



**MONTGOMERY  
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2009 OCT -6 P 2: 21

October 6, 2009

Florene Davidson, Secretary  
New Mexico Oil Conservation Commission  
1220 S. St. Francis Drive  
Santa Fe, NM 87505

**Hand Delivered**

**Re: NMOCC Case No. 14134; Application of the Board of County Commissioners of Rio Arriba County for Cancellation or Suspension of Applications for Permits to Drill (APD's) filed by Approach Operating, LLC, Rio Arriba County, New Mexico;**

**NMOCC Case No. 14141; Application of Approach Operating, LLC for Approval of Six Applications for Permits to Drill, Rio Arriba County, New Mexico; and**

**NMOCC Case No. 14278; and Application of Approach Operating, LLC for Approval of Fourteen Applications for Permits to Drill; Rio Arriba County, New Mexico**

Dear Ms. Davidson:

On behalf of Approach Operating, LLC, enclosed for filing in the above-referenced cases are an original and six copies each of our (1) Motion to Strike, and (2) Response to Proposed Intervenor's Motion for an Order Requiring Production of Information Relating to the Pending Applications.

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**REPLY TO:**

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Ms. Florene Davidson, Secretary  
October 6, 2009  
Page 2

Very truly yours,

A handwritten signature in cursive script that reads "Karen Williams".

Karen Williams  
Assistant to J. Scott Hall

JSH:kw  
Enclosures

cc: Adan Trujillo, Esq.  
Steven Sugarman, Esq.  
Mark Smith, Esq.

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

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IN THE MATTER OF THE APPLICATION OF THE BOARD OF COUNTY COMMISSIONERS OF RIO ARRIBA COUNTY FOR CANCELLATION OR SUSPENSION OF APPLICATIONS FOR PERMITS TO DRILL (APD'S) FILED BY APPROACH OPERATING, LLC, RIO ARRIBA COUNTY, NEW MEXICO 0009 OCT -6 P 2: 21 CASE NO. 14134

IN THE MATTER OF THE APPLICATION OF APPROACH OPERATING, LLC FOR APPROVAL OF SIX APPLICATIONS FOR PERMITS TO DRILL, RIO ARRIBA COUNTY, NEW MEXICO CASE NO. 14141

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 NO. 14278

MOTION TO STRIKE

Approach Operating, LLC, ("Approach"), through its counsel, Montgomery and Andrews, P.A., (J. Scott Hall), moves that the Commission or Commission Chair enter an order striking the Notice of Intervention and Amended Notice of Intervention filed in these matters on behalf of Proposed Intervenor Dwight E. Rice, Trustee, Rice Family Living Trust. As grounds for this motion, Approach states:

Proposed Intervenor does not have standing. To acquire standing, a party must demonstrate "(1) an injury in fact, (2) a causal relationship between the injury and the challenged conduct, and (3) a likelihood that the injury will be redressed by a favorable decision. *John Does I Through III v. Roman Catholic Church of The Archdiocese, Inc.*, 1996-NMCA-094, 122 N.M. 307, 924 P.2d 273. Mr. Rice has demonstrated none of these required components.

In this case, there is neither injury in fact nor even the threat of injury. The APD's for two alternate locations on the Rice Trust's surface have been withdrawn (Rice No. 1 and Rice

No. 2 Wells).<sup>[1]</sup> Consequently, there is no APD currently pending before the Commission for review and approval. Hence the “challenged conduct” component for standing does not exist. At such time in the future as an APD on the Proposed Intervenor’s surface may be submitted for approval, Mr. Rice can seek to invoke the Division’s procedural rules in order to establish standing and have an APD reviewed for compliance with the Division’s rules and regulations. Until then, there is no case or controversy pending before the Commission which justifies an adjudicatory hearing to address Proposed Intervenor’s hypothetical and at best, premature, cause of action.

Respectfully submitted,

MONTGOMERY & ANDREWS, P.A.

By:  \_\_\_\_\_

J. Scott Hall, Esq.  
Post Office Box 2307  
Santa Fe, New Mexico 87504  
(505) 982-3873  
Attorneys for Approach Operating, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was delivered to counsel of record on this 6<sup>th</sup> day of October, 2009 as follows:

**By E-Mail**

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**Hand Delivered:**

Mark Smith, Esq.  
New Mexico Energy Minerals and  
Natural Resources Department  
1220 S. St. Francis Drive  
Santa Fe, NM 87505-4000



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J. Scott Hall

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<sup>[1]</sup> In this regard, please refer to the Response To Proposed Intervenor's Motion For An Order Requiring Production Of Information Relating To The Pending Applications.

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

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2009 OCT -6 P 2:22

IN THE MATTER OF THE APPLICATION OF THE BOARD  
OF COUNTY COMMISSIONERS OF RIO ARRIBA COUNTY  
FOR CANCELLATION OR SUSPENSION OF APPLICATIONS  
FOR PERMITS TO DRILL (APD'S) FILED BY APPROACH  
OPERATING, LLC, RIO ARRIBA COUNTY, NEW MEXICO

CASE NO. 14134

IN THE MATTER OF THE APPLICATION OF  
APPROACH OPERATING, LLC FOR APPROVAL  
OF SIX APPLICATIONS FOR PERMITS TO DRILL,  
RIO ARRIBA COUNTY, NEW MEXICO

CASE NO. 14141

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 NO. 14278

**RESPONSE TO PROPOSED INTERVENOR'S  
MOTION FOR AN ORDER REQUIRING PRODUCTION OF  
INFORMATION RELATING TO THE PENDING APPLICATIONS**

Approach Operating, LLC, ("Approach"), through its counsel, Montgomery and Andrews, P.A., (J. Scott Hall), for its response to the Motion for An Order Requiring Production of Information Relating to the Pending Applications, states:

Proposed Intervenor (Dwight E. Rice, Trustee, Rice Trust) has filed a motion in Case No. 14278 which seeks to have the Commission order Approach to produce information that "includes, but is not limited to" possible environmental impacts of operations. Proposed Intervenor wants the information for all wells for which APD's are pending, "both on an individual-well basis and on a landscape scale." The motion should be denied for the following reasons:

(1) The Motion is premature. The APD's for two alternate locations on the Rice Trust's surface have been withdrawn (Rice No. 1 and Rice No. 2 Wells). Once representatives from Approach, Rice Trust, and Rio Arriba County's Planning and Zoning Department have been able to convene an on-site meeting<sup>[1]</sup> to conduct a survey and select a well location, site-specific data gathering can begin and an APD for the Rice No. 3 Well will be submitted. This has not yet happened. It is expected this will occur over the next few months. Until then, there is no APD on the Rice Trust surface presently pending before the Division for approval.

(2) Substantially all that the Rice Trust is asking the Commission to order produced<sup>[2]</sup> will be assembled in connection with Approach's applications for special use permits to be submitted to Rio Arriba County pursuant to the County's recently implemented Oil and Gas Ordinance 2009-001.<sup>[3]</sup> The Rice Trust, through counsel, has also demanded such data be provided as a pre-condition to allowing Approach to conduct surveys and pre-application on-site meetings on its lease under the Surface Owners Protection Act ("SOPA") and under Ordinance 2009-001. Through counsel, Mr. Rice has been told that he will be provided with all such information relating to the Trust's surface that is required to be provided under SOPA, Ordinance 2009-001 and other applicable laws or regulations as such information becomes available. The Rice Trust's counsel has also been told that it cannot make supplying such information a pre-condition to the preliminary on-site planning visits as such a position would frustrate the operation of the County's ordinance.<sup>[4]</sup>

In addition, it should be noted that the accumulation of the very information the Rice Trust seeks has been delayed due to the Rice Trust's lack of cooperation with the efforts of Approach to propose locations and to schedule on-site visits. Over the last several months, Approach has attempted to solicit the surface owner's input on alternate locations, but without

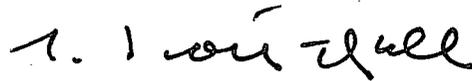
success. Approach has also proposed no fewer than seven dates to schedule on-site visits with Mr. Rice and Rio Arriba County Staff. These proposed dates were either rejected or received no response. Only recently, Rice Trust counsel has requested that the on-site visit be delayed to late October. That request is being accommodated, but further delay will necessarily result. As a consequence, it is expected that the information will not be gathered, processed and submitted until sometime in 2010.

With respect to Item D, this too is premature. This information is not presently available. It is not presently known what, if any, well stimulation or completion techniques will be used. Further, such information would be in the possession of the well servicing company. At such time as these matters are known, all disclosures will be made as required by law.

Respectfully submitted,

MONTGOMERY & ANDREWS, P.A.

By: \_\_\_\_\_



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Attorneys for Approach Operating, LLC

<sup>[1]</sup> Rio Arriba County Oil and Gas Ordinance 2009-001, Sections 2.2 and 6.6.

<sup>[2]</sup> Items A and B. Item C: A lease boundary map has been provided, as well as topographic maps and area of review and setback inventory spreadsheets for the alternate locations.

<sup>[3]</sup> These items are addressed, *inter alia*, in the following sections of the Ordinance: Section 4.1-Exploration Permits; Section 5.1 and 5.4 -Development Permits; Section 6.17-Water Quality and Quantity; Section 6.18-Groundwater Monitoring; Section 6.19-Groundwater Sampling and Reporting; Section 8-1(A) through (O)-Special Use Permit Application Contents and Submittal.

<sup>[4]</sup> Ordinance 2009-001, Section 6.7.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was delivered to counsel of record on this 6<sup>th</sup> day of October, 2009 as follows:

**By E-Mail**

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