

**OIL & GAS DOCKET NO. 03-0242400**

---

**APPLICATION OF GROVER R. DAVIDSON TO CONTEST CANCELLATION OF P-4 CERTIFICATES OF COMPLIANCE FOR THE FLOYD, B. M. "A" (11635) LEASE, AND FLOYD, B. M. "B" (19205) LEASE, BOLING FIELD, WHARTON COUNTY, TEXAS, AND TO CONTEST CLASSIFICATION OF CERTAIN WELLS AS BAY WELLS REQUIRING BAY WELL FINANCIAL SECURITY PURSUANT TO STATEWIDE RULE 78(g)**

---

**APPEARANCES:**

**FOR APPLICANT:**

Robert D. Jowers  
Grover R. Davidson

**APPLICANT:**

Grover R. Davidson

**PROPOSAL FOR DECISION**

**PROCEDURAL HISTORY**

<b>DATE HEARING REQUESTED:</b>	March 29, 2005
<b>DATE OF NOTICE OF HEARING:</b>	April 7, 2005
<b>DATE OF HEARING:</b>	June 6, 2005
<b>HEARD BY:</b>	James M. Doherty, Hearings Examiner
<b>DATE RECORD CLOSED:</b>	September 15, 2005
<b>DATE PFD CIRCULATED:</b>	October 3, 2005

**STATEMENT OF THE CASE**

This is a case wherein Grover R. Davidson ("Davidson") requested a hearing to contest a proposed severance of his Floyd, B. M. "A" (11635) Lease and Floyd, B. M. "B" (19205) Lease, in the Boling Field, Wharton County, Texas. Davidson also contests the Commission's classification of wells on the Floyd, B. M. "B" (19205) Lease as wells requiring the filing of bay well financial security.

By letter dated April 27, 2005, the examiner broadened the call of the hearing to include consideration of whether any of the leases operated by Davidson should be severed and whether Davidson is entitled to a reduction in financial security requirements pursuant to Statewide Rule 78.

A hearing was held on June 6, 2005, at which time Davidson appeared and presented evidence and argument. Based on evidence presented at the hearing that there was a prospect that waters covering wells on the Floyd, B. M. "B" (19205) Lease ("subject wells") might be drained to allow Davidson an opportunity to plug the wells, the examiner initially held the record open until August 8, 2005, for submission by Davidson of further evidence of progress on this front. On August 5, 2005, Davidson submitted correspondence and documentation indicating that an effort to drain waters from around the subject wells had commenced. As a consequence, by letter dated August 16, 2005, the examiner agreed to hold the record open until September 15, 2005, for a further progress report. On September 14, 2005, Davidson filed further correspondence and documentation to indicate that draining of waters around the subject wells was continuing, but that it could not be projected when Davidson would be able to access the wells for the purpose of plugging them.

### **BACKGROUND**

For the purpose of providing context, the examiner has officially noticed printouts reflecting information from the Commission's mainframe system, including P-4 Inquiry, and P-4 Certificate of Compliance Certified Letter/Cancellation/Reissue Inquiry and Remarks databases for all leases operated by Davidson; Oil Proration Schedule, Drilling Permit Master Data Inquiry, Oil and Gas W-2/G-1 Record, Oil Lease Ledger Status Inquiry, and Historical Oil Ledger Inquiry databases for wells on the Floyd, B. M. "B" (19205) Lease; P-5 Master Inquiry, P-5 Financial Assurance Inquiry, and On-Schedule Leases, Wells, Wellbores By Operator databases for Grover R. Davidson, and Oil & Gas Production Data Query databases for Grover R. Davidson for January-December 2004, and January-August 2005. The examiner has also officially noticed an official report of a District Office inspection dated September 13, 2005, relating to the subject matter of this hearing.<sup>1</sup>

Davidson's Form P-5 organization report was due for annual renewal on March 1, 2005. Commission records indicate that the P-5/Financial Assurance Unit calculated that Davidson's required amount of financial assurance as of March 1, 2005, was \$197,840. Davidson did not file financial assurance in this amount, and his organization report has been in delinquent status since March 1, 2005.

In a prior renewal year, Davidson had filed approved financial assurance in the total amount of \$18,580, calculated on the basis of \$2.00 per foot of total depth of 9,290 feet for 10 wells operated by Davidson. Classification of three of Davidson's wells on the Floyd, B. M. "B" (19205) Lease, Well No. 1A (API #481 32363), Well No. 2L (API #481 32362), and Well No. 3J (API #481 32379) as "Inland Waterway" wells requiring bay well financial assurance accounted for the increase in Davidson's total required financial assurance to the sum of \$197,840.<sup>2</sup>

---

<sup>1</sup> Copies of these records officially noticed by the examiner were mailed to counsel for Davidson on September 20, 2005.

<sup>2</sup> Amendments to Statewide Rule 78, providing for entry level financial assurance of \$60,000 for operators of bay wells and \$60,000 per inactive bay well in excess of one, were effective September 1, 2004.

On February 28, 2005, the Commission issued to Davidson a notice of intent to cancel the P-4 Certificate of Compliance for the Floyd, B. M. "A" (11635) Lease, based on failure of Davidson to renew his financial assurance. Subsequently, on April 30, 2005, the Commission issued to Davidson notices of intent to cancel the P-4 Certificates of Compliance for the remainder of Davidson's leases, including the Floyd, B. M. "B" (19205) Lease, the Anderson, Charles and Lucy (11089) Lease, and the Allen, Coye Mae (04567) Lease, for the same reason. Davidson requested this hearing to contest the proposed lease severances and the classification of the Floyd, B. M. "B" (19205) Lease wells as wells requiring bay well financial assurance. Severance of Davidson's leases has been held in abeyance pending the outcome of this hearing.

### **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.<sup>3</sup>

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.

---

<sup>3</sup> As of the date the record closed, Davidson was the operator of 9 wells having total depth of 8,920 feet.

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 . . .”.

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.

### **DISCUSSION OF THE EVIDENCE**

Davidson is a small operator of wells in District 03. As of the date the record closed, Davidson was the operator of nine wells on four Commission leases. The Commission’s Production Data Query system records officially noticed by the examiner show that during 2004, Davidson’s total reported production was 224 barrels of oil and 22 MCF of casinghead gas. For January-August 2005, Davidson’s reported production was 28 barrels of oil and 12 MCF of casinghead gas.

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.<sup>4</sup>

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 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

---

<sup>4</sup> 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.

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. According to Davidson, this water impoundment, also referred to as a lake or reservoir, now covers about 1,100 acres. At the time of the hearing, Davidson believed that the subject wells were in eight to fifteen feet of water, about 25 yards from the nearest shoreline of the lake or reservoir. 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 testified that at one time, ConocoPhillips agreed to drain water from the impoundment so that Davidson could plug the subject wells, but then did not do so. Davidson is a plaintiff in a class action lawsuit that has been filed against ConocoPhillips arising out of the water impoundment and the taking of Davidson’s property rights. This lawsuit was still in the pretrial stage at the time of the hearing.

Shortly before the hearing, Davidson had 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 that 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, 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 can progress only as fast as the drain pipe will permit, draining has been temporarily impeded by heavy rains, draining of the impoundment is continuing but will take time, and draining mechanisms will 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 indicates 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.<sup>5</sup>

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 took the position that the subject wells are not “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,” the water impoundment is not “navigable” because it does not have a navigable outlet, and the subject wells can be plugged by conventional land-based methods when the impoundment has been drained to permit such plugging.

#### **EXAMINER’S OPINION**

In the unique factual circumstances of this case, where 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, and where steps are being taken to drain water from around the wells to permit them to be plugged by conventional land-based methods, the examiner recommends that the Commission order that Davidson shall be allowed to renew his Form P-5 organization report for the period March 1, 2005, through February 28, 2006, by filing financial assurance sufficient to satisfy the financial assurance requirements of Statewide Rule 78(g)(1), subject to conditions that: (1) Within 30 days of the date on which the Commission’s order becomes administratively final, Davidson shall file financial assurance pursuant to Statewide Rule 78(g)(1) and make such other filings as may be necessary to renew his organization report for the period March 1, 2005, through February 28, 2006; (2) in the event Davidson does not, within 30 days of the date the Commission’s order is administratively final, file financial assurance as 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, 2005, through February 28, 2006, the P-4 certificates of compliance for Davidson’s leases shall be canceled and their pipeline or other carrier connections shall be severed; (3) Davidson shall plug the subject wells if prior to February 28, 2006, removal of waters from around the wells is only temporary, and the wells can be plugged by conventional land-based methods, as determined by the Commission’s Field Operations Section; and (4) the Commission’s order in this docket shall not apply to the amount of financial assurance required of Davidson to renew his organization report on March 1, 2006. For the few months remaining in Davidson’s current Form P-5 renewal year, based on the number of wells currently operated, this would allow Davidson to renew his organization report and continue to operate by filing financial assurance in the form of a blanket

---

<sup>5</sup> The District Office inspection report erroneously referred to the Floyd, B. M. “A” (11635) Lease, but the reference to level of the water impoundment appears to relate to the subject wells, because these wells are the only Davidson wells classified by the Commission as wells located in an “inland waterway.”

bond, letter of credit, or cash deposit in the amount of \$25,000 or an individual bond, letter of credit, or cash deposit in an amount equal to \$2.00 per foot of total depth of all wells operated.

The examiner's recommendation is based in part on the lack of any evidence that the subject wells are currently in violation of any of the Commission's environmental rules, and contemplates that if the subject wells have not been plugged by March 1, 2006, Davidson will not then be permitted to renew his organization report except by filing financial assurance as required by Statewide Rule 78(g)(1) and 78(g)(2), subject to his right to request a further hearing. Renewal of Davidson's organization report for his current renewal year will moot the severances of Davidson's leases based on Form P-5 and financial assurance delinquency. On the other hand, if, within 30 days from the date on which the Commission's order becomes administratively final, Davidson fails to file financial assurance for the period March 1, 2005, through February 28, 2006, as required by Statewide Rule 78(g)(1), the P-4 certificates of compliance for Davidson's leases should be canceled pursuant to Texas Natural Resources Code, §91.142(f).

#### **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.
2. Davidson's Form P-5 organization report was due for renewal on March 1, 2005. At that time, the Commission's P-5/Financial Assurance unit calculated that Davidson's required amount of financial assurance was \$197,840. Davidson did not file financial assurance in this amount, and his organization report has been in delinquent status since March 1, 2005.
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, 2005, 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 February 28, 2005, the Commission issued to Davidson a notice of intent to cancel the certificate of compliance for the Floyd, B. M. "A" (11635) Lease, based on failure of Davidson to renew his financial assurance. On April 30, 2005, the Commission issued to Davidson notices of intent to cancel the certificates of compliance for the remainder of Davidson's lease, including the Floyd, B. M. (19205) Lease, the Anderson, Charles and Lucy (11089) Lease, and the Allen, Coye Mae (04567) Lease, for the same reason.
5. Davidson requested a hearing to contest cancellation of the certificates of compliance for his leases and to contest classification of wells on the Floyd, B. M. "B" (19205) Lease 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.

6. Davidson is a small operator of wells in Commission District 03. As September 15, 2005, the date the record in this docket closed, Davidson was the operator of nine wells on four Commission leases. During 2004, Davidson reported to the Commission total production of 224 barrels of oil and 22 MCF of casinghead gas. Davidson's reported production for January - August 2005, was 28 barrels of oil and 12 MCF of casinghead gas.
7. 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.
8. 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.
9. 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.
10. 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.
11. 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 water impoundment, and the water is used in a refinery operation.
12. The water impoundment in which the subject wells are located now forms a lake covering about 1,100 acres. At the time of the hearing, the subject wells were in eight to fifteen feet of water.
13. Since 1999, the water level in the lake has fluctuated, but Davidson has had no control over the water level.

14. At the time of the hearing, Davidson was a plaintiff in a pending class action lawsuit against ConocoPhillips relating to the maintenance of the water impoundment.
15. Shortly before the hearing, Davidson learned that an old sulfur well covered by the water impoundment was leaking, and ConocoPhillips had agreed to drain water from the impoundment 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, and this effort was continuing as of the date the record in this docket was closed. 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 last District Office inspection.
17. If ConocoPhillips does not permanently lower the water level in the lake to permit Davidson to produce the subject wells, 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, were not bay wells as defined by Statewide Rule 78(a)(5) [16 TEX. ADMIN. CODE §3.78(a)(5)] at the time they were acquired by Grover R. Davidson.
4. Current drainage of the water impoundment 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, 2005, to February 28, 2006, renewal year by filing financial assurance in an amount prescribed by Statewide Rule 78(g)(1) [16 TEX. ADMIN. CODE §3.78(g)(1)], subject to the conditions that: (a) within 30 days of the date on which the Commission's order in this docket becomes administratively final, Davidson shall file financial assurance as 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, 2005, through February 28, 2006; (b) in the event Davidson does not, within 30 days of the date on which the Commission's order in this

docket becomes administratively final, file financial assurance as required by Statewide Rule 78(g)(1) and make such other filings as may be necessary to renew Davidson's organization report for the period March 1, 2005, through February 28, 2006, the P-4 certificates of compliance for all of Davidson's leases shall be canceled and their pipeline or other carrier connections shall be severed; (c) Davidson shall 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 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) the Commission's order in this docket shall not apply to the amount of financial assurance required of Davidson to renew his organization report on March 1, 2006.

**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, 2005, to February 28, 2006, renewal year by filing financial assurance in an amount prescribed by Statewide Rule 78(g)(1), subject to conditions.

Respectfully submitted,

James M. Doherty  
Hearings Examiner