

APPLICATION OF GROVER R. DAVIDSON TO CONSIDER A REDUCTION IN THE AMOUNT OF FINANCIAL SECURITY REQUIRED PURSUANT TO STATEWIDE RULE 78(g) FOR HIS OPERATIONS IN THE STATE OF TEXAS

APPEARANCES:

FOR APPLICANT:

Grover R. Davidson

APPLICANT:

Grover R. Davidson

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE OF REQUEST FOR HEARING:	March 22, 2009
DATE OF NOTICE OF HEARING:	March 26, 2009
DATE OF HEARING:	April 17, 2009
HEARD BY:	James M. Doherty, Hearings Examiner
DATE RECORD CLOSED:	April 30, 2009
DATE PFD CIRCULATED:	May 21, 2009

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) for Davidson’s operations in Texas. Currently, Davidson is the operator of a total of eight wells having total depth of 8,655 feet. Three of these wells, the Floyd, B. M. “B” (19205) Lease, Well Nos. 1 A, 2 L, and 3 J, Boling Field, Wharton County, Texas, have been classified as inland waterway wells requiring bay well financial assurance. Unless the requested reduction is approved, Davidson will be required to file financial assurance of at least \$197,310, \$180,000 of which is additional financial assurance required by Statewide Rule 78(g)(2) for the three inland waterway wells, to renew his Form P-5 organization report for his renewal year which commenced March 1, 2009.

A hearing was held in this docket on April 17, 2009. At applicant’s request, the hearing was conducted telephonically, and Davidson made an appearance representing himself. No one appeared in opposition to the application. The record of the hearing was held open until April 30, 2009, to permit Davidson to file certain information 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. A person required to file a bond, letter of credit, or cash deposit under §91.104 who operates one or more wells is considered to have met that requirement for a well if the well bore is included in a well-specific plugging insurance policy that meets the requirements of §91.104(c).

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

OFFICIAL NOTICE/BACKGROUND¹

At the hearing, the examiner took official notice of the proposals for decision, final orders, and evidentiary records in four prior dockets wherein Davidson sought relief similar to the relief sought here: Oil & Gas Docket Nos. 03-0242400; 03-0246950; 03-0251941; and 03-0256988. The examiner also took official notice of the following official records of the Commission: (1) P-5 Master Inquiry database for Davidson; (2) P-5 Financial Assurance Inquiry database for Davidson; (3) On-Schedule Leases, Wells, Wellbores by Operator database for Davidson; (4) 14(b)(2) Well Inquiry by Operator database for Davidson; (5) 14(b)(2) Inquiry by Lease, 14(b)(2) Well History Inquiry, P-4 Inquiry, Oil Proration Schedule, Certificate of Compliance Certified Letter/Cancellation/Reissue Inquiry, Oil Lease Ledger Status Inquiry, and H-15 Data Inquiry databases for all leases and wells operated by Davidson; (6) Plugging Data Inquiry database for the Floyd, B. M. "A" (11635) Lease, Well No. 2; (7) Production Data Query for 2008 for Davidson; and (8) April 15, 2009, District Office Inspection Report for the Floyd, B. M. "B" (19205) Lease, Well Nos. 1 A, 2 L, and 3 J and associated photographs.

This is Davidson's fifth successive request for an exception to the financial assurance requirements of Statewide Rule 78(g)(2). In four prior dockets, Oil & Gas Docket Nos. 03-0242400 (Final Order served November 2, 2005); 03-0246950 (Final Order served August 23, 2006); 03-0251941 (Final Order served September 12, 2007); and 03-0256988 (Final Order served August 13, 2008), the Commission approved exceptions permitting financial assurance reductions relating to Davidson's 2005, 2006, 2007, and 2008 Form P-5 renewals, subject to conditions. In these 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, 2009, would be \$17,310.

Davidson is a small operator of eight shallow wells on four leases in the Boling Field in Wharton County. These wells range in depth from 239' to 2,622'. The three wells operated by Davidson that are classified as wells in an inland waterway, the Floyd, B. M. "B" (19205) Lease, Well Nos. 1 A, 2 L, and 3 J, range in depth from 795' to 840'. During calendar year 2008, Davidson's total reported production from all leases and wells was 368 barrels of oil and 16 MCF of casinghead gas.

¹ This section of the proposal for decision includes a discussion of evidence derived from official notice of proposals for decision, final orders, and evidentiary records pertaining to prior similar applications by Davidson and official notice of other identified public records of the Commission. The "Discussion of Testimony Presented at the Hearing" section, *infra*, discusses testimony and other evidence presented by Davidson at the hearing in the present docket.

The Floyd, B. M. "B" (19205) Lease, Well Nos. 1 A, 2 L, and 3 J 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 Floyd, B. M. "B" (19205) Lease, Well Nos. 1 A, 2 L, and 3 J 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 and a poorly maintained levee. When Davidson commenced to operate the wells in 1982, a sulphur mining company used pumps to remove water that collected in the drainage way. However, a successor landowner discontinued this practice, and water suddenly encroached on the location of the wells in early 1999 as a result of a breach in a levee on a tributary to the San Bernard River.

Phillips Petroleum Company obtained an easement from the successor surface owner and in 2002 obtained a certificate of adjudication from the Texas Commission on Environmental Quality to impound water in the area. According to Davidson, Phillips' successor, ConocoPhillips, now uses the area for storage of water. Two relatively large and connected lakes have formed as a result of run-off into a natural subsidence area and as a function of how levees have been maintained and how much water is released by ConocoPhillips into the San Bernard River. According to Davidson, water released into the river flows down the river to a ConocoPhillips refinery at Sweeney, Texas, where the water is used in the refinery operation.²

Davidson claims that at one time ConocoPhillips agreed to drain water from the upper lake to allow Davidson access to the Floyd, B. M. "B" (19205) Lease 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 from an attorney apparently representing ConocoPhillips stated that his client had begun de-watering the lake to allow Davidson access to abandon his wells, although the context of the letter may suggest that continuation of this effort was dependent on settlement of the class action lawsuit. In connection with Oil & Gas Docket No. 03-0256988, Davidson's attorney advised that one form of relief sought in the class action lawsuit is the draining of water away from the location of Davidson's wells.

Davidson has further claimed that the Floyd, B. M. "B" (19205) Lease wells are not presenting any threat of pollution of usable quality water. According to Davidson, the wells are not leaking because valves are shut in and the wells are completed in a tight sand. Davidson has said also that closely spaced holes were drilled throughout the Boling Field area by a sulfur mining

² Davidson has claimed that in 1999, a levee was breached, which allowed water from a tributary of the San Bernard River to flood the area. He claims that the breach was never repaired because the surface owner was interested in collecting water into the lakes. According to Davidson, a valve system and spillway permits water from the lakes to be released into the San Bernard River, and he believes that ConocoPhillips is artificially controlling the water level in the lakes according to the needs of its Sweeney Refinery.

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 usable quality water in the field area.

The Floyd, B. M. "B" (19205) Lease, Well Nos. 1 A, 2 L, and 3 J are more than 25 years old and have been inactive since 1999. The wells were scheduled for H-15 tests due in August 2008, but it is impossible to test the wells because they are completely covered by water. Statewide Rule 14(b)(2) plugging extensions for the wells were canceled on September 3, 2008, based on delinquency of H-15 tests. The District Office performed an inspection of the Floyd, B. M. "B" (19205) Lease on April 15, 2009, and the inspector reported that the wells are inactive but could not be accessed for inspection or examination because they are under water. Three photographs were taken by the inspector, which are attached to this proposal for decision as Appendices 1-3.³

In this and prior Rule 78 cases, Davidson has made a point of the fact that there are wells of other operators in the same body of water not getting the same amount of attention as his Floyd, B. M. "B" (19205) Lease wells. The proposal for decision in Oil & Gas Docket No. 03-0251941 involving Davidson's 2007 request for financial assurance reduction, included reference to District Office inspections on June 18-20, 2007, that disclosed three wells of other operators in the same lake that had not been classified as wells in an inland waterway, 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 three wells on June 26, 2007. The examiner has officially noticed from Commission records that since that time, Finch was able to build a road and pad with fill material for the Floyd, Belle M. -F- (19739) Lease, Well No. 1F, so that the well is no longer in the water or classified as an inland waterway well. The Form P-5 organization report of Davis Bros. has been delinquent since April 1, 1992, and the Floyd, B. M. (00510) Lease, Well Nos. 1 and 2 are orphan wells.

³ Davidson testified at the hearing in this docket that the well with pipe and a valve visible above water in the Appendix 1 photograph is not his well, although the Floyd, B. M. "B" (19205) Lease, Well No. 3 J is under water "up the hill" in the same area. Davidson also said that the drilling platform visible above water in the Appendix 2 photograph is not his, although the Floyd, B. M. "B" (19205) Lease, Well No. 1 A is under water about 50 yards to the east of the platform. The Appendix 3 photograph shows a tank that is visible above water and just to the right of the tank a portion of a pump jack that is above water. The tank belongs to Davidson, and he believes that the pump jack marks the location of the Floyd, B. M. "B" (19205) Lease, Well No. 2 L which is under water. Davidson agreed that all three photographs depict conditions which are representative of conditions currently existing in the area of his Floyd, B. M. "B" (19205) Lease wells.

DISCUSSION OF TESTIMONY
PRESENTED AT THE HEARING

On September 28, 2008, Davidson plugged one of his land wells, the Floyd, B. M. "A" (11635) Lease, Well No. 2. He has obtained approval of Forms W-3A to plug two additional land wells, the Anderson, Chas. & Lucy (11089) Lease, Well Nos. 3TB and 5TB, and plans to plug these wells within the next two months. This will bring Davidson's total well count down to 6 wells.

The Floyd, B. M. "B" (19205) Lease, Well Nos. 1 A, 2 L, and 3 J are still under water. However, Davidson believes that due to drought conditions, ConocoPhillips has recently drawn down the water level, because the water level is now as low as it has been in several years. Davidson concluded that ConocoPhillips may have had a need to fill a pond at the Sweeney refinery, because the water in the lake receded substantially over a period of only five or six weeks. Davidson believes that his Floyd, B. M. "B" (19205) Lease, Well Nos. 1 A, 2 L, and 3 J are now covered by two and one-half to six feet of water, whereas at the time of Davidson's last financial security reduction hearing on May 30, 2008, it was estimated that the wells were covered by eight to fifteen feet of water. Davidson has obtained approval of Forms W-3A to plug the Floyd, B. M. "B" (19205) Lease, Well Nos. 1 A, 2 L, and 3 J that expire December 9, 2009, and intends to plug these wells as soon as they can be plugged by conventional land-based methods. If drought conditions persist, Davidson believes he "might get lucky" in this regard.

Davidson believes that he has been doing all that he can do to address a bad situation that was not of his making. He stresses that water encroached on the location of his wells in a period of hours after a levee was breached on a tributary of the San Bernard River. His Floyd, B. M. "B" (19205) Lease, Well Nos. 1 A, 2 L, and 3 J were covered by water in early 1999 and have not been uncovered since that time. Prior to the filing of the class action lawsuit to which Davidson is a party, he attempted to persuade ConocoPhillips to drain the water away from his wells, but ConocoPhillips ultimately took the position that it was not responsible. Davidson does not have control of the progress of the class action lawsuit because of the number of plaintiffs involved. An April 22, 2009, status report from Davidson's litigation counsel, filed at the examiner's request, stated that the lawsuit is still "pending." It is anticipated that a motion for class certification soon will be filed, and an evidentiary hearing on this motion should be had during the summer of this year. If the plaintiffs prevail on this motion, trial on the merits "could" take place in the fall of this year.

EXAMINER'S OPINION

The examiner has officially noticed Commission records disclosing that there are only 30 wells in the entire state that are classified as inland waterway wells. Twenty-four of these are in Caddo Lake and are operated by Eugene Ducharme. Ducharme's Form P-5 organization report has been delinquent since April 1, 1997. Goodrich Petroleum Company, an active operator, has one well

classified as an inland waterway well.⁴ The remainder of the inland waterway wells are the three wells operated by Davidson and the two wells operated by Davis Brothers Exploration & Drilling Co. The only inland waterway well for which “bay well” financial assurance has ever been filed is the one Goodrich Petroleum well. As far as the examiner can determine, the Davidson and Davis Brothers wells are the only inland waterway wells in the state that were originally drilled and produced as land wells and subsequently flooded by water.

Davidson’s Floyd, B. M. “B” (19205) Lease, Well Nos. 1 A, 2 L, and 3 J were drilled as land wells and produced as such for 17 years before becoming flooded. Through no fault of Davidson, water suddenly covered these wells as a result of a broken levee. Since the wells were originally flooded, water has been stored in the area under the control of others. The water level has been a matter beyond Davidson’s control.

Davidson’s Floyd, B. M. “B” (19205) Lease, Well Nos. 1 A, 2 L, and 3 J are shallow wells and are susceptible to being plugged relatively inexpensively by conventional land-based methods if the water recedes naturally or is drained from the well locations. Because Davidson’s wells have been covered by water for ten successive years, there is no particular reason for confidence that the water will recede naturally, but lowering of the water level due to water usage during extreme drought conditions or draining of the water away from the well locations as a result of the pending class action lawsuit remain as possibilities.

The Commission has during the four preceding years, approved an exception to “bay well” financial assurance requirements 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, 2009, by filing financial assurance in an amount equal to the amount required for land wells under Statewide Rule 78(g)(1), subject to conditions in the attached recommended final order, including a condition requiring that the Floyd, B. M. “B” (19205) Lease, Well Nos. 1 A, 2 L, and 3 J be plugged as soon as they can be plugged by use of conventional land-based methods. Based on the depth of the wells Davidson currently operates, adoption of this recommendation would require Davidson to file financial assurance in the amount of \$17,310.

While this recommendation affords Davidson financial assurance relief for another year, it does not solve the dilemma presented by Davidson’s case. As indicated by the report of the most recent attempted inspection on April 15, 2009, of the Floyd, B. M. “B” (19205) Lease, Well Nos. 1 A, 2 L, and 3 J, access to the lease and wells for the purpose of inspection and examination is, and for many years has been, interfered with and barred by the fact that the wells are under water. The same is true of the Davis Brothers Exploration & Drilling Co. Floyd, B. M. (00510) Lease, Well

⁴ The P-5/Financial Assurance Unit has questioned whether the classification of this well as an inland waterway well is the result of a mistake on the Form W-1 application for the drilling permit for the well which showed that the well was to be directionally drilled from a surface location in Martin Lake to a bottom hole location on land. However, the well was drilled in 2006 and remains classified as an inland waterway well.

Nos. 1 and 2. Section 88.091 of the Texas Natural Resources Code (“Code”) provides that the Commission shall have access at all times to the oil property of all persons for inspection and examination. Section 88.092 of the Code provides that *no person* may interfere with such inspection and examination of an oil property. Davidson repeatedly has asserted that ConocoPhillips is the licensee and owner of the water that covers his wells. He has asserted further that ConocoPhillips artificially controls the water level in the lake that surrounds and covers the wells and releases water from the lake only as needed to meet the needs of a refinery at Sweeney, Texas. ConocoPhillips has not, however, been afforded any formal opportunity to address these claims or suggest a solution. The examiner therefore further recommends that the Commission direct Hearings Section staff to open an informal complaint file regarding these issues, require ConocoPhillips to file a written response to Davidson’s claims, and, if deemed appropriate, initiate a Commission called hearing requiring ConocoPhillips to show cause why it should not be ordered to cure any current violations of Sections 88.091 and 88.092 of the Code by temporary removal of water from the locations of the Davidson and Davis Bros. wells in order that such wells may be inspected, examined, and, if required, plugged and abandoned.

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”). A request by Davidson to conduct the hearing by telephone was approved by the examiner on April 8, 2009. Davidson appeared at the hearing by telephone and presented evidence.
2. Davidson’s Form P-5 organization report was due for renewal on March 1, 2009. In connection with this renewal, Davidson requested a hearing to consider an exception to or reduction in the financial assurance requirements of Statewide Rule 78(g).
3. Davidson is the designated operator of eight wells having a total depth of 8,655 feet. Three of these wells, the Floyd, B. M. “B” (19205) Lease, Well Nos. 1 A, 2 L, and 3 J, Boling Field, Wharton County, Texas, have been classified as inland waterway wells requiring bay well financial assurance. Unless the requested exception or reduction is approved, Davidson will be required to file financial assurance of at least \$197,310, \$180,000 of which is additional financial assurance required by Statewide Rule 78(g)(2) for the three inland waterway wells, to renew his Form P-5 organization report for his renewal year which commenced March 1, 2009.

4. This is the fifth successive year in which Davidson has made a request for an exception to or reduction in the financial assurance requirements of Statewide Rule 78(g). In four prior dockets, Oil & Gas Docket No. 03-0242400 (Final Order served November 2, 2005), Oil & Gas Docket No. 03-0246950 (Final Order served August 23, 2006), Oil & Gas Docket No. 03-0251941 (Final Order served September 12, 2007), and Oil & Gas Docket No. 03-0256988 (Final Order served August 13, 2008), on essentially the same facts as are presented in this docket, the Commission approved exceptions permitting financial assurance reductions relating to Davidson's 2005, 2006, 2007, and 2008 Form P-5 renewals, subject to conditions. In these 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.
5. In this docket, Davidson seeks the same relief approved by the Commission in the four prior dockets. If this relief is granted, Davidson will be required to file financial assurance in the amount of \$17,310 to renew his Form P-5 organization report for his renewal year commencing March 1, 2009.
6. The amount of financial assurance that Davidson would be required to file if the requested exception or reduction is not granted is greatly impacted by classification of the Floyd, B. M. "B" (19205) Lease, Well Nos. 1 A, 2 L, and 3 J, Boling Field, Wharton County, Texas, as inactive inland waterway wells. This classification alone serves to increase Davidson's financial assurance requirement under Statewide Rule 78(g) by \$180,000.
7. Davidson is a small operator of eight shallow wells on four leases in the Boling Field in Wharton County. These wells range in depth from 239' to 2,622'. The three wells operated by Davidson that are classified as wells in an inland waterway, the Floyd, B. M. "B" (19205) Lease, Well Nos. 1 A, 2 L, and 3 J, range in depth from 795' to 840'. During calendar year 2008, Davidson's total reported production from all leases and wells was 368 barrels of oil and 16 MCF of casinghead gas.
8. On September 28, 2008, Davidson plugged one of his land wells, the Floyd, B. M. "A" (11635) Lease, Well No. 2. He has obtained approval of Forms W-3A to plug two additional land wells, the Anderson, Chas. & Lucy (11089) Lease, Well Nos. 3TB and 5TB, and plans to plug these wells within the next two months. This will bring Davidson's total well count down to 6 wells.
9. The Floyd, B. M. "B" (19205) Lease, Well Nos. 1 A, 2 L, and 3 J 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. 1 A, 2 L, and 3 J are located in a natural drainage area that drains toward the San Bernard River in Wharton County. In about January 1999, a break in a levee along a tributary to the San Bernard River caused the wells to be flooded in a period of a few hours. The levee has never been repaired, and although the water level has fluctuated year to year, water has continuously covered the Floyd, B. M. "B" (19205) Lease, Well Nos. 1 A, 2 L, and 3 J since January 1999.
11. Phillips Petroleum Company, now ConocoPhillips Company, obtained the right from the surface owner to store water in the area of the Floyd, B. M. "B" (19205) Lease, Well Nos. 1 A, 2 L, and 3 J, and in 2002 obtained a certificate of adjudication from the Texas Commission on Environmental Quality to impound water in the area. The water is used by ConocoPhillips in a refinery operation at Sweeney, Texas.
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. 1 A, 2 L, and 3 J. The water level in these lakes is affected by the amount of rainfall, a broken levee that has not been repaired, and the amount of water released by ConocoPhillips into the San Bernard River.
13. The Floyd, B. M. "B" (19205) Lease, Well Nos. 1 A, 2 L, and 3 J were flooded in January 1999 and water has continued to cover the wells since that time due to circumstances beyond Davidson's control.
14. The amount of water covering the Floyd, B. M. "B" (19205) Lease, Well Nos. 1 A, 2 L, and 3 J has receded during the past year. The wells are presently covered by an estimated 2 ½ to 6 feet of water, as compared to 8 to 15 feet as of the May 30, 2008, hearing on Davidson's 2008 application for an exception to financial assurance requirements of Statewide Rule 78(g).
15. Davidson is a plaintiff in a class action lawsuit now pending in Wharton County against ConocoPhillips and others, wherein claims are being asserted for flooding of plaintiffs' properties. Davidson has been advised by his attorneys that drainage of water from the locations of the Floyd, B. M. "B" (19205) Lease, Well Nos. 1 A, 2 L, and 3 J is one form of relief sought in the lawsuit.
16. Valves on the Floyd, B. M. "B" (19205) Lease, Well Nos. 1 A, 2 L, and 3 J are shut in, and there is no evidence that the wells are posing an imminent threat of pollution.
17. The Floyd, B. M. "B" (19205) Lease, Well Nos. 1 A, 2 L, and 3 J can be plugged by conventional land-based methods if water around the wells recedes due to drought conditions and/or water usage or is drained.

18. Davidson is willing to plug the Floyd, B. M. "B" (19205) Lease, Well Nos. 1 A, 2 L, and 3 J as soon as they can be plugged 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 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. Grover R. Davidson is entitled to an exception to the financial assurance requirements of Statewide Rule 78(g) for his Form P-5 organization report renewal year commencing March 1, 2009, subject to conditions, based on the following factors: (a) the flooded condition of the Floyd, B. M. "B" (19205) Lease, Well Nos. 1 A, 2 L, and 3 J may be temporary, and these wells can be plugged by conventional land-based methods if water recedes; (b) the Floyd, B. M. "B" (19205) Lease, Well Nos. 1 A, 2 L, and 3 J were drilled as land wells and produced as such for 17 years before the wells were flooded; (c) the flooded condition of the Floyd, B. M. "B" (19205) Lease, Well Nos. 1 A, 2 L, and 3 J was and is beyond the control of Grover R. Davidson; (d) there is no evidence that these wells are presenting an imminent threat of pollution; (e) Grover R. Davidson intends to plug the Floyd, B. M. "B" (19205) Lease, Well Nos. 1 A, 2 L, and 3 J as soon as they can be plugged by conventional land-based methods; and (f) Grover R. Davidson's entitlement to an exception to the financial assurance requirements of Statewide Rule 78(g) will be subject to further Commission review when Davidson's Form P-5 organization report is due for renewal on March 1, 2010.
6. Grover R. Davidson should be permitted to renew his Form P-5 organization report for his renewal year commencing March 1, 2009, 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 in this docket 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 his renewal year commencing March 1, 2009; (b) in the event Grover R. Davidson does not, within 30 days of the date the final order in this docket 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 his renewal year commencing March 1, 2009, the P-4 certificates of compliance for all leases operated by Grover R. Davidson shall be canceled and their pipeline or other carrier connections shall be severed; (c) Grover R. Davidson shall plug the Floyd, B. M. "B" (19205) Lease, Well Nos. 1 A, 2 L, and 3 J, Boling Field, Wharton County, Texas, as soon as such wells can be plugged by conventional land-based methods; and (d) the final order in this docket applies only to Grover R. Davidson's Form P-5 organization report renewal year commencing March 1, 2009, and shall not apply to the amount of financial assurance required of Grover R. Davidson to renew his organization report for his renewal year commencing March 1, 2010.

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, 2009, by filing financial assurance in an amount equal to the amount required by Statewide Rule 78(g)(1), subject to conditions.

The examiner recommends further that the Commission direct staff of the Hearings Section of the Office of General Counsel to open an informal complaint file regarding the issue of whether ConocoPhillips Company owns, controls, and/or is responsible for water that covers and prevents inspection and examination of the Grover R. Davidson Floyd, B. M. "B" (19205) Lease, Well Nos. 1 A, 2 L, and 3 J, Boling Field, Wharton County, Texas, and/or the Davis Brothers Exploration & Drilling Co. Floyd, B. M. (00510) Lease, Well Nos. 1 and 2, Boling Field, Wharton County, Texas, require ConocoPhillips Company to file a written response, and, if deemed appropriate, initiate a Commission called hearing requiring ConocoPhillips Company to show cause why it should not be ordered to cure any current violations of Sections 88.091 and 88.092 of the Texas Natural Resources Code by temporary removal of water from the locations of the Davidson and Davis Bros. wells in order that such wells may be inspected, examined, and, if required, plugged and abandoned.

Respectfully submitted,

James M. Doherty
Hearings Examiner