



**MONTGOMERY
& ANDREWS**

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RECEIVED OCD

2009 AUG 31 P 4: 24

August 31, 2009

Ms. 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 Florene:

On behalf of Approach Operating, LLC, enclosed for filing in the above-referenced cases is an original and seven copies of the Motion for Conditional Approval of Applications for Permits to Drill and for Dismissal, along with a transmittal letter to Chairman Fesmire.

We request that this motion be set for hearing before the Commission on September 9, 2009. We are also requesting that the hearing on the Applications be continued until after the Motion for Conditional Approval is decided.

REPLY TO:

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Santa Fe, New Mexico 87501
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Mark E. Fesmire, Director
August 31, 2009
Page 2

Very truly yours,

A handwritten signature in black ink, appearing to read "J. Scott Hall". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

J. Scott Hall

JSH:kw
Enclosure

cc: Adan Trujillo, Esq., attorney for Board of County Commissioners
of Rio Arriba County

00126003

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

**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**

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**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 FOR CONDITIONAL APPROVAL
OF APPLICATIONS FOR PERMITS TO DRILL
AND FOR DISMISSAL**

Approach Operating, LLC, (“Approach”), through its undersigned attorneys, Montgomery and Andrews, P.A., (J. Scott Hall) moves the Commission enter its order providing for the conditional approval of drilling permits and for the conditional dismissal of these proceedings. In support, Approach states:

These adjudicatory proceedings were initiated before the Oil Conservation Division by the Board of County Commissioners of Rio Arriba County, New Mexico (the “County”). By their Application in NMOCD Case No. 14134, the County Commissioners invoked the Division’s adjudicatory hearing process seeking the agency’s determination whether the drilling of four wells under approved permits held by Approach will cause waste, violate correlative rights and will be injurious to human

health and the environment. At the request of the Division, Approach Operating, LLC was asked to submit for hearing six additional applications for permits to drill (“APD’s”) that were pending agency approval. Approach complied with the Division’s request and filed its Application on May 14, 2008.¹ A hearing on the merits for the two consolidated applications was held by one of the Division’s examiners on June 20-23, 2008.

On July 18, 2008, the Division Director issued Order No. R-12976 that effectively removed the case from the Division’s hearing process so that approval of the drilling permits at issue could be considered instead by the Oil Conservation Commission. The Order also had the effect of temporarily suspending the APD’s previously approved by the agency pending the hearing by the NMOCC. Subsequently, on January 27, 2009, Approach filed its Application in Case No. 14278 for the approval of APD’s for an additional fourteen wells in the same general vicinity.

In the interim, on April 24, 2008 the Board of County Commissioners of Rio Arriba County adopted Ordinance No. 2008-3 which *inter alia* directed the Rio Arriba County Planning and Zoning Department staff to prepare for adoption of new ordinances addressing the impacts of oil and gas development on the various resources in the County. The County Planning and Zoning staff was also directed to ensure a complete discussion of and participation in development of the new ordinance by residents, oil and gas operators, property owners and other interested parties. Approach was an active participant in the process initiated by the County, as were representatives of other operators, members of the public, representatives from the U.S. Forest Service, Bureau of Land Management, Jicarilla Apache Tribe, and the New Mexico Oil Conservation

¹ NMOCD Case No. 14141; In the Matter of Approach Operating, LLC for Approval of Six Applications for Permits To Drill, Rio Arriba County, New Mexico.

Division. After considerable effort on the part of all these participants, the County Planning and Zoning staff prepared and presented to the Board of County Commissioners a proposed ordinance to regulate oil and gas development. On May 20, 2009, the Board of County Commissioners adopted Ordinance No. 2009-01² establishing the County's comprehensive oil and gas regulatory program. In adopting the ordinance, the Board of County Commissioners made a summary finding:

All forms of development have the potential to negatively impact County resources and the environment through the introduction of contaminants and surface disturbance, which can lead to habitat degradation, fragmentation, and loss as well as degraded qualities of air, soil, and water. Considering oil and gas activities as a form of development, the County designs this Ordinance as a means to allow for the economically feasible development of oil and gas resources, which benefits the economy of the County, while ensuring the minimum possible impact on the environment and fulfilling the County's interest of protecting the health and welfare of County residents.

Ordinance No. 2009-01 sets forth criteria for oil and gas exploration and development activities and facilities and establishes a procedure for obtaining development permits and special use permits within the jurisdiction of the County's land use and zoning authority. The permitting process includes a notice and public hearing function. Of importance, Ordinance No. 2009-01 created two primary land-use zones within the County: (1) the Energy Resource Development District comprising the western portions of the County where oil and gas development is well established, and (2) the

² *Ordinance No. 2009-01. AN ORDINANCE INTENDED TO ADDRESS OIL AND GAS EPLORATION, DRILLING, PRODUCTION, TRANSPORTATION, ABANDONMENT AND RECLAMATION WITHIN RIO ARRIBA COUNTY REQUIRING THE APPROVAL OF AN EXPLORATORY PERMIT FOR EXPLORATION ACTIVITIES RELATED TO OIL AND GAS AND PROVIDING FOR THE DIVISION OF THE COUNTY INTO TWO ENERGY RESOURCE DISTRICT; THE ENERGY RESOURCES DEVELOPMENT DISTRICT, AND THE FRONTIER DISTRICT, REQUIRING THE APPROVAL OF A SPECIAL USE PERMIT AND SUBSEQUENT NOTICE TO PROCEED FOR THE INSTALLATION, CONSTRUCTION, DEVELOPMENT AND OPERATION OF OIL AND GAS FACILITIES WITHIN THAT DISTRICT, AND FURTHER PROVIDING FOR THE PROCESSES AND CRITERIA FOR REQUESTING AND OBTAINING SUCH APPROVALS AND FEES FOR THE SAME, STANDARDS FOR OIL AND GAS FACILITIES, VARIANCES, APPEALS THE ENFORCEMENT OF THIS ORDINANCE AND OTHER RELATED MATTERS.*

Frontier Development District in eastern portions of the County where the design, performance and review standards for permitting are more rigorous and establish additional protocols for the protection and monitoring of fresh water supplies.

Approach has initiated the application process with Rio Arriba County to obtain special use permits for a number of the wells involved in these proceedings under the new procedures established under Ordinance No. 2009-01 (the “oil and gas ordinance”) and that process is well under way. An initial group of twelve well locations has been identified to the County and pursuant to the ordinance procedures, a pre-application meeting with the County’s Planning and Zoning Department staff has been held. On-site inspections for a number of the locations have taken place with the participation of County staff. Surface owners were in attendance at inspections at a number of locations, and were invited to participate in every circumstance.

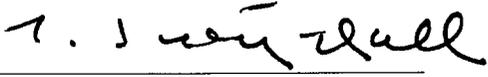
With Approach’s participation in the County’s new permitting process, the conduct of potentially duplicative hearings before both the Oil Conservation Commission and the County should be avoided. Therefore, Approach urges that the APD’s that are the subject of these proceedings may be approved administratively in the ordinary course of the Division’s established administrative approval process and that the Applications in these three cases may be dismissed. *Provided*, however, that the Division’s approvals for each of the wells should be subject to the express condition that the operator shall comply with the County’s oil and gas ordinance.

WHEREFORE, Approach Operating, LLC requests the Commission enter its order (1) authorizing the Division’s District III office to approve the referenced Applications for Permits To Drill subject to the express condition in each case that the

operator will comply with the County's oil and gas ordinance, (2) vacating Order No. R-12976, and (3) dismissing the applications in these matters without prejudice.

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 faxed to counsel of record on this 31st day of August, 2009 as follows:

Ted J. Trujillo, Esq.
Adan Trujillo, Esq.
P. O. Box 2185
Española, NM 87532-2185
(505) 753-4750 [facsimile]

Cheryl L. Bada, Esq.
New Mexico Energy Minerals and Natural
Resources Department
1220 S. St. Francis Drive
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J. Scott Hall

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