TEX. NAT. RES. CODE ANN. §81.0531.

DISCUSSION OF THE EVIDENCE

Enforcement's Evidence

At the time of the filing of Enforcement's complaints, Baxter's most recent Form P-5 Organization Report had been approved on August 18, 2003. This Form P-5 identified Baxter as a sole proprietorship, with Kelly H. Baxter as the sole proprietor. The examiner has officially noticed that subsequent to the filing of the complaints, Baxter's Form P-5 was renewed on October 10, 2004, and Baxter filed financial security in the form of a letter of credit in the amount of \$50,000.

Baxter was designated operator of the Melton Lease, Well No. 1 by Form P-4 effective March 1, 2002, approved March 7, 2002, and of the Neblett Lease, Well No. 1 by Form P-4 effective September 1, 2002, approved November 15, 2002. The Melton Lease, Well No. 1 is a saltwater disposal well permitted for fluid injection into a productive reservoir, and the Neblett Lease, Well No. 1 is an oil well.

Thirteen separate District Office inspections of the Melton Lease between March 11, 2002, and October 1, 2004, disclosed that during all of this period, the Melton Lease, Well No. 1 was inactive and unplugged. No reports of injection activity for the Melton Lease, Well No. 1 were filed with the Commission, as required by Statewide Rule 46, after March 31, 2001. The Melton Lease, Well No. 1 ceased all injection activity on or before March 31, 2001.

Eight separate District Office inspections of the Neblett Lease between September 6, 2003, and October 7, 2004, disclosed that during all of this period, the Neblett Lease, Well No. 1 was inactive and unplugged. Baxter did not report to the Commission any production for the Neblett Lease, Well No. 1 after December 31, 1999. Production from the Neblett Lease, Well No. 1 ceased on or before December 31, 1999.

No Statewide Rule 14(b)(2) plugging extensions currently are in effect for the Melton Lease, Well No. 1 and the Neblett Lease, Well No. 1. The examiner has officially noticed that the Melton Lease, Well No. 1 last had a plugging extension on September 25, 2003. Thereafter, a plugging extension for the Melton Lease, Well No. 1 could not be granted because of a failed mechanical integrity test for the well conducted on September 30, 2002. The Neblett Lease, Well No. 1 last had a plugging extension on January 13, 2004. Thereafter, a plugging extension could not be granted for the Neblett Lease, Well No. 1 because of the inability of Baxter to demonstrate that he possessed a good faith claim of a current right to operate the well. No Plugging Record (Form W-3) or Cementing Affidavit (Form W-15) have been filed with the Commission for the Melton Lease, Well No. 1 or the Neblett Lease, Well No. 1.

Baxter performed a mechanical integrity test of the Melton Lease, Well No. 1 on September 30, 2002. The results of this test reported to the Commission on Form H-5 (Disposal/Injection Well Pressure Test Report) demonstrated that the Melton Lease, Well No. 1 failed the test. The last successful mechanical integrity test on the well was performed on October 10, 1997.

Between March 26, 2002, and February 17, 2004, the District Office corresponded with Baxter on nine separate occasions regarding the subject violations on the Melton Lease. Between January 13, 2004 and April 26, 2004, the District Office corresponded with Baxter on four separate occasions regarding the Statewide Rule 14(b)(2) violation on the Neblett Lease. On October 17, 2003, and May 5, 2004, Baxter corresponded with the District Office stating that he was "waiting on a rig" to plug the Neblett Lease, Well No. 1. Also, on May 5, 2004, Baxter corresponded with the District Office stating that operations to plug and abandon the Melton Lease, Well No. 1 would begin on or before June 21, 2004.

The estimated cost to the state to plug the Melton Lease, Well No. 1 is \$18,000.00. The estimated cost to the state to plug the Neblett Lease, Well No. 1 is \$30,400.00.

Unplugged wellbores are likely to cause pollution of usable quality ground water and surface water. Any wellbore, cased or otherwise, is a potential conduit for flow from oil or saltwater zones to zones of usable quality water or to the surface. Holes or leaks may develop in cased wells, allowing oil or saltwater to communicate with usable quality water zones or to flow to the surface. Uncased wells allow direct communication between zones and provide unimpeded access to the surface.

Failure to test a disposal well may allow leaks of fluid to go undetected and cause pollution of surface or subsurface water. Operators must pressure test each disposal well at least once every five years to show that the well is not leaking and that waste is being confined to the permitted injection interval and that usable quality water zones are properly isolated from possible contamination.

There is no record of prior enforcement orders against Baxter for violations of Commission rules.

Baxter's Evidence

After Baxter acquired the Melton Lease, Well No. 1, Baxter determined that the well had downhole problems consisting of distorted tubing that rendered the well unusable as a saltwater disposal well. Baxter determined that the well should be plugged, because removal of the damaged tubing was too expensive. A plugging contractor was contacted by Baxter, and the plugging contractor consulted with the District Office to obtain permission to plug the well with the tubing in place. The District Office took the position that the tubing should be removed before the well was plugged. According to Baxter, the well can be plugged with the tubing in place without any threat of pollution to surface or subsurface water, and removal of the damaged tubing would cost "several hundred thousand dollars." Baxter requested an additional 45 days after the hearing to accomplish plugging of the Melton Lease, Well No. 1, and stated that if the well could be plugged with the tubing in place, plugging could be completed within that time.

Baxter claimed that he had been attempting to plug the Neblett Lease, Well No. 1 for more than a year. However, according to Baxter, the well has not been plugged because of difficulty in obtaining a rig. Baxter also requested an additional 45 day grace period to plug this well, and stated that if a rig were available, the well could be plugged within that time.

EXAMINER'S OPINION

Both the Melton Lease, Well No. 1 and the Neblett Lease, Well No. 1 have been inactive for more than one year, and have not been plugged. Neither of these wells currently has a Statewide Rule 14(b)(2) plugging extension. A plugging extension for the Melton Lease, Well No. 1 cannot

be obtained because of a failed mechanical integrity test on the well and Baxter's apparent inability to demonstrate mechanical integrity of the well. A plugging extension for the Neblett Lease, Well No. 1 cannot be obtained because of Baxter's inability to demonstrate a good faith claim of a current right to operate the well. The Melton Lease, Well No. 1 and the Neblett Lease, Well No. 1 are both in violation of Statewide Rule 14(b)(2), and there is no dispute that Baxter is the operator of these wells responsible for compliance with this rule.

The Melton Lease, Well No. 1 is also in violation of Statewide Rule 46(j) because it is a saltwater disposal well that has not demonstrated mechanical integrity at least once every five years. This well failed a mechanical integrity test on September 30, 2002, and last had a successful mechanical integrity test on October 10, 1997. When the well failed the mechanical integrity test on September 30, 2002, Baxter's options were to work over the well to correct the problem or plug the well. Baxter has done neither.

Baxter's violations of Statewide Rule 14(b)(2) and Statewide Rule 46(j) are serious and a hazard to the public health and safety because of the threat of pollution of usable quality water presented by unplugged wellbores and disposal wells that cannot demonstrate mechanical integrity. Baxter has no record of prior enforcement orders entered against him for violations of Commission rules, but cannot be said to have acted in good faith. Baxter failed to achieve compliance with Statewide Rules 14(b)(2) and 46(j), notwithstanding repeated communications from the District Offices requesting compliance. Baxter's assertion that the Neblett Lease, Well No. 1 has not been plugged due to rig unavailability is not credible. The availability of pulling unit rigs may have been limited from time to time, but the Neblett Lease, Well No. 1 has been inactive for more than five years. The Melton Lease, Well No. 1 failed a mechanical integrity test more than two years ago and has been inactive for nearly four years. The District Offices have been corresponding with Baxter regarding needed compliance on the Melton Lease, Well No. 1 since March 26, 2002, and on the Neblett Lease, Well No. 1 since at least January 13, 2004. None of Baxter's pledges to plug these wells has come to fruition, and allowing Baxter an additional 45 days following the hearing to achieve compliance was to no avail.

The examiner recommends that Baxter be assessed an administrative penalty in the amount of \$4,000.00 in Oil & Gas Docket No. 8A-0238733, comprised of \$2,000.00 for one violation of Statewide Rule 14(b)(2) and \$2,000.00 for one violation of Statewide Rule 46(j). The Examiner further recommends that Baxter be assessed an administrative penalty in the amount of \$2,000.00 in Oil & Gas Docket No. 03-0238763 for one violation of Statewide Rule 14(b)(2). These recommended penalties conform to the standard penalties in the recommended standard penalty schedule for enforcement cases.

In addition, the examiner recommends that Baxter be ordered to plug the subject wells. Baxter's compliance by any other means appears unlikely. The Melton Lease, Well No. 1 has been inactive for almost four years, and the well has a mechanical problem such that the well cannot demonstrate mechanical integrity without a work over. Baxter has represented that a work over would be so expensive as to be impractical. The Neblett Lease, Well No. 1 has been inactive for

more than five years, and it appears from the certified enforcement case file that Baxter can no longer demonstrate a good faith claim of a current right to operate this well. The landowner has complained to the Commission about this, and has requested that the well be plugged.

Based on the record in these dockets, the examiner recommends adoption of the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Kelly H. Baxter, sole proprietor, Baxter, Kelly H. Oil and Gas Company (“Baxter”) was given at least ten (10) days notice of this proceeding by certified mail, addressed to Baxter’s most recent Form P-5 Organization Report address. Baxter appeared at the hearing and presented evidence.
2. Baxter is a sole proprietorship. Baxter last filed an approved Form P-5 on October 4, 2004, and filed financial security in the form of a letter of credit in the amount of \$50,000.00.
3. Baxter has no history of prior Commission orders entered against him for violations of Commission rules.
4. Kelly H. Baxter is owner and sole proprietor of Baxter and was a person in a position of ownership or control of Baxter at the time the violations involved in these dockets occurred.
5. The violations committed by Baxter are violations of Commission rules related to safety and the prevention or control of pollution.
6. Baxter designated himself to the Commission as the operator of the Melton, J. D (00291) Lease (“Melton Lease”), Well No. 1, Anton, West Field, Hockley County, Texas, by filing a Form P-4 (Producer’s Transportation Authority and Certificate of Compliance) which was approved March 7, 2002, and effective March 1, 2002.
7. Baxter designated himself to the Commission as the operator of the Neblett (23361) Lease (“Neblett Lease”), Well No. 1, Martin Prairie (Wilcox 4900) Field, Grimes County, Texas, by filing a Form P-4 (Producer’s Transportation Authority and Certificate of Compliance) which was approved November 15, 2002, and effective September 1, 2002.
8. The Melton Lease, Well No. 1, a saltwater disposal well permitted for fluid injection into a productive reservoir, has been inactive for more than one year and has not been plugged.

- (a) The well was inactive and unplugged as of District Office inspections on thirteen separate dates between March 11, 2002, and October 1, 2004.
 - (b) No reports of injection activity for this well were filed with the Commission after March 31, 2001.
 - (c) No Plugging Record (Form W-3) or Cementing Affidavit (Form W-15) for this well have been filed with the Commission.
9. The Neblett Lease, Well No. 1, an oil well, has been inactive for more than one year and has not been plugged.
- (a) The well was inactive and unplugged as of District Office inspections on eight separate dates between September 6, 2003, and October 7, 2004.
 - (b) No production has been reported to the Commission for the well since December 31, 1999.
 - (c) No Plugging Record (Form W-3) or Cementing Affidavit (Form W-15) for this well have been filed with the Commission.
10. No Statewide Rule 14(b)(2) plugging extension currently is in effect for the Melton Lease, Well No. 1. This well last had a plugging extension on September 25, 2003. Thereafter, a plugging extension for this well could not be granted because of a failed mechanical integrity test for the well conducted on September 30, 2002.
11. No Statewide Rule 14(b)(2) plugging extension currently is in effect for the Neblett Lease, Well No. 1. This well last had a plugging extension on January 13, 2004. Thereafter, a plugging extension could not be granted for this well because of Baxter's inability to establish that he possesses a good faith claim of a current right to operate the well.
12. Melton Lease, Well No. 1 was scheduled by the Commission for a pressure test required by Statewide Rule 46 on December 30, 2002. On September 30, 2002, Baxter performed a mechanical integrity (pressure) test on the Melton Lease, Well No. 1. The results of this test reported to the Commission on Form H-5 (Disposal/Injection Well Pressure Test Report) demonstrated that the well failed the test. The last successful mechanical integrity test on this well was performed on October 10, 1997.
13. Between March 26, 2002, and February 17, 2004, the District Office corresponded with Baxter on nine separate occasions requesting compliance with Commission rules respecting the Melton Lease, Well No. 1. These communications with Baxter did not result in Baxter's compliance.

14. Between January 13, 2004, and April 26, 2004, the District Office corresponded with Baxter on four separate occasions requesting compliance with Statewide Rule 14(b)(2) respecting the Neblett Lease, Well No. 1. These communications with Baxter did not result in Baxter's compliance.
15. The estimated cost to the state to plug the Melton Lease, Well No. 1 is \$18,000.00.
16. The estimated cost to the state to plug the Neblett Lease, Well No. 1 is \$30,400.00.
17. Usable quality groundwater in the area was likely to be contaminated by migrations or discharges of saltwater and other oil and gas wastes from the subject wells during the period of their noncompliance with Statewide Rule 14(b)(2). Unplugged wellbores constitute a cognizable threat to the public health and safety because of the risk of pollution.
18. Failure to successfully test a saltwater disposal well is likely to allow leaks of fluid to go undetected and cause pollution of surface or subsurface water. A successful pressure test of each disposal well at least once every five years is necessary to demonstrate that the well is not leaking and that waste is being confined to the permitted injection interval and that usable quality water zones are properly isolated from possible contamination.

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued to the appropriate persons entitled to notice.
2. All things necessary to the Commission attaining jurisdiction have occurred.
3. Kelly H. Baxter, sole proprietor, Baxter, Kelly H. Oil and Gas Company ("Baxter"), is the operator of the Melton, J. D. (00291) Lease ("Melton Lease"), Well No. 1, Anton, West Field, Hockley County, Texas, as defined by Commission Statewide Rules 14, 58, and 79 [Tex. R. R. Comm'n., 16 TEX. ADMIN. CODE §§3.14, 3.58, and 3.79] and Chapters 85 and 89 of the Texas Natural Resources Code.
4. Kelly H. Baxter, sole proprietor, Baxter, Kelly H. Oil and Gas Company ("Baxter"), is the operator of the Neblett (23361) Lease ("Neblett Lease"), Well No. 1, Martin Prairie (Wilcox 4900) Field, Grimes County, Texas, as defined by Commission Statewide Rules 14, 58, and 79 [Tex. R. R. Comm'n., 16 TEX. ADMIN. CODE §§3.14, 3.58, and 3.79] and Chapters 85 and 89 of the Texas Natural Resources Code.
5. As operator, Baxter has the primary responsibility for complying with Statewide Rules 14 and 46 [Tex. R. R. Comm'n., 16 TEX. ADMIN. CODE §§3.14 and 3.46], Chapters 89 and 91 of the Texas Natural Resources Code, and other applicable statutes and Commission rules respecting the subject wells.

6. Baxter violated Statewide Rule 14(b)(2) [Tex. R. R. Comm'n., 16 TEX. ADMIN. CODE §§3.14(b)(2)] by failing to timely plug the Melton Lease, Well No. 1 or otherwise comply with Statewide Rule 14(b)(2). The Melton Lease, Well No. 1 has been out of compliance with Statewide Rule 14(b)(2) since September 25, 2003, when the well last had a plugging extension.
7. Baxter violated Statewide Rule 14(b)(2) [Tex. R. R. Comm'n., 16 TEX. ADMIN. CODE §§3.14(b)(2)] by failing to timely plug the Neblett Lease, Well No. 1 or otherwise comply with Statewide Rule 14(b)(2). The Neblett Lease, Well No. 1 has been out of compliance with Statewide Rule 14(b)(2) since at least January 13, 2004, when the well last had a plugging extension.
8. Baxter violated Statewide Rule 46(j) [Tex. R. R. Comm'n., 16 TEX. ADMIN. CODE §3.46] by failing to demonstrate the mechanical integrity of the Melton Lease, Well No. 1 at least once every five years. The Melton Lease, Well No. 1 has been out of compliance with Statewide Rule 46(j) since at least December 30, 2002, when the well was scheduled by the Commission to be pressure tested.
9. The documented violations committed by Baxter constitute acts deemed serious and a hazard to the public health, and demonstrate a lack of good faith within the meaning of TEX. NAT. RES. CODE ANN. §81.0531(c).
10. As sole proprietor and owner of Baxter at the time Baxter violated Commission rules related to safety and the prevention or control of pollution, Kelly H. Baxter, and any organization in which he may hold a position of ownership or control, is subject to the restrictions of TEX. NAT. RES. CODE ANN. §91.114(a)(2).

RECOMMENDATION

The examiner recommends that the Commission adopt the attached final orders requiring that Baxter:

1. In Oil & Gas Docket No. 8A-0238733, plug, in compliance with Commission rules, the Melton, J. D. (00291) Lease, Well No. 1, Anton, West Field, Hockley County, Texas;
2. In Oil & Gas Docket No. 8A-0238733, pay an administrative penalty in the amount of FOUR THOUSAND DOLLARS (\$4,000.00);
3. In Oil & Gas Docket No. 03-0238763, plug, in compliance with Commission rules, the Neblett (23361) Lease, Well No. 1, Martin Prairie (Wilcox 4900) Field, Grimes County, Texas; and
4. In Oil & Gas Docket No. 03-0238763, pay an administrative penalty in the amount of TWO

THOUSAND DOLLARS (\$2,000.00).

Respectfully submitted,

James M. Doherty
Hearings Examiner