

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

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**In the Matter of the Application of Approach  
Operating, LLC for Approval of Fourteen  
Applications for Permits to Drill, Rio Arriba  
County, New Mexico**

Case 14278

**PROPOSED-INTERVENOR RICE FAMILY LIVING TRUST'S  
MOTION FOR AN ORDER REQUIRING THE PRODUCTION OF  
INFORMATION RELATED TO THE PENDING APPLICATIONS**

Pursuant to NMAC 19.15.4.16(A), Proposed-Intervenor Rice Family Living Trust (“the Trust”) hereby respectfully moves this Commission to issue an Order requiring Applicant Approach Operating, LLC to produce and disclose certain information relative to its proposed drilling operation. Specifically, the Trust seeks information that will enable it to assess the possible impacts of the Applicant’s proposal on human health and the environment. The Trust proposes that this motion be heard at the September 9, 2009 Commission hearing on this matter.

In support of this motion, the Trust states as follows:

- (1) Through counsel, the Trust has sought information from the Applicant regarding the potential environmental impacts of its drilling proposal, including specifically impacts to water resources in the Chama watershed. See Exhibit 1 and Exhibit 2.
- (2) Through counsel, and also in connection with the concurrent County permitting process, the Trust has also sought production and disclosure of all environmental analyses which the Applicant has prepared for use in this adjudication and in the County permitting process. Id.

(3) Through counsel, and also in connection with the concurrent County permitting process, the Trust has sought production of a surface map of the project area which shows all the Applicant's proposed wells, both in relation to each other and in relation to topographic features, improvements, and roads. Id.

(4) Applicant has not produced any of this information to the Trust, other than a GoogleEarth image showing the location of the proposed well sites and two "typical" schematic drawings: (1) a "drawing of the proposed closed loop system drilling location" and (2) a "drawing of a typical typical producing location."

(5) Without the production and disclosure of this information as to the potential impacts of Applicant's proposal on human health and the environment, the Trust cannot meaningfully and effectively participate in this adjudication.

(6) More importantly, without any evidence whatsoever as to the possible impacts of Applicant's proposal on human health and the environment – both on an individual-well basis and on a landscape scale – it would be inappropriate for the OCC to approve the pending applications, or to direct approval of the pending applications.

The Trust respectfully submits that the Commission's meaningful consideration of the merits of Applicant's applications cannot be had unless and until the Applicant produces and discloses information in its possession regarding the possible environmental impacts of its operations. This information includes, but is not limited to, the following:

- A. All analyses in the Applicant's possession relative to potential impacts of its drilling program on the project area's surface water, ground water, geohydrology, wildlife habitat, historical and cultural resources, soils, recreation, traffic visual quality, and currently existing uses.

- B. All analyses in the Applicant's possession that discuss the water budget for this project, and where the Applicant will acquire the water necessary for drilling and development of these wells.
- C. A map which shows the boundaries of the Applicant's lease and the locations of the 24 wells in the leased area for which it has applications pending before the Commission.
- D. A complete list of all chemicals that will be used in the drilling and stimulation of the wells proposed by the Applicant, including a list of all chemicals used in proposed hydraulic fracturing processes.

So as to afford the Trust an opportunity to participate fully and effectively in this contested adjudicatory hearing, and so as to assure a full and fair hearing of the contested issues in this matter, the Trust respectfully requests that the Commission enter an Order requiring the Applicant to produce the information identified above.

Respectfully submitted,

          /s/ Steven Sugarman            
Steven Sugarman  
1210 Luisa Street, Suite 2  
Santa Fe, NM 87505  
(505) 672-5082

Attorney for Proposed-Intervenor Rice Family  
Living Trust

I hereby certify that a true and correct copy of the foregoing was sent by telefax and e-

mail to Ms. Cheryl Bada (attorney for the Commission) at cbada@state.nm.us and (505) 476-3220, by telefax and e-mail to Mr. J. Scott Hall (attorney for the Applicant) at shall@montand.com and (505) 982-4289, and by telefax and e-mail to Mr. Adan Trujillo (attorney for Rio Arriba County) at adantrujillo@gmail.com and (505) 753-4750 on this 8th day of September, 2009.

/s/ Steven Sugarman  
Steven Sugarman

**S**TEVEN  
SUGARMAN

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ATTORNEY AT LAW

**VIA FIRST CLASS MAIL AND E-MAIL**

August 28, 2009

Mr. Scott Hall  
Montgomery & Andrews  
325 Paseo de Peralta  
Santa Fe, NM 87501

Re: Approach Operating proposal to drill one or more wells on Rice Family Living Trust property in Rio Arriba County

Dear Scott:

Thank you for taking the time to visit with me on the phone this week about your client's proposal to drill one or more wells on my client's property. As I expressed to you during our telephone conversation, and also in my letter to you of August 20, Mr. Morgan was applying unreasonable pressure and engaging in unfair strong arm tactics in efforts to browbeat Mr. Rice into coming to terms on a Surface Use Agreement on a very short time frame. At the same time, Mr. Morgan withheld important information from Mr. Rice as to the status of your client's applications for State and County permits to drill on my client's property. Our hope and expectation is that communications will improve now that you and I are in direct contact on this matter.

I'm sure you can appreciate that Mr. Rice is concerned about the adverse effects of your client's drilling program. He is concerned about the direct and local impacts on his property, as well as the cumulative effects that will occur on a landscape-level within the Rio Chama watershed. For this reason, Mr. Rice plans to participate as fully as possible in the permitting processes at the State and County levels.

STEVEN.SUGARMAN@HOTMAIL.COM  
PHONE: (505) 672-5082

1210 LUISA STREET - SUITE 2  
SANTA FE, NEW MEXICO 87505

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In this connection, my letter to you of August 20 contains a request that you provide me with information as to the current status of your client's permitting efforts. Since you have yet to respond to that request, let me take the opportunity here to elaborate on the information that we expect to receive from your client sufficiently in advance of a meeting and a County Site Visit to enable us to assess your drilling proposal generally, and the relative advantages and disadvantages of well locations specifically. Please provide to us:

- (1) Any and all materials that your client has provided to the County of Rio Arriba ("County") in connection with a Pre-Application Meeting under Section 7.5 of County Ordinance 2009-01 for any oil or gas well in the County's Frontier Area.
- (2) Any and all materials that your client has provided to the County in connection with any pending application for an oil or gas well in the County's Frontier Area under Section 7.7 of County Ordinance 2009-01.
- (3) Any and all materials that your client has provided to the County in connection with an application for a special use permit for industrial use and a development permit for industrial use pursuant to County Ordinance 2009-09.
- (4) All analyses that your client has conducted relative to potential impacts of its drilling program in the County's Frontier Area on the area's surface water, ground water, geohydrology, wildlife habitat, historical and cultural resources, soils, recreation, traffic visual quality, and currently existing uses. As you know, this information is a subset of the information that your client will need to provide to the County in order to complete its applications in accordance with County Ordinance 2009-01 and County Ordinance 2009-09.
- (5) Please have your client provide a map which shows the boundaries of its lease and the locations of the 24 wells in the Frontier Area for which it has applications pending at OCC. Without such a map, it is impossible for Mr. Rice to participate as meaningfully as possible in the upcoming permitting processes.

In our phone call, you mentioned that your client might proceed in phases through the permitting process and that you have already had County Site Visits with respect to certain proposed well locations. Accordingly, I am assuming that your client may already have prepared some of the information required by County Ordinance 2009-01 and County Ordinance 2009-09 in connection with some other proposed well location in the Frontier Area. If your client has not yet prepared the information requested above in connection with the proposed well location(s) on my client's property, please provide the information in connection with a proposed well that is

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further along in the permitting process.

As for a date for a meeting at the site, the dates that you proposed in your letters of August 25 and August 26 are not workable. As Mr. Rice made clear to Mr. Morgan, Mr. Rice's prior business engagements prevent him from travelling to New Mexico to meet with your client until the end of September. Furthermore, it seems prudent to defer a meeting at the Rice property and the County Site Visit until such time as your client has had a fair opportunity to provide the information requested in this letter, and Mr. Rice has had a chance to review that information. Along these same lines, Mr. Rice anticipates hiring one or more experts to assist in the review of your client's drilling proposal. Scheduling the meeting for late September or early October will give us the time that we need to engage our experts in adequate time for them to participate meaningfully in the meeting and the County Site Visit.

Please let me know when we can expect to see the information that we requested. When we have this date nailed down, we can more efficiently plan a date for a meeting at the Rice property and a County Site Visit.

Thank you for your attention to these matters, Scott.

Sincerely,

  
\_\_\_\_\_  
Steven Sugarman

**VIA FIRST CLASS MAIL AND E-MAIL**

August 31, 2009

Mr. Scott Hall  
Montgomery & Andrews  
325 Paseo de Peralta  
Santa Fe, NM 87501

Re: Approach Operating proposal to drill one or more wells on Rice Family Living Trust property in Rio Arriba County

Dear Scott:

Thank you for your letter of August 28, 2009. With respect to a protocol for communications, I work out of my in-town office part of the time and out of my home office part of the time. The phone number that you have for me, which is the phone number that appears on this letterhead, is the phone number for both offices. Insofar as written correspondence is concerned, the best procedure for non-certified correspondence would be for you to use e-mail. Insofar as future certified correspondence is concerned, I request that you both e-mail me and use the mailing address on this letterhead. As you propose, you may consider my August 18 letter to Mr. Morgan as proof of receipt of your client's August 14 letter to Mr. Rice for purposes of NMSA Section 7-12-5(A).

Your letter suggests that your client has made considerable effort to meet and exceed requirements of state law in addressing surface owner concerns. I must respectfully disagree with you. In fact, your client has already violated specific requirements of the Surface Owners Protection Act in the course of its communications with my client. As you are aware, the Act requires that certain important information about an operator's proposed plans be disclosed to a surface owner at the same time that the operator proposes a Surface Use and Compensation

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Agreement. NMSA Section 7-12-5(B)(4). Your client failed to comply with this requirement. At the time that your client transmitted its proposed Surface Use and Compensation Agreement to my client, it disclosed the proposed well locations and also provided two schematics drawings that purport to show a typical producing location and a well pad that incorporates a closed loop drilling system. However, your client did not provide contemporaneously with the proposed Surface Use and Compensation Agreement – and has still not provided – information as to the use and impoundment of water, the removal and restoration of plant life, surface water changes, actions to limit and control precipitation runoff and erosion, interim and final reclamation plans, and other information that is critical to my client's assessment of your client's proposal. We consider this failure to provide critical information, and Mr. Morgan's efforts to strong-arm my client into an agreement without having provided required information, as a material breach of the Act.

Your letter of August 28 asserts that your client's applications have been pending with the Oil Conservation Division for quite some time, and I agree that this is the case. However, I am sure that we can further agree that the information that has been provided to the OCD in connection with the state applications is only a minuscule fraction of the information that is required to be disclosed to landowners pursuant to the Act, and to Rio Arriba County pursuant to County Ordinance 2009-01 and Ordinance 2009-09. Your suggestion that the information that your client provided to OCD constitutes compliance with other statutory and regulatory obligations is incorrect.

As I have stated to you in my prior correspondence, it is our intent to deal with you in strict good faith as required by common law and statute. However, we cannot commence a meaningful and constructive engagement with you on this matter unless and until we have specific information as to Approach's plans and proposals. We understand that the nature of the permitting processes makes it impossible for you to provide final plans until such time as your final locations are approved. However, much of the information required by the Surface Owners Protection Act – which your client failed to provide at the statutorily required time – and County Ordinance 2009-01 and County Ordinance 2009-09 is not dependent on the final selection of a drill site. We are assuming, since your client has sent proposed Surface Use and Compensation Agreement to landowners in Rio Arriba County and has commenced the County's permitting process, that your client has developed this information. As I wrote to you on August 28, we would like to review this information in advance of a County Site Visit.

Rio Arriba County Ordinance 2009-01 states that

[t]he purpose of the Onsite visit for the County is to verify information presented on an application, and to work with the Surface Property Owner and the Applicant

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to identify site specific concerns and potential environmental impacts associated with the proposed development, and to discuss possible conditions of approval and Best Management Practices to be used in mitigating the identified impacts.

As I have previously expressed to you, we view the County Site Visit as a critically important step in the permitting process. In this regard, it is essential that your client share details as to its proposed surface plans with us prior to the time that the County Site Visit occurs – for operations and activities before, during, and after its drilling operations. My letter of August 28 set out for you the information that you are required to provide to landowners and to permitting authorities in connection with your proposals to drill on my client's property. Of course, I am willing to work with you to relieve any undue burden or inconvenience to your client that is associated with the release of that information. However, I am sure you can appreciate that our ability to assess your proposal for Surface Use and Compensation Agreement and your site location is hamstrung until such time as we have had an opportunity to review this information. Furthermore, our ability to participate meaningfully and fully in a County Site Visit is precluded by our current lack of information as to your client's plans.

We will both be guided by our respective common law and statutory duties in this matter. However, as I have previously suggested to you, we would also both be well served by resort to common courtesy and common sense. It is in this spirit that I have requested information from you in advance the County Site Visit, and it is in this spirit that I will work you in connection with the timely production of that information.

Sincerely,

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Steven Sugarman