

OIL & GAS DOCKET NO. 03-0246950

APPLICATION OF GROVER R. DAVIDSON TO CONTEST CANCELLATION OF P-4 CERTIFICATES OF COMPLIANCE FOR THE ALLEN, COYE MAE (04567) LEASE, ANDERSON, CHAS. & LUCY (11089) LEASE, FLOYD, B. M. "A" (11635) LEASE, AND FLOYD, B. M. "B" (19205) LEASE, BOLING FIELD, WHARTON COUNTY, TEXAS, AND TO CONTEST CLASSIFICATION OF THE FLOYD, B. M. "B" (19205) LEASE, WELL NOS. 1A, 2L, AND 3J AS INLAND WATERWAY WELLS REQUIRING BAY WELL FINANCIAL ASSURANCE

APPEARANCES:

FOR APPLICANT:

Robert D. Jowers
Grover R. Davidson

APPLICANT:

Grover R. Davidson

FOR INTERVENOR:

Christopher Hotchkiss
Staff Attorney

Enforcement Section
Railroad Commission of Texas

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE HEARING REQUESTED:

March 27, 2006

DATE OF NOTICE OF HEARING:

April 27, 2006

DATE OF HEARING:

May 17, 2006

HEARD BY:

James M. Doherty, Hearings
Examiner

Donna Chandler, Technical Examiner

DATE PFD CIRCULATED:

June 9, 2006

STATEMENT OF THE CASE

This is a case wherein Grover R. Davidson ("Davidson") contests: (1) the classification by the Commission of Davidson's Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and 3J as inland waterway wells requiring bay well financial assurance; and (2) the proposal of the Commission to

cancel the certificates of compliance for all of Davidson's leases based on Davidson's failure timely to renew his Form P-5 organization report and financial assurance.

A hearing was held on May 17, 2006. Davidson and the Enforcement Section of the Office of General Counsel appeared and presented evidence.

APPLICABLE LAW

Pursuant to §91.103 of the Texas Natural Resources Code ("Code"), any person, including any firm, partnership, joint stock association, corporation, or other organization, required to file an organization report under §91.142 of the Code must execute and file with the Commission a bond, letter of credit, or cash deposit.

Pursuant to §91.104 of the Code, a person required to file a bond, letter of credit, or cash deposit under §91.103 of the Code who is an inactive operator or who operates one or more wells must, at the time of filing or renewing an organization report required by §91.142 of the Code, file an individual bond as provided under §91.1041 of the Code, a blanket bond as provided under §91.1042 of the Code, or a letter of credit or cash deposit in the same amount as required for an individual bond under §91.1041 of the Code or a blanket bond under §91.1042 of the Code.

Pursuant to §§91.1041(b) and 91.1042(b) of the Code, the Commission is authorized to set by rule the amount of the financial security for an operator of bay and offshore wells at a reasonable amount that exceeds the amount provided by §§91.104(a) and 91.1042(a) of the Code.

Statewide Rule 78(g)(1) provides the base amount of financial security required of all operators. The base amount of blanket bonds, letters of credit, or cash deposits required of operators of 10 or fewer wells is \$25,000. Alternatively, an operator may file an individual bond in an amount equal to \$2.00 per foot of the total depth of all wells operated.¹

Statewide Rule 78(g)(2) provides for the filing of additional financial security for operators of bay wells. Pursuant to Statewide Rule 78(g)(2)(A), all operators of bay wells must file entry level financial security of no less than \$60,000 in addition to the financial security required by Statewide Rule 78(g)(1). Statewide Rule 78(g)(2)(B) requires additional financial security of \$60,000 for each *inactive* bay well in excess of one.

Statewide Rule 78(a)(5) defines "bay well" as any well under the Commission's jurisdiction for which the surface location is, as here pertinent, "located in or on a lake, river, stream, canal, estuary, bayou, or other inland navigable waters of the state and which requires plugging by means other than conventional land-based methods, including, but not limited to, use of a barge, use of a

¹ As of the date the record closed, Davidson was the operator of 9 wells having total depth of 8,920 feet.

boat, dredging, or building a causeway or other access road to bring in the necessary equipment to plug the well . . .”.

Pursuant to Texas Natural Resources Code, §91.142(f), if an operator does not maintain on file with the Commission an organization report and financial assurance as required by Chapter 91 of the Code, the Commission may, on written notice, suspend any certificates of compliance approved under Chapter 85 of the Code.

BACKGROUND

This is Davidson’s second request for relief from bay well financial assurance requirements. In Oil & Gas Docket No. 03-0242400, the Commission served a Final Order on November 1, 2005, relative to Davidson’s financial assurance requirement for his March 1, 2005, through February 28, 2006, P-5 renewal year. In this Final Order, the Commission granted Davidson relief from bay well financial assurance requirements based on findings, *inter alia*, that: (1) through actions of others and beyond Davidson’s control, water had encroached on the locations of three of Davidson’s wells in a natural drainage way; (2) when acquired by Davidson, the wells were land-based and were produced as such by Davidson for many years prior to the water encroachment; (3) the water level around Davidson’s wells was in the process of being drained; and (4) if drainage of the waters around the wells were only temporary, Davidson would plug the wells when they could be accessed on dry land for the purpose of plugging by conventional land-based methods.

In its Final Order served November 1, 2005, the Commission ordered that Davidson would be permitted to renew his Form P-5 organization report for the March 1, 2005, through February 28, 2006, renewal year by posting financial assurance in the amount required by Statewide Rule 78(g)(1), subject to conditions that: (1) within 30 days of the date on which the order became final, Davidson would file financial assurance as required by Statewide Rule 78(g)(1) and make such other filings as were necessary to renew his organization report for the period March 1, 2005, through February 28, 2006; (2) in the event Davidson did not file such financial assurance and renew his Form P-5 as required, the certificates of compliance for Davidson’s leases would be canceled; (3) Davidson would plug the Floyd, B. M. “B” (19205) Lease, Well Nos. 1A, 2L, and 3J, if prior to February 28, 2006, removal of waters from around the wells was only temporary and the wells could be plugged by conventional land-based methods, as determined by the Commission’s Field Operations Section; and (4) the order would not apply to the amount of financial assurance required of Davidson to renew his Form P-5 organization report on March 1, 2006.

The effect of the Commission’s Final Order served November 1, 2005, was to permit Davidson to renew his organization report for the March 1, 2005, through February 28, 2006, renewal year by filing financial assurance as if all of his wells were land-based. As of December 23, 2005, Davidson filed financial assurance in the amount of \$18,580 in the form of a letter of credit. This was financial assurance in an amount equal to \$2.00 per foot of the total depth of the nine wells operated by Davidson.

As of March 1, 2006, when Davidson's Form P-5 was due for renewal for the March 1, 2006, through February 28, 2007, renewal year, the Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and 3J remained classified by the Commission as wells located in or on an inland waterway, because water had not been completely drained from around the wells. Because wells in or on an inland waterway are subject to bay well financial assurance requirements, the Commission's P-5/Financial Assurance Unit notified Davidson that to renew his Form P-5 for the March 1, 2006, through February 27, 2007, renewal year, Davidson was required to file financial assurance of at least \$197,840. Davidson is a small operator, and it is not feasible for him to file financial assurance in this amount. During the period January 2005 through March 2006, Davidson's total production was 190 barrels of oil and 28 MCF of casinghead gas. When Davidson was unable to file financial assurance of at least \$197,840, his Form P-5 was placed in delinquent status as of March 1, 2006, and later the Commission issued to Davidson notices of intent to cancel the certificates of compliance for all of Davidson's leases. Davidson now requests that he be permitted to renew his Form P-5 for an additional year by filing financial assurance in the amount of \$18,580.

DISCUSSION OF THE EVIDENCE²

The record in this case and Commission records officially noticed by the examiner show that the Floyd, B. M. "B" (19205) wells that are now classified by the P-5/Financial Assurance Unit as inland waterway wells requiring bay well financial assurance were drilled in 1982 by another operator. Commission records disclose that Davidson became the operator of these wells in 1986. Commission production records show that the wells produced minimum amounts of oil until January 1999 when production ceased.³

Davidson testified that the subject wells were drilled as land-based wells by another operator and were operated and produced as land-based wells by Davidson from 1986 when he became operator until 1999 when water encroachment covered the wells. The wells are located in a natural drainage way that drains toward the San Bernard River in Wharton County. A levee constructed along the river area causes water to back up in the drainage way as a result of rainfall, although apparently there is a drainage pipe constructed through the levee which can be used to release water down to the river.

When Davidson commenced to operate the subject wells, Texas Gulf Sulfur was engaged in sulfur mining in the area, maintained the levee, and used pumps to pump out water that collected

² Pursuant to Davidson's request, the examiner officially noticed the record, proposal for decision, and final order in Oil & Gas Docket No. 03-0242400 involving Davidson's similar application relative to his March 1, 2005, through February 28, 2006, Form P-5 renewal year. Much of the evidence discussed is contained in the record of the hearing held on June 6, 2005, in this prior docket.

³ Commission production records officially noticed by the examiner indicate the following reported production of oil for the Floyd, B. M. "B" (19205) Lease during 1993-1999: 1993 - 13 BO; 1994 - 19 BO; 1995 - 12 BO; 1996 - 63 BO; 1997 - 44 BO; 1998 - 17 BO; and 1999 (Jan. only) - 1 BO.

in the drainage way. However, a successor to Texas Gulf Sulfur who purchased the land did not use pumps or release water into the river, and water gradually encroached on the location of the subject wells operated by Davidson. Davidson testified that he had no control over the water level that collected in the drainage way.

On an undisclosed date, the successor landowner conveyed a water easement to Phillips Petroleum Company, now ConocoPhillips. In 2002, Phillips obtained from the Texas Commission on Environmental Quality (“TCEQ”) a certificate of adjudication to impound water in the area of the drainage way. ConocoPhillips now maintains the water impoundment. Davidson testified that he had seen the water level rise and fall. There is an indication in the record that water impounded in this lake or reservoir is somehow used by ConocoPhillips in a nearby refinery operation.

Davidson is a plaintiff in a class action lawsuit that has been filed against ConocoPhillips arising out of the water impoundment and the alleged taking of Davidson’s property rights. This lawsuit was filed in August 2004, and was still in the pretrial discovery stage at the time of the hearing. Davidson seeks money damages in the lawsuit, but there is a possibility that when discovery has been completed, injunctive relief could be sought requiring that the waters around Davidson’s wells be drained.

During 2005, Davidson learned from a TCEQ representative that an old sulfur well that had been covered by the water impoundment was leaking, and ConocoPhillips had agreed to drain water from the impoundment to address this problem. An August 5, 2005, letter from counsel for Davidson stated that on the premise that ConocoPhillips would not drain the impoundment permanently, Davidson had filed with the Commission the necessary forms to plug the subject wells, and would plug them when ConocoPhillips had drained the impoundment sufficiently to allow Davidson to access the wells on dry land. Attached to the August 5, 2005, letter was June 7, 2005, correspondence to Davidson’s counsel from an attorney apparently representing ConocoPhillips that stated his client had “begun de-watering the lake at the Sweeney Refinery, allowing your client, Mr. Davidson, access to re-abandon well heads.” This same correspondence stated that the window of opportunity for Davidson to “re-abandon his well heads” was somewhat limited.

On September 14, 2005, in connection with Oil & Gas Docket No. 03-0242400, counsel for Davidson filed additional correspondence, enclosing excerpts from the deposition testimony of a TCEQ representative, apparently given on August 24, 2005, in the context of the class action lawsuit initiated by Davidson and others against ConocoPhillips. In this deposition testimony, the TCEQ representative stated, among other things, that he was instrumental in causing ConocoPhillips to begin efforts to drain the subject water impoundment starting in May 2005, the draining of the impoundment could progress only as fast as the drain pipe will permit, draining had been temporarily impeded by heavy rains, draining of the impoundment was continuing but would take time, and draining mechanisms would permit more water to be drained from the impoundment. In the September 14, 2005, correspondence, Davidson’s counsel stated that Davidson still could not predict when he would be able to access the wells, but confirmed Davidson’s prior pledge to plug the wells when possible in the event ConocoPhillips would not permanently drain the impoundment to allow production of the wells.

The District Office inspection report officially noticed by the examiner in connection with Oil & Gas Docket No. 03-0242400 indicated that an inspection of the subject impoundment was made on September 13, 2005. The subject wells remained under water. However, the inspector observed that the water level in the impoundment had dropped by about five feet since the last inspection.

As of May 17, 2006, the date of the hearing in the current docket, water remained around the Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and 3J. Davidson was without knowledge as to whether ConocoPhillips was continuing to drain the impoundment, but stated that the water level was about as low as he had seen. There has been a noticeable reduction in the water level during the past two months, and the tops of the subject wells are now above water. A District Office inspection on March 29, 2006, and photographs taken by the inspector, disclosed that there is still a considerable body of water around the wells, but the District Office estimated the water level had dropped five to seven feet since the last inspection in January 2006. Davidson stated that the subject wells are not leaking or otherwise posing a threat of pollution. Davidson would like ConocoPhillips to permanently drain water from the locations of his wells so that he can restore the wells to production. However, if drainage is only temporary, and the Commission orders him to do so, Davidson will plug the wells when they can be plugged by conventional land-based methods.

Davidson argued that imposition of bay well financial assurance requirements as a condition of organization report renewal would impose a severe financial hardship on Davidson. Davidson does not believe that the subject wells are "bay wells" within the definition of that term in Statewide Rule 78(a)(5) because the wells are located in private waters, not "waters of the state," and the water impoundment is not "navigable" because it does not have a navigable outlet.

The Enforcement Section presented the testimony of the Manager of the Commission's P-5/Financial Assurance Unit. He confirmed that: (1) Davidson's Form P-5 renewal date for his current renewal year was March 1, 2006, and Davidson's P-5 has been in delinquent status since that date because of a failure to file the required financial assurance; (2) considering that three of Davidson's wells are classified as wells in or on an inland waterway, Davidson's financial assurance requirement under Statewide Rule 78 is \$205,000 (Financial Assurance Option 2) or \$197,840 (Financial Assurance Option 1); and (3) the Commission has issued to Davidson notices of intent to cancel the certificates of compliance for all of Davidson's leases, based on Form P-5 and financial assurance delinquency. The Manager of the P-5/Financial Assurance Unit does not object to continuing for an additional year the same sort of financial assurance reduction granted to Davidson in Oil & Gas Docket No. 03-0242400, assuming that the order of approval is appropriately conditioned.

EXAMINERS' OPINION

The "bay well" financial assurance provisions of Statewide Rule 78 do not specifically address the situation where wells drilled and produced for many years as land wells are temporarily covered by inland waters. However, because the surface locations of the Floyd, B. M. "B" Lease, Well Nos. 1A, 2L, and 3J presently are in or on a body of inland water that clearly qualifies as a

“lake,” the examiners believe that the wells have been properly classified by the P-5/Financial Assurance Unit as wells in an inland waterway requiring bay well financial assurance under Statewide Rule 78. Reclassification of the wells as land wells would not be appropriate because Statewide Rule 78(a)(6) defines “land well” as “any well subject to Commission jurisdiction for which the surface location *is not in or on inland or coastal waters.*”

Davidson’s interpretation that the subject wells should not be classified as “bay wells” because they are located in or on a privately owned, rather than state owned, lake and because the lake does not have a navigable outlet is not the proper interpretation of the “bay well” definition in Statewide Rule 78(a)(5). Agency rules are to be interpreted according to the same rules of construction as are applied to statutes. An important principle to be observed in interpreting an agency rule is that the rule should be given a fair, rational, reasonable, and sensible construction considering its language and subject matter, with a view to accomplishing the agency’s intent and purpose.

Under Statewide Rule 78, wells with surface locations in or on a lake are properly classified as “bay wells” whether or not the lake is “owned” by the State. The phrase “and other inland navigable waters of the State” in the Statewide Rule 78(a)(5) definition of “bay well” does not require the interpretation contended for by Davidson. The examiners believe that if the Commission had intended to limit the applicability of bay well financial assurance requirements to wells with surface locations in or on waters “owned” by the State, it would have said so in plain language. Given the purpose and intent of requiring additional financial assurance for bay and offshore wells, the examiners believe that the Statewide Rule 78(a)(5) definition of “bay well” includes wells with surface locations in or on all inland waters in the State. Additional financial assurance was required because of the added expense associated with plugging wells located in inland waters, as compared to the expense of plugging land wells, and this additional expense is incurred regardless of the ownership of the inland waters.

For the same reason, wells with surface locations in a lake are properly to be considered within the Statewide Rule 78(a)(5) definition of “bay well” whether or not the lake has a navigable outlet. First, the word “navigable” in the bay well definition does not clearly modify “lake, stream, canal, estuary, [or] bayou.” Only “other inland waters” are plainly required to be “navigable.” The examiners believe that the word “navigable” was made applicable to “other inland waters” in the bay well definition in order to exclude miscellaneous small and shallow accumulations of water, such as a seasonal wetlands area. Secondly, even if Statewide Rule 78(a)(5) could reasonably be construed to require that a “lake, stream, canal, estuary, [or] bayou” be “navigable,” the bay well definition does not require they be navigable in the sense that they have a navigable outlet that permits passage from one body of water to another.

Having concluded that the Floyd, B. M. “B” (19205) Lease, Well Nos. 1A, 2L, and 3J cannot be reclassified as “land wells” exempt from bay well financial assurance requirements, the examiners turn now to the question of whether, in the unique circumstances of this case, Davidson is entitled to a reduction in bay well financial assurance for his March 1, 2006, through February 28, 2007, Form P-5 renewal year. Although, arguably, this is an issue which was not raised by Davidson’s request for hearing and not included in the call of the hearing, it is nonetheless an issue

which was tried by consent, in view of Davidson's request that he be permitted to renew his Form P-5 by filing the same amount of financial assurance approved in the Commission's Final Order in Oil & Gas Docket No. 03-0242400 for the March 1, 2005, through February 28, 2006, renewal year.

In the particular circumstances of this case, where: (1) the subject wells were drilled as land-based wells and operated as such for many years until water encroached over the wells beyond the control of the operator; (2) where there is no evidence of a violation of any rule pertaining to safety or the prevention or control of pollution; (3) where steps apparently are being taken to drain water from around the wells and a prospect that the wells ultimately can be plugged by use of conventional land-based methods; and (4) particularly because progress has been made in lowering the water level in the area of the subject wells since the Commission's prior Final Order in Oil & Gas Docket No. 03-0242400, the examiners recommend that the Commission enter a Final Order in this docket permitting Davidson to renew his Form P-5 organization report, for the March 1, 2006, through February 28, 2007, renewal year only, by filing financial assurance in the amount of \$25,000, which is the base amount of blanket bond financial assurance required for an operator of nine wells pursuant to Statewide Rule 78(g)(1)(B)(i).

The examiners recommend further that the Commission's final order in this docket be conditioned as follows: (1) within 30 days of the date on which the final order becomes administratively final, Davidson shall file a minimum of \$25,000 of financial assurance and make such other filings as may be necessary to renew his organization report for the period March 1, 2006, through February 28, 2007; (2) in the event Davidson does not, within 30 days of the date the Final Order becomes administratively final, file a minimum of \$25,000 of financial assurance and renew his organization report for the period March 1, 2006, through February 28, 2007, the P-4 certificates of compliance for all leases operated by Davidson shall be canceled and their pipeline or other carrier connection shall be severed; (3) at all times during the period March 1, 2006, through February 28, 2007, while Davidson continues to be the P-4 operator of the Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and/or 3J, Davidson shall maintain financial assurance on file with the Commission of at least the amount required by Statewide Rule 78(g)(1)(B)(i) - (iii); (4) Davidson shall maintain the Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and/or 3J in compliance with all Commission rules; (5) Davidson shall promptly notify the Commission's District Office for District 03 when waters have been removed from around the surface locations of the Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and/or 3J; (6) Davidson shall plug the Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and/or 3J, if prior to February 28, 2007, waters are removed from around such wells, the removal of waters is only temporary, and the wells can be plugged by conventional land-based methods, as determined by the Commission's Field Operations Section; and (7) the Final Order shall not apply to the amount of financial assurance required of Davidson to renew his organization report on March 1, 2007.

The examiners' recommendation will increase the amount of financial assurance filed by Davidson from \$18,580 to \$25,000. Under the proposed Final Order conditions, Davidson will be required to maintain at least this much financial assurance throughout his current P-5 renewal year, as long as he continues to be the P-4 operator of the Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and/or 3J, regardless of the disposition of other wells operated by Davidson. This amount of financial assurance will enable Davidson to continue to operate during the nine months that remain

in his current P-5 renewal year. Renewal of Davidson's Form P-5 organization report will moot the proposed severances of Davidson's leases based on P-5 and financial assurance delinquency. As of March 1, 2007, Davidson's next Form P-5 renewal date, the Commission will have another opportunity to review the status of the subject wells and to make a further assessment of the amount of financial assurance that should be required of Davidson.

Based on the record in this case, the examiners recommend adoption of the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. At least ten (10) days notice of the hearing in this docket was sent to all parties entitled to notice. Grover R. Davidson ("Davidson") appeared at the hearing and presented evidence and argument. The Enforcement Section also appeared through its Staff Attorney, Christopher Hotchkiss and presented evidence.
2. Davidson's Form P-5 organization report was due for renewal on March 1, 2006. At that time, the Commission's P-5/Financial Assurance unit calculated that Davidson's required amount of financial assurance was \$197,840 (Option 1) or \$205,000 (Option 2). Davidson did not file financial assurance in this amount, and his organization report has been in delinquent status since March 1, 2006.
3. In years prior to the September 1, 2004, effective date of amendments to Statewide Rule 78, Davidson had filed approved financial assurance in an amount calculated on the basis of \$2.00 per foot of total depth of all wells operated. The increased amount of financial assurance determined by the P-5/Financial Assurance Unit to be required of Davidson for Form P-5 renewal on March 1, 2006, pursuant to Statewide Rule 78, as amended, was accounted for by classification of three of Davidson's wells on the Floyd, B. M. "B" (19205) Lease, as wells in an "inland waterway" requiring bay well financial assurance.
4. On November 1, 2005, in Oil & Gas Docket No. 03-0242400, the Commission served a Final Order permitting Davidson to renew his Form P-5 organization report for the March 1, 2005, through February 28, 2006, renewal year by filing financial assurance in an amount prescribed by Statewide Rule 78(g)(1), subject to certain conditions. Davidson renewed for March 1, 2005, through February 28, 2006, by filing financial assurance in the amount of \$18,580 on December 3, 2005.
5. The Commission has issued to Davidson notices of intent to cancel the certificates of compliance for all of Davidson's leases based on failure of Davidson to renew his organization report and financial assurance as of March 1, 2006.

6. Davidson requested a hearing to contest cancellation of the certificates of compliance for his leases and to contest classification of the Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and #J, Boling Field, Wharton County, Texas, as wells requiring bay well financial assurance under Statewide Rule 78. Severances of Davidson's leases have been held in abeyance pending the outcome of this hearing.
7. Davidson is a small operator of wells in Commission District 03. As of May 17, 2006, the date the record in this docket closed, Davidson was the operator of nine wells on four Commission leases. During the period January 2005, through March 2006, Davidson reported to the Commission total production of 190 barrels of oil and 28 MCF of casinghead gas.
8. The Floyd, B. M. "B" (19205) Lease, Well Nos 1A (API #481 32363), 2L (API #481 32362), and 3J (API #481 32379) ("subject wells") are the wells operated by Davidson that are classified by the P-5/Financial Assurance unit as "inland waterway" wells requiring bay well financial assurance. The surface locations of the subject wells are in eight to ten feet of water in a lake which in 2005 covered about 1,100 acres.
9. The subject wells were drilled by another operator as land-based wells. Davidson became the operator of the wells in 1986 and operated and produced the wells as land-based wells until 1999 when water encroachment covered the wells.
10. The subject wells are located in a natural drainage way that drains toward the San Bernard River in Wharton County, Texas. A levee along the river area causes water to back up in the drainage way as a result of rainfall, although there is a drainage pipe constructed through the levee which can be used to release water down to the river.
11. When Davidson commenced to operate the subject wells, another operator was engaged in sulfur mining in the area, maintained the levee, and used pumps to pump out water that collected in the drainage way. A successor operator who purchased the land did not use pumps or release water into the river, and water gradually encroached on the location of the subject wells.
12. Subsequently, the successor landowner conveyed a water easement to Phillips Petroleum Company, now ConocoPhillips. In 2002, Phillips obtained from the Texas Commission on Environmental Quality a certificate of adjudication to impound water in the area of the drainage way. ConocoPhillips now maintains the lake, and the water is used in a refinery operation.
13. Since 1999, the water level in the lake has fluctuated, but Davidson has had no control over the water level.
14. Davidson is a plaintiff in a pending class action lawsuit against ConocoPhillips and others relating to the maintenance of the lake that covers the subject wells.

15. In 2005, Davidson learned that an old sulfur well covered by the lake was leaking, and ConocoPhillips had agreed to drain water from the lake to address this problem. Davidson and a representative of TCEQ believe that this may have the effect of uncovering the subject wells so that they can be accessed on dry land.
16. In May 2005, ConocoPhillips started to lower the water level in the lake. A District Office inspection on September 13, 2005, disclosed that the water level was about five feet lower than it had been on the occasion of the next previous District Office inspection.
17. The water level in the lake has continued to recede during the last quarter of 2005 and thus far in 2006. The water level has been reduced significantly during March and April 2006, and the tops of the subject wells are now above water.
18. If ConocoPhillips does not permanently lower the water level in the lake to permit Davidson to produce the subject wells, and if the Commission orders Davidson to do so, Davidson will plug the wells as soon as they can be accessed on dry land for the purpose of plugging by conventional land-based methods.

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely given to all persons legally entitled to notice.
2. All things have occurred and been accomplished to give the Commission jurisdiction to decide this matter.
3. The Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and 3J, Boling Field, Wharton County, Texas, are bay wells as defined by Statewide Rule 78(a)(5) [16 TEX. ADMIN. CODE §3.78(a)(5)].
4. Current drainage of the lake so as to remove water from around the Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and 3J, if successful, will have the effect of permitting the wells to be plugged by conventional land-based methods and remove the wells from the definition of bay wells in Statewide Rule 78(a)(5) [16 TEX. ADMIN. CODE §3.78(a)(5)].
5. Grover R. Davidson should be allowed to renew his Form P-5 organization report for the March 1, 2006, to February 28, 2007, renewal year by filing financial assurance in the amount of \$25,000, subject to the conditions that: (a) within 30 days of the date on which the final order becomes administratively final, Grover R. Davidson shall file a minimum of \$25,000 of financial assurance and make such other filings as may be necessary to renew his organization report for the period March 1, 2006, through February 28, 2007; (b) in the event Grover R. Davidson does not, within 30 days of the date the Final Order becomes administratively final, file a minimum of \$25,000 of financial assurance and renew his organization report for the period March 1, 2006, through February 28, 2007, the P-4 certificates of compliance for all leases operated by Davidson shall be canceled and their pipeline or other carrier connection shall be severed; (c) at all times during the period March

1, 2006, through February 28, 2007, while Grover R. Davidson continues to be the P-4 operator of the Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and/or 3J, Davidson shall maintain financial assurance on file with the Commission of at least the amount required by Statewide Rule 78(g)(1)(B)(i) - (iii); (d) Grover R. Davidson shall maintain the Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and 3J in compliance with all Commission rules; (e) Grover R. Davidson shall promptly notify the Commission's District Office for District 03 when waters have been removed from around the surface locations of the Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and/or 3J; (f) Grover R. Davidson shall plug the Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and/or 3J, if prior to February 28, 2007, waters are removed from around such wells, the removal of waters is only temporary, and the wells can be plugged by conventional land-based methods, as determined by the Commission's Field Operations Section; and (g) this Final Order shall not apply to the amount of financial assurance required of Grover R. Davidson to renew his organization report on March 1, 2007.

RECOMMENDATION

The examiners recommend that the Commission adopt the attached final order allowing Grover R. Davidson to renew his Form P-5 organization report for the March 1, 2006, to February 28, 2007, renewal year by filing financial assurance in the amount of \$25,000, subject to conditions.

Respectfully submitted,

James M. Doherty
Hearings Examiner

Donna Chandler
Technical Examiner