

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA**

**SECURITIES AND EXCHANGE  
COMMISSION,**

**Plaintiff,**

v.

**BRIAN D. FOX,**

**Defendant.**

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**Civil Action No. 11-CV-211-CVE-PJC**

**COMPLAINT**

Plaintiff Securities and Exchange Commission (“Commission” or “SEC”) alleges:

**SUMMARY**

1. From year-end 2004 through the first-quarter 2008, defendant Brian Fox misled the investing public by fraudulently inflating the revenue and assets and fraudulently omitting major liabilities, of Powder River Petroleum International, Inc. (“Powder River” or the “company”) in the company’s Commission filings, and by making other false and misleading public disclosures. From year-end 2004, Powder River conveyed working interests in oil and gas leases to investors in Asia for over \$43 million. Because Powder River promised full repayment of the working interest investors’ initial investment, with a 9% guaranteed annual return of principal, these transactions were, in reality, loans. But Powder River, with Fox as chairman, president, Chief Financial Officer (“CFO”) and Chief Executive Officer (“CEO”), improperly recognized the loan proceeds as revenue in the company’s financial statements. These bogus revenues were incorporated in Powder River’s quarterly and annual public filings with the SEC.

2. Fox supplied the false information leading to the fraudulent financial statements and filings, and he reviewed the financial statements and filings before their public submission. Despite his knowledge that the financial statements and filings were false and misleading, Fox did nothing to correct them either before or after their public dissemination. Moreover, Fox signed and, pursuant to the Sarbanes-Oxley Act of 2002, certified, falsely, the company's SEC filings. In addition, Fox was responsible for the improper recording in the company's financial statements of oil and gas reserves on properties that Powder River did not own; Fox was also responsible for the inflation of the net realizable value of those reserves. As a result of Fox's acts and omissions, Powder River materially overstated its revenues by 7% to 2,417%, its pre-tax income by 18% to 465%, and its assets by 7% to 48% in financial statements incorporated in its SEC filings.

3. Beginning in mid-2007, Powder River's total guaranteed payment obligation to its investors exceeded its oil and gas production revenues. In the second quarter of 2007, Powder River began a practice of using incoming working interest conveyance proceeds from new investors to fulfill its ongoing guaranteed minimum payment obligations to prior investors. By early March 2008, Powder River fulfilled its guaranteed minimum payment obligations *entirely* from the escrowed working interest conveyance proceeds of prior investors. Although Fox was aware of the Ponzi-style payments, he nonetheless caused the company to continue to represent in Commission filings that Asian investor proceeds would be used to purchase and develop oil and gas properties, without disclosing that the company was using those proceeds, in part, to pay off its growing number of Asian investors. In addition, Fox, on behalf of Powder River, prepared and issued materially misleading press releases and other public disclosures announcing inflated revenues, assets, and reserves, and successful property purchases that Powder River had

not actually consummated. Fox knew, or was severely reckless in not knowing, that the releases and disclosures were materially misleading.

4. On December 12, 2008, Powder River filed for Chapter 11 bankruptcy in the United States Bankruptcy Court for the Western District of Oklahoma. On November 2, 2010, the case was converted to a Chapter 7 bankruptcy.

5. By committing the acts alleged in this complaint, Fox directly and indirectly engaged in, and unless restrained and enjoined by the Court will continue to engage in, acts, transactions, practices, and courses of business that violated Sections 10(b) and 13(b)(5) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78m(b)(5)], and Exchange Act Rules 10b-5, 13a-14, 13b2-1, and 13b2-2 [17 C.F.R. §§ 240.10b-5, 240.13a-14, 240.13b2-1, and 240.13b2-2]. Fox also aided and abetted Powder River's violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78(m)(b)(2)(A), and 78(m)(b)(2)(B)] and Exchange Act Rules 12b-20, 13a-1, 13a-11, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13].

6. The Commission, in the interest of protecting the public from such fraudulent activities, brings this securities law enforcement action seeking judgment from the Court: (a) enjoining Fox from engaging in future violations of the federal securities laws that he violated; (b) requiring Fox to disgorge all wrongfully obtained benefits, plus prejudgment interest; (c) requiring Fox to pay civil monetary penalties under Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]; (d) barring Fox from serving as an officer or director of any public company under Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)]; and (e) providing other appropriate relief.

### **JURISDICTION AND VENUE**

7. Plaintiff Securities and Exchange Commission brings this civil enforcement action under Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 77t(b), 78u(d) and (e)]. The Court has jurisdiction of this civil enforcement action under Section 27 of the Exchange Act [15 U.S.C. §§ 78(u)(e), and 78aa]. Powder River and Fox made use of the means or instruments of interstate commerce, of the mails, or of the facilities of a national securities exchange in connection with the acts, transactions, practices, and courses of business alleged in this complaint.

8. Venue is proper in the Northern District of Oklahoma under Section 27 of the Exchange Act [15 U.S.C. §§ 77v(a) and 78aa] because Powder River was, throughout the period relevant to this complaint, a corporation incorporated under the laws of the State of Oklahoma, and maintained an office in Tulsa, Oklahoma. Moreover, Fox transacted business, including investor-related activities, on behalf of Powder River out of the company's Tulsa office.

#### **DEFENDANT**

9. Brian Fox served as Powder River's chairman, president and CEO from December 2003 through July 2008, and as its CFO from December 2003 through August 2007. In October 2008, the Oklahoma Department of Securities filed an action against Fox and Powder River, alleging state securities law violations; Fox subsequently consented to a state law injunction. In 2000, the Canadian Alberta Securities Commission issued a cease-and-desist order against Fox and barred him from serving as a corporate officer or director for 18 months, based on his violations of the Alberta securities registration provisions.

#### **RELATED ENTITY**

10. Powder River Petroleum International, Inc. is an Oklahoma-chartered corporation headquartered in Calgary, Alberta. Throughout the relevant period, Powder River conducted

business, including investor-related activities, from its office in Tulsa, Oklahoma. Pursuant to the Exchange Act, Powder River filed periodic reports with the Commission as a small business issuer; after 2007, Powder River began filing reports with the SEC as a routine issuer.

11. On July 14, 2008, the district court of Tulsa County, State of Oklahoma, issued a temporary restraining order and appointed a receiver for Powder River in connection with a complaint filed by a group of the Asian investors against Fox and Powder River. On December 12, 2008, Powder River filed for Chapter 11 bankruptcy in the United States Bankruptcy Court for the Western District of Oklahoma, Case No. 08-15613 (Judge Niles Jackson). On November 2, 2010, the case was converted to a Chapter 7 bankruptcy pursuant to 11 U.S.C. §1112(a).

12. The company has not restated its financial statements, other than a restatement of its 2007 quarterly financial statements included in its year-end 2007 Form 10-K. Powder River has not filed any reports with the Commission since September 17, 2008. During the pertinent periods, the company's common stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act; the company's shares had been quoted on Pink OTC Markets, Inc.

## **FACTS**

### **A. Powder River's Offering of Working Interests**

13. In 2004, Powder River began conveying miniscule percentages of its working interests in individual U.S. oil and gas leases ("working interest conveyances") to Asian investors through a Singaporean intermediary with whom Fox had done business in the past. Powder River's contracts with the Asian investors provided that they would receive guaranteed principal repayments of (at least) 9% per annum of their original investment, with the payments commencing approximately six months after the date of investment – until the investors reached the "break-even" point, *i.e.*, until their principal had been fully repaid (the "guaranteed minimum

payments”). Thereafter, investors were to receive payments flowing from Powder River’s oil and gas production – in proportion to the investors’ percentage share of the company’s working interests. Fox negotiated and signed the Asian investor contracts on behalf of Powder River.

**B. Powder River’s Misleading Commission Filings and Financial Statements**

**1. Fox caused Powder River to report inflated revenues.**

14. From year-end 2004 through the first quarter of 2008, Powder River improperly recognized as revenue over \$33.5 million in proceeds from the working interest conveyances. These conveyances were in substance borrowings, not revenue, and should have been reported as such by Powder River (*see* Financial Accounting Standards No. 19, *Financial Accounting and Reporting by Oil and Gas Producing Companies*, paragraph 43). The investors’ contractual right to receive guaranteed payments until their “break-even point” represented, in substance, a loan to Powder River at a guaranteed 9% minimum annual rate of return to the investors, coupled on the back-end by a share of the project’s future oil-and-gas production after repayment of the investors’ principal.

15. As a result of Powder River’s improper accounting, the company materially overstated its revenues by 7% to 2,417% and its net pre-tax income by 18% to 465%, in its quarterly and annual SEC reports for the year ended December 31, 2004 through the quarter ended March 31, 2008. These falsified reports include the following: i) the Forms 10-KSB for the fiscal years ended December 31, 2004, 2005, and 2006; ii) the Form 10-K for the fiscal year ended December 31, 2007; iii) the Forms 10-QSB for the quarters ended March 31, 2005, 2006, and 2007, for the quarters ended June 30, 2005, 2006, and 2007, and for the quarters ended September 30, 2005, 2006, and 2007; and iv) the Form 10-Q for the quarter ended March 31, 2008.

16. In his various, frequently multiple, corporate officer capacities, Fox signed and certified all of these filings. Fox also signed the Form 8-K “Current Reports,” filed by Powder River, including a materially false and misleading Form 8-K filed on March 17, 2008. Attached to this complaint as Exhibit “A” are charts summarizing the company’s fraudulent accounting and its impact on the company’s financial statements.

17. Having negotiated the contracts providing for the guaranteed minimum payments to the Asian investors, Fox was aware, or severely reckless in not knowing, that the investor proceeds from the working interest conveyances constituted, in substance, a loan to Powder River. Fox also knew, or was severely reckless in not knowing, that those proceeds were not in the nature of “revenue” to the company. The company’s improper recording of the proceeds as revenue from year-end 2004 through the first quarter of 2008 was attributable to Fox, who repeatedly characterized the conveyances as “sales” to outside accountants retained as consultants by the company (“the outside consultants”) to assist Fox in preparing the company’s financial statements. Fox knew, or was severely reckless in not knowing, that his characterization of the conveyances as sales was false and misleading, and that his mischaracterization would render Powder River’s financial statements and SEC filings false and materially misleading.

18. Although Fox knew that the guaranteed minimum payments were, in substance, loan principal repayments, he told the company’s outside consultants and external auditor that they were “prepaid production payments.” The consultants and auditor relied on Fox’s false characterization in recognizing the payments as an offset against the company’s oil-and-gas production revenues. As a result, Powder River recorded the working interest conveyance proceeds as revenue in the company’s annual and quarterly filings from year-end 2004 through

March 2008, and improperly recorded the minimum guaranteed payments as an asset – prepaid production payments – in the company’s quarterly filings for the first, second and third quarters of 2007.

19. In August 2007, Fox resigned his position as CFO of Powder River, but continued in his positions as the company’s chairman, president, and CEO, and continued signing and certifying the company’s quarterly and annual filings in those capacities. He also remained the sole signatory on Powder River’s bank accounts. Fox was replaced as CFO in August 2007 by one of the outside accounting consultants, who became part-time CFO for the company. Fox continued to misrepresent to both his successor as (part time) CFO and the other outside consultant, who assisted the new (part-time) CFO, that the working interest conveyance proceeds were “sales” revenue, when, as Fox knew, they were, in substance, loan proceeds. As a result, Powder River continued, misleadingly, to account for the proceeds from the working interest conveyances as revenue in its SEC filings.

20. At all times relevant to this complaint, Powder River represented in its Commission filings that the working interest conveyance proceeds would be used by the company to purchase and develop the company’s working interests in various oil-and-gas properties. In the second quarter of 2007, Powder River began a practice of using incoming working interest conveyance proceeds from new investors to fulfill its ongoing guaranteed minimum payment obligations to prior investors. By early March 2008, Powder River fulfilled its guaranteed minimum payment obligations *entirely* from the escrowed working interest conveyance proceeds of prior investors.

21. The company resorted to this “Ponzi” approach because it lacked sufficient funds to make the payments. In fact, the company’s total payment obligation to its investors in 2008,

at least \$6.2 million, vastly exceeded the company's oil-and-gas production revenues from the prior year, 2007, which were only \$3.3 million. As CEO and president, Fox authorized these Ponzi-like payments, and did not object when his successor as CFO continued the practice of authorizing Ponzi payments.

22. Moreover, Fox did nothing to ensure that the Ponzi-type nature of the payments was disclosed in Powder River's filings or by other means. Despite his knowledge of the misapplication of the incoming conveyance proceeds, Fox signed and certified the company's deficient and materially misleading filings. In addition, Fox continued to misrepresent to the company's outside consultants and its auditor, and later to Fox's successor as CFO, that the guaranteed minimum payments were assets, in the form of "prepaid production payments." Fox failed to inform any of these individuals that the payments were actually guaranteed principal repayments. Based on Fox's misrepresentations and omissions, Powder River, from as early as year-end 2004 through March 2008, failed to disclose as a current liability the company's guaranteed minimum repayment obligation to the Asian investors.

23. By March 2008, during the audit of Powder River's year-end 2007 financial statements, Powder River's CFO, one of the outside consultants, and the company's audit engagement partner reviewed the underlying working interest contracts entered into by Powder River and the individual investors. They also spoke to the Singaporean intermediary about the nature of the guaranteed minimum payments. As a result, they agreed that accounting for the guaranteed payments as an asset (prepaid production payments) in the first, second, and third quarters of 2007 was improper. Consequently, on March 17, 2008, Powder River filed a Form 8-K, signed by Fox, in which it publicly disclosed for the first time that the guaranteed minimum

payments to investors were loan repayments and warned that the company's first, second and third quarter 2007 financial statements could not be relied upon.

24. Despite their recognition that the company's accounting for the guaranteed minimum payments as *assets* was improper, they failed to consider whether the guaranteed nature of the company's principal payment obligation to the investors invalidated the ongoing classification of the conveyance proceeds as *revenue*. As a result, the company continued recognizing the working interest conveyance proceeds as revenue through the first quarter of 2008, thereby materially overstating its revenues and pre-tax income in the financial statements included in its 2007 Form 10-K and its first quarter 2008 Form 10-Q. Fox, who was at all times aware that working interest conveyance proceeds were loan proceeds, not revenue, nonetheless signed and certified the deficient and materially misleading 2007 Form 10-K and first quarter 2008 Form 10-Q. Making matters worse, the company disclosed the guaranteed minimum payments in the year-end 2007 Form 10-K and in first quarter 2008 Form 10-Q as a "future commitment" in a footnote to the incorporated financial statements. Fox, who was at all times aware i) that the conveyance proceeds were, in substance, loans, and thus not revenue, and ii) that the guaranteed minimum payments were a current and ongoing – not future – commitment, nonetheless signed and certified the deficient and materially misleading 2007 Form 10-K and first quarter 2008 Form 10-Q.

## **2. Fox caused Powder River to report inflated asset values.**

25. From 2005 through the first quarter of 2008, Powder River reported assets that the company did not own, that did not exist, or that should have been written off. As a result, the company overstated its assets by 7% to 48%. *See Exhibit A.*

26. In particular, Powder River improperly included as assets in its financial statements two oil-and-gas leases it had agreed, but failed, to acquire. Specifically, in 2005, Fox made nonrefundable payments with Powder River funds totaling \$500,000 to acquire a New Mexico oil-and-gas lease for \$5 million. By August 2005, Fox had defaulted on the agreement and Powder River forfeited both its rights to the lease and to return of its \$500,000 down payment. Nonetheless, Fox, then CEO, CFO, and president, failed to write off the \$500,000 in acquisition costs. Furthermore, the company continued to report the New Mexico lease as an asset on its balance sheet from the third quarter of 2005 through the first quarter of 2008.

27. Similarly, in late 2006 and early 2007, Fox made nonrefundable payments with Powder River funds totaling \$1.5 million to acquire a Texas oil-and-gas lease for \$6.5 million. The company reported the lease, along with an associated \$5 million note payable, as assets in its financial statements and SEC filings commencing year-end 2006 through the first quarter of 2008. In reality, the agreement was never consummated and, contrary to Fox's representations to the accounting consultants and external auditor, no note agreement was ever executed. As with the New Mexico lease, Powder River ultimately forfeited its right both to acquire the Texas lease and to recover its \$1.5 million down payment.

28. In 2006, Powder River reported as an asset on its balance sheet a \$1.2 million "cash" item, which was in reality a loan receivable, based on a loan Powder River had made to an undisclosed related party. In 2007, Powder River began recording the transaction as a "loan receivable," and accruing interest on it. The company failed, however, to disclose that the "loan receivable" was a related party transaction – which is required to be specifically disclosed under Statement of Financial Accounting Standard No. 57, *Related Party Disclosure*. Furthermore, although the borrower made no loan re-payments to Powder River, the company included the full

loan amount, plus accrued interest, in its year-end 2007 financial statements. Fox, who knew no payments had been made on the loan and knew the borrower was a related party, took no steps to correct the improper accounting, and then signed and certified the false and materially misleading 2007 Form 10-K.

**3. Fox caused Powder River to report, improperly, certain oil and gas properties as “proved reserves.”**

29. At year-end 2005, 2006 and 2007, oil and gas properties represented, respectively, 62%, 67% and 82% of Powder River’s total reported assets. Powder River’s year-end 2004 to year-end 2007 financial statements reported supplementary, unaudited footnote information required under Statement of Financial Accounting Standards No. 69, *Disclosures about Oil and Gas Producing Activities*. Powder River claimed in the footnote that it owned proved reserves valued at between \$3.7 million and \$382 million. The claim included proved reserves from properties the company did not own, and was derived in part from questionable reserve estimates that did not comply with the SEC’s definition of proved reserves set forth in Regulation S-X Rule 4-10(a).

30. Fox obtained reserve reports for Powder River and oversaw its reserve-reporting process. At least some of the company’s reserve reports were prepared by a Texas engineer, an individual Fox knew, or was severely reckless in not knowing, was a convicted felon and securities fraud recidivist. Powder River, however, represented in its annual and quarterly reports from 2004 to 2007 that the company’s proved reserves were based on evaluations prepared by a certain Oklahoma petroleum engineer. In fact, the Oklahoma engineer performed no services for Powder River after 2005, and his earlier reports were not intended for use in SEC filings. Further, as Fox knew or was severely reckless in not knowing, the Oklahoma engineer never comprehensively evaluated the company’s oil and gas properties, and he did not know of

or consent to Powder River's references to him or his reports in Powder River's Commission filings.

31. Fox was on notice that the company's reserve reports were inadequate. Nonetheless, Powder River continued to include proved reserves, based on inadequate reserve reports, in its annual reports for the years 2005 through 2007. By 2007, Powder River had still not obtained bona fide historical or updated reserve reports, despite the fact that oil and gas properties represented approximately 82% of its total reported assets.

**C. Fox issued false and misleading press releases and made other fraudulent public disclosures about Powder River.**

**1. Press Releases**

32. Fox drafted and disseminated numerous false and materially misleading press releases announcing property purchases the company did not complete, and touting fraudulently inflated revenues, pre-tax income and reserves. The fraudulent false press releases included releases issued on the following dates: November 29, 2005; January 24, 2006; March 7, 2006; September 6, 2006; September 25, 2006; October 11, 2006; December 27, 2006; April 9, 2007; May 16, 2007; July 23, 2007; October 10, 2007; and October 30, 2007. The company subsequently posted the press releases on its website.

33. The press releases dated January 24, 2006 and October 11, 2006 announced as "completed" the "purchase" by Powder River of, respectively, the San Juan, New Mexico and Victoria County, Texas "projects." In fact, as Fox was well aware, Powder River had not at the time of the press release, and has not at any time thereafter, completed the acquisition of either property; further, it never recovered its substantial down payments on the properties. Fox took no steps to correct these disclosures, either in a corrective press release or otherwise, even though he drafted and reviewed them, and knew they were materially false and misleading.

## 2. **October 2007 Annual Shareholder Meeting Presentation**

34. On October 30, 2007, Fox conducted a slide presentation at Powder River's annual shareholder meeting in Tulsa, Oklahoma. Fox showed a map of Powder River's "producing properties," including the Texas Lease, which the company did not actually own. Similarly, he presented a proved reserves chart showing reserves from the failed New Mexico and Texas Lease purchases. Fox did not inform the assembled shareholders that Powder River did not own the properties, and that it had forfeited its down payments on the properties. Finally, Fox told the shareholders that Powder River's "primary focus" was "oil and gas exploration and development," without disclosing that what he called its "secondary focus" – the "acquisition and marketing of oil and gas properties" – yielded virtually all of the company's reported revenue. Fox also failed to clarify for the shareholders at the meeting that the company's total oil and gas revenue did not cover the company's undisclosed guaranteed payments to the Asian investors.

### **D. Fox falsified Powder River's SEC filings.**

35. Fox participated in drafting, and reviewed, signed and certified Powder River's Commission filings, which he knew or was severely reckless in not knowing contained false and materially misleading statements related to the company's accounting, revenues, assets, liabilities, related party transactions, results of operations and general financial posture. Those filings were as follows: i) the Forms 10-KSB for the fiscal years ended December 31, 2004, 2005, and 2006; ii) the Form 10-K for the fiscal year ended December 31, 2007; iii) the Forms 10-QSB for the quarters ended March 31, 2005, 2006, and 2007, for the quarters ended June 30, 2005, 2006, and 2007, and for the quarters ended September 30, 2005, 2006, and 2007; and iv)

the Form 10-Q for the quarter ended March 31, 2008. In his various, frequently multiple, corporate officer capacities (chairman, president, CEO, and CFO), Fox signed and certified all of these filings. Fox also signed the Form 8-K “Current Reports,” filed by Powder River, including a materially false and misleading Form 8-K filed on March 17, 2008.

36. As a result of Fox’s misconduct, Powder River’s books and records falsely and inaccurately reflected, among other things, the company’s revenues, assets, and liabilities, results of operations, related party transactions, and general financial condition. Additionally, Fox knowingly or recklessly circumvented Powder River’s then existing accounting controls by, among other things, concealing the contracts between Powder River and the investors – contracts that would have revealed the working interest conveyance proceeds as borrowings, and the guaranteed minimum payments as return of the investors’ loaned principal. Fox also misrepresented to the company’s consultants and auditor the true nature of the working conveyance proceeds, the loan principal repayments, the company’s debt obligations, and the company’s purported proved reserves.

37. Fox, as chairman, president, CEO, and CFO of Powder River, also failed to maintain a system of internal accounting controls sufficient to provide assurances that revenue, assets, and liabilities were valued and reported appropriately to permit the proper preparation of financial statements in conformity with GAAP. The company conceded this failure in its 2007 Form 10-K’s restatement of its 2007 quarterly financial statements.

**E. Fox signed false Sarbanes-Oxley certifications.**

38. Fox falsely certified that the company’s annual and quarterly SEC reports did not contain any material misstatements or omit material information and that the reports fairly

presented in all material respects Powder River's financial condition and results of operations. Fox knew or was severely reckless in not knowing that these certifications were false.

39. In his Sarbanes-Oxley Section 302 certifications, Fox also falsely attested that he had disclosed to the company's external auditor all instances of fraud, whether or not material, involving management or others with responsibility over the company's internal controls. Fox knew or was severely reckless in not knowing that these certifications were false.

**F. Fox made material misrepresentations to, and concealed material information from Powder River's external auditor.**

40. Fox falsely attested in management representation letters to Powder River's external auditor, which he signed as president or as CEO, that Powder River's financial statements were "fairly presented in conformity with GAAP," that Fox "ha[d] no knowledge of any fraud or suspected fraud affecting the Company," that the company "has satisfactory title to all owned assets" and that "related party transactions and related accounts receivable ... have been properly recorded or disclosed in the financial statements." The management letters were dated as follows: March 29, 2004; February 23, 2005; February 20, 2006; May 13, 2006; August 11, 2006; March 7, 2007; and August 9, 2007. Fox knew or were severely reckless in not knowing that these representations were false. Fox also falsely stated in the letters that there had been no fraud involving management or employees with significant roles in internal controls.

41. Fox intentionally, or severely recklessly, concealed from the consultants and the company's external auditor the true nature of the working conveyance proceeds, the loan principal repayments, the company's debt obligations, the value and bona fides of the company's purported proved reserves, and certain related party transactions.

**G. Fox fraudulently concealed the fraudulent accounting and reporting.**

42. In addition to and including the concealment conduct described in the preceding paragraphs, Fox took affirmative steps that were intended to and which resulted in the concealment of Fox's fraudulent conduct from the auditors, the Commission, and the investing public.

43. Fox took affirmative steps to conceal his actions by authorizing, executing or otherwise causing Powder River to issue public filings and public statements that contained false and misleading disclosures regarding Powder River's accounting, revenues, assets, liabilities, related party transactions, results of operations and general financial posture. The Commission, its staff, and the public were entitled to rely upon the truthfulness of the disclosures contained in Powder River's public statements and SEC filings.

44. As also discussed in previous paragraphs of this complaint, Fox had deceived the company's consultants, external auditor, and Fox's successor as CFO about the nature of the loan proceeds, and based on that deception, the company had reported the proceeds as revenue from the end of 2004 through the first quarter of 2008.

45. Based on these facts, Fox deprived the Commission and the public of notice or reason to conclude that he was conducting a fraudulent accounting scheme. Further, the Commission exercised due diligence until discovering the scheme on or about July 17, 2008, after which the Commission staff expeditiously opened an informal inquiry into Powder River's accounting practices. After conducting a thorough and timely investigation, the Commission authorized the filing of this complaint.

**H. Fox was motivated by personal gain to falsify Powder River's financial statements and filings.**

46. Fox received from Powder River a bonus of \$320,000, which was directly linked to the company's fraudulently inflated revenues. Because Fox falsified those revenues, and was engaged in fraud throughout his tenure with Powder River, Fox should be ordered to disgorge this bonus, in addition to all other unjust enrichment he received from Powder River, coupled with prejudgment interest.

**I. The Restatement**

47. During the audit of Powder River's 2007 financial statements in March 2008, Fox's successor as CFO, the outside consultant and the company's audit engagement partner reviewed the underlying working interest contracts with individual investors and talked to the Singaporean intermediary about the nature of the guaranteed minimum payments. As a result, they agreed that accounting for the guaranteed payments as an asset (prepaid production payments), was improper.

48. Consequently, on March 17, 2008, Powder River filed a Form 8-K, signed by Fox, in which it publicly disclosed for the first time that the guaranteed minimum payments to investors were loan repayments and warned that the company's first, second and third quarter 2007 financial statements contained in the company's filings on Form 10-QSB could not be relied upon. In the Form 8-K, the company expressly referred to the correction of the accounting error as a "restatement."

49. Even the restatement was materially false and misleading. There is no mention in the company's discussion of the restatement, that the company, since the end of 2004, had consistently falsified its financial statements by, among other things, recording the proceeds from the working interest conveyances as revenue, and by failing to record as a liability the company's obligation to pay to the investors the guaranteed minimum payments. Making matters worse, the

company, in Note 6 to the financial statements incorporated in its year-end 2007 Form 10-K, and in Note 4 to the financial statements incorporated in its Form 10-Q for the first quarter of 2008, falsely characterized this obligation a “Future Commitment,” when, in fact, it was a current ongoing commitment.

50. Powder River’s restatement, though fraudulently incomplete as discussed in the preceding paragraphs, constituted an admission of accounting errors. GAAP provides that “correction of an error in the financial statements of a prior period discovered subsequent to their issuance should be reported as a prior period adjustment.” Accounting Principles Board (“APB”) Opinion No. 20.36 (1971). An error includes a mistake in the application of GAAP as well as a misuse of facts. As the APB explains:

Errors in financial statements result from mathematical mistakes, mistakes in the application of accounting principles, or oversight or misuse of facts that existed at the time the financial statements were prepared. In contrast, a change in accounting estimate results from new information or subsequent developments and accordingly from better insight or improved judgment. . . . A change from an accounting principle that is not generally accepted to one that is generally accepted is a correction of an error for purposes of applying this Opinion.

APB Opinion No. 20.13 (1971).

51. The Commission, in accordance with its rulemaking authority under the Exchange Act, requires issuers to disclose specific information in periodic reports that must be filed with the Commission. 15 U.S.C. § 78m. One such obligation, imposed by Commission Regulation S-X, requires issuers to file financial statements that comply with GAAP and are audited in accordance with Generally Accepted Accounting Standards (“GAAS”). See 17 C.F.R. §§ 210.2-02 and 210.4-01. Under SEC Regulation S-X, “financial statements filed with the Commission which are not prepared in accordance with generally accepted accounting principles will be presumed to be misleading or inaccurate, despite footnote or other disclosures, unless the

Commission has otherwise provided.” 17 C.F.R. § 210.4-01(a)(1). Consequently, Powder River’s financial statements were presumptively misleading and inaccurate.

**J. Fox poses a current threat to the investing public.**

52. To date, Fox has not only failed to admit or express contrition for his wrongdoing, but continues to maintain his innocence. Worse, according to the August 7, 2008 “Initial Report” prepared by the receiver appointed for Powder River, Fox, “in defiance of the Court’s order to cooperate ... has actively interfered” in the receiver’s attempts to “assert control over the various oil-and-gas producing properties of the company.” According to the receiver, “Mr. Fox’s activities have caused disruptions in the company’s operations.”

53. For at least 14 consecutive quarters, Fox took advantage of his position as the head of Powder River to defraud the investing public. In addition to a large salary, Fox received a \$320,000 bonus directly linked to the revenue figures he personally inflated. Fox, who has been in the oil and gas business for several decades, remains in a position to attempt to commandeer a U.S. oil-and-gas company as he did Powder River.

**FIRST CLAIM**

***(Violations of Exchange Act Section 10(b) and Exchange Act Rule 10b-5)***

54. The Commission re-alleges paragraphs 1 through 53.

55. By engaging in the conduct described above, Fox, with scienter, directly or indirectly, by use of the means or instruments of interstate commerce or of the mails, or of the facility of a national securities exchange, in connection with the purchase or sale of securities: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading; and/or (c) engaged in acts,

practices, or courses of business which operated or would operate as a fraud or deceit upon other persons, including purchasers and sellers of securities.

56. By reason of the foregoing, Fox violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5], and unless restrained and enjoined will continue to commit such violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

### **SECOND CLAIM**

#### ***(Violations of Exchange Act 13(b)(5) and Exchange Act Rule 13b2-1)***

57. The Commission re-alleges paragraphs 1 through 53.

58. By engaging in the conduct described above, Fox, directly or indirectly, knowingly falsified books, records, or accounts of Powder River, or knowingly circumvented or knowingly failed to implement a system of internal accounting controls at Powder River subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

61. By engaging in the conduct described above, Fox, directly or indirectly, falsified or caused to be falsified, books, records, or accounts subject to 15 U.S.C. § 78m(b)(2)(A).

62. By reason of the foregoing, Fox violated, and unless restrained and enjoined will continue to violate Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1].

### **THIRD CLAIM**

#### ***(Violations of Exchange Act Rule 13b2-2)***

63. The Commission re-alleges paragraphs 1 through 53.

64. Fox, as an officer of an issuer, by engaging in the conduct described above, directly or indirectly, made or caused to be made a materially false or misleading statement to an accountant, or omitted to state or caused another person to omit to state any material fact

necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading, to an accountant in connection with: (i) an audit, review or examination of the financial statements of an issuer required to be made under Commission rules, or (ii) the preparation or filing of any document or report required to be filed with the Commission; or directly or indirectly took action, or directed another to take action, to coerce, manipulate, mislead, or fraudulently influence any independent public or certified public accountant engaged in the performance of an audit or review of the financial statements of Powder River required to be filed with the Commission, while he knew or should have known that such action(s), if successful, could result in rendering Powder River's financial statements materially misleading.

65. By reason of the foregoing, Fox has violated, and unless restrained and enjoined will continue to violate, Exchange Act Rule 13b2-2 [17 C.F.R. § 240.13b2-2].

#### **FOURTH CLAIM**

##### ***(Violations of Exchange Act Rule 13a-14)***

66. The Commission re-alleges paragraphs 1 through 53.

67. Fox, as Powder River's principal executive officer and principal financial officer, respectively, signed false certifications under Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rule 13a-14 thereunder that were included in Powder River's annual and quarterly reports. Fox signed a false certification that was included with Powder River's quarterly report filed on Form 10-Q for the quarter ended September 30, 2002. In each such certification, Fox falsely stated, among other things, that: (a) each report did not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading; (b) each financial

statement, and other financial information included in each report, fairly presented in all material respects the financial condition, results of operations, and cash flows of Powder River as of, and for, the period presented in the report; and (c) Fox had disclosed to Powder River's external auditor all significant deficiencies in the design or operation of Powder River's internal controls and any fraud, whether or not material, that involved management or other employees who had a significant role in Powder River's internal controls. Fox knew or should have known that his certifications were false.

68. By reason of the foregoing, Fox violated Exchange Act Rule 13a-14 [17 C.F.R. § 240.13a-14].

**FIFTH CLAIM**

***(Violations of Exchange Act Section 13(a) and Exchange Act Rules 12b-20, 13a-1, 13a-11 and 13a-13)***

69. The Commission re-alleges paragraphs 1 through 53.

70. Powder River filed with the Commission and disseminated to investors false and misleading quarterly and annual reports and reports on Form 8-K. In doing so, Powder River violated Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)], and Exchange Act Rules 12b-20, 13a-1, 13a-11 and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11 and 240.13a-13], which require issuers of securities registered under the Exchange Act to file with the Commission factually accurate quarterly and annual reports and reports on Form 8-K that, among other things, do not contain untrue statements of material fact or omit to state material information necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

71. By engaging in the conduct described above, Fox knowingly or with severe recklessness gave substantial assistance to Powder River's violations of these provisions.

72. By reason of the foregoing, Fox has aided and abetted Powder River's violations, and unless restrained and enjoined will continue to aid and abet such or similar violations, of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)], and Rules 12b-20, 13a-1, 13a-11 and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13].

**SIXTH CLAIM**

***(Violations of Exchange Act Sections 13(b)(2)(A) and 13(b)(2)(B))***

73. The Commission re-alleges paragraphs 1 through 53.

74. Based on the conduct alleged above, Powder River violated Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)], which requires issuers of securities registered under Section 12 of the Exchange Act [15 U.S.C. § 78l] to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of its assets.

75. Based on the conduct alleged above, Powder River violated Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)], which requires issuers to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions were recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain the accountability of assets.

76. By engaging in the conduct described above, Fox knowingly or recklessly provided substantial assistance to Powder River in (i) its failure to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected the transactions and dispositions of the assets of Powder River; and (ii) its failure to devise and maintain a sufficient system of internal accounting controls.

77. By reason of the foregoing, Powder River has violated Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78(m)(b)(2)(B)].

78. By reason of the foregoing, Fox has aided and abetted Powder River's violations, and unless restrained and enjoined will continue to aid and abet such violations, of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78(m)(b)(2)(B)].

### **REQUEST FOR RELIEF**

For these reasons, the Commission respectfully requests that the Court:

#### **I.**

Permanently enjoin Fox from violating Sections 10(b) and 13(b)(5) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78m(b)(5)], and Exchange Act Rules 10b-5, 13a-14, 13b2-1, and 13b2-2 [17 C.F.R. §§ 240.10b-5, 240.13a-14, 240.13b2-1, and 240.13b2-2], and aiding and abetting violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78(m)(b)(2)(A), and 78(m)(b)(2)(B)] and Exchange Act Rules 12b-20, 13a-1, 13a-11, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13].

#### **II.**

Order defendant Fox to disgorge all wrongfully obtained funds and benefits, plus prejudgment interest.

#### **III.**

Order defendant Fox to pay civil monetary penalties under Section 21(d)(3) of the Exchange Act [15 U.S.C. §§ 77t(d) and 78u(d)(3)].

#### **IV.**

Bar defendant Fox from serving as an officer or director of any public company under Section 21(d)(2) of the Exchange Act [ and 78u(d)(2)].

V.

Order any additional relief as this Court may determine just and necessary.

Dated: April 8, 2011

Respectfully submitted,

*s/ Jeffrey A. Cohen*

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**EXHIBIT A**

**Estimated Misstatements of Powder River's  
Financial Statements  
Annual Financial Data for Year-end 2004 through  
Year-end 2007**

(Dollars in thousands)						
Period	FS Item	As Reported	As Estimated By SEC	\$ Misstated Incr (Decr)	Percent Misstated	Nature of Principal Misstatements
FYE 12/31/04	Assets	\$ 4,006	\$ 4,006	\$ 0	0%	None
	Revenue Pre-tax	\$ 2,185	\$248	\$( 1937)	781%	Payable to investors classified as revenue
	Income	\$1,008	\$(929)	\$( 1937)	209%	Revenue recognition & asset value inflation
FYE 12/31/05	Assets	\$ 7,825	\$7,314	\$ ( 511)	7%	Included assets not owned
	Revenue Pre-tax	\$4,644	\$623	\$( 4021)	645%	Payable to investors classified as revenue
	Income	\$1,511	\$( 3,021)	\$( 4,532)	150%	Revenue recognition & asset value inflation
FYE 12/31/06	Assets	\$ 24,895	\$17,832	\$ ( 7,063)	40%	Included non-existent assets and assets not owned
	Revenue Pre-tax	\$13,174	\$1,785	\$( 11,389)	638%	Payable to investors classified as revenue
	Income	\$8,757	\$( 3,913)	\$( 12,670)	324%	Revenue recognition & asset value inflation
FYE 12/31/07	Assets	\$ 27,842	\$19,200	\$ ( 8,642)	45%	Included non-existent assets and assets not owned
	Revenue Pre-tax	\$13,423	\$3,347	\$( 10,076)	301%	Payable to investors classified as revenue
	Income	\$2,167	\$( 15,375)	\$( 17,542)	114 %	Revenue recognition & asset value inflation

**Estimated Misstatements of Powder River's Financial Statements**  
**Quarterly Financial data from Q1, 2005 through Q1, 2008**

Period	FS Item	(Dollars in thousands)			Percent Misstated	Nature of Principal Misstatements
		As Reported	As Restated (Staff Est.)	\$ Misstated Incr (Decr)		
FQE 3/31/05	Assets	\$6,384	\$ 6,384	\$ 0	0%	Payable to investors classified as revenue Revenue recognition
	Revenue	\$1,951	\$76	\$(1,875)	2,467%	
	Pre-tax Income	\$1,472	\$(403)	\$(1,875)	465%	
FQE 6/30/05	Assets	\$ 6,266	\$6,266	\$ 0	0%	
	Revenue	\$312	\$312	\$ 0	0%	
	Pre-tax Income	\$(2,446)	\$(2,446)	\$ 0	0%	
FQE 9/30/05	Assets	\$ 6,593	\$6,593	\$ 0	0%	Payable to investors classified as revenue Revenue recognition
	Revenue	\$837	\$131	\$( 706)	539%	
	Pre-tax Income	\$(596)	\$(1,302)	\$( 706)	54%	
FQE 3/31/06	Assets	\$ 12,374	\$ 11,812	\$ (562)	5%	Included assets not owned
	Revenue	\$ 6,040	\$240	\$( 5,800)	2,417%	Payable to investors classified as revenue Revenue recognition & asset value inflation
	Pre-tax Income	\$4,484	\$(1,366)	\$( 5,850)	428%	
FQE 6/30/06	Assets	\$ 16,072	\$15,510	\$ ( 562)	4%	Included assets not owned
	Revenue	\$6,357	\$557	\$( 5,800)	1,041%	Payable to investors classified as revenue Revenue recognition
	Pre-tax Income	\$3,408	\$( 2,392)	\$( 5,800)	242%	
FQE 9/30/06	Assets	\$ 20,477	\$19,915	\$ ( 562)	3%	Included not owned
	Revenue	\$5,397	\$226	\$( 5,171)	2,288%	Payable to investors classified as revenue Revenue recognition
	Pre-tax Income	\$3,469	\$( 1,702)	\$( 5,171)	304%	

(Dollars in thousands)						
Period	FS Item	As Reported	As Restated (Staff Est.)	\$ Misstated Incr (Decr)	Percent Misstated	Nature of Principal Misstatements
FQE 3/31/07	Assets	\$29,271	\$22,206	\$ ( 7,065)	32%	Included non-existent assets and assets not owned
	Revenue	\$5,693	\$952	\$( 4,741)	498%	Payable to investors classified as revenue
	Pre-tax Income	\$3,411	\$( 1,330)	\$( 4,741)	357 %	Revenue recognition
FQE 6/30/07	Assets	\$32,125	\$25,060	\$(7,065)	28%	Included non-existent assets and assets not owned
	Revenue	\$5,449	\$649	\$(4,800)	740%	Payable to investors classified as revenue
	Pre-tax Income	\$3,402	\$(1,398)	\$(4,800)	343%	Revenue recognition
FQE 9/30/07	Assets	\$32,237	\$25,172	\$(7,065)	28%	Included non-existent assets and assets not owned
	Revenue	\$2,728	\$546	\$(2,182)	400%	Payable to investors classified as revenue
	Pre-tax Income	\$826	\$(1,356)	\$(2,182)	161%	Revenue recognition
FQE 3/31/08	Assets	\$26,547	\$17,905	\$ ( 8,642)	48%	Included non-existent assets and assets not owned
	Revenue	\$582	\$546	\$( 36)	7%	Payable to investors classified as revenue
	Pre-tax Income	\$( 3,209)	\$( 3,909)	\$( 700)	18 %	Revenue recognition & asset value inflation