

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

IN THE MATTER OF THE APPLICATION
OF AMERISTATE OIL & GAS INC.
COMPULSORY POOLING
LEA COUNTY, NEW MEXICO

CASE NO.

OIL CONSERVATION DIV.
99 MAY 26 AM 9:22

MOTION TO DISMISS

Comes now Chesapeake Operating Inc. ("Chesapeake"), by its attorneys, Kellahin and Kellahin, enters its appearance in this case as an interested party in opposition to the applicant and moves the Division to dismiss this case because the applicant has violated Section 70-2-17(C) NMSA 1978 by instituting an application for compulsory pooling prior to proposing the well:

And in support states:

RELEVANT FACTS

(1) As of February 1, 1999, the working interest and unleased mineral interest ownership within the Morrow formation in the E/2 of Section 15, T16S, R35E, NMPM, Lea County, New Mexico is as follows:

Chesapeake Operating Inc.	51.1067 %
Ameristate Oil & Gas, Inc.	0.8892 %
TMBR/Sharp Drilling Inc.	37.5424 %
Louis Mazzullo, Inc.	0.1976 %
Patricia J. Cooper (unleased)	4.6875 %
Fuels Products, Inc.	0.8891 %
S. P. Johnson, III (unleased)	4.6875 %

(2) On March 22, 1999, Chesapeake proposed to Ameristate and the other working interest owners in the E/2 of Section 15 that Chesapeake would drill and operate its Boyce "15" Well No. 1 to be located in Unit H of Section 15 and dedicated to a standard 320-acre gas spacing unit for any production from the Morrow formation.

(3) On April 29, 1999, Chesapeake filed a compulsory pooling application which was docketed as Case 12186 and set for hearing on May 27, 1999.

(4) At Ameristate's request, the case was continued to June 10, 1999.

(5) On May 18, 1999, counsel for Ameristate filed a compulsory pooling application with the Division seeking to pool the same acreage for a well at the same location as proposed by Chesapeake but to be operated by Ameristate.

(6) Prior to May 18, 1999, Ameristate made no effort either orally or in writing to propose its well to Chesapeake.

ARGUMENT

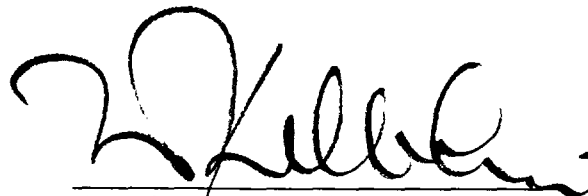
Contrary to the custom and practice before the Division and in violation of Section 70-2-17(C) NMSA (1978), Ameristate has instituted compulsory action against Chesapeake without first undertaking **any** effort to form a spacing unit on a voluntary basis for the drilling of Ameristate's well. Section 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. The only proposal that satisfies this requirement was made by Chesapeake. It is impossible to have any failure to agree prior to any specific well proposal being made by Ameristate.

Any compulsory pooling application which is filed before 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. 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.

Ameristate's actions in this case are egregious. Ameristate has simply waited too long to propose its well. Ameristate is attempting to avoid being subjected to Chesapeake's pooling application by untimely seeking to create its own pooling application. Ameristate's application must be dismissed. The Division's files are replete with cases which were dismissed for the same reasons that Ameristate's case should be dismissed. For example see NMOCD Cases 9939, 10635, 10636, 11107, 11434, 11461, 11927, 11999 and 12014.

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 Chesapeake requests that the Division Hearing Examiner grant this motion and dismiss Ameristate's compulsory pooling application.

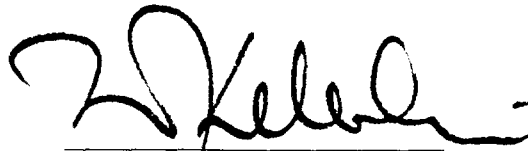
A handwritten signature in black ink, appearing to read 'W. Thomas Kellahin', written over a horizontal line.

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CERTIFICATE OF SERVICE

I certify that a copy of this pleading was hand delivered to counsel for applicant this 26th day of May, 1999.



W. Thomas Kellahin