

OIL & GAS DOCKET NO. 03-0251941

APPLICATION OF GROVER R. DAVIDSON FOR A REDUCTION IN THE FINANCIAL ASSURANCE REQUIRED BY STATEWIDE RULE 78 FOR THE FLOYD, B. M. "B" (19205) LEASE, WELL NOS. 1A, 2L, AND 3J, BOLING FIELD, WHARTON COUNTY, TEXAS

APPEARANCES:

FOR APPLICANT:

Grover R. Davidson

APPLICANT:

Grover R. Davidson

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE OF REQUEST FOR HEARING:	May 13, 2007
DATE OF NOTICE OF HEARING:	May 23, 2007
DATE OF HEARING:	June 18, 2007
HEARD BY:	James M. Doherty, Hearings Examiner
DATE RECORD CLOSED:	June 28, 2007
DATE PFD CIRCULATED:	July 9, 2007

STATEMENT OF THE CASE

This is the application of Grover R. Davidson ("Davidson") for a reduction in the financial assurance required by Statewide Rule 78(g)(2) for the Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and 3J, Boling Field, Wharton County, Texas. The Commission's P-5/Financial Assurance Unit has classified these wells as inland waterway wells requiring bay well financial assurance. Davidson is the operator of the three wells classified as inland waterway wells, which are inactive, and six wells classified as land wells. These nine wells have total depth of 8,920'. Unless the requested reduction is approved, Davidson will be required to file financial assurance of at least \$197,840 to renew his Form P-5 organization report for his renewal year which commenced March 1, 2007.

A hearing was held in this docket on June 18, 2007. Grover R. Davidson appeared to represent himself, and no one appeared in opposition to the application. The record of the hearing was held open until June 28, 2007, to permit Davidson to late-file certain exhibits requested by the examiner.

APPLICABLE LAW

Pursuant to §91.104 of the Texas Natural Resources 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.

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 waters¹ 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 Official records of the P-5/Financial Assurance Unit reflect that in the State as a whole, only 28 wells have been classified as inland waterway wells. Three of these wells are the Floyd, B. M. “B” (19205) Lease wells operated by Davidson. Twenty-four of these wells are located in Caddo Lake in Harrison County and are operated by another operator. One additional well operated by a third operator supposedly is located in Martin Lake in Rusk County, although the P-5/Financial Assurance Unit is making inquiry as to whether classification of this well as an inland waterway well may be the result of an erroneous plat showing that the well was directionally drilled from a surface location in the lake to a bottom hole location on land.

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

BACKGROUND²

This is Davidson's third successive request for a reduction in the financial assurance required by Statewide Rule 78(g)(2) for the Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and 3J. In two prior dockets, Oil & Gas Docket No. 03-0242400 (Final Order served November 2, 2005) and Oil & Gas Docket No. 03-0246950 (Final Order served August 23, 2006), the Commission approved Davidson's request for financial assurance reduction relating to Davidson's 2005 and 2006 Form P-5 renewals, subject to conditions. In these two prior dockets, the reductions approved by the Commission permitted Davidson to renew his organization report by filing financial assurance in an amount equal to the amount required by Statewide Rule 78(g)(1) for land wells. If, as Davidson requests, the same relief were granted in the present docket, Davidson's financial assurance requirement to renew his Form P-5 organization report for his renewal year commencing March 1, 2007, would be \$17,840.³

Davidson is a small operator of nine shallow wells on four leases in the Boling Field in Wharton County. These wells range in depth from 239' to 2,622'. The Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and 3J, which are Davidson's wells classified as wells in an inland waterway, range in depth from 795' to 840'. The examiner has officially noticed the Production Data Query database which shows that during 2006, Davidson's total reported production from all leases was 228 barrels of oil and 17 MCF of casinghead gas.

The Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and 3J ("subject wells") were drilled as land wells by a previous operator in 1982. Davidson became the operator of these wells in 1986 and produced the wells as land wells until January 1999, when production ceased because water had encroached on the location of the wells.

The wells are located in a natural drainage area that drains toward the San Bernard River in Wharton County. Water collects in this drainage area as the result of rainfall. When Davidson commenced to operate the subject wells in 1982, a mining company was engaged in the mining of sulfur in the area and used pumps to remove water that collected in the drainage way. However, a successor landowner discontinued this practice, and water gradually encroached on the location of the subject wells by early 1999.

² Except as otherwise noted, this discussion of "Background" derives mainly from official notice of the proposals for decision and final orders in Oil & Gas Docket Nos. 03-0242400 and 03-0246950 and Commission mainframe databases, to which Davidson had no objection.

³ Davidson's Form P-5 was due for renewal on March 1, 2007, and currently is delinquent. Severance of Davidson's leases based on this delinquency has been held in abeyance pending the final outcome of Davidson's request for financial assurance reduction in this docket.

In 2002, Phillips Petroleum Company obtained a certificate of adjudication from the Texas Commission on Environmental Quality to impound water in the area, and it appears that ConocoPhillips now uses the area for storage of water. Two relatively large and connected lakes have formed, which are depicted on the aerial map attached to this proposal for decision as Appendix 1.⁴ The evidence suggests that collection of water into these lakes is the result of run off into a natural subsidence area, and also possibly is a function of how levees are maintained and how much water is released from the lakes into the San Bernard River.⁵ Water released into the river flows down the river bed to a ConocoPhillips refinery at Sweeney, Texas, where it is extracted and apparently used in the refinery operation. Davidson believes that ConocoPhillips is the surface owner of the land covered by “Lake A” on Appendix 1 and has a water easement from the surface owner of the land covered by “Lake B.”

Davidson claims that at one time ConocoPhillips agreed to drain water from “Lake B” to allow Davidson access to the subject wells for the purpose of plugging them, but this never happened. Davidson is a plaintiff in a class action lawsuit filed in Wharton County against ConocoPhillips and others, wherein claims are being made regarding plaintiffs’ damages arising from maintenance of the water impoundment. A June 7, 2005, letter to Davidson’s attorney from an attorney apparently representing ConocoPhillips stated that his client had begun de-watering the lake at the Sweeney refinery to allow Davidson access to abandon the subject wells, although the context of the letter may suggest that continuation of this effort was dependent on settlement of the class action lawsuit. In any event, the water has not been drained away from the subject wells. At the June 6, 2005, hearing in Oil & Gas Docket No. 03-0242400, Davidson testified that the wells were in 8’ to 15’ of water, which is the same estimate made by Davidson at the June 18, 2007, hearing in the present docket.

DISCUSSION OF THE EVIDENCE

At the June 18, 2007, hearing, Davidson testified that he is seeking a financial assurance reduction for the third successive year because the circumstances surrounding the subject wells have not changed. The wells are still covered by water, and under present circumstances, there is no practical means of plugging the wells. Davidson maintains his earlier position that water encroached on the locations of the subject wells without any advance warning to Davidson and beyond his control. Davidson asserts that ConocoPhillips is in sole control of how much water is released from

⁴ For ease of reference, on Appendix 1 the examiner has identified these two lakes as “Lake A”, which is the larger lake to the east toward the San Bernard River, and “Lake B”, which is immediately to the west of “Lake A”. The subject wells are in “Lake B” and Davidson has placed three black dots at the western extremity of “Lake B,” which he has encircled on the map and which represent the approximate locations of the subject wells. Two black dots just outside the circle drawn by Davidson represent the approximate locations of two wells of another operator, which Davidson believes are also in “Lake B.”

⁵ The evidence is to the effect that ConocoPhillips has the right to use the water in “Lake A” and “Lake B” but does not disclose with certainty whether ConocoPhillips is artificially controlling the water level by releases into the river and by the way adjacent levees are maintained.

“Lake A” and “Lake B” into the San Bernard River.

Davidson asserts that ConocoPhillips has decided to do nothing in the way of pumping water out of “Lake B” to allow Davidson access to the subject wells for the purpose of plugging them.⁶ He believes that the Commission should pursue the matter with ConocoPhillips to require that the upper part of “Lake B” be drained sufficiently so that Davidson can plug the subject wells and the party responsible for at least two other nearby wells believed by Davidson to be in the water can do likewise.⁷ In his request for hearing, Davidson stated his willingness and intention to plug the subject wells when water has been drained from around them and the wells can be plugged by conventional land-based methods. Based on his discussions with a former employee of the sulfur mining operator in the area, Davidson understands that, with proper pumping, water could be drained from the upper part of “Lake B”, where the subject wells are located, in two or three days.

Davidson believes that, in the meantime, the subject wells are not presenting any threat to usable quality water. He asserts that the wells are not leaking and have no real prospect of leaking because valves are shut in, and the wells are completed in a tight sand. Davidson says further that closely spaced holes were drilled throughout the Boling Field area by a sulfur mining operator which was not required to cement casing in the holes, so that the area was not environmentally protected. Davidson believes that all water sands in the area are invaded with mine water, and there is no drinkable water in the field area.

Davidson has been advised by his attorney that although the class action lawsuit filed by Davidson and others against ConocoPhillips has not yet gone to trial, the case is being pursued with vigor. Davidson believes that within the next year or two, this lawsuit will result in some nature of relief that will require removal of the water around the subject wells and enable Davidson to either produce the wells or plug them.

EXAMINER’S OPINION

⁶ In 2002, Davidson furnished the District Office with correspondence from Phillips Petroleum Company that took the position that the area around Davidson’s wells had been naturally flooded, and Phillips did not have the responsibility to remove the water by drainage or pumping.

⁷ The examiner has officially noticed District Office inspection reports showing that inspections of the “Lake B” area on June 18 and June 20, 2007, disclosed that three wells of other operators that have not heretofore been classified as wells in an inland waterway are, in fact, in “Lake B” and covered by water. These are the Floyd, B. M. (00510) Lease, Well Nos. 1 and 2 operated by Davis Bros. Exploration & Drilling Co. and the Floyd, Belle M. -F- (19739) Lease, Well No. 1F operated by B. L. Finch, Inc. The District Office placed an inland waterway code on these wells as of June 26, 2007. The Form P-5 organization report of Davis Bros. has been delinquent since April 1, 1992. The Form P-5 organization report of Finch is active, and the Floyd, Belle M. -F- (19739) Lease, Well No. 1F is Finch’s only well. Finch currently has financial assurance on file in the amount of \$960.

The Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and 3J were drilled as land wells and produced as such for 17 years before the area around the wells became flooded. Water encroached on the locations of the wells through no fault of Davidson. However remote the current prospects may seem, the subject wells are susceptible to being plugged by conventional land-based methods when and if water recedes or is drained or pumped from the area around the wells. Responsibility for causing this to happen may be settled as the result of pending litigation. There is no evidence that in the meantime the subject wells are presenting an imminent threat to usable quality water. The Commission has twice approved a financial assurance reduction for Davidson based on essentially the same facts as are presented here. In the circumstances, the examiner recommends that Davidson be granted an exception to the provisions of Statewide Rule 78(g)(2), allowing Davidson to renew his Form P-5 organization report for his renewal year commencing March 1, 2007, by filing financial assurance in an amount equal to the amount required under Statewide Rule 78(g)(1), which in this case is \$17,840, subject to the same conditions as were contained in the Commission's final orders in Oil & Gas Docket Nos. 03-0242400 and 03-0246950.

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

FINDINGS OF FACT

1. At least ten (10) days notice of hearing in this docket was sent to Grover R. Davidson ("Davidson"), and Davidson appeared at the hearing and presented evidence.
2. Davidson's Form P-5 organization report was due for renewal on March 1, 2007. Because Davidson is the designated operator of nine wells having total depth of 8,920', and three of these wells, the Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and 3J, Boling Field, Wharton County, Texas, have been classified by the P-5/Financial Assurance Unit as inactive wells in an inland waterway, Davidson is required to file financial assurance of at least \$197,840 to renew his Form P-5 organization report, unless an exception to or reduction of the financial assurance requirements of Statewide Rule 78(g)(2) is approved by the Commission.
3. Davidson is a small operator of nine shallow wells on four leases in the Boling Field in Wharton County. These wells range in depth from 239' to 2,622'. The Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and 3J range in depth from 795' to 840'. During 2006, Davidson reported total production from all leases of 228 barrels of oil and 17 MCF of casinghead gas.
4. Being unable to file financial assurance in the amount of \$197,840, Davidson could not renew his Form P-5 organization report on the March 1, 2007, due date, and his organization report has been in delinquent status since that date.
5. By this application, Davidson requests that the Commission approve a reduction in the

amount of financial assurance that Davidson is required to file in order to renew his Form P-5 organization report. This is the third successive year in which Davidson has made a request for financial assurance reduction.

6. In two prior dockets, Oil & Gas Docket No. 03-0242400 (Final Order served November 2, 2005) and Oil & Gas Docket No. 03-0246950 (Final Order served August 23, 2006), on essentially the same facts as are presented in the present docket, the Commission approved a reduction in the financial assurance that Davidson was required to file in order to renew his Form P-5 organization reports for the renewal years commencing March 1, 2005, and March 1, 2006. In the two prior dockets, the reductions approved by the Commission permitted Davidson to renew his organization report by filing financial assurance equal to the amount required by Statewide Rule 78(g)(1), subject to conditions. Based on these approvals and the total depth of wells he then operated, Davidson filed approved financial assurance for his 2005 and 2006 renewal years in the amount of \$18,580.
7. In the present docket, Davidson requests that he be granted the same relief from financial assurance requirements as was granted in Oil & Gas Docket Nos. 03-0242400 and 03-0246950. If this relief were approved, because Davidson currently operates one fewer well than in the previous renewal years, his financial assurance requirement would be \$17,840 to renew his organization report for the renewal year commencing March 1, 2007.
8. The financial assurance required of Davidson under Statewide Rule 78 is greatly impacted by classification of the Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and 3J as inactive inland waterway wells. This classification alone serves to increase Davidson's financial assurance requirement under Statewide Rule 78 by \$180,000.
9. The Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and 3J were drilled by a previous operator in 1982 as land wells. Davidson became the operator of the wells in 1986 and produced them as land wells until early 1999, when water encroached on the locations of the wells making continued production impossible.
10. The Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and 3J are located in a natural drainage area that drains toward the San Bernard River in Wharton County. Water collects in this drainage area as the result of rainfall. When Davidson commenced to operate the subject wells in 1986, a mining company was engaged in the mining of sulfur in the area and used pumps to pump out water that collected in the drainage way. However, a successor landowner discontinued this practice, and water gradually encroached on the location of the subject wells by early 1999.
11. In 2002, Phillips Petroleum Company, now ConocoPhillips, obtained a certificate of adjudication from the Texas Commission on Environmental Quality allowing Phillips to impound water in the area for use in a refinery operation at Sweeney, Texas. Water is released from this water storage area into the San Bernard River and flows down the river

bed to the refinery where it is extracted for use by ConocoPhillips in the refinery operation.

12. Two relatively large and connected lakes have formed in the area, and the westernmost of these lakes now covers the Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and 3J with 8' to 15' of water. Formation of the lakes is the result of rainfall run off into a natural subsidence area and may also have been affected by the manner in which adjacent levees are constructed and maintained and the amount of water that is released into the San Bernard River.
13. ConocoPhillips has declined to take steps to drain or pump water away from the locations of the Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and 3J so that Davidson might produce the wells or plug them. Davidson is a plaintiff in a class action lawsuit against ConocoPhillips and others, now pending in Wharton County, wherein claims are being asserted for flooding of plaintiffs' properties. Davidson believes that this lawsuit may resolve the question of responsibility for draining water away from the Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and 3J.
14. The locations of the Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and 3J were flooded due to circumstances beyond any control of Davidson. ConocoPhillips has a water easement in the lands covered by the lake which covers these wells and the right to use water from this lake. Davidson has no control over the water level around the Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and 3J.
15. If ConocoPhillips will not permanently drain water from the area of the Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and 3J so that the wells can be produced, but will temporarily remove the water covering these wells by pumping, Davidson will plug the wells as soon as they can be accessed on dry land.
16. Valves on the Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and 3J are shut in, and the wells are not leaking. There is no evidence that these wells are currently posing an imminent threat of pollution of any usable quality water source. If Davidson is permitted to renew his Form P-5 organization report by filing a reduced amount of financial assurance, the wells will be brought into compliance with Statewide Rule 14(b)(2) by approval of plugging extensions.
17. The Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and 3J are susceptible to being plugged by conventional land-based methods if water around the wells recedes due to lack of rainfall or due to intentional drainage of the body of water that currently surrounds the wells.

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 financial assurance requirements of Statewide Rule 78(g)(2) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.78(g)(2)] are subject to reduction pursuant to Statewide Rules 78(g)(4) and 78(g)(5) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §§3.78(g)(4) and 3.78(g)(5)], or if the operator requests a hearing, by the granting of an exception to the requirements of Statewide Rule 78(g)(2).
4. Whether an exception to, or reduction in, the financial assurance requirements of Statewide Rule 78(g)(2) should be approved is a matter within the Commission's discretion.
5. The flooded condition of the Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and 3J may be temporary, and these wells may be susceptible of plugging by conventional land-based methods if water recedes due to lack of rainfall or drainage, thus removing the wells from the definition of "bay wells" in Statewide Rule 78(a)(5) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.78(a)(5)].
6. Grover R. Davidson is entitled to an exception to the financial assurance requirements of Statewide Rule 78(g)(2) for his Form P-5 organization report renewal year commencing March 1, 2007, based on the following factors: (a) the flooded condition of the Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and 3J may be temporary, and these wells may be susceptible of plugging by conventional land-based methods if water recedes due to lack of rainfall or drainage; (b) the subject wells were drilled as land wells and operated as such for 17 years before the wells were flooded; (c) the flooded condition of the subject wells was and is beyond the control of Grover R. Davidson; (d) there is no evidence that the subject wells are currently presenting an imminent threat of pollution of any usable quality water source; (e) the subject wells will not be in imminent need of plugging if Grover R. Davidson is permitted to renew his organization report by filing reduced financial assurance and obtain a Statewide Rule 14(b)(2) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.14(b)(2)] plugging extension for the wells; and (f) Grover R. Davidson's entitlement to a financial assurance reduction will be subject to further Commission review when his Form P-4 organization report is due for renewal as of March 1, 2008.
7. Grover R. Davidson should be permitted to renew his Form P-5 organization report for his renewal year commencing March 1, 2007, by filing an amount of financial assurance equal to the amount required under Statewide Rule 78(g)(1), subject to the following conditions: (a) within 30 days of the date on which the final order becomes administratively final, Grover R. Davidson shall file at a minimum the amount of financial assurance required by Statewide Rule 78(g)(1) and make such other filings as may be necessary to renew his

organization report for the period March 1, 2007, through February 29, 2008; (b) in the event Grover R. Davidson does not, within 30 days of the date the Final Order becomes administratively final, file at a minimum the amount of financial assurance required by Statewide Rule 78(g)(1) and renew his organization report for the period March 1, 2007, through February 29, 2008, 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) Grover R. Davidson shall plug the Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and/or 3J, if prior to February 29, 2008, 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 (d) 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, 2008.

RECOMMENDATION

The examiner recommends that the attached Final Order be adopted allowing Grover R. Davidson to renew his Form P-5 organization report for his renewal year commencing March 1, 2007, by filing financial assurance in an amount equal to the amount required by Statewide Rule 78(g)(1), subject to conditions.

Respectfully submitted,

James M. Doherty
Hearings Examiner