

**KELLAHIN AND KELLAHIN**

ATTORNEYS AT LAW

EL PATIO BUILDING

117 NORTH GUADALUPE

POST OFFICE BOX 2265

SANTA FE, NEW MEXICO 87504-2265

TELEPHONE (505) 982-4285  
TELEFAX (505) 982-2047

W. THOMAS KELLAHIN\*

\*NEW MEXICO BOARD OF LEGAL SPECIALIZATION  
RECOGNIZED SPECIALIST IN THE AREA OF  
NATURAL RESOURCES-OIL AND GAS LAW

JASON KELLAHIN (RETIRED 1991)

July 1, 1998

**HAND DELIVERED**

Mr. Michael E. Stogner  
Hearing Examiner

Rand L. Carroll, Esq.  
Division Attorney  
Oil Conservation Division  
2040 South Pacheco  
Santa Fe, New Mexico 87505

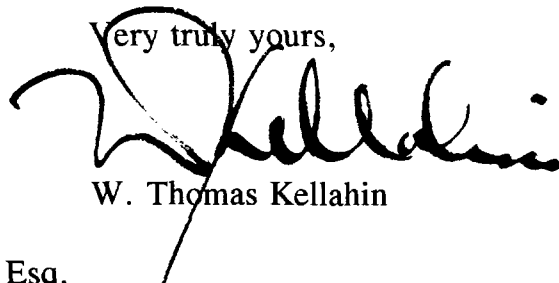
98 JUL - 1 PM 4: 10  
OIL CONSERVATION DIV.

Re: **MOTION TO DISMISS**  
NMOCD Case 11999  
Application of Costilla Energy, Inc.  
for compulsory pooling and an unorthodox gas well location  
Eddy County, New Mexico

Gentlemen:

On behalf of Nearburg Exploration Company, L.L.C., an adversely affected interest owner, please find enclosed our MOTION TO DISMISS the referenced case filed by Costilla Energy, Inc.. This case is currently set on the Examiner's Docket scheduled for July 9, 1998.

Very truly yours,



W. Thomas Kellahin

cc: James Bruce, Esq.  
Attorney for Costilla Energy, Inc.  
Nearburg Exploration, L.L.C.  
Attn: Mike Gray

**STATE OF NEW MEXICO  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION DIVISION**

IN THE MATTER OF THE APPLICATION  
OF COSTILLA ENERGY, INC. FOR  
COMPULSORY POOLING AND AN UNORTHODOX  
WELL LOCATION, EDDY COUNTY, NEW MEXICO

CASE NO. 11999

93 JUL - 1 PM 4: 10  
OIL CONSERVATION DIV.

**MOTION TO DISMISS**

Comes now Nearburg Exploration Company, L.L.C. ("Nearburg"), by its attorneys, Kellahin and Kellahin, enters its appearance in this case as an interested party in opposition to the applicant, Costilla Energy, Inc. ("Costilla") and moves the Division to dismiss this case because the applicant has violated Section 70-2-17(C) NMSA 1978 by prematurely instituting an application for compulsory pooling,

And in support states:

**RELEVANT FACTS**

(1) On June 15, 1998, Costilla sent a letter proposing to Robert and Maxine Hannifin and the other working interest owners in the S/2 of Section 33, T16S, R26E that Costilla would drill and operate its Funk "49" Well No.1 as a Morrow well to be located 1650 feet FSL and 1080 feet FWL and dedicated to the S/2 of said Section 33. **See Exhibit "A" attached.**

(2) The next day, on June 16, 1998, Costilla filed a compulsory pooling application with the Division seeking the issuance of a compulsory pooling order for this well and spacing unit alleging that in less than 24 hours after sending its well proposal, it had "in good faith sought to obtain the voluntary joinder..." but "certain interest owners have failed or refused to join in dedicating their interests."

(3) On July 17, 1998, Costilla mailed notice of this compulsory pooling application which was docketed as Case 11999 and set for hearing on July 9, 1998.

(4) On June 25, 1998, Nearburg obtained an oil and gas lease from Robert and Maxine Hannifin for their interest in the subject spacing unit. **See Exhibit "B" attached.**

(5) On July 1, 1998, Nearburg advised Costilla that Nearburg had acquired the Hannifin interest and desired to enter into negotiations for the voluntary participation in this well at a mutually agreeable location.

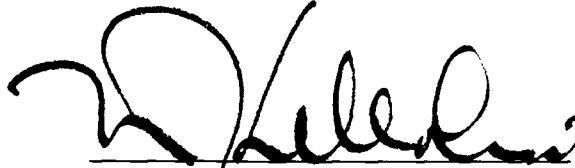
### **ARGUMENT**

Contrary to the custom and practice before the Division and in violation of Section 70-2-17(C) NMSA (1978), Costilla has instituted compulsory action against Nearburg's predecessor in interest without first making "good faith" effort to form a spacing unit on a voluntary basis for the drilling of Costilla's well. Section 70-2-17(C) NMSA 1978 is very specific in its requirement that the compulsory pooling authority of the Division can only be exercised in those instances where the parties have not agreed to voluntarily pool their interests in a spacing unit for a specifically proposed well on that unit. It is impossible to have exhausted a good faith effort to reach a voluntarily agreement in less than 24 hours after sending notice of the well proposal. **For example, see NMOCD Case 11434, Order R-10545 and NMOCD Case 11107, Order R-10242.**

Any compulsory pooling application which is filed in less than 24 hours after the well is proposed must be dismissed. It is no solution to suggest that this fatal flaw can be fixed by simply continuing the case. See **NMOCD Case 11434, Order R-10545**. Such action simply ignores the requirements of Section 70-2-17(C) NMSA 1978 and will encourage others to use compulsory pooling as a negotiating weapon rather than as a remedy of last resort.

Costilla's application must be dismissed. Unless this application is dismissed the Division will be establishing a precedent which will allow applicants to avoid complying with Section 70-2-17(C) NMSA 1978.

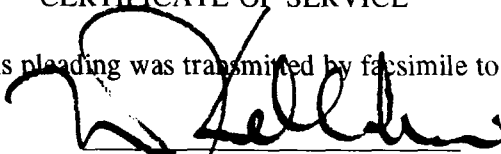
WHEREFORE Nearburg Exploration Company, L.L.C. requests that the Division Hearing Examiner grant this motion and dismiss Oil Conservation Division Case 11999.



W. Thomas Kellahin  
Kellahin & Kellahin  
P. O. Box 2265  
Santa Fe, New Mexico 87504  
(505) 982-4285

CERTIFICATE OF SERVICE

I certify that a copy of this pleading was transmitted by facsimile to counsel for applicant this 1st day of July, 1998.



W. Thomas Kellahin



CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

June 15, 1998

Address List Attached:

Re: Funk 49 #1 Well  
1,650' FSL & 1,080' FWL  
Section 33, T-16-S, R-26-E  
Eddy County, New Mexico

Gentlemen:

Costilla Energy, Inc., as operator, proposes to drill the above captioned Funk 49 #1 Well to a depth sufficient to adequately test the Morrow formation within the spacing unit consisting of the S/2 of the above captioned Section 33, total estimated depth being 8,500'. The Eddy County records indicate that you are the owner of a leasehold interest, mineral interest or both. In this regard, please find attached two (2) AFEs covering this test. Please execute and return one (1) copy should you desire to participate. Upon receipt of your decision to participate, Costilla will forward an Operating Agreement for your approval and execution.

In the event you do not desire to participate in this test, Costilla requests that you either farmout your leasehold interest in the S/2 of the above captioned Section 33, delivering to Costilla a 75% of 8/8ths net revenue interest with you retaining the difference in the form of an overriding royalty interest, or in the case of unleased mineral interest, lease your interest to Costilla for \$100.00 per net mineral acre, with said lease providing for a 3/16ths of 8/8ths royalty and a primary term of three (3) years.

Your earliest attention to this request will be most appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Gary L. Winter".

Gary L. Winter, CPL  
District Landman



COSTILLA ENERGY ,INC

AUTHORITY FOR EXPENDITURE

Date: 5/21  
 Lease Name & Well No. Funk 49 41 Field Name: WC  
 Location: Sec. 33, T - 18S, R - 28E State: County: Eddy  
 Objective: Morrow Depth: 0.500 ft.

AFE#	JOB#	INTANGIBLES				DRILLING	COMPLETION
102	507	1. Surveys				\$ 1,500	
138	508	2. Insurance				\$ 2,500	
140	512	3. Pl Lining				\$ 7,850	
141/338	503	4. Road & Location				\$ 8,000	\$ 3,500
101	502	5. Damages				\$ 5,000	
103		6. Cement Services					
104	503	a. Surface Casing Cmt.	400	sss.		\$ 4,800	
105	504	b. Intermediate Casing Cmt.	800	sss.		\$ 17,500	
309	808	c. Production Casing Cmt.	750	sss.			\$ 17,500
138	511	d. Cmt for P & A					
		7. Rig Costs					
109	530	a. Footage	8,500	\$16.00 per ft		\$ 136,000	
110	528	b. Daywork	9	\$5,500 per day		\$ 27,500	
311	842	c. Camp Unit	6	\$1,800 per day			\$ 14,400
112	372	d. Modification/Decontamination (Rig Move)					
335	552/842	e. Swabbing Unit					
132	535	f. Fuel & Power					
113/313	557	8. Equipment, Rental & Expense Supplies				\$ 3,500	\$ 1,400
142/337	500/842	9. Tool Rental					\$ 1,250
137/336	592/802	10. Casing Crew					\$ 2,125
114	515	11. Drilling mud, Chemicals				\$ 18,500	
		12. Drilling Water					
118	524	a. Water Line Rental					
143	527	b. Water Well					
144/344	535	c. Water Hauled				\$ 20,000	\$ 3,800
		13. Wellbore & Formation Evaluation Services					
118	526	a. Open Hole Logging				\$ 14,500	
119	537	b. Mud Log	15	\$500 per day		\$ 7,500	
120	532	c. Drilling Stem Test & Analysis				\$ 4,500	
121	550	d. Coring & Analysis					
322	828	e. Cased Hole Logging					\$ 4,500
321	853	f. Perforating					\$ 3,500
145/345	501	g. Gyro Survey					
		14. Well Stimulation					
328	814	a. Acidizing					\$ 8,500
327	369	b. Fracturing					
128/326	520/820	15. Transportation/Trucking/Forklift				\$ 2,500	\$ 3,850
129/329	558/850	16. Welding & Misc Services				\$ 1,500	\$ 2,000
130/330	521/821	17. Engineering and/or Geological Services					
131/331	571/871	18. Overhead & Contingencies		10.00%		\$ 28,018	\$ 6,613
		19. Supervision				\$ 14,000	\$ 7,500
148/339	545/845	20. Blowers/Reamers					\$ 750
147/340	587/887	21. Contract Labor				\$ 2,500	\$ 5,000

TOTAL INTANGIBLES: \$ 327,965 \$ 85,968

AFE#	JOB#	TANGIBLES				DRILLING	COMPLETION
		1. Casing					
210	410	a. Surface	13,375	\$17.25	450	\$ 7,783	
212	412	b. Intermediate	6,825	\$12.50	1350	\$ 16,875	
415	715	c. Production	5,500	\$6.35	3,500		\$ 58,975
218/418	422/722	d. Liner & hanger					
230	417	e. Conductor Casing					
417	728	2. Tubing	2,875	\$2.75	8500		\$ 23,375
218/418	430/730	3. Wellhead				\$ 3,000	\$ 2,000
419	720	4. Packur & Downhole flow controls					\$ 12,500
420	730	5. Pumping unit & Prime mover					
421	780	6. Rods, Pump & Tubing Anchor					
223/423	449/749	7. Surface Equipment					
223/423	453/753	a. Flowline, valves & connections					\$ 4,000
424	748	b. Separation & Treating Vessels					\$ 12,500
425	740	c. Tankage					\$ 12,500
227/427	448/748	8. Insulation Coats & Other Misc Tangibles					\$ 9,000
231/431	427/727	9. Compressors (Purchase)					
428	745	10. Heaters & Treaters					\$ 7,500
430	752	11. Artificial Lift Devices					
232/431	499/799	12. Lease & Well Equipment - Other					\$ 8,000

TOTAL TANGIBLES: \$ 27,838 \$ 148,350

ESTIMATED TOTAL COSTS:

	DRILLING	COMPLETION
1. Drilling Intangibles	\$ 327,965	\$ 327,965
2. Drilling Tangibles	\$ 27,838	\$ 27,838
3. Completion Intangibles		\$ 85,968
4. Completion Tangibles		\$ 148,350
5. Plugging Expense		
TOTAL WELL COSTS:	\$ 355,803	\$ 590,940

COMPANY PARTNER: \_\_\_\_\_ DATE: \_\_\_\_\_  
 WI PARTNER: \_\_\_\_\_ DATE: \_\_\_\_\_



EXHIBIT "A"

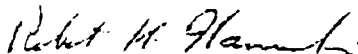
Attached to and made a part of that certain Oil and Gas Lease dated June 25, 1998, covering the E/2SE/4 of Section 32 and the W/2SW/4 of Section 33, T-16-S, R-26-E, Eddy County, New Mexico, by and between Robert H. Hannifin and Maxine B. Hannifin, husband and wife, as Lessor, and Nearburg Exploration Company, L. L. C., as Lessee.

12. Any title defect which renders Lessor's title unmerchantable shall either be waived by Lessee or corrected at Lessee's sole cost.
13. In the event this lease is perpetuated beyond the primary term by any means provided for heretofore, and in the further event a period of 120 days shall elapse between the cementing of production casing, if a completion is to be made, or release of drilling rig, if a dry hole, of any well drilled on lands covered by this lease or on acreage validly pooled or unitized therewith, Lessee shall execute and deliver to Lessor an instrument releasing this lease insofar and only insofar as it covers both:
- (a) All lands covered hereby which are not validly included in a production or proration unit for a well thereon then producing or capable of producing oil and/or gas and associated hydrocarbons; and
  - (b) All rights as to all horizons 100 feet below the stratigraphic equivalent of the total depth drilled in the unit well as to any lands covered by said lease and then included in a valid production or proration unit.

Upon occurrence of the two contingencies stipulated at the beginning of this paragraph, this lease shall ipso facto terminate as to items (a) and (b) above, and the release provided for shall be merely evidentiary of this fact.

14. This lease shall not continue in force by reason of a shut-in well or wells as provided in Paragraph 3 for any one shut-in period of more than two (2) consecutive years past the primary term hereof.

SIGNED FOR IDENTIFICATION:

  
Robert H. Hannifin

  
Maxine B. Hannifin