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August 26, 2008

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Reply to Santa Fe Office

### HAND DELIVERED

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

Re: *NMOCC Case No. 14134; Application of the Board of County  
Commissioners, Rio Arriba County, New Mexico; and*

*NMOCC Case No. 14141; Application of Approach Operating, LLC,  
Rio Arriba County, New Mexico; Order No. R-12976*

Dear Ms. Davidson:

Enclosed for filing in the above-consolidated cases are the original and six copies of the Motion for Continuance of Approach Operating, LLC.

Very truly yours,



J. Scott Hall

JSH/mb

Enclosures

cc: Counsel of record (via fax, w/enc.)  
Gail MacQuesten, Esq. (via fax, w/enc.)

2008 AUG 26 PM 3 05  
RECEIVED

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

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

2008 NOV 25 PM 3  
RECEIVED  
CASE NO. 14141

MOTION FOR CONTINUANCE

Approach Operating, LLC, ("Approach"), through its undersigned attorneys, Montgomery and Andrews, P.A., (J. Scott Hall) moves the Commission enter its order continuing the hearing in this matter presently set for September 11, 2008 pending further clarification of the procedures to apply in this matter and in a potentially related rulemaking proceeding. This motion for continuance is being filed at the request of the Oil Conservation Division. At this time, Approach requests the hearing be continued to the Commission hearing docket scheduled for December 11, 2008.

These adjudicatory proceedings were initiated before the Oil Conservation Division by the Board of County Commissioners of Rio Arriba County, New Mexico. 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. The County Commissioners did not file an application as required by Rule 1206 of the

Division's rules and did not otherwise provide notice. At the request of the Division, Approach Operating, LLC was asked to submit for hearing six additional applications for permits to drill that were pending agency approval. Approach complied with the Division's request and filed its Application on May 14, 2008.<sup>1</sup> Subsequently, a hearing on the merits for the two consolidated applications was held by one of the Division's examiners on June 20-23, 2008. At the examiner hearing, Approach presented evidence of its plans to utilize state-of-the-art closed-loop drilling systems using shallow-depth air-tool drilling rigs without the use of pits or below-grade tanks.

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 drilling permits previously approved by the agency pending the hearing by the NMOCC.

On July 21, 2008, it was learned that the Governor had directed the Division to formulate new rules and regulations governing drilling operations "in eastern Rio Arriba County." Approach has been unable to obtain a copy of any written directive and, therefore, the exact scope and intent and area of applicability of any such rules and regulations are uncertain.

On July 23, 2008, pursuant to Rule 1214 B, Approach requested a pre-hearing conference to obtain guidance on the procedures for the Commission hearing on the APD's and the need to coordinate with the anticipated rulemaking proceeding. No response to the request for a pre-hearing conference was received. Approach has since

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<sup>1</sup> 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.

been unable to learn from the agency what specific bearing, if any, the prospective rulemaking may have on the pending cases. Approach has also requested the opportunity to participate in the rulemaking process and has offered technical support from the important perspective of an experienced operator to facilitate the drafting of rules. As of this date, the plans, procedures and timeframe for the rulemaking have not been established. No stakeholder meetings have been convened and no application has been filed. Further information is needed.

It is Approach's purpose to support, rather than thwart, the timely promulgation of appropriate rules that promote the protection of water resources, human health and the environment. Accordingly, a continuance of the hearing in Cases 14134 and 14141 as requested by the Division will afford the agency the opportunity to coordinate the anticipated rulemaking with the agency's statutory mandates under the Oil and Gas Act.

This motion is made without prejudice to any of Approach's rights, claims or defenses under *inter-alia* N.M. Const. Article IV, §34.

WHEREFORE, Approach Operating LLC requests the Commission enter its Order continuing the hearing on these applications to the December 11, 2008 Commission hearing docket.

Respectfully submitted,

MONTGOMERY & ANDREWS, P.A.

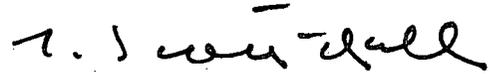
By: J. Scott Hall

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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 26<sup>th</sup> day of August, 2008 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. NM Energy Minerals and Natural Resources 1220 S. St. Francis Drive Santa Fe, NM 87505-4000 (505) 476-3200 [facsimile]
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J. Scott Hall