

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

COPY

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 (APDs)  
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

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
SPECIAL EXAMINER HEARING

2008 JUL 14 PM 3 57  
RECEIVED

BEFORE: DAVID K. BROOKS, Legal Examiner

June 20, 2008

Santa Fe, New Mexico

This matter came for hearing before the New Mexico Oil  
Conservation Division, DAVID K. BROOKS, Legal Examiner, on  
June 20, 2008, at the New Mexico Energy, Minerals and Natural  
Resources Department, 1220 South St. Francis Drive, Room 102,  
Santa Fe, New Mexico.

REPORTED BY: JOYCE D. CALVERT, P-03  
Paul Baca Court Reporters  
500 Fourth Street, NW, Suite 105  
Albuquerque, New Mexico 87102

1	INDEX	
2	Examiner Hearing CASE NO. 14134 & 14141	
3		PAGE
4	APPEARANCES	4
5	APPLICANT'S WITNESSES:	
6	BERNADETTE GONZALES	
	DIRECT EXAMINATION BY MR. A TRUJILLO	18
7	CROSS-EXAMINATION BY MR. HALL	20
8	DON SCHREIBER	
	DIRECT EXAMINATION BY MR. A. TRUJILLO	21
9	CROSS-EXAMINATION BY MR. HALL	23
10	JOHN SENA	
	DIRECT EXAMINATION BY MR. A. TRUJILLO	26
11	CROSS-EXAMINATION BY MR. HALL	28
	DIRECT EXAMINATION BY MR. T. TRUJILLO	30
12	CROSS-EXAMINATION BY MR. HALL	58
13	BETH SULTEMEIER	
	DIRECT EXAMINATION BY MR. T. TRUJILLO	65
14	CROSS-EXAMINATION BY MR. HALL	92
15	LEO VICTOR VALDEZ	
	DIRECT EXAMINATION BY MR. T. TRUJILLO	114
16	CROSS-EXAMINATION BY MR. HALL	132
17	STEVEN TAYLOR FINCH	
	DIRECT EXAMINATION BY MR. A. TRUJILLO	139
18	CROSS-EXAMINATION BY MR. HALL	190
	REDIRECT EXAMINATION BY MR. A. TRUJILLO	208
19	RE-CROSS-EXAMINATION BY MR. HALL	219
	EXAMINATION BY MR. BROOKS	222
20		
	TERRENCE P. BOYLE, Ph.D.	
21	DIRECT EXAMINATION BY MR. A. TRUJILLO	230
	CROSS-EXAMINATION BY MR. HALL	251
22		
	PUBLIC COMMENTS	106
23		
	REPORTER'S CERTIFICATE	262
24		
25		

1		
2	APPLICANT'S EXHIBITS	PAGE
	ADMITTED INTO EVIDENCE	
3		
4		
5	Number 1	21
6	Numbers 22 - 37	26
7	Numbers 38 - 44	29
8	Number 12	34
9	Number 16	74
10	Numbers 13 - 15 & 17	85
11	Number 11	126
12	Number 19	139
13	Number 20	139
14	Numbers 2 - 5	175
15		
16		
17	* * *	
18		
19		
20		
21		
22		
23		
24		
25		

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A P P E A R A N C E S

FOR THE APPLICANT:

Ted J. Trujillo, Esq.  
ATTORNEY AT LAW  
P.O. Box 2185  
Española, New Mexico 87532-2185

Adan Trujillo, Esq.  
ATTORNEY AT LAW  
P.O. Box 2185  
Española, New Mexico 87532-2185

FOR THE RESPONDENT:

J. Scott Hall, Esq.  
MONTGOMERY & ANDREWS LAW FIRM  
325 Paseo De Peralta  
Santa Fe, New Mexico 87501

1 MR. BROOKS: Okay. I believe it's now 9 o'clock.  
2 We'll call this hearing to order. We are on the record in  
3 Docket No. 2008. This is a special hearing docket convened by  
4 the New Mexico Oil Conservation Division to hear Case  
5 Nos. 14134 and 14141. I am David Brooks. I am the Hearing  
6 Examiner appointed pursuant to Section 70-2-14 of the  
7 New Mexico statutes to hear this matter.

8 For those who are not familiar with the procedure,  
9 there will not be a decision at this hearing because the  
10 decision will not be made by me. The decision will be made by  
11 the Director. I will conduct this hearing and then I will make  
12 recommendations to the Director based on the evidence received  
13 at this hearing, and the Director will issue a decision.

14 Because there are a number of spectators present, I  
15 want to establish some ground rules. First of all, I want to  
16 explain that this is an adjudicatory hearing. It is not a  
17 public meeting. An adjudicatory hearing conducted by an  
18 administrative agency is similar to a judicial procedure. The  
19 rules do not require nor contemplate receiving public comments.  
20 Because of the nature of these cases, we will endeavor before  
21 the conclusion of the proceedings to give members of the public  
22 some opportunity to make comments. And I will fill you in  
23 further on that later. I did not come very well prepared for  
24 that because we have a signup sheet, but it only has a few  
25 spaces on it, and there's not going to be room for everyone to

1 sign up.

2 Before we can begin to receive public comments, we  
3 need to know who wants to comment. And I will try to make  
4 arrangements at the morning break, which is approximately  
5 mid-morning, to have a signup sheet circulated in which people  
6 can indicate if they do wish to make public comments so we can  
7 get an idea of the volume of potential comments that we will be  
8 facing. And then I will try to make some arrangements to  
9 receive those comments.

10 Now, the public comments will not be considered as  
11 evidence in this proceeding. The New Mexico Oil Conservation  
12 Division's rules state that statements other than evidence may  
13 be made a part of the record and considered by the agency. It  
14 doesn't say exactly for what purpose, but that will be  
15 included. And the public comments will be included with the  
16 recommendations that I make to the Director; that is, they will  
17 be attached as part of the record that will be forwarded to the  
18 Director along with any observations I may have as a result  
19 thereof.

20 The presentations will be made by the parties acting  
21 through their attorneys. I don't mean to be pre-judging  
22 anybody that anyone will attempt anything; that is not  
23 contemplated. But just so you will all know, as I said, this  
24 is not a public meeting. Cheering, jeering, signs, and other  
25 public reactions to the statements of the attorneys or the

1 witnesses are not allowed.

2           Okay. At this time, we will call Case No. 14134, the  
3 Application of the Board of County Commissioners of Rio Arriba  
4 County for Cancellation or Suspension of Applications for  
5 Permits to Drill filed Approach Operating, LLC, Rio Arriba  
6 County, New Mexico; and Case No. 14141, Application of Approach  
7 Operating, LLC, for Approval of Six Applications for Permits to  
8 Drill, Rio Arriba County, New Mexico.

9           Call for appearances.

10           MR. T. TRUJILLO: Mr. Hearing Examiner, Ted Trujillo  
11 and co-counsel of Adan Trujillo on behalf of the County of  
12 Rio Arriba.

13           MR. HALL: Good morning, Mr. Examiner, Scott Hall  
14 with the Montgomery & Andrews law firm of Santa Fe. I  
15 represent Approach Oil and Gas, Incorporated, and Approach  
16 Operating, LLC. I have four witnesses to be sworn in this  
17 morning.

18           MR. BROOKS: Very good. How many witnesses do you  
19 have?

20           MR. T. TRUJILLO: Your Honor, we have five witnesses  
21 to be sworn in.

22           MR. BROOKS: Okay. Would all those witnesses that  
23 are present please stand. And we'll start with you over here  
24 and move from right to left. Each one needs to state your name  
25 please, for the record.

1 MR. MANOUSHAGIAN: Ralph Manoushagian.

2 MR. CRAFT: Ross Craft.

3 MR. BROOKS: The gentleman in the glasses.

4 MR. SCHREIBER: Don Schreiber.

5 MR. REED: Glenn Reed.

6 MR. MAGGIORE: Peter Maggiore.

7 MR. VALDEZ: Leo Valdez.

8 MS. GONZALES: Bernadette Gonzales.

9 MS. SULTEMEIER: Beth Sultemeier.

10 MR. BOYLE: Terry Boyle.

11 MR. SENA: John Sena.

12 MR. CANDELARIA: Alberto Candelaria.

13 MR. BROOKS: Any other witnesses? Very good. Will  
14 the court reporter please swear the witnesses.

15 [Witnesses sworn.]

16 MR. BROOKS: Okay. Given the fact that we do not  
17 have a conventional application in this case, and there are a  
18 number of issues involved, it would be helpful to me if the  
19 attorneys could give opening statements to just illustrate  
20 what -- or let me know what they think the issues are that are  
21 going to be presented here.

22 Mr. Trujillo, can you make an opening statement?

23 MR. A. TRUJILLO: Yes.

24 MR. BROOKS: You may proceed.

25 MR. A. TRUJILLO: Good morning, Mr. Hearing Examiner.

1 The County of Rio Arriba is here today for a full evidentiary  
2 administrative hearing on the merits to protest 10 applications  
3 for permits to drill oil wells submitted by Approach Oil and  
4 Gas, Incorporated. Four of these permits have already been  
5 granted, and the other six are pending. The County is here  
6 today for this unusual purpose because of the locations where  
7 these wells might be placed and the manner in which they have  
8 been -- the manner in which the landowners have been contacted  
9 in their placement.

10 Now, the place where these oil wells have been  
11 permitted is the Tierra Amarilla Watershed. Now, the evidence  
12 presented today will show that this watershed receives some of  
13 highest amounts of annual precipitation in our arid state, and  
14 the water it provides sustains and is beneficially utilized by  
15 farmers, ranchers, livestock, wildlife, the general public, and  
16 countless other living things.

17 You'll hear testimony today that from its headwaters  
18 at approximately 10,000 feet to approximately 8,000 feet, the  
19 Tierra Amarilla Creek waters are categorized by the EPA as  
20 unimpaired. Approach Oil, Incorporated has submitted two  
21 applications in that unimpaired corridor.

22 The evidence will show that one permit to build a  
23 drilling pad and to drill an oil well has already been granted  
24 in an alpine wetland. That proposed well site is located 40  
25 feet from one of the unimpaired headwater springs of the TA

1 Creek on one side and 40 feet from a second headwater spring on  
2 the other. It's right in the middle.

3 A second permit has already been granted and a  
4 one-and-a-half acre well pad has already been constructed in  
5 the mouth of a box canyon, a natural drainage that experiences  
6 snow melt and storm runoff multiple times a year. It's only  
7 been nine months since that pad was built, and there's already  
8 visible evidence of erosion.

9 We'll also see today that Approach has a pending  
10 permit yards away from the TA Creek on one side and an acequia,  
11 a centuries old acequia, on the other. It's right in the  
12 middle.

13 You'll see that Approach Oil has applications to  
14 place oil wells in natural geological drainages in one of the  
15 most water-producing areas of New Mexico. You'll hear from  
16 affected landowners today who are intimately familiar with the  
17 hydrological and ecological cycles and rhythms of their  
18 properties. They know where those properties drain. They know  
19 what happens if they aren't allowed to drain properly.

20 You'll hear expert testimony in stream toxicology,  
21 ecology and hydrogeology that will reveal that no matter what  
22 drilling methods are used by Approach Oil -- be it air or gas,  
23 closed-loop system or an open pit -- the placement of these  
24 wells and their well pads will unequivocally have a detrimental  
25 effect on this fragile ecosystem.

1           And then you'll hear from Approach. Their experts  
2 will try to convince you that their drilling practices are best  
3 practices and that they'll do their very best to minimize the  
4 risks of water contamination, water impairment, and damage to  
5 this ecosystem. But they won't be able to deny, and the County  
6 maintains, that accidents can happen. And the County doesn't  
7 want accidents to happen in the places where these wells are  
8 proposed to be placed.

9           So the County is asking you, Mr. Hearing Examiner, to  
10 invoke your discretion to use the enumerated powers conferred  
11 upon the OCD by New Mexico State Statutes to protect the public  
12 welfare, the environment, and the surface and ground waters of  
13 this water-poor state and cancel the four granted permits and  
14 deny the remaining six.

15           MR. BROOKS: Thank you. Mr. Hall?

16           MR. HALL: Mr. Examiner, the issues before you are  
17 framed by the Notice and the various pleadings provided you  
18 before the hearing today. The issues you will decide are those  
19 of whether or not approval and operations on these well  
20 locations can be done in a manner so as to prevent waste,  
21 protect correlative rights, and assure that human health and  
22 the environment are protected as well.

23           Mr. Examiner, we are pleased that the County has  
24 selected this forum for the resolution of this debate. We  
25 think this is the proper forum to do so. We think the debate

1 ought to be decided on the basis of competent, reliable,  
2 scientific and technical evidence. And that's what we intend  
3 to present to you over the course of the next few days.

4 Mr. Examiner, as you know from personal experience,  
5 the Division and the Commission has expended considerable  
6 effort in recently revising its surface waste management rules  
7 and its pit rules. Those rules and the recent amendments now  
8 direct, to a large degree, the location and operation of wells  
9 in the State.

10 In view of that effort on the part of the Division  
11 which we apply, Approach has made the decision to drill each  
12 and every one of these wells with closed-loop drilling systems  
13 with steel tanks. Pits will not be utilized at all. That  
14 fact, Mr. Examiner, I believe should shorten this hearing  
15 substantially.

16 Further, Mr. Examiner, I wish you to know that one of  
17 the wells for which we seek approval of an APD is being  
18 withdrawn; the Benjamin Trujillo Well No. 1 shown to be in 28  
19 North, 4 East in Case No. 14141.

20 Thank you, Mr. Examiner.

21 MR. BROOKS: You had indicated something about the  
22 nonstandard location applications. Those were submitted as  
23 administrative applications, and you said they were at issue in  
24 this proceeding. Could you tell me what the situation is on  
25 that?

1 MR. HALL: That's correct. We will provide some  
2 additional testimony on that. When I first examined the C-102  
3 forms for a number of these APDs, it was apparent to me that  
4 the locations were unorthodox and would require well location  
5 exceptions. I proceeded to file well location administrative  
6 applications on the Sultemeier No. 1 in the Sena No. 2. As  
7 this case developed and we further investigated those well  
8 locations, we determined that the GPS lat/longs reflected on  
9 the APDs are correct, that the surveys are correct. The  
10 problem we ran into -- and I've discussed this with the Aztec  
11 Office, is that the TA Land Grant is unsurveyed.

12 MR. BROOKS: Right.

13 MR. HALL: So locating section lines within the  
14 boundaries of the TA Land Grant is often difficult. And I  
15 think Mr. Trujillo will confirm that.

16 MR. BROOKS: I'm aware that there are problems up  
17 there.

18 MR. HALL: A lot of these section lines are projected  
19 off of an old survey from the south which do not correspond  
20 with projections from a separate survey from the west. And as  
21 the township and section lines converge to the north, they  
22 become substantially off.

23 I discussed with Mr. Hayden and Mr. Perrin in the  
24 Aztec Office how we ought to go about resolving this. They are  
25 satisfied with using the GPS lat/long description on there.

1 That enable them to actually find the actual well locations on  
2 the ground. The reason we need to show a unit letter at all on  
3 any of these is so these APDs can fit into the ONGUARD system.

4 So in my discussions with them, most recently Mr.  
5 Hayden, I believe the Division is satisfied that we don't need  
6 to obtain well location approvals on any of these wells. In  
7 any event, none of these wells is closer than 660 feet to any  
8 other.

9 MR. BROOKS: Or to -- is any well closer than 660  
10 feet to any oil and gas lease line?

11 MR. HALL: Some of them are closer than -- well, as  
12 close as 330 feet.

13 MR. BROOKS: Well, but they're oil wells --

14 MR. HALL: Which is proper spacing for 40-acre oil  
15 wells.

16 MR. BROOKS: So oil wells, the 330 would be adequate.

17 MR. HALL: Yes.

18 MR. BROOKS: Okay. Very good. Now, there's one  
19 other issue I need to address with the attorneys and that is  
20 the issue of timing. Since we do not have an unlimited time  
21 for this presentation, we can't let it stretch out like the Pit  
22 Rule hearings did last November. We have today, and we have  
23 part of Monday. I was not aware of this at the time. But  
24 another agency has this room until 11 o'clock on Monday. So we  
25 won't be able to get started until 11 o'clock on Monday.

1           But that gives us -- I figure if we get an effective  
2 six hours today and say we can get an effective five hours on  
3 Monday, maybe we can add a half an hour or hour to -- one way  
4 or another -- I think we have an effective amount of about  
5 12 hours. If I divide that equally, that would give each side  
6 six hours to make their presentation.

7           I have -- I believe that no attorney can control the  
8 cross-examination of his witnesses and, therefore, the  
9 cross-examination should be charged against the account of the  
10 attorney conducting the cross-examination. And, therefore,  
11 what I will say is that each side has six hours in which to  
12 present their testimony and that of the -- and cross-examine  
13 the other attorney's witnesses.

14           Now, we may have to reserve some time for public  
15 comments which means that we may have to run late on Monday if  
16 we don't get through with everybody's 12 hours. Now, does  
17 anyone have any input on that process?

18           MR. A. TRUJILLO: Mr. Hearing Examiner?

19           MR. BROOKS: Yes, sir.

20           MR. A. TRUJILLO: One of the County's expert  
21 witnesses in unavailable on Monday.

22           MR. BROOKS: Okay. The County is presenting its --  
23 will be presenting first. So you can use your own judgment.

24           MR. A. TRUJILLO: Mr. Hearing Examiner, that is  
25 correct. But it is essential to my cross-examination of

1 Approach Oil's expert witnesses in the field of hydrogeology  
2 that my expert witness is in the audience to inform me about  
3 the issues that are most ripe for cross-examination. I'm not  
4 sure if I can prepare an adequate cross-examination without the  
5 benefit of having my expert witness in the audience.

6 MR. BROOKS: Mr. Hall?

7 MR. HALL: Mr. Examiner, what I would suggest, and we  
8 are prepared to do this, is let both sides present their  
9 technical experts first. That way all of our experts can  
10 remain in the room to advise us on this first day. And I  
11 believe we can get the most important aspect of the hearing  
12 under our belts.

13 MR. BROOKS: Okay. Is that acceptable to you,  
14 Mr. Trujillo?

15 MR. A. TRUJILLO: I don't think so. I believe that  
16 we would facilitate the presentation of our evidence in as  
17 quickly a manner as possible. But at this point, to bifurcate  
18 this proceeding and have experts go before fact witnesses I  
19 think throws off our presentation. And I think it disrupts the  
20 presentation that we have already prepared. And I believe that  
21 we can get our presentation done within three hours barring any  
22 lengthy cross-examination on the part of Mr. Hall.

23 MR. BROOKS: Well, I don't believe we can accommodate  
24 both of your requests, so I think we're going to have to have  
25 to proceed in the manner Mr. Hall suggests because we only have

1 these two days allocated to this hearing. And if we don't get  
2 through, we have serious problems.

3 MR. A. TRUJILLO: Mr. Hearing Examiner, if you would  
4 allow us a brief recess to meet with my hydrogeologist, my  
5 expert witness, I believe we might come to a --

6 MR. BROOKS: Okay.

7 [Off the record from 9:23 a.m. to 9:24 a.m., and  
8 testimony continued as follows:]

9 MR. A. TRUJILLO: Mr. Hearing Examiner, after  
10 conferring with my expert witness in hydrogeology, he has  
11 informed me that he can get somebody to cover for him on Monday  
12 so he can be available here. So I believe that it would be  
13 most proper to proceed in the manner that the County's been  
14 anticipating in terms of its presentation.

15 MR. BROOKS: Very good. I will be keeping track of  
16 each side's time. And we will begin with each side -- I don't  
17 have a chess clock here, so I will just have to keep track of  
18 it. We will begin at 9:25.

19 The County may begin your presentation.

20 MR. A. TRUJILLO: Mr. Hearing Examiner, the first two  
21 witnesses that the -- actually, the first three witnesses the  
22 County would like to call would be solely for the purposes of  
23 authentication of exhibits, namely, this map and numerous  
24 photographs that the County is asking be submitted into  
25 evidence. If Mr. Hall would like to stipulate to the admission

1 of these exhibits, then we can forgo that authentication of  
2 exhibits and proceed directly to substantive testimony.

3 MR. BROOKS: Mr. Hall?

4 MR. HALL: I haven't had the opportunity to review  
5 their exhibits.

6 MR. BROOKS: Okay. Very good. You may proceed.

7 MR. A. TRUJILLO: The County calls Bernadette  
8 Gonzales.

9 MR. BROOKS: You can take the witness stand over here  
10 to my left. The chair over there, please.

11 THE WITNESS: Okay. I am a mapper for Rio Arriba  
12 County.

13 BERNADETTE GONZALES

14 after having been first duly sworn under oath,  
15 was questioned and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. A TRUJILLO:

18 Q. Ms. Gonzales, will you please state your name for  
19 the record?

20 A. Okay. I'm sorry. Bernadette Gonzales.

21 Q. And go ahead and tell us about this map.

22 A. Okay. The OCD permits, the proposed and  
23 permitted, came from, of course, the Oil Conservation Division.  
24 We changed the lat and long into X and Y coordinates, okay? So  
25 they are color-coordinated there. The proposed is in orange

1 and the permitted is in black. They are also labeled according  
2 to the well names.

3 The rest of the information that was obtained here  
4 was from the New Mexico Regional Geographic Information  
5 Systems, RGIS, and they have a number -- it's a clearinghouse  
6 for data and data sets that is obtained throughout New Mexico  
7 and other resources.

8 The rest of the information came from the Southwest  
9 Regional GAP, which is also a clearinghouse for the Southwest  
10 Region of the United States, which includes five states.  
11 New Mexico is one of them.

12 We also obtained information from the BLM from both  
13 the Farmington and Taos field offices. And let me see -- I'm  
14 missing one. Oh, also from the Forest Service. And these are  
15 all available to the public. It's all within websites that  
16 they have established. And you can review their data. It'll  
17 cite the sources on where they came from.

18 Q. Ms. Gonzales, did you prepare this map?

19 A. Yes, I did.

20 MR. A. TRUJILLO: Mr. Hearing Examiner, I move to  
21 have Rio Arriba County Exhibit No. 1 admitted into evidence.

22 MR. BROOKS: Objections?

23 MR. HALL: A brief cross.  
24  
25

## CROSS-EXAMINATION

1

2 BY MR. HALL:

3 Q. Ms. Gonzales, does the map show -- well, let me  
4 ask you, other than land status, what else does it show?

5 A. It shows the river, our roads, our road center  
6 line. That actually was GPS for Rio Arriba County, so those  
7 are actual placements on there. The artificial and the canal  
8 ditches and the river streams came from the hydrology portion  
9 of RGIS, okay? Did I answer your question?

10 Q. What does that data show? What type of data is  
11 that, other than locations of streams, locations of well lines?

12 A. Yes, uh-huh.

13 Q. And were you responsible for translating the  
14 lat/long data to the XY data?

15 A. What I did was -- it was in degrees, minutes and  
16 seconds, and then it was transferred into decimal degrees. And  
17 then from there we have a consultant, who is not here today,  
18 and she is the one that transferred it over to the X and Y.

19 Q. Is it your understanding that the XY coordinates  
20 accurately reflect the true locations of those wells?

21 A. Yes, it is, because I did a double check on it  
22 using the decimal degrees, and it is in the location where the  
23 X and Y are platted.

24 Q. But you did not perform that work yourself?

25 A. Not the X and Y transfer from the decimal degrees

1 to the X and Y. No, I did not do that.

2 MR. HALL: Mr. Examiner, subject to our ability to  
3 challenge actual locations -- I can't see that far, anyway --  
4 we don't object to it.

5 MR. BROOKS: Exhibit 1 is admitted.

6 [Applicant's Exhibit 1 admitted into evidence.]

7 MR. HALL: We do not stipulate to the accuracy of the  
8 location.

9 MR. BROOKS: Okay. Understood. You may proceed.

10 MR. A. TRUJILLO: Thanks. The County calls Don  
11 Schreiber.

12 DON SCHREIBER

13 after having been first duly sworn under oath,  
14 was questioned and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. A. TRUJILLO:

17 Q. Mr. Schreiber, if you could please, open up the  
18 Rio Arriba County witness exhibit binder in front of you --

19 A. Yes, sir.

20 Q. -- and turn to Exhibit 22.

21 A. Got it.

22 Q. I'm sorry. Would you please state your name for  
23 the record.

24 A. My name is Don Schreiber.

25 Q. Mr. Schreiber, you are on the stand today to

1 authenticate these photographs. Now, under New Mexico law, the  
2 authentication or verification of photographs prerequisite to  
3 their admission into evidence may be made by the photographer  
4 or by any witness whose familiarity with the subject matter  
5 represented thereby qualifies him to testify as to the  
6 correctness of the representation of the objects or scenes  
7 which they portray.

8           And there's a New Mexico case, State Highway  
9 Department versus Kistler-Collister Company that held that  
10 although the exhibits are not physically prepared by the  
11 witness who identified them, they were prepared at his request  
12 and he participated in their preparation. And no further  
13 foundation for their admissibility was necessary.

14           Now, Mr. Schreiber, I would like you to tell the  
15 Hearing Examiner the process by which you helped in the  
16 participation of these photographs -- or this photograph, and  
17 then we'll scroll through several others.

18           A. Very well. I arranged for an aircraft and a  
19 professional photographer to take a series of aerial  
20 photographs of the first four APD permits that were issued to  
21 Approach by OCD. And we made a flight on May 17th, leaving  
22 from Santa Fe airport and photographed the area and returned to  
23 Santa Fe.

24           Q. Okay.

25           A. This photograph and a number of others here are

1 part of that first flight on May 17th.

2 Q. Now, could we scroll through these photographs?  
3 Mr. Schreiber, do these photographs represent the preparation  
4 that you requested in anticipation of their creation?

5 A. Yes, they do. This photograph, if you'll go back  
6 one again -- right there -- represents a series of photographs  
7 that were taken on June 20th -- no June 17th -- and they are  
8 the results of the second flight, aerial flight, made on that  
9 day originating at the Farmington Airport to photograph  
10 additional angles of the four original APDs and to photograph  
11 the area of the second six APDs. And this photograph is one of  
12 those, one of the series.

13 Q. Thank you. Could you please next --

14 A. Continue. Yes. Yes. Yes. Yes. Yes. Yes.  
15 Yes. Yes.

16 MR. A. TRUJILLO: Mr. Hearing Examiner, at this time,  
17 the County moves for the admission of County Exhibits 22  
18 through 36.

19 MR. BROOKS: Mr. Hall?

20 MR. HALL: A brief cross.

21 CROSS-EXAMINATION

22 BY MR. HALL:

23 Q. Mr. Schreiber, as I understand, you took two  
24 flights two separate days?

25 A. That's correct.

1 Q. You didn't actually take the photographs, you  
2 directed them?

3 A. That's correct.

4 Q. Okay. You were in the back seat?

5 A. That's correct, in the second flight.

6 Q. You weren't on board the first flight?

7 A. I'm sorry. Let me amend that. I was in the  
8 front seat.

9 Q. On the first flight?

10 A. On the second flight.

11 Q. Do you know how the well locations were -- what  
12 navigation did you use to go to the well locations?

13 A. The first four we established the exact location  
14 of Approach's stake, or in the case of Sulzemeier, their well  
15 location.

16 Q. How?

17 A. By talking to each of the individual landowners,  
18 consulting with them on maps where we were able to identify on  
19 the map the exact spot of the well location that was either  
20 built, in the case of Sulzemeier, or staked in the case of Sena  
21 and Woolley. So through consultation with the landowners we  
22 determined where they were and then we flew and took those  
23 exact locations in the first four, for the first four APDs.

24 Q. So you didn't utilize GPS coordinates in the air?  
25 You were just eyeballing it?

1           A. No. We used GPS coordinates as well. But on the  
2 first four we began with the GPS coordinates to establish where  
3 on the ground they were, and a satellite map, and then began to  
4 close those down until we had them visually located by the  
5 landowner and then marked on the map so that we could be sure  
6 we had the right ones.

7           Q. Who was the photographer for the flight you  
8 didn't go on?

9           A. Peter Ogilvie.

10          Q. I'm sorry?

11          A. Peter Ogilvie.

12          Q. He's from Santa Fe?

13          A. Yes, he is.

14          Q. And what directions did you give him to locate  
15 these locations for shooting from the air?

16          A. We prepared a guidebook for Mr. Ogilvie and for  
17 the pilot. And that was the culmination of all the various  
18 GPS, satellite, topographical instructions and then the  
19 landowners' special instructions, combined in a book to give to  
20 them so that when they flew it, they would know beyond just the  
21 GPS what they were looking at.

22                 The GPS in the aircraft continues to roll as you  
23 move, so you need to have an exact point on the ground because  
24 you're going to circle that or come at a different angle and  
25 the GPS is going to keep moving, so GPS alone won't give you

1 the exact spot.

2 MR. HALL: I don't believe I have any objection.

3 MR. BROOKS: Very good. Could you reiterate which  
4 exhibits you're offering, Mr. Trujillo?

5 MR. A. TRUJILLO: Rio Arriba County 22, 23, 24, 25,  
6 26, 27, 28, 29, 30, 31, 32 -- just through 37.

7 MR. BROOKS: 22 through 37, inclusive?

8 MR. A. TRUJILLO: 22 through 37.

9 MR. BROOKS: 22 through 37, inclusive, are admitted.  
10 [Applicant's Exhibits 22 through 37 admitted into  
11 evidence.]

12 MR. A. TRUJILLO: The County calls John Sena.

13 MR. BROOKS: Mr. Sena?

14 JOHN SENA

15 after having been first duly sworn under oath,  
16 was questioned and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. A. TRUJILLO:

19 Q. Mr. Sena, could you state your name for the  
20 record, please.

21 A. John Sena.

22 Q. Mr. Sena, I'm going to show you a series of  
23 photographs. We're going to go through the same exercise that  
24 we went through with Don Schreiber before we enter into the  
25 substantive portion of your testimony, at which time I'll pass

1 your examination to co-counsel.

2 A. Yes, sir.

3 Q. I'm going to show you a series of photographs.

4 MR. HALL: Which number are we on?

5 MR. A. TRUJILLO: We are on number 38. And for your  
6 reference, there is a number corresponding to the exhibit  
7 number on the bottom right-hand corner of the slide.

8 MR. HALL: This is your 48?

9 MR. A. TRUJILLO: We're at 40.

10 Q. (By Mr. A. Trujillo): Now, Mr. Sena, do you  
11 recognize those photographs?

12 A. Yes, I do.

13 Q. Were you there on the day that they were  
14 photographed?

15 A. Yes, sir.

16 Q. Do you recall what day that was?

17 A. No, I don't.

18 Q. In the bottom right-hand corner of the slide,  
19 there's a depiction, May 7, 2008. Is that about right?

20 A. That is right, I believe.

21 Q. Now, are these photographs an actual  
22 representation or an accurate representation of what you saw  
23 that day?

24 A. Yes, sir.

25 MR. A. TRUJILLO: The County offers Exhibits 38

1 through 44 into evidence.

2 MR. BROOKS: Mr. Hall?

3 CROSS-EXAMINATION

4 BY MR. HALL:

5 Q. Mr. Sena, can you correlate the location of these  
6 photographs to locations on a map if asked?

7 A. Yes, sir.

8 Q. Okay. You took all the photographs?

9 A. No, sir, I did not.

10 Q. Who did?

11 A. One of the County photographers.

12 Q. Who was that?

13 MR. A. TRUJILLO: Mr. Hearing Examiner, Mr. Sena does  
14 not recall the name of the County employee. I submit that he  
15 doesn't have an answer.

16 Q. (By Mr. Hall): Did you accompany the  
17 photographer at the time?

18 A. Yes, I did.

19 Q. Okay. Let me ask you about slide 40 there. Is  
20 this on your property?

21 A. Yes, sir, it is.

22 Q. Is that your impoundment there?

23 A. Yes.

24 Q. Okay. And is that the TA Creek we're looking at?

25 A. No, sir.

1 Q. What is that?

2 A. That is a secondary stream fed by natural waters  
3 and runoff on the back portion of my property.

4 Q. If asked, you could locate this on a map for us?

5 A. Yes, sir.

6 Q. And at what time of year was this picture taken?

7 A. The 7th of May, I believe.

8 Q. Is this snow runoff we're looking at?

9 A. Yes, sir, and spring.

10 Q. Okay. Oh, and a spring?

11 A. Yes, sir.

12 Q. Can you show us where the spring might be?

13 A. The spring would be approximately three quarters  
14 of a mile upstream of the impoundment.

15 MR. HALL: Okay. I have no objection, Mr. Examiner.

16 MR. BROOKS: Okay. Which exhibits again are you  
17 tendering?

18 MR. A. TRUJILLO: Exhibits 38 through 44.

19 MR. BROOKS: 38 through 44 are admitted.

20 [Applicant's Exhibits 38 through 44 admitted into  
21 evidence.]

22 MR. A. TRUJILLO: At this time, Mr. Hearing Examiner,  
23 I pass the examination of Mr. Sena to Mr. Ted Trujillo.

24 MR. BROOKS: Okay.

25

DIRECT EXAMINATION

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BY MR. T. TRUJILLO:

Q. Good morning, Mr. Sena.

A. Good morning, sir.

Q. Mr. Sena, would you give us a little background about your education and your occupation?

A. I'm a retired federal officer with the US Department of Energy, Transportation Safeguard Division.

Q. Okay. And what formal education have you had?

A. High school and some at Amarillo Junior College.

Q. Okay. And what is your familiarity with the Tierra Amarilla area in general?

A. My family has been in the Tierra Amarilla area since 1950. Our original home site is in Pojoaque, New Mexico, which is about 60 miles south of Tierra Amarilla.

Q. And how would you describe, generally, your frequency of visits with this particular area of the County?

A. I'm going to say I spend about 70 percent of my time there since 2000. Prior to that, I traveled with my father and my brother who is co-owner of the ranch. We've all spent probably 40 to 50 percent of our time there.

Q. And you are aware, of course, that there are two permits for drilling a well on your property, are you not?

A. Yes, sir.

Q. Now, what is the size of your property?

1 A. 940 acres, approximately.

2 Q. Okay. And is any part of this property  
3 irrigated?

4 A. Yes, sir, it is.

5 Q. And do you know more or less how many acres of  
6 irrigation you have?

7 A. Our registered ditch has issued us 54.4 water  
8 rights. Those are for surface irrigation.

9 Q. And what is the name of that ditch?

10 A. Acequia Sena Salazar.

11 Q. Okay. And do you happen to know the priority  
12 date of your water rights?

13 A. 1870.

14 Q. Do you have any domestic wells on your property,  
15 Mr. Sena?

16 A. No, sir.

17 Q. Okay. And do you have any mineral rights on your  
18 property?

19 A. Yes, sir.

20 Q. And what is your interest in the mineral estate?

21 A. We have -- all our deeds say we own 50 percent of  
22 mineral rights.

23 Q. Who owns the other half, Mr. Sena?

24 A. A gentleman by the name of Mr. Serano from  
25 Youngsville, New Mexico.

1 Q. Okay. Generally, can you tell us what your  
2 primary uses of this property are?

3 A. We are primarily a cattle cow/calf operation.  
4 And we also operate elk and deer hunting camps. I am a  
5 licensed outfitter and guide with the State of New Mexico. And  
6 also on the 40-plus acres we irrigate, we raise pasture grass,  
7 hay.

8 Q. Okay. And do you have a residence on that  
9 property?

10 A. Yes, sir, we do.

11 Q. Do you make any other use of your property other  
12 than the uses that you've enumerated?

13 A. There's always recreational usage by the family  
14 or family members or friends.

15 Q. Now, Mr. Sena, I understand you have contact with  
16 officials from Approach Operating, LLC.

17 A. Yes, sir.

18 Q. Okay. Can you describe, you know, your contacts  
19 with the personnel from Approach?

20 A. I received one letter from Approach telling me  
21 that they had made an effort to contact me -- contact me by  
22 mail and by phone calls to no avail -- I'm sorry -- by phone,  
23 and they had not been able to contact me.

24 Q. Okay.

25 A. So Mr. Bryce Morgan mailed me a letter.

1 Q. Now, I'm going to ask you to turn to -- open your  
2 exhibit book, and you'll see a series of numbers on the  
3 right-hand side and there's, of course, an exhibit to this.  
4 And I want you to turn to Tab No. 12. It reads "Approach  
5 Letters to John Sena."

6 Now, Mr. Sena, would you identify this document?

7 A. Yes. This is the, I guess, drilling agreement  
8 that Approach sent me.

9 Q. Very well. And thumb through it to see if it's  
10 complete as far as you can tell.

11 MR. HALL: At this point, Mr. Examiner, I think I'll  
12 interpose an objection. It appears to be a letter for the  
13 purposes of entering into a contract for service access under  
14 the Surface Owners Protection Act. I don't see how that's  
15 relevant at all to the issues that are framed by the notice in  
16 this proceeding.

17 MR. BROOKS: Well, let me overrule your objection. I  
18 think it's background -- relevant background. You may  
19 continue.

20 Q. (By Mr. T. Trujillo): Mr. Sena, let me ask you  
21 again; is this document complete as far as you can tell?

22 A. Yes, sir, it is.

23 Q. And this is the document that you received then?

24 A. Yes, it is.

25 MR. T. TRUJILLO: We would offer this document into

1 evidence as County's Exhibit 12.

2 MR. HALL: Same objection, Mr. Hearing Examiner.

3 MR. BROOKS: Okay. Exhibit 12 will be admitted.

4 [Applicant's Exhibit 12 admitted into evidence.]

5 Q. (By Mr. T. Trujillo): Now, Mr. Sena, what  
6 participation did you have with Approach personnel in locating  
7 where the two proposed well sites were going to be on your  
8 property?

9 A. None.

10 Q. Okay.

11 A. They informed me -- I'm sorry. A surveyor,  
12 Mr. Archuleta, called me and told me that he wanted access to  
13 my property, that he had been retained by Approach to mark  
14 possible well sites.

15 Q. Okay. And what was your subsequent contact with  
16 Mr. Archuleta?

17 A. Well, due to the fact that I knew that we owned  
18 half the mineral rights -- I did not know what Mr. Serano had  
19 done with his half -- I took it for granted that Approach had  
20 purchased them or something. And I okayed Mr. Archuleta to  
21 access the property.

22 Q. Did you accompany him when he made his access?

23 A. Yes, sir, I did.

24 Q. Who else was with him?

25 A. There were a couple of gentlemen from Farmington,

1 New Mexico, who represented Approach.

2 Q. Do you happen to remember their names?

3 A. No, sir, I don't.

4 Q. What sort of interaction did you have with these  
5 three gentlemen?

6 A. We met at our home site. Mr. Archuleta noted on  
7 his map where he wanted me to take him. By recognizing my own  
8 property and, of course, his map, I knew exactly where he  
9 wanted to go and I proceeded to take him.

10 Q. Okay. And the location that you proceeded to  
11 take him to was what location?

12 A. What you people are considering Sena 1, which is  
13 right next to one of my food reseeding areas and Sena 2, which  
14 is right northeast of our home site.

15 Q. Now, am I to understand that you took them to  
16 both locations?

17 A. Yes, sir.

18 Q. Okay. What was your understanding -- was it your  
19 understanding that those were proposed well sites?

20 A. I was thinking it was probably a general area.  
21 But one of the engineers said this would be the exact spot of  
22 drilling.

23 Q. Okay.

24 A. Exact location of the well.

25 Q. What -- were you asked your opinion about the

1 site selection?

2 A. No, sir.

3 Q. Now, Exhibit 12, the letter that you have before  
4 you --

5 A. Yes, sir.

6 Q. -- I want you to -- in the context of this  
7 exhibit, did you ever reach an agreement with Approach?

8 A. No, sir.

9 Q. Okay. Now, what I'd like you to do is, looking  
10 at the County's Exhibit No. 1, if you could locate on that  
11 exhibit your two well sites?

12 A. Sena Well 2.

13 Q. You may approach, Mr. Sena. Why don't you go  
14 ahead and go right up to -- the lettering is rather small.

15 A. Here and here.

16 Q. Very well.

17 MR. BROOKS: I'm going to suggest that we ask  
18 Mr. Sena to mark those on the exhibit because they will become  
19 part of a written record, and the person reading the record  
20 will not be able to know what "here" means.

21 MR. T. TRUJILLO: I agree. Thank you, Mr. Hearing  
22 Examiner.

23 Q. (By Mr. T. Trujillo): If you can, circle the two  
24 locations on your property.

25 MR. T. TRUJILLO: For the record, Mr. Sena is

1 circling them with a yellow highlighter.

2 MR. BROOKS: Thank you.

3 Q. (By Mr. T. Trujillo): Now, Mr. Sena, with regard  
4 to Well Site No. 1 and Well Site No. 2, which one is at the  
5 higher elevation?

6 A. Well Site No. 2.

7 Q. Mr. Sena, what I'd like you to do is let's look  
8 at some photos. And I'm go going to ask you to turn to  
9 County's Exhibit 42. Mr. Sena, what does this photograph  
10 depict?

11 A. Spring snows in our area.

12 Q. Okay. Is this on your property?

13 A. No, sir, it's not.

14 Q. Approximately where is this location?

15 A. Oh, I'm going to say about five miles upstream.

16 Q. And close to what property owners, if you know?

17 A. Woolley.

18 Q. Okay. Now, how would you characterize the amount  
19 of snowfall that you see for the date that you have on that  
20 photograph?

21 A. Late spring. It's pretty close to what we  
22 usually have that time of the year.

23 Q. Now, take a look at the next exhibit, which is  
24 Rio Arriba County's 43. Do you recognize that?

25 A. Yes, sir, I do.

1 Q. And can you locate it for us, approximately?

2 A. Upstream about four and a half miles.

3 Q. And how would you describe, you know, the  
4 condition of the snow melt at that stage?

5 A. Pretty normal for that time of year.

6 Q. Now, in locating this snow bank here, where would  
7 Highway 64 be in proximity to this snow bank?

8 A. The photo was taken off the roadway.

9 Q. And do you have a feel for maybe the elevation?

10 A. Very close to 10,000, probably.

11 Q. Now, let's take a look at the next one, 44.

12 Could you locate that for me in the context of the other  
13 photographs?

14 A. I believe this is south of Exhibit 43, a short  
15 distance, maybe a quarter mile.

16 Q. Now, you can see a ridge at the very top of that  
17 photo. Do you happen to know if it has a local name or  
18 anything?

19 A. You know, I don't believe it's got a local name.  
20 I believe it's a corner of the property managed by Dave  
21 Holloway.

22 Q. Okay. Now, let's move over to -- let's see --  
23 let's move back to Rio Arriba County Exhibit 35.

24 Mr. Sena, do you recognize the features on this  
25 photograph?

1 A. Yes, sir, I do.

2 Q. For example, right under the plane tip there you  
3 can see a hill. Does that have a name?

4 A. That is what the locals call Penasco Amarillo.

5 Q. And then sort of more to the middle of the  
6 picture there's a rocky structure, for lack of a better  
7 description. Do you know what structure that is?

8 A. Brazos Cliffs.

9 Q. And in the very far background, you can see some  
10 snow-capped mountains. Where are those mountains located?

11 A. Those are in Colorado.

12 Q. Do you know what mountain range that will be?

13 A. I'm going to say the Sangre de Cristos, but I'm  
14 not sure.

15 Q. Now, you see a road structure there. What road  
16 is that?

17 A. US 64.

18 Q. Okay. Let me ask you, then, you recognize a  
19 curve there in the road?

20 A. Yes, sir.

21 Q. Whereabouts would that be?

22 A. I'm going to say it's very close to the head  
23 waters of the TA Creek.

24 Q. Very good. And your property in relationship to  
25 the property shown in this picture would be where?

1 A. It would have to be southwest about seven miles,  
2 maybe.

3 Q. Is that at a higher or lower elevation?

4 A. Lower elevation.

5 Q. Okay. Now, I would like you to look at 34, which  
6 you'll have to back up a bit. And do you recognize this  
7 photograph?

8 A. Yes, sir, I do.

9 Q. Does it show some of the same features?

10 A. Yes, sir, it does.

11 Q. Now, does it show your property?

12 A. A little bit of it, yes.

13 Q. And where would it be in relation to this  
14 photograph?

15 A. Far left center --

16 Q. Okay.

17 A. -- on the bottom.

18 Q. All right. Now, there's a feature that's running  
19 parallel with the highway there immediately to the bottom of  
20 it, sort of a ridge. Does that have a local name?

21 A. South of where this picture is taken, it's known  
22 as TA Hill.

23 Q. Okay. Very well. And then there's a fairly open  
24 meadow below that. Have you ever seen that property?

25 A. Yes, I have.

1 Q. And what property is that?

2 A. That is Juan Montano, Sulzemeier and Spills.

3 Q. And in looking at this photo, the drainage -- you  
4 would describe the drainage as running in which direction then?

5 A. At this point, it would probably be northwest.

6 Q. And headed northwest to where?

7 A. To El Vado Dam, Rio Chama.

8 Q. And then below the ridge, TA Hill, how does that  
9 property drain?

10 A. That one drains straight south to El Vado --  
11 well, to the Rio Chama.

12 Q. Okay. Very good. Now, Mr. Sena, I'd like you to  
13 take a look at -- we're going to go back to County Exhibit 25.  
14 What is depicted in this photograph, Mr. Sena?

15 A. This is the far north corner of my ranch.

16 Q. Very good. And where is Well No. 1, if it's  
17 located within this picture?

18 A. It's the largest -- Well No. 1 is not shown in  
19 this one.

20 Q. I'm sorry. Well No. 2.

21 A. Well No. 2 is the largest opening.

22 Q. I see. Very good. And is that staked, then?

23 A. Yes, sir, it is.

24 Q. And where approximately is that staked?

25 A. Right where that tree is. Right above that.

1 MR. T. TRUJILLO: Let the record show that Mr. Sena  
2 indicated a tree right in the middle of that area.

3 Q. (By Mr. T. Trujillo): I think what would help is  
4 if you would take a pen and circle it on your exhibit book  
5 there. And then if you can initial at the bottom of the page  
6 your initials. All right.

7 Now, Mr. Sena, I gather -- can you describe what you  
8 circled there?

9 A. This is approximately more from memory than the  
10 picture. But the tree is approximately 35, 40 yards north of a  
11 seeding area that the Department of Agriculture has assisted me  
12 in planting for reseeding and regrowth of vegetation in the  
13 area.

14 Q. Is that reseeding area within the meadow that is  
15 shown in that photograph?

16 A. Yes. That whole portion right there.

17 Q. And is it fenced?

18 A. Yes, sir, it is.

19 Q. Now, what concerns, if any, do you have about  
20 this particular well location for drilling?

21 A. This ridge here is approximately I'm going to say  
22 300 feet higher than the valley floor where the seeding area  
23 and the proposed well site is. This hillside here is about  
24 700 feet. The natural drainage of this bowl is right to the  
25 middle. And you can see where the drainage is right there.

1 And there is an impoundment right in that little treeline  
2 there.

3 Q. And that impoundment is manmade or natural?

4 A. No, it's manmade.

5 Q. And what is its purpose?

6 A. Its purpose is to control runoff, to cut back on  
7 erosion.

8 Q. And does it serve any purpose for wildlife or  
9 livestock?

10 A. Water is a very, very dear commodity. And any  
11 time you can retain water, it helps.

12 Q. What about access to a particular site. What  
13 concerns would you have with access, if any?

14 A. There's an area -- it would be right in here --  
15 that's known as Ball Buster Hill, and I was told by the  
16 Approach representative that day that they would not be able  
17 to --

18 MR. HALL: I'm going to object. I think we're  
19 getting some hearsay testimony at this point.

20 MR. BROOKS: Well, it's not hearsay if this person  
21 actually was an Approach representative.

22 MR. HALL: Well, if he's present, we can lay the  
23 foundation for that.

24 MR. BROOKS: Okay.

25 MR. T. TRUJILLO: Mr. Hearing Examiner, basically any

1 statement that Mr. Sena hears from Approach officials at least.  
2 could constitute an admission by a party --

3 MR. BROOKS: Well, I agree it's not -- that's what I  
4 said. It's not hearsay if it's a statement by someone from  
5 Approach. Mr. Hall wanted to establish, I think, when and  
6 where he talked to this person.

7 MR. T. TRUJILLO: I think he can do that on  
8 cross-examination if we could move this along, because I think  
9 he would be able to determine after I conclude my direct, even  
10 if he wants to cross-examine that area.

11 MR. BROOKS: Okay. In court we would allow him to  
12 take the witness on voir dire at this point, but I think you're  
13 right. It would move along better if we do it that way. So I  
14 will overrule the objection, and you can continue.

15 Q. (By Mr. T. Trujillo): You were about to say, Mr.  
16 Sena?

17 A. It's a very steep incline. They made the comment  
18 that they would not be able to get machinery up that hill, that  
19 they would have to utilize other or make other roads into the  
20 area.

21 Q. Okay. Now, this proposed site, how far is it  
22 from Highway 64, more or less?

23 A. Just under two miles.

24 Q. Okay. Well, let me ask you to look at 26. What  
25 water courses can you point out for us, Mr. Sena?

1           A. This here is the same stream system and  
2 impoundment that was shown on an earlier photo, and the stream  
3 runs seasonally straight northeast, I guess.

4           Q. Now, is that impoundment visible in this photo?

5           A. Yes, it is.

6           Q. Would you go ahead and point it out? Now,  
7 looking above the area to the right where the staking is, you  
8 had talked about an impoundment above it. Is there anything  
9 visible there?

10          A. Yes, sir, it's right there.

11          Q. Would you go ahead and circle both those  
12 impoundments? And then initial at the bottom of the page, if  
13 you would.

14          Mr. Sena, let's look at 27. How does this photo  
15 relate to the previous two?

16          A. It's the same area, just a little closer.

17          Q. Very good.

18          MR. BROOKS: I'm sorry, you said 27?

19          MR. T. TRUJILLO: Yes.

20          MR. BROOKS: Very good. Continue.

21          Q. (By Mr. T. Trujillo): Can you describe the water  
22 course there?

23          A. The water course, the closest proximity from the  
24 well site, the water course is approximately -- I would say  
25 under 200 yards. And the water course flows up. You can see

1 where the stream actually runs.

2 Q. Okay.

3 A. The natural spring is right there.

4 Q. And there is a natural spring?

5 A. Yes, sir.

6 Q. Would you go ahead and circle the area where you  
7 believe there's a natural spring?

8 Okay. And then if you could circle it on the plat  
9 and initial. How would you describe the seasonal variations  
10 and flows in that creek?

11 A. This creek is fed by two different what we call  
12 bowls. One is the Luna Bowl. One is the Garcia Bowl. And  
13 they're both approximately about 300 acres in size apiece. And  
14 there's only one drainage, and that is at the bottom of each  
15 one.

16 Q. And again, the well site is depicted on this  
17 photo?

18 A. Yes, sir, it is. That same lone tree.

19 Q. Now, if you could -- let's look at 26. Excuse  
20 me, I think we did that already. I think we're going  
21 backwards -- 40. I'm sorry. Let's see.

22 Now, if you could locate that photo for us in the  
23 context of previous photos.

24 A. Again, that is that same little diversion. We  
25 had to kind of catch silt and slow down the water flow.

1 Q. And let's look over at 41. And how does this  
2 photo relate to the previous photo?

3 A. This photo is exactly downstream right next to  
4 the other photo. You can see that the erosion has caused  
5 this -- caused approximately an 8- to 12-foot drop right below  
6 that other little diversion.

7 Q. And is that a snow bank or remnants of a snow  
8 bank that we're looking at?

9 A. Yes, sir, it is.

10 Q. Approximately what is the elevation of that area?

11 A. I believe it's 87 or 86.

12 Q. Now, Mr. Sena, let's look at -- I want to go all  
13 the way back to 23.

14 Now, what are we looking at in this photo, Mr. Sena?

15 A. We're looking at our home site, part of our  
16 irrigated land. And the upper part, this here is all irrigated  
17 land. This is our home site. This is the road to the back of  
18 the hill, back of the mountain, back of the ranch.

19 Q. Would this be the road that Approach will be  
20 using, from your understanding?

21 A. Yes, sir.

22 Q. And if you go below under the far bottom  
23 left-hand corner, is that part of the same road?

24 A. Yes, it is.

25 Q. At the bottom? And where does that road exit to?

1 A. They all come to the front of the house.

2 Q. And then from the front of the house, how does it  
3 get to the highway?

4 A. You go straight south.

5 Q. Now, can you see any features of your acequia  
6 structures?

7 A. Yes.

8 Q. And where would they be?

9 A. There's one along this fence. And that water  
10 irrigates this portion here and this portion here.

11 Q. Very well.

12 A. There are water rights associated with that  
13 parcel right there. There's another ditch right here, right in  
14 front of the house. There are water rights associated with  
15 that.

16 Q. Mr. Sena, where is the well site located in this  
17 photo.

18 A. Approach's well site is right by this ravine and  
19 on that high side right there.

20 Q. Okay. Now, what number is that well site?

21 A. That would be Well Site 1.

22 Q. Now, what I would like you to do is on your  
23 photograph, write a number one where you think that well site  
24 is and circle it and initial it.

25 MR. BROOKS: Now, we're still on Exhibit 23?

1 MR. T. TRUJILLO: That's correct.

2 Q. (By Mr. T. Trujillo): Mr. Sena, what water  
3 features can you point out that are associated with that  
4 particular well site?

5 A. Right here where you can see this clearing,  
6 it's -- about 300 yards north of the drilling site, there's a  
7 natural spring.

8 The pointer is dead.

9 There's one natural spring right there. There's a  
10 natural spring right here. Maybe a little bit off this  
11 picture.

12 Q. Okay.

13 A. And then our ditch is -- our natural ditches and  
14 TA Creek.

15 Q. Now, would you go ahead and put an 'S' where you  
16 think those natural springs are and circle those as well?

17 A. An 'S'?

18 Q. Yes. Now, Mr. Sena, what use does wildlife make  
19 of this part of your property?

20 A. Well, wildlife -- again, there's the E-PLUS  
21 program with the New Mexico Department of Game and Fish, and  
22 their direction, as far as winter feed and stuff -- you can see  
23 all this has been plowed, disked, and reseeded. But not all  
24 the sage has been removed to be used as winter pasture for game  
25 animals.

1 Q. Are you a participant in this program, then?

2 A. Yes, sir.

3 Q. And so is it elk that make use of that pasture?

4 A. Everything -- elk, deer.

5 Q. Now, would you identify the creek there in the  
6 photo, the name of the creek?

7 A. TA Creek.

8 Q. Very good. What sorts of volumes have you seen  
9 in that creek?

10 A. Say again, sir?

11 Q. What sorts of volumes have you seen in that creek  
12 over the course of the years?

13 A. I don't know as far as cubic feet runoff and  
14 stuff, but I've seen it run brim to brim -- or bank to bank, I  
15 should say. We also had a river -- I'm sorry -- a bridge that  
16 used to be right here. In 1966 we had a hailstorm in June and  
17 the hail ended up being about oh, I'm going to say four and a  
18 half inches high. And we had a rainstorm right after. The  
19 amount of hail that was picked up by the runoff took the  
20 bridge.

21 Q. Your bridge?

22 A. My bridge. And that bridge is downstream about 5  
23 to 600 yards. And that bridge was approximately four foot,  
24 three and a half foot above the normal runoff level.

25 Q. Now, Mr. Sena, your house and your structures

1 there, how far is it from that well site that we're talking  
2 about?

3 A. Sir, I believe that we had figured that the well  
4 site was to the closest point, was approximately 300 yards.

5 Q. Okay.

6 A. And then our cabin is approximately 40 yards from  
7 there, 30 yards.

8 Q. Okay. Let's look at 24. Now, how does this  
9 photo relate to the previous one, Mr. Sena?

10 A. Same photo, just a little different angle, a  
11 little farther southwest.

12 Q. Very good. Now, can you more or less locate  
13 where the well site would be there?

14 A. Yes, sir.

15 Q. And would you go ahead and locate that well site?

16 A. That well site would be right there.

17 Q. Okay.

18 A. And there's my bridge.

19 Q. I see. You've replaced that bridge, Mr. Sena?

20 A. Yes, we have.

21 Q. Do you expect to replace another one?

22 A. I hope not.

23 Q. There is a line that goes, you know, sort of at a  
24 diagonal starting at the right-hand corner towards sort of the  
25 bottom left-hand corner. What is that straight line there?

1           A. That is our -- we rotate our livestock to better  
2 utilize our properties. And during the summer, we irrigate  
3 this first third and we graze the back the second third, the  
4 middle third. And that is a cross fence and a ditch line.

5           Q. Very well. Now, is there any surface water  
6 showing in the vicinity of the well site?

7           A. The well site again, is there. And right here  
8 you can see the natural spring.

9           Q. I see. Would you circle that natural spring?  
10 How far would that spring be from the well site?

11          A. Probably under 250 yards.

12          Q. Okay. And going from the first spring there  
13 towards the loop in the river and close to the fence -- that is  
14 a fence, Mr. Sena?

15          A. Yes.

16          Q. I'm sorry. Is that another place where water  
17 gathers?

18          A. Yes, it's another impoundment. Again, more to  
19 catch silt from running onto our pastures.

20          Q. And how far would that be from the well site,  
21 approximately?

22          A. 200 yards.

23          Q. If you could circle that as well. Now, is the  
24 acequia visible there?

25          A. The acequia -- we have one that runs here.

1 Q. Okay.

2 A. We have one that runs here.

3 Q. All right.

4 A. And then we have the one that runs up on top.

5 Q. Okay. And, generally, how would you -- how far  
6 away is that well site from those areas that are being  
7 irrigated by your acequia?

8 A. 100 yards. Mr. Trujillo, may I say something?

9 MR. HALL: There's no question pending of the  
10 witness.

11 Q. (By Mr. T. Trujillo): What did you want to say,  
12 Mr. Sena?

13 A. Just that it is very relevant that runoff on that  
14 little canyon right there is right in the path of the well, the  
15 proposed well pad.

16 Q. Would you mark a line parallel with the course of  
17 that runoff and then mark it on your exhibit? I'm going to  
18 turn your attention to a neighboring property, Benjamin  
19 Trujillo. Are you familiar with that property?

20 A. Yes, sir, I am.

21 Q. And how are you familiar with that property?

22 A. I buy Mr. Trujillo's elk permits, and I utilize  
23 the property for elk hunting.

24 Q. What water improvements, if any, do you share  
25 with that property?

1           A. Our head water -- excuse me -- the headwaters to  
2 our ditch, our head gate, is just north of Mr. Ben Trujillo's  
3 property, and the main ditch has two runoffs through the middle  
4 of Mr. Trujillo's property.

5           MR. HALL: At this point, Mr. Examiner, I'd interpose  
6 an objection. We've indicated that the APD for the Trujillo  
7 No. 1 is being withdrawn. It's no longer relevant to what  
8 we're doing.

9           MR. BROOKS: Mr. Trujillo?

10          MR. T. TRUJILLO: Well, Your Honor, relevance is,  
11 again, in the eye of the beholder. What we're looking at is  
12 the process of selecting well sites. And I think that that's,  
13 you know, germane because that is the application that we have  
14 pending before, even though it's been withdrawn, it is an  
15 accomplished fact that it was selected.

16          And I think we're looking at a number of changes  
17 which the Hearing Examiner can certainly take into  
18 consideration. But what we're also looking at is the process  
19 of selecting well sites. And I think it's germane to that  
20 topic.

21          MR. BROOKS: Well, I'm not sure I see the relevance,  
22 however, since this is an administrative proceeding, I will  
23 allow you to develop the testimony and see what relevance it  
24 has. I overrule the objection.

25          Q. (By Mr. T. Trujillo): Mr. Sena, if you could

1 turn to photo 38. What are we looking at in this photo?

2 A. We are looking at our lower ditch on Mr. Ben  
3 Trujillo's property.

4 Q. And where is the lower ditch in this photo? Does  
5 it have a name?

6 A. That's all also Acequia Sena Salazar.

7 Q. And what do we see at the top of the picture?

8 A. If I'm correct, it's 27 yards from our ditch to  
9 the proposed well site.

10 Q. Did you yourself actually walk it?

11 A. Yes, I have.

12 Q. Okay. Now, if you turn over to photo number 39,  
13 what are we looking at here?

14 A. This is standing right next to Approach's  
15 proposed well site opposite --

16 MR. BROOKS: To clarify for the record, is this again  
17 the site that has been withdrawn that Mr. Hall referred to?

18 MR. T. TRUJILLO: That is correct, Mr. Hearing  
19 Examiner.

20 A. Again, we are standing on the proposed drill site  
21 looking opposite the ditch at the river.

22 Q. (By Mr. T. Trujillo): And how would you gauge  
23 the distance?

24 A. If I'm correct, it was 130 feet.

25 Q. Okay. Mr. Sena, are you familiar with a third

1 property owned by an Anthony Garcia?

2 A. I know of the property, and I've been on it. But  
3 not a lot, sir.

4 Q. Very good. And if you could go to County's  
5 Exhibit No. 1 and locate on that exhibit Mr. Anthony Garcia's  
6 proposed well site?

7 A. I believe it's right in here.

8 Q. Does it show -- in terms of proximity to Highway  
9 64, is it north or south of it? Can you tell?

10 A. Like I said, I have not visited the site. I just  
11 know of the ranch. But I have seen the ribbons on the gate  
12 indicating that the surveyors have been there.

13 Q. And at the place where the ribbons are on the  
14 gate, how would you describe the terrain immediately next to  
15 the gate?

16 A. From the right-of-way fence or US 64 all way to  
17 the river, it is a marshy bottomland.

18 Q. Is it an irrigated parcel or is it naturally  
19 marshy?

20 A. It's a natural marsh.

21 Q. Now, Mr. Sena, what other concerns do you have  
22 with the selection of these drilling sites that are on your  
23 property in addition to the ones that we've talked about?

24 A. I think we've basically covered them. It's just  
25 the fact that they were very inconsiderate to the environment.

1 They were very inconsiderate to the landowner. They are very  
2 inconsiderate to the land.

3 Q. And did you have any opportunity to meet with the  
4 hydrologist from the company recently?

5 A. No.

6 Q. Now, let me ask you, before your experience with  
7 Approach, what was your opinion regarding the oil and gas  
8 industry? What was your view?

9 MR. HALL: I'm going to object. The question is  
10 calling for opinion testimony from a fact witness.

11 MR. BROOKS: Well, I don't think it's being offered  
12 as opinion testimony, so I will overrule the objection.

13 Q. (By Mr. T. Trujillo): You can answer.

14 A. I'm all for community growth. I'm all for  
15 economic development. I've never been involved with a  
16 situation like this before. And I'm for progress, but I think  
17 negative aspects or negative dealings with Approach have  
18 effected me in a negative way.

19 Q. Well, given your experience then with Approach,  
20 what would be your recommendations to OCD for improving the  
21 future of drilling on the Sena ranch?

22 A. It needs to be a little more correlation between  
23 landowner and the drilling companies. I think local history  
24 and knowledge and those aspects should be taken into  
25 consideration.

1 Q. If these well sites are going to continue in the  
2 locations that are proposed, what impacts economically would  
3 you anticipate? Let me sharpen that question.

4 What impacts would it have on your outfitting  
5 business?

6 A. As far as my personal businesses and my ranch, it  
7 would diminish property values, I believe. It would diminish  
8 my harvesting of game animals. It would increase my workload  
9 as far as maintaining affected areas such as erosion,  
10 reseeding. In times of drought, re-navigating my ditches to  
11 better irrigate my properties would all be a burden.

12 MR. T. TRUJILLO: Mr. Hearing Examiner, I pass the  
13 witness.

14 MR. BROOKS: Very good. At this time we'll take a  
15 15-minute -- or, let's try for a 10-minute recess. I don't  
16 know if we can actually make it that quickly or not.

17 [Recess taken from 10:35 a.m. to 10:50 a.m., and  
18 testimony continued as follows:]

19 MR. BROOKS: For your information, I'll note that  
20 Rio Arriba County has 4 hours, 56 minutes remaining, and  
21 Approach has 5 hours, 54 minutes remaining.

22 You may proceed, Mr. Hall.

23 CROSS-EXAMINATION

24 BY MR. HALL:

25 Q. Good morning, Mr. Sena. Let me ask you when you

1 ran through your photographs -- might we have those put up on  
2 the PowerPoint, please? You identified a number of springs on  
3 your property for us.

4 A. Yes, sir.

5 Q. Can you tell me, do you utilize the water from  
6 those springs?

7 A. Partially.

8 Q. Do you have water rights associated with the  
9 springs?

10 A. Yes, sir, we have 54-acre water rights.

11 Q. And those springs charge the acequia; is that  
12 correct?

13 A. No, sir, they do not.

14 Q. I'm confused. You indicated earlier you had 54.4  
15 acre feet of water rights, but not from the acequia?

16 A. No, no. From the acequia but not from the  
17 springs.

18 Q. Okay. So you have separate rights to the  
19 springs; is that accurate?

20 A. No, sir. I do not know anything about actual  
21 water rights from a spring.

22 Q. All right. Do you know if those springs are  
23 registered with the State Engineer to anyone?

24 A. I'm sure they are.

25 Q. Do you know to who?

1 A. I don't know for sure, sir.

2 Q. Initially, I believe I heard you testify that you  
3 did not have a fresh domestic water well on your property. Did  
4 I understand correctly?

5 A. That is correct, sir.

6 Q. We can look at your photograph, your Exhibit 23,  
7 which is your house there. Is there no well at your house?

8 A. There is a sump well. It's a 400-gallon  
9 container buried about 20-foot under the ground, and it absorbs  
10 water from the ground.

11 Q. All right. Is your house on a septic tank  
12 system?

13 A. Yes, sir, it is.

14 Q. And this is not your primary residence; is that  
15 correct?

16 A. No, sir, it's not.

17 Q. How often do you utilize that residence?

18 A. During the summer months probably three days a  
19 week, one or two persons.

20 Q. Do you have any tenants there?

21 A. No, sir.

22 Q. Okay. I'm curious to know, Mr. Sena -- I'm sure  
23 you know your property very well. Tell me, do you know what  
24 the carrying capacity is?

25 A. As far as livestock?

1 Q. Yes, sir.

2 A. In a good, good year, sir, we can run 60 to 70  
3 pair.

4 Q. All year long?

5 A. Six -- five to six months out of the year.

6 Q. Okay. And does the elk population affect your  
7 carrying capacity?

8 A. No, sir.

9 Q. On your ranch again, I'm sure you're familiar  
10 with it, I'm curious to know, have you ever seen any oil seeps  
11 on the surface?

12 A. No, sir. But we do have the remnants of an old  
13 coal mine, and to my way of thinking, if there's coal, there  
14 should be oil.

15 Q. Is that the Dandy Mine, do you know?

16 A. It is a vein of the Dandy Mine, Duende.

17 Q. Say again?

18 A. Duende Mine.

19 Q. Duende?

20 A. Yes.

21 Q. Okay. Can you locate that on the map for us and  
22 circle that?

23 A. You want the vein on my property or the well?

24 Q. If you could locate all veins known to you  
25 associated with that mine.

1 A. Not on this map. It would be in this area, sir.

2 MR. HALL: If I may approach, Mr. Examiner --

3 MR. BROOKS: You may.

4 MR. HALL: -- to look at this?

5 Q. (By Mr. Hall): Would you point it out to me?

6 A. I'm going to say it's right there.

7 Q. Okay. And you've indicated from the Sena Well  
8 No. 2 location it's approximately a half a mile to the east; is  
9 that fair to say?

10 A. Yes, sir.

11 Q. Okay. What type of mine is that?

12 A. There's two abandoned coal mines.

13 Q. Coal mines? Do you know when the mines last  
14 produced?

15 A. It is my understanding that in the '40s and early  
16 '50s and maybe later, that the coal from these mines was used  
17 to heat the schools. So I'm going to say the '40s -- '50s,  
18 maybe early '50s.

19 Q. Okay. Mr. Sena, you briefly discussed your  
20 relationship with Approach.

21 A. Yes, sir.

22 Q. Isn't it accurate to say that Approach has always  
23 been open to you and will take your calls at any time?

24 A. That is correct.

25 Q. You've had numerous telephone calls with

1 Approach's landman?

2 A. That's correct.

3 Q. And you've had at least one face-to-face meeting  
4 that I know of. Are there more?

5 A. I do not recall any face-to-face meetings.

6 Q. Well, you and I were at one.

7 A. Oh, I'm sorry. You're right, sir. May I say  
8 something along those lines?

9 Q. Let me ask you some questions about that meeting,  
10 if I might. You had your attorney present with you; isn't that  
11 right?

12 A. Yes, sir.

13 Q. And, in fact, you mentioned the issue of you  
14 think you have a mineral title interest --

15 A. Yes, sir.

16 Q. -- in the lands. And isn't it correct that  
17 Approach offered to make its title examining attorney available  
18 to you to discuss that?

19 A. If that is the case, it has not been conveyed to  
20 me. I did make a phone call and talked to Mr. Bryce Morgan in  
21 regard to obtaining a copy of your deed or your documentation  
22 claiming mineral rights. Mr. Bryce Morgan told me that since I  
23 had retained an attorney, that all correspondence would go to  
24 him.

25 Q. Should I make that available to your attorney?

1 Would you like me to do that?

2 A. I already paid to get it done, sir.

3 Q. You should have called me. That's all I have,

4 Mr. Sena. Thank you very much.

5 A. You're welcome, sir.

6 MR. BROOKS: Thank you. Is there anyone here who is  
7 not a party or an attorney or a witness who wishes to speak at  
8 this proceeding? If so, please hold up your hand.

9 We have a couple of people in the back. Anybody  
10 else? Very good. Since there are just a few, we will do that  
11 just before the lunch break. And so I won't need to take a  
12 list of names because there are just a few people. I thought  
13 there might be a large number.

14 Okay. I take it since your witness has already  
15 stepped down that you had no redirect; is that correct?

16 MR. T. TRUJILLO: That's correct, Mr. Hearing  
17 Examiner. I won't be using any of our time for redirect.

18 MR. BROOKS: Very good. Thank you. You may call  
19 your next witness.

20 MR. T. TRUJILLO: That would be Beth Sultemeier.

21 MR. BROOKS: Okay, you've already been sworn, so you  
22 may proceed, Mr. Trujillo.

23 BETH SULTEMEIER

24 after having been first duly sworn under oath,

25 was questioned and testified as follows:

DIRECT EXAMINATION

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BY MR. T. TRUJILLO:

Q. Ms. Sulzemeier, would you state your name for the record?

A. Beth Sulzemeier.

Q. Okay. And what is your educational background, generally?

A. I have a college degree in health, physical education, and recreation. And I'm also a licensed real estate broker.

Q. And what is your current occupation?

A. Real estate broker.

Q. Okay. What is your familiarity with the Tierra Amarilla area?

A. I'm very familiar. I grew up in New Mexico. I live in Espanola and our family has gone up hiking and fishing and camping and things up in northern New Mexico for years and we own the property up there now.

Q. And now the property that we're talking about is the property that has two proposed well sites; is that correct?

A. Yes.

Q. As you understand it?

A. Yes.

Q. How are you connected to that property yourself?

A. With the family. I'm a part owner of -- we have

1 property both on the east and west side of the highway.  
2 There's 1600 acres on the east side and a little over 3100 on  
3 the west side. My mother -- it was my father's and a partner  
4 that split up years ago. My mother -- it's now mostly in her  
5 name in the trust. And on the east side there's 400 acres of  
6 my mother's on the north end. And then there's six children  
7 and we each have interest in the remaining 1200 acres.

8 Q. And is there an operation for the entire  
9 property?

10 A. We operate it as one piece, the Sultemeier Ranch,  
11 and we do similar to Mr. Sena. We have an outfitter who  
12 handles -- we only do elk hunting. We don't do deer. We're  
13 trying to build up the deer population on the property. And we  
14 also lease out for cattle a certain part of the year. So, you  
15 know, that is part of my mother's income, basically.

16 Q. What would be your role in the Sultemeier Ranch?

17 A. I've been -- since I'm the only one directly  
18 living closer, the youngest kid, I've kind of been the ranch  
19 manager, I guess you would say. I'm kind of the coordinator  
20 for everything. My mom is 87 and she wasn't as involved in it  
21 as my dad, so as the kids, we've kind of taken over, myself and  
22 couple of my brothers more have a role in it than others.

23 Q. Now, is any part of your property irrigated?

24 A. No, we don't have any irrigation.

25 Q. Now, do you understand from any source if you

1 have any mineral rights in this property?

2 A. I had not been aware of any, but the first phone  
3 call I received from Approach was Bryce Morgan. He said that,  
4 you know, most landowners don't have any, but we had a very  
5 small percentage. And I don't recall. In my mind I want to  
6 say one twelfth of one percent or something, very small.

7 Q. Now, what was your first contact with officials  
8 from Approach?

9 A. I got a phone call. Mr. Morgan called and said  
10 that their company from Ft. Worth was handling the mineral  
11 rights. And I've never had any dealing with that or how it  
12 works, so I didn't know if they owned them or were -- you know,  
13 the company representing the owner or whatever. And he was  
14 very nice and just said that they wanted to coordinate with us  
15 about various sites. I believe he said they had like 90,000  
16 acres total in the area and that a certain portion was our  
17 ranch. But he didn't get into what areas or where at that  
18 point.

19 Q. In the discussion about sites, they were for what  
20 purpose?

21 A. Well, he -- what he first told me was the initial  
22 thing was to just come in and do exploratory. Just to come in  
23 and kind of survey and look at the area and try to determine  
24 the area that they were going to use. And he told me it would  
25 be on the east side.

1           And I don't remember if it was the first conversation  
2 or another one. He called a couple of times. He said the east  
3 side and he described the gate. We have some corrals. We have  
4 certain names for certain areas and, you know, our main gate is  
5 across from some corrals, and he did explain that gate, that  
6 they wanted to go into that and look around. And where he told  
7 me they wanted to look was between the highway and the big  
8 cliffs going up the TA Hill, as we call it. There's a lookout  
9 up the TA Cliff.

10           There's a narrow strip along there that's mostly  
11 pinon. We don't normally use that area. So I said, "Well, let  
12 me talk to the family. But, actually, that probably would be  
13 an agreeable place to do exploratory because we don't really  
14 use that, and it wouldn't hurt any area that we use."

15           And we did have several conversations about that and  
16 specified the area. But it was all verbal.

17           Q. Then what was your next contact with them?

18           A. Basically just -- a lot of times we would miss  
19 each other, just playing phone tag or, you know, I have a cell  
20 phone, of course, and a home phone. And, we'd miss each other  
21 times about needing to get in. I don't remember -- I know I  
22 wouldn't probably give out the combinations to the gate. And,  
23 of course, it's close enough to the highway that surveyors or  
24 whatever probably walked in.

25           I was not up there so I didn't see any, you know,

1 stakes or what they were doing. On the second one, now, I've  
2 seen some areas. But at that time, I didn't see any. And we  
3 did do everything verbal. There wasn't, you know -- I didn't  
4 understand how it worked or really know what to ask or how to  
5 proceed, so it was verbal and we did not talk about me going up  
6 there to see it at that time.

7 Q. Now, are you talking about the first site?

8 A. The first site.

9 Q. And subsequently, what activity, if any, occurred  
10 at the first site?

11 A. Well, we didn't hear -- I know it was probably  
12 before September of '07. And the first time we saw anything --  
13 I didn't hear anything about roads or anything what they were  
14 doing until -- I just happened to know it was September 29th  
15 of '07 because it was my oldest brother Bill's birthday, and he  
16 and his wife went up there for a picnic.

17 And we have -- my dad's favorite spot, that's what it  
18 was, the box canyon. That was my dad's favorite location. The  
19 reason he liked it was because it was protected off the road  
20 but not too far off the highway to get to. And it had about  
21 every kind of tree on the ranch. We are a little lower in  
22 elevation, so we're mostly pinon, juniper, some pine. This was  
23 the only location that had a grove of aspen trees, and it was a  
24 meadow.

25 The previous owners did wheat farming so there was a

1 lot of -- you know, besides sagebrush and trees, there was a  
2 lot of open meadows, which is nice. This was kind of a little  
3 box canyon with a meadow, and that's where we had our family  
4 gatherings and things.

5 Q. What report did you get from your brother, Bill,  
6 then?

7 A. Well, I was working that day and when I came  
8 home -- we're pretty big kidders and when I walked in the door  
9 he said, "Well, the picnic area is gone."

10 And I said, "What? What are you talking about? Tell  
11 me what it is."

12 And he said, "It's gone. It's completely gone. It  
13 looks like a big parking lot. The trees are gone. Everything  
14 is gone. Daddy's place is gone."

15 I said, "Oh, yeah, you're kidding."

16 And I looked over at my sister-in-law and she was  
17 crying. And she said, "You're brother just burst into tears  
18 when he got up there."

19 So I still kind of thought he was kidding. And I  
20 said, "Well, no, that's not right. It's supposed to be between  
21 the cliffs. That's not right."

22 He thought, actually, when he came in the main gate,  
23 which was previously a two-track ranch road, he thought -- he  
24 was actually supportive. He thought, oh, that's very nice,  
25 they came in toward the old homestead cabin that is falling

1 down. And he thought they had moved the road up next to the  
2 trees out of sight, so he actually thought that was a good  
3 thing. But when he came past the homestead and it forks off to  
4 that canyon -- he said, when he saw it fork to the canyon, he  
5 said he just knew that something was wrong.

6 Q. What followup did you have, then, with Approach  
7 after that.

8 A. After having to make the phone call to the rest  
9 of the family to explain what happened -- I mean, I felt  
10 terrible because I just felt responsible in a way that I didn't  
11 understand it or get the right information or whatever, so I  
12 called everybody and explained it and then I did call Bryce  
13 Morgan. And he was very nice, you know. He said, "How are you  
14 doing?"

15 I said, "Well, I'm not doing very well. We have a  
16 problem. They drilled in the wrong spot."

17 And since then I realize they haven't drilled. They  
18 put the pad sight and the tank, the water tank and all.  
19 There's a culvert there. I thought it was where they drilled.  
20 But anyway, he said, "What do you mean?"

21 And I said, "Bryce, they went over the hill into the  
22 box canyon into a meadow where we have" --

23 And he said, "That's not where we discussed." He was  
24 very nice. I kind of expected him to say, "No, no. That's  
25 what we said." He didn't. He was very nice. And he said,

1 "That isn't where we discussed." He said, "It was between the  
2 road and those big cliffs."

3 And I said, "Yes."

4 And he said, "Well, that's not what we talked about."

5 I said, "Well" --

6 And he said, "What do you want us to do? What can we  
7 do to help you or to make it better?"

8 And I said, "I don't know. I don't even know what to  
9 tell you." So I talked to the family and we talked about, you  
10 know, we're not all about money. Should we have them reclaim  
11 it and replant it, reseed it. But we said it'll never be the  
12 same in our lifetime, but maybe the grandkids in the future  
13 will enjoy it.

14 So we really didn't tell them anything of what we  
15 wanted. We just didn't know what to do. They had given us a  
16 very minimal payment for just the first, you know, initially  
17 they said it was a one-time payment for just doing the  
18 exploratory well.

19 Q. What was the amount of that payment?

20 A. A thousand dollars, and no payment for roads or  
21 anything. And I didn't know what they were supposed to pay  
22 for. So we took that. And then he said, "Well" -- he called  
23 back. He said, "Beth, we've discussed it and we're going to  
24 send you another \$4,000 to help make up for what was done. And  
25 then any future sites we will offer you \$5,000."

1           But in the meantime, talking to other landowners and  
2 people, I was told you should be paid for roads, you should be  
3 paid for things. And I told him at that time, I said, "You  
4 know, Bryce, you said they were going to be doing a second  
5 site, you know. We just need to slow down and back up."

6           I said, "First of all, we aren't going to agree to  
7 any other sites until we talk about some ground rules and what  
8 is expected and, you know, access and what we get paid for and  
9 everything." And I said, "We do not want any other site unless  
10 we can physically go and look at the site and approve it."

11           And he said they would do that. But they have staked  
12 out a second site, and I did not meet with them up there. And  
13 they did offer on the second one two days after Memorial Day to  
14 meet me up there, I think, with the hydrologist or something.  
15 But I was back at work after the holiday, and I couldn't meet  
16 them and none of my brothers -- they were working, so we could  
17 not go.

18           Q. Now, you talked about the second site being  
19 selected. I gather, then, that you had no participation in  
20 that decision?

21           A. No. They did mail us -- he didn't tell me  
22 anything verbally. They did then mail us a detailed contract  
23 at that point with an aerial map marking it. And I did go up  
24 several weekends and walk, and I did find where it was staked  
25 and where it was flagged. But I didn't give them anything back

1 in writing that we would approve it. I don't necessarily have  
2 a feeling right now whether we would approve that site or not.  
3 I know two of my brothers are not happy with it because it's in  
4 an area with the views and, you know, a pretty area where we  
5 talked about doing a cabin or something eventually. So we have  
6 not given them final approval to do that site. Or we have not  
7 signed the contract either because of the moratorium, and I  
8 wanted to get more information.

9 Q. Now, let me ask you to take that binder in front  
10 of you, and I'm going to look for an exhibit that might -- hang  
11 on. Let's look at Exhibit 16. Hopefully I got it right.

12 Now, if you could thumb through that, Ms. Sulzemeier,  
13 and is this the correspondence that you received with regard  
14 the two sites?

15 A. Yes. This one was mainly for Well No. 2. This  
16 was after -- for the second site, mainly, I believe.

17 Q. Okay.

18 MR. T. TRUJILLO: Now, this is Rio Arriba County 16,  
19 so I would offer it into evidence.

20 MR. BROOKS: Okay. I assume that you have the same  
21 objection you had to the previous letter.

22 MR. HALL: I do, Mr. Examiner.

23 MR. BROOKS: Okay. We'll overrule the objection.  
24 Exhibit 16 will be admitted.

25 [Applicant's Exhibit 16 is admitted into evidence.]

1 Q. (By Mr. T. Trujillo): Now, I want you to turn to  
2 Exhibit D on this. And unfortunately, what we have are black  
3 and white photos rather than color photos. But I believe we  
4 will probably be fine with this.

5 A. The aerial?

6 Q. Of the aerial.

7 A. Yes.

8 Q. It's going to be hard to read.

9 A. Yeah.

10 Q. But since you know the lay of the land there, is  
11 this the plat that you understood was mapping out the second  
12 well site?

13 A. Yes, yes.

14 Q. What features do you see on there that would be  
15 new?

16 A. Well, part of what we looked at is that the  
17 road -- this is the proposed road. It's cutting right across  
18 what we call the elk pasture. It's the gate that is farther  
19 south from the first one. When they were going up to do this  
20 one -- I guess when they came up for Memorial Day, they got in.  
21 He called me and said they couldn't get to the first site.  
22 They wanted the combo or they needed to go back to the first  
23 site for something.

24 And I said, "Well, how did you get into the second  
25 one? If you got to the second one, you can get to the first

1 one. There's a road that goes around."

2 And he said, "Well, they had put their lock on this  
3 gate," which I didn't know about. And my first thought about  
4 this one is that we would not permit a road to be cut right  
5 through the middle of the elk pasture. You know, we try to  
6 keep roads around the edge or along the tree line. So that was  
7 the first thing we noticed. And then I was able to go back up  
8 and find the site, though.

9 Q. And now, does it show the access to the first  
10 well site on this plat as well?

11 A. Yes. I guess it's just farther over to the left  
12 there. I guess if that's supposed to be the road -- it's hard  
13 to see, even on the color copy. I guess the line on the left  
14 is -- that's supposed to be showing the first site, I guess.

15 Q. Would that be the approximate location at the end  
16 of the road of the box canyon?

17 A. It seems like it goes farther back to me, but I  
18 can't tell from this copy. To me I would think it would be  
19 more down below about the middle of page where it kind of makes  
20 a curve there and kind of open. That's where I would kind of  
21 visually -- that's more of the box canyon area to me.

22 Q. Well, let's see if we can find some photos, then,  
23 of that box canyon. What I would like to do is maybe start  
24 with a photo -- 22. Would this be the box canyon we're talking  
25 about?

1 A. Yes, it is.

2 Q. What are we looking at. What are we looking at?

3 A. It's right where that -- the open pad is where  
4 the little meadow was. It does -- this was the main road that  
5 came in, the two-truck ranch road that came back to this and  
6 then -- you can't see it, it's blocked off -- there was another  
7 road. You can kind of see the canyon up above there that goes  
8 into another little canyon. That's blocked off now. And then  
9 the grove of aspens you can kind of see a little bit of it  
10 there to the left in those cliffs above. And this is over a  
11 ridge from the big main cliffs going up to TA. This is over  
12 that ridge and comes back into this little canyon.

13 Q. Now, were there aspens that were removed?

14 A. There were some aspens that were removed. Not  
15 all of them. And there are a few aspens a little north of  
16 that, you can see. But there were some aspens, pinons,  
17 juniper, cedar-type of thing that was removed.

18 Q. Now, does the water drain into the area of the  
19 pad from the canyon?

20 A. It could, yes. At certain times it would drain  
21 there. It is kind of at a slope there. It does drain downhill  
22 from there. And then also from the ridge it would drain down.  
23 So you kind of -- it would come from different directions.  
24 It's not like it all drained south or north. It would drain  
25 west a little bit. It would drain south and east a little bit.

1 Q. Now, from the photo, it appears that structure  
2 there has water. Have you been on the site, and can you  
3 identify what that is?

4 A. Yes. That's the lined pit. And it does have  
5 water in it. I didn't know where. I didn't -- you know, like  
6 I said, I didn't know if they had drilled or what they had done  
7 yet. So I thought that was water they had used. But someone  
8 says they think it's just from runoff, just drainage that has  
9 come into that pit.

10 Q. Would you go ahead and circle that pit for me on  
11 there?

12 A. On here?

13 Q. Let's see, well, does it show up on this?

14 A. It does.

15 MR. T. TRUJILLO: Let the record show that she  
16 circled it in yellow marker. Very good.

17 Q. (By Mr. T. Trujillo): Now, let's look at  
18 photo 28. How does this photo relate to the one we just looked  
19 at?

20 A. We're just looking at it flip-flopped. You can  
21 see the highway there above it.

22 Q. That's 84?

23 A. Yeah. That's 84. So the road -- you can see the  
24 road coming in. That's across from the corrals. That's the  
25 gate that we normally use. It comes past the first little

1 grove of trees and then where it takes a turn to the right,  
2 just to the left of that is where the old -- there was an old  
3 homestead there -- then it just goes along the treeline and  
4 comes back into that canyon.

5 Q. Now, is the second site visible in this area at  
6 all?

7 A. I don't think this goes over far enough. No.  
8 You cannot see this in this photo. It would be farther to the  
9 left.

10 Q. Now, you were talking about a high cliff going up  
11 TA Hill. Is part of that high cliff visible here, or is that  
12 farther up?

13 A. Just the start of it over on the right side where  
14 the highway where the meadow is and then the trees start,  
15 that's the edge of the cliff. You can kind of see the white  
16 and then -- that's the start of the cliffs. And, of course,  
17 the lighter area over there toward the right is the highest  
18 point. Our property goes approximately to where the end of the  
19 cliffs right before you go up the TA Hill. That's what I've  
20 always been told is kind of our north boundary.

21 Q. So what was your understanding about where the  
22 well was going to be located, then, if you could use this photo  
23 as a point of reference?

24 A. We thought it was going to be in between the  
25 highway so you see the road coming in at the highway. We

1 thought directly north of there -- you can kind of see the  
2 white line on the ridge of the cliffs. We thought it was in  
3 that narrow strip between the highway and the cliffs. That's  
4 where we thought it was going to be.

5 Q. Now, you did mention you had acreage on the  
6 south -- on the west side of the highway as well?

7 A. Yes. A little over 3100 over on the east side.

8 Q. Have there been any discussions about that  
9 property?

10 A. No.

11 Q. Let's look at 29. And, again, maybe you could  
12 give us a frame of reference with this one.

13 A. This is the Well No. 1 that they came in -- and,  
14 of course, the road is coming in from the highway and around by  
15 the homestead and then this is back in the box canyon there.

16 Q. Okay. Now, looking at this photo, which way  
17 would water flow in this terrain?

18 A. Well, I'm not an expert on that. But just for  
19 the terrain from what's higher, this is the hill. The back  
20 side of the big cliff comes down this way. This is a little  
21 cliff that probably runs a little bit that way. And then  
22 there's also a small cliff over on this side.

23 So it's going to kind of all drain into that meadow.  
24 That meadow is always really green. It probably retained  
25 moisture a little bit because of being a little more protected

1 as far as wind and sun, you know, trees. So it always stayed a  
2 little greener in there.

3 Q. Did you ever see wildlife?

4 A. Yes. Well we have a lot of dear and elk. We  
5 have three antelopes that are in there. We have a bear that  
6 I've seen in this particular canyon. We have turkey, of  
7 course -- coyotes and prairie dogs. It's a good day depending  
8 on how many animals I see when I go up the ranch. I'm happy  
9 when I see the animals.

10 Q. Could I ask you to look at 33. Now, can you  
11 locate on this photo the location of the box canyon?

12 A. Well, it's a little harder. I'm not sure what  
13 we're looking at here. Is this heading north to the right, or  
14 what are we looking at? I'm not sure on this.

15 Q. Well, suppose for the sake of discussion that  
16 that is Highway 84.

17 A. Okay.

18 Q. And to the right is going south and to the left  
19 is going north.

20 A. Okay. Oh, okay. Now I got you. Now I see.  
21 Yes. You can see the road right here coming in. It looks like  
22 that goes around the curves and it looks like that's the pad  
23 right there in the box canyon, yeah.

24 Q. Now, can you see where the proposed road is on  
25 this photo for the second well site?

1           A. Yes. This would be what we call the elk pasture.  
2           And it looks like on their thing it would go around and then  
3           come up around and it looks like it's hidden by the trees. But  
4           it comes around this big pasture and then comes back in over  
5           here below -- there's another ridge, a lot of ridges and  
6           cliffs -- and it's below that, yeah.

7           Q. And --

8           A. And there's not an existing road across that  
9           pasture now.

10          Q. And where do you think a more sensible route  
11          would be?

12          A. Well, if that site was -- you know, we haven't  
13          agreed to that site yet. One of our biggest requirements would  
14          be to either follow an existing road or to put it along a tree  
15          line or arroyo or something so it's not so visible and scars up  
16          the land. But we'd be concerned about that area anyway just  
17          because that's a crossing and migration for the elk and deer.  
18          You know, dusk and dawn every day that's where they cross,  
19          usually. So we would be concerned about that.

20          It would be farther. I understand they want to go  
21          the closest route, so I understand. You know, from the other  
22          road, the first road, there is an existing road that goes  
23          around by a big tank and around some other pasture, but I do  
24          understand that's farther. So, you know, cost effectiveness, I  
25          think they were just trying to take a more direct route. But

1 we would be concerned with that a little bit.

2 Q. Is any part of your property to the west of  
3 Highway 84 visible in this photo?

4 A. To the west? Yes. But actually, what it is, our  
5 property on the east side starts down even south of where this  
6 shows. It's longer. It even goes father this way. It starts  
7 across from the Spills Ranch that everyone knows there's a big  
8 red barn. On the east side it's all this side. Then on the  
9 west side it starts across from the -- the corrals across from  
10 this gate and goes north and east. So this area right here is  
11 not part of ours.

12 Q. Okay. For the record, I wanted to look at some  
13 correspondence that appears to have taken place. So I'd like  
14 you to take a look at 13, Tab 13. Is this a letter that you  
15 have dealt with?

16 A. Yes, it is. What had happened is they were  
17 sending things to my mother. And as I said, she's 87 and has  
18 some health problems, so she asked me and the boys to handle  
19 it. So she gave this to me.

20 Q. Okay. Now, in looking at Exhibit No. 14, if you  
21 would, is this another letter that you would have handled?

22 A. Yes.

23 Q. Now, let's look at 50.

24 A. 50, 5-0?

25 Q. 1-5. I'm sorry, 15.

1 A. 15?

2 Q. Yes.

3 A. Okay.

4 Q. Again, is this a letter that you have dealt with?

5 A. Yes. This is the letter that came after I talked  
6 to Bryce about the first well being in the wrong location.

7 Q. We're going to skip 16.

8 A. Okay.

9 Q. And let's look at 17. 16 we already looked at.  
10 And we're looking at that. Is that another letter where you  
11 received correspondence?

12 A. Yes. And actually, I was copied on this one  
13 also.

14 MR. T. TRUJILLO: Very well. And at this point, I  
15 would like to offer for admission Exhibits 13, 14, 15, 17 -- 16  
16 has already been admitted.

17 MR. BROOKS: Mr. Hall?

18 MR. HALL: Mr. Examiner, we would object. These  
19 letters have to do with negotiations between Approach and the  
20 record title owner of the property, Avella Sultemeier. It gets  
21 into prospective contractual elections pursuant to the Surface  
22 Owners Protection Act. I think that's a realm that is outside  
23 of the Division's jurisdiction.

24 In the course of the legislative process resulting in  
25 the enactment of the Surface Owners Protection Act, it's my

1 understanding that the Oil Conservation Division indicated to  
2 the Legislature and to the parties that to be part of that  
3 process, it's really beyond the Division's jurisdiction and  
4 authority under the Oil and Gas Act.

5 I don't think it's relevant at all to the issues that  
6 are set forth in the advertisements for this case.

7 MR. T. TRUJILLO: If I may, Mr. Hearing Examiner?

8 MR. BROOKS: I'm going to overrule the objection.  
9 We'll admit this for purposes of showing background.

10 [Applicant's Exhibits 13 through 15 and 17 are  
11 admitted into evidence.]

12 Q. (By Mr. T. Trujillo): Let me ask you, then, I'm  
13 going to go back to photo 29. And have you been on this site  
14 since -- where you would see the features present?

15 A. Yes, yes. I've been there recently quite a few  
16 times.

17 Q. Okay. Now, is there any -- what evidence, if  
18 any, is there of erosion that's occurring on this site?

19 A. There's a couple of different places. Along this  
20 little ridge, it's eroding over here and then there's erosion  
21 right there, kind of both in this area. It looks like it was  
22 cut down about four feet. This was all level at one time and  
23 now it's down about four feet I'd guesstimate. And, you know,  
24 there is signs of water breaking little banks and rolling down.  
25 And then, of course, we believe the water in the pit there was

1 from one runoff and things.

2 But probably the biggest erosion is in an area right  
3 along here. And while we were looking -- it's -- you know, my  
4 brother stood in it. It's about to his knee, and he's about  
5 5'10". And as we were looking at that, we discovered a well  
6 casing sticking up that we didn't know about, and we dropped a  
7 rock, and it sounded like it hit water about 50 feet. And we  
8 didn't know that was even there. So there was a water well  
9 that we discovered. We knew there was an old water well over  
10 in the trees over here with an old hand pump that, you know,  
11 not operational that we've ever used for anything. But that  
12 other well casing we just discovered. I had never seen it.

13 Q. Whereabouts on this picture is that other well  
14 casing?

15 A. Oh, I'd say right in about here. It was close to  
16 where the erosion was.

17 Q. If you could take your marker and mark a circle  
18 in the area.

19 A. Yes. It might be easier to see on this one.

20 Q. And would you initial it at the bottom of that  
21 page? You might want to use a pen.

22 A. Sure.

23 Q. Now, when was it that your brother was there when  
24 the signs of erosion were evident?

25 A. Let's see -- gosh. At least a couple -- a month

1 and a half to two months ago. I went up with -- I've taken  
2 quite a few trips up there because my brothers all live  
3 different places and they all just happened to be coming in  
4 different weekends. So I actually went up there three weekends  
5 in a row to show three different brothers what was going on.

6 And then I've been up there several times with other  
7 family members. Oh, you know, six to eight weeks. Within six  
8 to eight weeks ago.

9 Q. And roughly when was the pad built, as far as you  
10 can tell?

11 A. Well, it was built sometime before September 29th  
12 of '07. I know there's some letter dated the 5th of September.  
13 So I would assume it was built between the 5th and the 29th.  
14 But it was already done when we saw it -- when my brother saw  
15 it on the 29th.

16 Q. Had you ever received notice, a phone call, or a  
17 letter that indicated the pad was going to be constructed on or  
18 about that date?

19 A. No. What was confusing to us is that -- I guess  
20 what we interpreted when I first talked to Bryce, and the way I  
21 understood it is that the exploratory well I pictured -- what I  
22 had pictured maybe was like water wells. We expected a little  
23 bit of an area to be disturbed and some pipes sticking up and I  
24 knew they would have to take some trees to get the road, you  
25 know, the equipment in and things like that.

1 I thought that unless they found something, then they  
2 wouldn't go forward with the pad and the pit and all that. So,  
3 you know, even though he did say a size of 175 by 175, we  
4 didn't envision something like this at the beginning. We  
5 thought it would go in different stages of exploratory seeing a  
6 smaller disturbed area and then we'd get a call saying, "We  
7 found something," or "It looks like there is oil," or whatever.  
8 "Here's the next step of it." We didn't know. We didn't  
9 understand it at all.

10 Q. With regard to your agreement with that site  
11 location, there was no agreement?

12 A. Well, with what we had agreed to on the phone, of  
13 course, I thought it was going to be between the highway and  
14 the cliffs. And I thought that you wouldn't even really be  
15 able to see it. Because I thought it would be so surrounded by  
16 trees. We envisioned maybe seeing a road going up to it. And  
17 even at that, it still led me to believe it was between the  
18 road and the cliffs. Because one time Bryce called me and he  
19 said, "We may be doing a second one north of the existing  
20 location."

21 And I said, "Well, gosh, you're already pretty close  
22 to our north boundary."

23 And he asked about a gate there between us the  
24 neighbor and I said, "Well, that's not our gate as far as I  
25 know." And I remember thinking, well, that's odd. Why would

1 you run the road way down from the corrals? Why wouldn't you  
2 just go, you know, get permission to go directly from the  
3 highway? It would be a lot closer.

4 So that puzzled me a little bit, but I didn't realize  
5 it was in the wrong -- he was talking about a different site.  
6 And I said, "Well, how close can they be together? Because  
7 you're already close to the north boundary."

8 And then he called back and said, "Never mind. We're  
9 not doing the second site now. That's been delayed."

10 And that was the next thing. And then it was back  
11 maybe this spring that he said, "Now we do want to do a second  
12 site."

13 And since then we've discovered the other one, so --

14 Q. Has your family had the opportunity to look at  
15 the proposed site number two?

16 A. Yes. Not everyone. I saw it and then three of  
17 my brothers have seen it. So four of us have.

18 Q. And who has not?

19 A. My mother has not. My sister, Karen and my  
20 brother, Bob.

21 Q. Okay. Now, before this experience with Approach,  
22 what was your view about the oil and gas industry moving into  
23 this area?

24 A. Well, I had just never thought about them being  
25 in this area. You know, like anybody, we're all feeling the

1 crunch of the prices and things. And, you know, you want  
2 America to become more self-sufficient and things. But, you  
3 know, you have a different feeling when it's on something you  
4 own as opposed to seeing it someplace else.

5 And my big concern is that, you know, they may have a  
6 certain right, and we have a certain right, but I want it to be  
7 in a way that's workable for all of us. And I'm especially  
8 concerned about the water quality. I'm especially concerned  
9 about the wildlife. You know, that is part of my mother's  
10 income -- and affecting neighbors. You all want to be a good  
11 neighbor to other people in the area.

12 So it's just scared me a little bit, just because I  
13 think we were naive and didn't understand how it worked. And  
14 my thought is to slow down, back up, let's get it straightened  
15 out and do it in a proper way and go forward. So I think it  
16 scared everybody what happened to us. It scared everybody.

17 Q. Now, what recommendations would you have for OCD  
18 with regard to how to guide this future drilling in this area?

19 A. Well --

20 MR. HALL: I guess I object, Mr. Examiner. There is  
21 no foundation as to her qualifications to recommend to the OCD  
22 anything.

23 MR. BROOKS: Well, I'll overrule the objection.  
24 Granted the witness probably doesn't have knowledge of what our  
25 jurisdiction and procedures are, but I will allow her to

1 express her opinion. You may continue.

2 A. Like I said, I would like to -- you know, I would  
3 like to see a hold on the six and a repeal of the first four so  
4 we can go back and review and start again on how this does  
5 work. You know, in a good world, I'd rather not even proceed  
6 on this site at all, just because of the sentiment of it and  
7 have it restored. And since they haven't drilled yet, you  
8 know, I'd like to backtrack on that.

9 But, you know, I just think that I've been trying to  
10 educate myself, and the family has, and talk to as many friends  
11 and neighbors so we are all on the same page and there's no  
12 hard feelings, and we can go forward and compromise or change  
13 our mind completely or whatever. You know, just do it in a  
14 positive way.

15 Q. There's a structure right in the middle of the  
16 pad there. Do you know what that is?

17 A. That is a culvert. Are you talking about this  
18 right here?

19 Q. Yes.

20 A. That is a culvert maybe three or four feet wide  
21 that is sticking up and it's kind of filled with dirt and just  
22 sticking out of the ground a couple of feet. And that's  
23 what -- the first time I saw the site, I thought that was the  
24 well, you know. I thought they had already drilled something,  
25 so I didn't know.

1 Q. Do you have any concerns about that?

2 A. The only concern -- I did call Bryce because when  
3 I went up there, it was kind of deep and it wasn't covered.  
4 The pit has a fence around it, but I was concerned about small  
5 animals or someone falling in there. And so I did call them  
6 and ask them if they could have that covered. And he told me  
7 they would, but it's not covered. I was worried about  
8 something falling in.

9 MR. T. TRUJILLO: Mr. Hearing Examiner, I pass the  
10 witness.

11 MR. BROOKS: Very good. Mr. Hall?

12 CROSS-EXAMINATION

13 BY MR. HALL:

14 Q. Good morning, Ms. Sultemeier.

15 A. Good morning.

16 Q. Let me ask you something. If you would refer to  
17 Exhibit 13 --

18 A. Okay.

19 Q. -- in the hearing exhibit book. First of all, am  
20 I correct that Avella Sultemeier is the record title owner of  
21 this land?

22 A. Yes.

23 Q. Okay. You and your siblings don't have an  
24 interest in this particular tract? That's another tract?

25 A. Well, it's in a trust for entire family, but

1 since my mother is still living, she's handling the trust.  
2 She's set up in the trust for the family.

3 Q. She is trustee?

4 A. Yes, I believe so.

5 Q. And she's the one authorized to deal --

6 A. Yes. But she has granted me as an agent to act  
7 on her behalf.

8 Q. Do you have written Power of Attorney?

9 A. I do have Power of Attorney.

10 Q. Then is it recorded in the County?

11 A. It is.

12 Q. Exhibit 13, the September 5, 2007, letter, that  
13 came through you?

14 A. No. It came to my mother. And then she asked me  
15 about it, and I got a copy of it and looked at it.

16 Q. And you were aware of its existence around  
17 September 5th --

18 A. Yes.

19 Q. -- is that fair to say?

20 A. Yes.

21 Q. And if you look in the first sentence of the  
22 second paragraph, it says Approach will begin building its  
23 location within the next few weeks. Do you see that?

24 A. Uh-huh.

25 Q. Earlier you testified you weren't aware that they

1 were coming in to build the location. Which is correct?

2 A. Well, when I talked to Bryce, the way he  
3 explained it to me is that would come farther down the road. I  
4 thought there would be a sequence of events. I thought that --  
5 you know, I knew that if they found something after the  
6 exploratory, then they would start building a pad site and  
7 things like that. So it was just naive on my part that I  
8 didn't realize that would happen right at the beginning.

9 Q. Right. And you were also aware that the location  
10 had been staked, correct?

11 A. No. I had never been -- we had never talked  
12 about staking or were offered to see it or anything.

13 Q. Let's look down mid-paragraph there, the second  
14 paragraph. It refers to "our staked location." You see that?

15 A. Uh-huh.

16 Q. So isn't it fair to say that you knew the  
17 location had been staked?

18 A. Well, but I didn't know it was in that location.  
19 I thought it was in a different location, and I wasn't worried  
20 about, you know -- it was staked. Because I thought it was a  
21 different place.

22 Q. Anything preventing you from going up and looking  
23 at the location where it was staked?

24 A. Well, I just didn't -- I felt comfortable with  
25 what we said on the phone, you know, when we described where it

1 would be. I felt comfortable with that. I live an hour and a  
2 half away, and I work and, you know, he never said -- I mean,  
3 now I think back and I think, gosh, you guys have been in the  
4 business for all these years. It seems like just to prevent  
5 any misunderstanding, that would even be a requirement of the  
6 homeowner to go up and sign off on something to say this is the  
7 location. Then there's no question.

8 And if I had any concerns -- like if the description  
9 we talked on the phone was different or, you know, it's a mile  
10 off the road or whatever, then I would have --

11 MR. HALL: Let me object, Mr. Examiner. The answer  
12 is not responsive.

13 Q. (By Mr. Hall): Let me repeat the question again.

14 A. Okay.

15 Q. Was there anything preventing you from going up  
16 and inspecting the staked location?

17 MR. T. TRUJILLO: It's been asked and answered.

18 MR. BROOKS: It's been asked, but I'm not sure it's  
19 been answered.

20 A. Well, I'd say, yes, in terms of time, depending  
21 on, you know, getting up there. I work full-time and take care  
22 of my mother and I -- you know, it was probably a time issue.  
23 But I didn't feel it was necessary. I would have made the time  
24 to go up and look at it if I felt it was in a different  
25 location than what I thought.

1 Q. (By Mr. Hall): In the course of your discussions  
2 with Approach, was it your understanding that Approach would  
3 reclaim and reseed the drill locations?

4 A. We didn't talk about that at first. After  
5 everything happened and before the second one, then I know  
6 there is -- in the contract there are some things about where  
7 reclaiming it. But at the time of the first one, I didn't  
8 think about that. I thought this was the way it was.

9 Q. Okay. The road to the location for the  
10 Sultemeier No. 1, that road previously existed; is that  
11 correct?

12 A. It's a two-track ranch road, yes. Yes, it did.

13 Q. All right. You indicated that in the course of  
14 your negotiations for a contract with Approach, you had  
15 consulted with others. Tell us who you consulted with?

16 A. Well, I called a friend of my father's.

17 Q. Who's that?

18 A. Richard Cook. And I talked to him because he's  
19 had experience with different things and just to ask kind of  
20 how it worked or, you know, fees and things like that.

21 Q. What did Richard Cook tell you?

22 A. He said that he hadn't had a lot of dealings in  
23 the oil business. And I just said what does this mean? Is  
24 this a test well? They're just going in and doing a little  
25 test well? They have offered us this much money -- and, you

1 know, part of the way I worded it to Bryce was I said, "I don't  
2 know how this works. I don't know if you're telling me a good  
3 a price, a bad price, or whatever. How does that work? Is  
4 that customary for a test site?"

5 And he said, "Yes, that's a customary fee."

6 And Mr. Cook said he wasn't familiar, you know. He  
7 didn't know if that was or wasn't. He said the one thing he  
8 would -- he said, "Well, you know what I would do is," he said,  
9 "I would ask them about the ownership of the well."

10 Like if they don't hit oil and it's a water -- it  
11 could be a water well. If when they're done, could you either  
12 get it registered in your name for the ranch for the future or  
13 would they, you know, give you that right to that well after  
14 they've completed it. And I did ask Bryce about that and he  
15 said, "Well, if we got a permit in our name, but that is  
16 something we would look at after it's all done, transferring  
17 that into your name."

18 Q. Who else have you talked to?

19 A. I've talked to Don Schreiber.

20 Q. What did Mr. Schreiber tell you?

21 A. Well, he was just very helpful because he's gone  
22 through it a little bit. And he just said, you know, we both  
23 have rights, and we need to work together to -- you know, that  
24 sometimes, you know, sometimes people are scared because they  
25 feel like, you know, it's a big company. They can just tell

1 you this is what we're doing without any input and that you  
2 need to be, you know, strong to say that you have rights and  
3 that you need to work around -- if we have requirements about  
4 when they can be in there or not, how to get access to the  
5 property.

6           You know, he wanted to look at the site to see what  
7 they had done. And then, you know, like I said, I didn't have  
8 any clue about, you know -- like I said, we're not all about  
9 money. But, you know, for compensation, we thought that was  
10 it. It was this much and then a little bit different after it  
11 had happened.

12           He was explaining that well, there's other things  
13 that you can, you know, for the road, for feet per -- you know,  
14 feet per pipeline. He just kind of explained the process to  
15 me. And then it was very helpful, he notified me of a meeting  
16 in Santa Fe awhile back where they had different experts about,  
17 you know -- an environmentalist, a former attorney for the oil  
18 industry and a professor from Colorado that spoke.

19           And my brother and I went to that just so we could  
20 start learning. And that was very helpful because it showed  
21 the process and what does happen and the sequence of events.  
22 And if I would have seen all that before or know, it would have  
23 been a lot easier for us.

24           Q. Why did you call Mr. Schreiber?

25           A. I did not initially call him. He called me just

1 because he had seen -- he had been researching it and working  
2 with the County and he saw that our name was on the permit.  
3 And I've had another -- I had another gentleman, a Dave  
4 Holloway call me up there. I guess -- I don't know if he's an  
5 owner or a foreman for a ranch -- and calling.

6 And when -- after -- well, after the first thing  
7 happened, a different gentleman from Approach called me a  
8 couple of times, T.K. Bright, I believe. And, you know, he had  
9 said that they were coming into town and offered to meet with  
10 us. And I didn't feel knowledgeable or comfortable enough to  
11 meet by myself with them. And I called several of the brothers  
12 to see if they could meet and they couldn't.

13 So I asked if we could meet with several landowners.  
14 I said why don't we meet with a bunch of us and save you time  
15 and us time, and we'll all kind of go over some of the basics  
16 together so we're all on the same page. But he said they would  
17 prefer not to meet -- you know, they would rather meet  
18 one-on-one.

19 So I did not go and meet after Memorial Day because I  
20 couldn't go because of scheduling. I think that's when Mr.  
21 Holloway called me and said he was going to meet with them and  
22 I didn't know who else -- I asked who -- he said he wasn't sure  
23 who was meeting. So that was that.

24 Q. Okay. You're a licensed New Mexico real estate  
25 broker?

1 A. Yes.

2 Q. You're a bit familiar with the way of executing  
3 deeds and recording deeds at the courthouse?

4 A. Yes.

5 Q. When you conferred with Mr. Schreiber, was he  
6 aware that Approach was attempting to negotiate a contract with  
7 you?

8 A. No, not really. That wasn't even really what our  
9 big thing of talking about was. It was more about, you know,  
10 how it was done as far as, you know, what was there and the  
11 landscape and things and the drainage and the water issues,  
12 things like that.

13 Q. You said you had discussed with him compensation  
14 for rights-of-ways, damages, that sort of thing?

15 A. Not amounts, particularly. Just that -- I didn't  
16 really get into what we had been paid with him. It was more of  
17 just, you know, you need to be aware that, you know, they need  
18 to compensate you for certain things, or whatever. And I  
19 didn't know about any of that. So, you know, I was glad for  
20 the discussion just so I would know if we were being treated  
21 fairly or not.

22 One of my first thoughts was, you know, there are  
23 certain things that are set prices for certain things and other  
24 things are negotiable. And it's between each person what they  
25 negotiate, of course. But, you know, part of what I was

1 concerned about, too, was the land value and -- you know, we  
2 have had offers to buy our property off an on. We haven't  
3 wanted to.

4 But my concern was, gosh, you know, is this going to  
5 affect land values and, you know, effect just everything in  
6 general. Like I said, with the wildlife, the hunting, and that  
7 type of thing. So he was just kind of, you know, explaining  
8 that, you know, that it was up to us to negotiate and that we  
9 should be compensated fairly.

10 Q. You mentioned Mr. Holloway. Was there anybody  
11 else you talked to?

12 A. I don't believe so, no.

13 Q. Did you talk to anyone at the County?

14 A. No. Just in the last few days, I've talked to  
15 both Mr. Trujillos.

16 Q. What did they say?

17 MR. T. TRUJILLO: I would object.

18 MR. HALL: This is not his client.

19 MR. BROOKS: Well, that's an awfully open-ended  
20 question. If you would limit it to what -- to something  
21 relevant than just what did he say.

22 Q. (By Mr. Hall): Did you talk to the Mr. Trujillos  
23 about this case?

24 A. Yes.

25 Q. What was said?

1 MR. T. TRUJILLO: Again, I think you're going to have  
2 get a focus and we also need to have some relevance on it. I  
3 think you can make some inquiries, but I think they need to be  
4 a little bit more focused. It's still the same question.

5 MR. BROOKS: I'll overrule the objection. But you  
6 need -- the answer should be confined to what was said about  
7 the case.

8 Q. (By Mr. Hall): Did you discuss with the  
9 Mr. Trujillos the proposed contracts that Approach had given  
10 you?

11 A. We didn't discuss it in detail, as far as the  
12 details of the contract. I just was giving him background on  
13 the sequence of events of what led up to each well, Well No. 1  
14 and Well No. 2. He asked me to verify the pictures. We did  
15 basically what we've done this morning, just went over the  
16 pictures. Is this your ranch? What is that in the picture?  
17 We went through the same questions he's asked me today is what  
18 we did.

19 Q. You didn't seek their counsel on the adequacy of  
20 the prospective contract?

21 A. No, not at all.

22 Q. Let's refer to Exhibit 29. That's the aerial  
23 photograph of the location. You've been on the ground at this  
24 location. I have not. But is the location -- is the pad  
25 bermed on one or more sides?

1           A. Yes. Actually, it's bermed all the way around  
2 except where the road comes in. Well, I take that back. Let  
3 me show you. It isn't bermed all the way around. Of course,  
4 you come in the road. That's open. This drops off so the pad  
5 is higher on this side over here. This is bermed up and up a  
6 little bit and it actually looks like there's a little ridge  
7 they cut in. This is bermed up, and I guess a little bit on  
8 this side. So this side is not.

9           Q. A little bit of erosion and runoff I think you  
10 discussed earlier --

11          A. Yes.

12          Q. -- is it your impression that all of that is  
13 contained on site?

14          A. No. It's actually eroding off the site,  
15 especially right here. There's a big -- the biggest probably  
16 erosion is right here running over into the road. And there's  
17 a little erosion -- it's hard on the paragraph to tell, but --  
18 back over on this side. And I can't say for sure, but it looks  
19 like -- it seems like there's been more done than the first  
20 time I saw it and a later time I saw it. There has been some  
21 more dirt moved around and like this little ridge was cut a  
22 little bit more. And it may have been because someone looked  
23 at it and saw, you know -- tried to do a little more to maybe  
24 prevent it from eroding. But it has eroded since then. And  
25 then especially over here we were concerned about.

1 Q. That well casing you said you discovered that you  
2 hadn't know about before --

3 A. Right.

4 Q. Let me ask you. How long has the property been  
5 in your family?

6 A. You know, I don't know the exact -- I want to say  
7 about 12 years.

8 Q. That well was not used by your family?

9 A. No, no. No. We only knew of two other wells.  
10 There was one farther across from the Spills, an old well we  
11 knew about. And then, like I said, over in the trees over here  
12 there was a, you know, a really old hand crank well thing that  
13 was kind of cute. That has disappeared. You know, I don't  
14 know when that disappeared. Someone took it for antiques, I  
15 guess.

16 Q. With your familiarity in the real estate  
17 business, are you claiming ownership to that well?

18 A. Well, it's on our property. I think it's not  
19 registered because it was probably dug or built before they  
20 registered it. So we have not researched it to see. The  
21 Highway Department tried to research the one across from Spills  
22 when they were building the new highway, and I don't think they  
23 found a registered -- and then the other one we didn't know  
24 about. And Approach did say they tried to research it and  
25 couldn't find anything.

1 Q. Don't you agree it would be a safe course of  
2 action if that well were just plugged?

3 A. Well, I don't know. It just depends on what  
4 happens in the future, you know, what the plans are. I think  
5 it should be capped right now for safety purposes. But we  
6 don't have any plans to use it or anything, you know.

7 Q. Has Approach offered to do that?

8 A. We did just recently get a letter that they said  
9 that they researched it with the state and that they were going  
10 to test. It appeared there was water. They were going to test  
11 it for water and they would cap it. We did get a letter for  
12 that.

13 Q. It's agreeable to you, then?

14 A. Yes. At this point, yes.

15 MR. HALL: I've nothing further of the witness,  
16 Mr. Examiner.

17 MR. BROOKS: Okay. Any redirect?

18 MR. T. TRUJILLO: No redirect.

19 MR. BROOKS: Okay. You may step down. I think what  
20 I will do at this point is there were two gentlemen who had  
21 indicated that they wished to speak. We will allow them to do  
22 so and then we will recess for lunch.

23 Could you please state your name and spell it for the  
24 court reporter.

25 MR. MICOU: My name is Johnny Micou. My last name is

1 spelled M-i-c-o-u.

2 MR. BROOKS: Okay. You may proceed with your  
3 statement. We will understand that since this is a statement  
4 and you're not under oath, that the attorneys will not be given  
5 the opportunity to cross-examine you unless you agree to submit  
6 to cross-examination. So you may continue.

7 PUBLIC COMMENTS

8 MR. MICOU: Thank you. Thank you for the opportunity  
9 to speak. I'm here representing Drilling Santa Fe, which was  
10 formed in response to Tecton Energy, LLC targeting the  
11 Galisteo Basin for oil and gas activity. Also, I'm here as  
12 Common Ground United, a coalition which was formed in response  
13 to frontier companies targeting fragile ecosystems and pristine  
14 areas of New Mexico. We also were formed to encourage best  
15 practices in developed areas and support stricter regulations.  
16 We are here in support of Rio Arriba County.

17 We suggest that other activities with an area  
18 targeted for oil and gas activities should be measured against  
19 traditional activities such as agriculture. The traditions and  
20 heritage of an area must be respected. The communities should  
21 have a determining voice. Oil and gas activities do not only  
22 change the landscape, but the cultural fabric as well.

23 OCD has too few inspectors and too small of a budget  
24 to fully protect counties from the adverse impacts of oil and  
25 gas activities. Consequently, counties must expand on the

1 regulatory authority of OCD and define critical areas  
2 inappropriate for oil and gas activities and adopt ordinances  
3 to protect those fragile areas absolutely.

4 Again, thank you for letting me make comments.

5 MR. BROOKS: Thank you. Was there someone else who  
6 wished to make comments? Yes, sir? Would you please state  
7 your name and spell your name for the benefit of the reporter.

8 MR. BACON: My name is David Bacon, B-a-c-o-n. I'm  
9 here representing my own outfit called Southwest Energy  
10 Institute. I've studied the effects of oil depletion on the  
11 world economy for the last 12 years. We right now have an oil  
12 imbalance -- supply and demand imbalance -- of about four  
13 million barrels a day that we can't make up. The world's  
14 demand is 85 million barrels. We fall short in production  
15 about 3.7 million barrels a day.

16 This is a situation created by the oil industry. The  
17 oil industry, and it's apparent in these hearings, only exists  
18 to extract oil from the ground and burn it and make a lot of  
19 money in that process. It doesn't exist to protect  
20 communities. It doesn't exist to protect natural systems, ways  
21 of life, culture. It doesn't exist to protect language. It  
22 doesn't exist to protect truth. It doesn't exist to protect  
23 anything that we value in the world. It only exists to extract  
24 oil and burn it and make a lot of money in the process.

25 The original people who founded this country came up

1 against a corporate imbalance, a corporate power and balance  
2 called the East India Company. Their impulse wasn't to form an  
3 East India Company regulation division. Their impulse was to  
4 get rid of the problem. Throw the tea in the harbor. It was  
5 interfering with their way of life, with their ability to carry  
6 on like they wanted to. Out of that reaction against what they  
7 called tyranny, actually -- they used the word tyranny -- came  
8 the Constitution -- came first the Declaration of  
9 Independence -- and then the Constitution of the United States.

10           And it was a radical document in that it put all  
11 power in the hands of the people, and all government derived  
12 solely for the people's benefit. And at the time, there was no  
13 such thing as corporate law. Certainly, the East India Company  
14 would have preferred to cross-examine the colonists and say you  
15 know what you're doing is breaking the law. You're illegal.  
16 You're going against a vast empire that has the right of  
17 monarchical power. You don't know what you're doing. You  
18 don't understand. You're going to end up destroying the very  
19 thing that makes you strong.

20           And they ignored that impulse at the time and they  
21 went ahead, and they took on the largest monarchical power in  
22 the world, and they won. Out of that we have a constitution  
23 which comes and goes. It's never set. There's never anything  
24 settled in law. The best nature of this country always comes  
25 to the fore when people wrest power from the overturning of the

1 subversion of the Constitution.

2           As in the history of abolitionists, who had no subtle  
3 law to stand on. Abolitionists took on slavery, which was  
4 fully in law at the time. Slavery was legal. You couldn't  
5 argue against it. It was legal. Suffragettes took on the  
6 constitutional law that said women can't vote. They took it on  
7 with no law on their side -- zero law.

8           Now, we see that communities have got to take on the  
9 power of oil and gas in New Mexico, not only to protect  
10 property rights, but to protect the rights of nature, to  
11 protect acequias and headwaters, to protect wildlife, to  
12 protect small ranching and farming, I think, and farming. And  
13 this isn't subtle law. This isn't law that comes easily. This  
14 is law that Rio Arriba is trying to deal with right now with  
15 very few resources and no history of power or subtle law on  
16 their side. It's the same history -- or the same situation  
17 we're dealing with in Santa Fe County with a few more  
18 resources, Mora County is dealing with it now.

19           I hope that within these hearings -- and I appreciate  
20 Oil Conservation Division's opening this up. Back to the story  
21 of peak oil. We now know that we have to begin to depend on  
22 our local resources again. We can't depend on cheap, abundant  
23 oil which brings cheap, abundant food, and cheap, abundant  
24 goods from around the globe. We have to go back to local. We  
25 have to go back to local food. We have to go back to local

1 building sources, and we have to go back to local communities.  
2 That's where our whole survival will come from.

3           Within that, we have to look at local energy. We  
4 have to look at sources of energy that are sustainable and that  
5 are owned by the community, that aren't corporately owned. So  
6 these are the opening forays in a much larger battle. And it's  
7 simply a battle to reclaim our constitutional rights as  
8 citizens and to decide our own future.

9           Thank you very much.

10           MR. BROOKS: Thank you, Mr. Bacon. Was there someone  
11 else who wished to -- please be advised that applause is not  
12 allowed in the proceeding. Is there someone else who wished to  
13 speak? You may proceed. And once again, state your name for  
14 the record and spell it for the court reporter.

15           MS. FOSTER: Thank you. My name is Karin Foster,  
16 that's K-a-r-i-n. The last name is F-o-s-t-e-r. I'm the  
17 attorney and Director of Government Affairs for the Independent  
18 Petroleum Association of New Mexico. I'm here today  
19 representing 280 small producers in the state.

20           Frankly, Mr. Hearing Examiner Brooks, this hearing is  
21 very interesting to me because a lot of it is a repeat of the  
22 discussions that we had at the legislature in 2007 when the  
23 Surface Owners Protections Act was passed by the legislature.  
24 At that time, I believe Mr. Fesmire, who is the Division  
25 Director, was present at the legislative committee meetings.

1 And I believe that there was discussion as to what was OCD's  
2 rule when it came to the relationships between surface owners  
3 and mineral interest owners.

4 At that time, it was decided by both the Legislature  
5 as well as statements made by Mr. Fesmire that the OCD did not  
6 want to be involved in this process because they understood  
7 that this is a private contract between a surface owner and a  
8 mineral interest owner. What you have here in this instance is  
9 Approach Resources who wants to exercise their rights as a  
10 mineral lessee or mineral owner -- in this instance. And you  
11 have -- I've heard the testimony this morning of two surface  
12 owners who believe that the communication between Approach and  
13 themselves might not have been adequate. And in the instance  
14 of Ms. Sultemeier, that she did have oral conversations with  
15 Approach Resources, but she did not take it upon herself to  
16 actually go out to the location and verify where the drill pad  
17 or the well, the drilling was going to occur.

18 This really seems to be squarely on the issue of the  
19 Surface Owners Protection Act. I do not believe, respectfully,  
20 that this is within the jurisdiction of OCD at this time. As  
21 you have heard me say on repeated occasions in other  
22 proceedings, as well as briefs that I have written for the OCD,  
23 the responsibility of the OCD is protection of correlative  
24 rights as well as the prevention of waste.

25 While the OCD does have jurisdiction to protection of

1 the environment, that is not as much as a primary  
2 responsibility under statute as protection of correlative right  
3 and prevention of waste. And while I respect that there are  
4 surface owners that believe that they do not have a right to  
5 speak, the fact of the matter is, the Surface Owners Protection  
6 Act under the State of New Mexico does not pull the OCD into  
7 the jurisdiction authority of the Surface Owners Protection  
8 Act.

9           And they did have the opportunity -- at least  
10 according the testimony -- to communicate with Approach  
11 Resources. And again, I respectfully would contend that this  
12 is not within the OCD's jurisdiction at this time.

13           Thank you.

14           MR. BROOKS: Thank you, Ms. Foster. Is there anyone  
15 else who wishes to speak?

16           UNIDENTIFIED PUBLIC MEMBER: I got one question.  
17 Will you all offer public testimony towards the end of the  
18 hearing today?

19           MR. BROOKS: We can if there are people available who  
20 wish to speak.

21           UNIDENTIFIED PUBLIC MEMBER: What about Monday?

22           MR. BROOKS: The length of time that might be allowed  
23 would depend on the number of people.

24           UNIDENTIFIED PUBLIC MEMBER: Well, I would like to  
25 have a public comment opportunity for Monday afternoon after

1 the hearing or before it ends.

2 MR. BROOKS: Yourself again or other people?

3 UNIDENTIFIED PUBLIC MEMBER: There will be me, and  
4 other people will be attending. And after this hearing, they  
5 can make more appropriate comments.

6 MR. BROOKS: Okay. That would be appropriate. We  
7 will extend you that courtesy. The length of time that will be  
8 allowed to each person will necessarily depend on the number of  
9 people that wish to speak.

10 UNIDENTIFIED PUBLIC MEMBER: How about three to five  
11 minutes each?

12 MR. BROOKS: Well, I can't guarantee that because if  
13 there are 90 people showing up to speak, that would be very  
14 awkward.

15 UNIDENTIFIED PUBLIC MEMBER: Limit it to five or ten.  
16 How about that?

17 MR. BROOKS: I will stick to what I said. When we  
18 know how many people are going to speak, then we will determine  
19 how much time we can allot to each one.

20 MR. HALL: Mr. Books, may I ask for clarification  
21 on --

22 MR. BROOKS: Yes, sir.

23 MR. HALL: We received no motions to intervene in  
24 this case. And I understand parties will not be allowed to  
25 present evidence, but simply make statements, if I understand

1 it correctly.

2 MR. BROOKS: That is correct. Anybody else want to  
3 be heard at this time?

4 Very good. We will take a luncheon recess until  
5 1:20.

6 [Recess taken from 12:05 p.m. to 13:36 p.m., and  
7 testimony continued as follows:]

8 MR. BROOKS: The hearing will return to order,  
9 please. We'll be back on the record in Case No. 14134 and  
10 14141.

11 Silence, please.

12 We're on the record in Case No. 14134 and 14141. And  
13 I believe, Mr. Trujillo, that it was time for you to call  
14 another witness.

15 MR. T. TRUJILLO: Yes. The County calls Leo Valdez.

16 MR. BROOKS: You've already been sworn, Mr. Valdez.

17 THE WITNESS: Yes.

18 MR. BROOKS: You may proceed.

19 LEO VICTOR VALDEZ

20 after having been first duly sworn under oath,

21 was questioned and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. T. TRUJILLO:

24 Q. Mr. Valdez, would you state your name again for  
25 the record.

1 A. Leo Victor Valdez.

2 Q. Very well. And what is your educational  
3 background, Mr. Valdez?

4 A. I'm an Aggie. I graduated from New Mexico State  
5 with a degree in Ag-Econ and a Master's in Public Finance from  
6 American University, Washington DC.

7 Q. What about your occupation?

8 A. I work for an investment banking firm based out  
9 of Chicago. I'm an owner, and I manage the offices in Arizona,  
10 Santa Fe, and California. It's called Hutchinson, Shockey,  
11 Erley and its business is public finance.

12 Q. All right. Very well. Now, with regard to the  
13 proposed well site on your property, can you give us some  
14 background on your familiarity with that particular property?

15 A. Well, way back a long ways, that property did  
16 belong to some of my ancestors. It eventually was sold, and  
17 over the years I bought two parcels back. One was 600-some  
18 acres and the other was 200. So it's like 793 acres that I  
19 own. I bought that over a course of 10 to 15 years.

20 We use the property mostly for cattle and hunting.  
21 When I took over the property, it had a lot of issues with  
22 erosion and overgrazing. So together under the Soil  
23 Conservation Program, I went in there and reseeded, disked,  
24 created a lot of ponds. There's a lot of erosion, so in  
25 addition to the ponds, there's smaller ponds along the gullies

1 to prevent erosion. There's a lot of what I call missing  
2 topsoil. And so that's been my background with the property.

3 Q. And now, besides that particular property, in  
4 general, do you know the surrounding properties?

5 A. Yes. I grew up there. My family is from there,  
6 both on my mom and my dad's side. I spent several summers up  
7 there working on the ranch. I actually worked on Highway 64.  
8 I was a grade setter when they built that highway. I've hunted  
9 and fished all of those properties. We hunted there on the  
10 property when it was owned by the Spills. And it was  
11 interesting. I saw that picture of that aspen site, and I  
12 visited various times and it was a beautiful place God created.

13 Q. Let me ask you, you talked about the drainage  
14 issues. How would you describe the grade, say from the Tierra  
15 Amarilla -- TA Hill -- going in a westerly direction?

16 A. Well, if you're going north to TA, you're going  
17 up 84 past the Sultemeier's property. Their boundary is my  
18 south boundary. As you go up, you're right against the cliffs.  
19 In winter and summer, there's a lot of rainfall that comes  
20 down. It all flows to the west to the TA Creek, and that's why  
21 we have a lot of problems with gullies there and a lot of  
22 erosion. Some of those gullies are even 15 feet deep. So a  
23 lot of the money I spent was to correct that and try and  
24 prevent further erosion. That's a big issue.

25 The property is actually a big migration route for

1 big game, both deer and elk. As the winter storms start, they  
2 start migrating down through there. They migrate through the  
3 Spills', Sultemeier's, and my property. My aunt actually owns  
4 property to the north of the Sultemeier's site that they showed  
5 up there on the top of that ridge.

6           So you have a lot of drainage that just comes off  
7 that cliff. And I do have concerns with the site as it deals  
8 with erosion, the polluting of numerous ponds that I have built  
9 over the course of time. The ponds were built there for --  
10 basically to stop seepage -- not seepage -- but silt, to create  
11 a place for wildlife, really. That was my whole intent. The  
12 State of New Mexico, if not everybody knows, it grants elk  
13 permits to the property owners. And they make a lot more money  
14 than you would raising cattle. So that is my major source of  
15 income for the property.

16           So I graze some cattle in there, but very limited  
17 because I like to leave the vegetation. And water is an  
18 important issue for game because when you have cattle in there,  
19 they drink huge amounts of water.

20           Q. How important is the elk hunting industry for  
21 your property to you?

22           A. To me, it's major. I'm not afraid to say that I  
23 make \$14,000 a year off of that. It actually creates a lot of  
24 value because -- I have the property on the market, by the way.

25           Q. How long have you had it on the market?

1 A. I would say about a year.

2 Q. Okay.

3 A. And the reason I put it on the market is because  
4 a lot of the property in here has been selling for some very  
5 high prices. So it obviously created an interest on my behalf.  
6 It's kind of hard to depart with because it's in the family,  
7 but on the other hand, it's sort of my life savings. I'm  
8 getting up in that time of my life I want to go fishing rather  
9 than do what I do for a living.

10 Q. And on your property, is there any irrigated  
11 acreage?

12 A. No. It's all dry land. It's been plowed,  
13 reseeded with different types of grass, mostly winter wheat.

14 Q. Okay. Now, you've had contact with personnel  
15 from Approach, have you not?

16 A. Yes. On a couple of occasions. I think the  
17 first time -- and I can't recall the sequence of events. -- I  
18 did call, I think it was Mr. Bright, and/or he called me, one  
19 of the two. We started talking about it and I think I was  
20 advised that Metes and Bounds wanted to go in there and survey.

21 And I said fine. And then I understood that they --  
22 well, they advised me that they had the mineral rights. That  
23 was my first conversation, and probably one of the few ones. I  
24 think I had another conversation where I was discussing with  
25 him the possibility of being sensitive to our hunting because

1 that's where we make our money. And that from September the  
2 1st when they start the bow hunt to December the 1st, that's  
3 our season.

4 In fact, we have an understanding with our outfitter  
5 that we personally, the owners, don't go on to that property  
6 during that period of time. I get five days out of the whole  
7 period to go in there and conduct my own hunting for myself and  
8 my family. But other than that, we restrict ourselves from  
9 going in there.

10 So I asked him if -- the hunting starts usually early  
11 in the morning and it's usually done by 9:00 in the morning.  
12 And then they start hunting like 2:00 or 3:00 in the afternoon  
13 until dark. So I was asking them to not go onto the property  
14 during those periods of time when the hunters were there.  
15 Because if you know where the property is, you're sitting on  
16 top of the ridge looking right down into my property. And what  
17 the outfitters do is -- there's another huge hill. They get up  
18 on top early in the morning and they're looking for the animals  
19 and once they spot them, then they stalk them.

20 So the well site that is proposed, is right in the  
21 middle of that. It's part of the hunting area also.

22 Q. Now, did you have a concern with them with the  
23 proposed well site?

24 A. Yes. I met with the gentleman from Approach on  
25 May the 27th, I believe. We met at my gate to the ranch. We

1 went up to the top of the mountain and then I described the  
2 boundaries to the ranch. And from my ranch to the west is my  
3 aunt's. And she -- we actually conduct the hunting or sale of  
4 the hunting rights jointly.

5           So I explained where it is, and I found the stake  
6 myself by driving around. I didn't know exactly where it was  
7 until I did receive a map and it showed it. I went and found  
8 it. And I basically advised him that I did not like the site.  
9 I used the word that it was -- what was the word I used? I  
10 can't remember what word I used -- but I said, you know, it's  
11 sinful, is the word I said, if you're going to put it there.

12           So we had further discussions. We drove down to the  
13 ranch and I showed him some other alternative sites. They were  
14 in little valleys where you could hide the pad and everything  
15 from the view on top. If you get up on top of there, you can  
16 look all the way to Heron, almost to Colorado from up there.

17           So I think the value of my property was going to  
18 diminish by that site being right there in the middle of this  
19 big, beautiful field. So we walked -- I think we walked to  
20 three different sites. And they said, well, you know, we'll  
21 look at it. There's some issues because there's a rock  
22 formation -- and I understand -- where the oil may or may not  
23 be. I'm not a geologist or anything, but common sense would  
24 tell me that probably closer to the rocks, that's probably  
25 where the oil may or may not be.

1 Q. Now, you were talking about across the road from  
2 you. Are you also acquainted with the property immediately  
3 across?

4 A. Yes. That property actually was shown to me as a  
5 possible purchase when I purchased the land originally.  
6 There's not a lot of room between the highway and the cliff, so  
7 it really had to me no real value as far as building on it,  
8 grazing on it. It was really not a place to conduct what I  
9 wanted to do. But I have issues with that site because that's  
10 where the water really starts and that's where you have the  
11 cause of the erosion and that's where we capture a lot of the  
12 water that comes off that cliff in that whole area.

13 Q. Now, let me clarify something here. When you  
14 were talking about the well site location on your property --

15 A. Uh-huh.

16 Q. -- did you participate whatsoever in the  
17 selection of that well site?

18 A. No.

19 Q. Let me ask you to take a look at some exhibits.  
20 And if we can start with this demonstrative exhibit that we  
21 have here, Mr. Valdez -- and it's a little -- if you can go to  
22 it, what I'd like you to do is look at that area there and see  
23 if you can find your well site.

24 A. Right there.

25 Q. Okay. And so it shows it being on what side of

1 US 84?

2 A. On the west side.

3 Q. Very good. Is it fairly close to the highway,  
4 then?

5 A. Yes, it is. I don't think it's more than 100  
6 feet. The only thing between me and the highway is a power  
7 line easement.

8 Q. Now, if you would look immediately across the way  
9 there, there's another one.

10 A. Another what?

11 Q. Another proposed site.

12 A. Yes.

13 Q. And how is it listed?

14 A. Cloyd Hinkle.

15 Q. Cloyd Hinkle. And is that the property you were  
16 describing earlier as being across from you?

17 A. Yes. That's the property I had an opportunity to  
18 purchase some years ago.

19 Q. And you know the terrain fairly well?

20 A. Very well.

21 Q. Now, do you know where -- do you have a sense of  
22 where that location is?

23 A. Yes. I don't know what the -- what's it called?  
24 What inches the --

25 Q. The scale?

1 A. Yeah, the scale. What is the scale?

2 Q. I don't know if there is a scale on that, but,  
3 you know --

4 A. Well, it's fairly close because I know where this  
5 other well site is.

6 Q. What issues do you think this second well site on  
7 the other side of the road would create for you?

8 A. Well, contamination of my ponds, really. There's  
9 erosion caused by either the facility itself -- and you're  
10 going to scar the land. You're not going to stop the erosion.  
11 Water is going to run once you break up the ground. There's  
12 nothing to hold it. There's no plant life. It's just a flat  
13 piece of dirt.

14 Q. Right. Now, with regard to the one on your side,  
15 you had suggested some alternative locations. And I realize  
16 that there's not a scale here, but how far away from the  
17 proposed drilling site were you proposing?

18 A. Well, one was right here, right to the south.

19 Q. Why don't you put an X where you think it is.  
20 And we'll use a pen because I don't think the highlighter is  
21 doing too well, if you don't mind. And we know it's an  
22 approximation.

23 A. One is here. One is here. One is here.

24 Q. Okay. Why don't you circle all three of them.  
25 And then maybe you could initial somewhere in there,

1 Mr. Valdez?

2 A. Okay.

3 Q. So have you heard back definitively from Approach  
4 as to the viability or feasibility of those alternative sites?

5 A. No. I think I was advised at a meeting that if  
6 they were to change the site, they'd have to change the  
7 application. No, I have not heard. The last comment that was,  
8 you know, as we were leaving the property was that -- you know,  
9 we talked about -- I asked how they arrived at the compensation  
10 and basically I was told it was based on other transactions  
11 they've had. And as they left, they said, do you have a price  
12 in mind? And I really don't have a price in mind because if  
13 the site where it is, that's a different price. If they were  
14 to accommodate me, that's probably a different price.

15 I mean, because if I were to lose my -- a lot of  
16 money or even some money to me is not worth losing, for  
17 example, my hunting rights or scarring the face and decreasing  
18 the value of my property. I don't believe I can sell the  
19 property if that particular site were built there for what I  
20 have it listed for.

21 Q. Okay. Let me ask you, Mr. Valdez -- let's look  
22 at some exhibits. We looked at the demonstrative one. I want  
23 to you to turn in that binder and there's a tab. It's Tab 11.

24 A. Yes.

25 Q. And I'm not sure if you've actually seen this

1 before. If you could identify it for the record.

2 A. I've identified it, but I don't believe I've seen  
3 this before.

4 Q. If you look at the second line, they're all  
5 blocked starting underneath the title Application for Permit to  
6 Drill. And in those blocks in there can you find your name in  
7 there?

8 A. Yes. But it looks like they spelled it wrong.  
9 It's just a typo. It's L-l-o instead of L-e-o.

10 Q. All right. Now, look at this information with  
11 regard to the proposed depth. You see three circles there, a  
12 circle with an A, a circle with a B, and a circle with a C?

13 A. Yes. I see A. I can't read it. It says  
14 something scientific. B says proposed depth 6,000, and C -- I  
15 need stronger glasses. Something about block to fresh water  
16 and gas, slash, air block.

17 Q. Okay. Now, with regard to the A, what is checked  
18 in A?

19 A. It looks like it says -- I don't know. What is  
20 the word, scientific?

21 Q. Okay. It's hard to read. Can you read any of  
22 the other areas?

23 A. I can't read that. But I can where that one on  
24 top is signed, it says proposed depth, 6,000.

25 Q. Okay. All right. Now, what about the indication

1 at the very bottom of that where it says 40-acre spacing?

2 A. I see that.

3 Q. Have you had any discussions with Approach  
4 personnel about these, you know, features of the application?

5 A. Only that I did say I did receive the application  
6 with the proposed layout of the facility. I did have that. We  
7 didn't go into specifics with regard to details of that  
8 particular layout.

9 Q. Now, let me ask you to turn to Exhibit 18.

10 A. Yes.

11 Q. Before -- let's back up. On Exhibit 11 --

12 MR. T. TRUJILLO: I'd like to offer that into  
13 evidence at this point in time.

14 MR. BROOKS: Which one?

15 MR. T. TRUJILLO: Exhibit 11, before I ask this next  
16 question.

17 MR. BROOKS: Any objections?

18 MR. HALL: No objection.

19 MR. BROOKS: 11 is admitted.

20 [Applicant's Exhibit 11 is admitted into evidence.]

21 Q. (By Mr. T. Trujillo): And looking at 18, if you  
22 could identify that for us, Mr. Valdez?

23 A. Yes.

24 Q. What is it?

25 A. It's a letter I received from Approach with the

1 proposed compensation agreement. And it just had the aerial  
2 photo, and it does show the proposed site area.

3 Q. Okay. Now, let's look at that aerial photo. I  
4 think in your packet it's Exhibit A. I believe it should be  
5 the very last page.

6 A. Yes, it is.

7 Q. All right. Now, can you identify, does that look  
8 about where you saw the stake --

9 A. Yes, it is.

10 Q. -- where it reads Approach Leo Valdez?

11 A. Yes. That's where it has the little circle,  
12 that's approximately where the stake is.

13 Q. Okay. All right. TA Hill from that point is in  
14 what direction?

15 A. That would be north.

16 Q. And in this thing you're going to the top of the  
17 page or to the bottom?

18 A. To the top. There's a turnout up on top.  
19 There's a big guard railing. The guard railing actually sits  
20 on my aunt's property. My fence line is down at the bottom of  
21 that -- the bottom of the hill adjacent to the highway.

22 Q. Is that a scenic lookout area?

23 A. Definitely.

24 Q. People do stop there regularly?

25 A. All the time. As I mentioned, that's where the

1 guides stop to oversee the property and with binoculars find  
2 the elk. We actually had to -- we were going to close that  
3 particular site off because a lot of people were dumping their  
4 trash over the area.

5           And we finally my aunt agreed with the Highway  
6 Department that she would not close the scenic site, that they  
7 would put a guard rail there. Unfortunately, there was an  
8 incident where someone went over that hill and got in a car  
9 accident and got killed. So that was another reason why we  
10 eventually -- everybody agreed we would put a guard rail.  
11 Obviously, it was not my approval. It was my aunt's.

12           Q. How would you describe the terrain? I don't see  
13 a road shown here from the US 84 to your well site. Did you  
14 discuss with Approach at any point in time where that road  
15 would go? How did you get to that point?

16           A. Well, we discussed several alternatives. As I  
17 mentioned, I think we said there was a possibility that they  
18 could use the easement for the power line. Or they could go up  
19 a little further north of my gates and the straightest  
20 direction would come off the highway. It looked like there was  
21 a possibility that they could build a road and in there  
22 directly from the highway, therefore not having to go over much  
23 of my land at all.

24           Q. Are there any drainage issues that should be  
25 considered?

1           A. Of course. Any time that they move dirt there --  
2 I did make one request. There's one of the last few stands of  
3 timber that's in there. And I've had a lot of people approach  
4 me to buy the timber, but I'd like it to stay as it is. And I  
5 did ask them, you know, please don't cut my big trees.

6           Q. Let's look at Exhibit 37.

7           A. Okay.

8           Q. Now, I just want to see if you could identify the  
9 features there and see if your land is connected in any way in  
10 this photo?

11          A. I'm not 100 percent sure, but it appears that  
12 this is the road -- the first one on the left is the one that's  
13 going up north -- where it's sort of straight, that's going  
14 right up the top of the TA Hill. As it turns a little bit,  
15 that's where the lookout is. If you look straight down, that's  
16 where my fence line would be. And the subject proposed site is  
17 in one of those clearings.

18          Q. Okay. Can you -- I don't know if there's a  
19 pointer there, maybe?

20          A. Oh. No. I can't see it from here, quite  
21 frankly.

22          Q. I can see that. Let me ask you, looking at  
23 the -- in what direction is that picture shooting?

24          A. I'm not 100 percent sure. But that looks like  
25 the road going to TA and the road up on top. That seems to be

1 the road that's going -- that's Highway 64. I may be wrong.  
2 This is the first time I've had an opportunity to look at this  
3 photo.

4 Q. All right. I just wanted to see if you could  
5 recognize some of the features. It is somewhat diffused  
6 because of the large area that's being covered.

7 Now, let me ask you, you had mentioned at one point  
8 in time you have listed the property. What are your plans at  
9 this present time with listing the property?

10 A. Well, it's still on the market. And, you know, I  
11 have to, you know, talk to my realtor and see what the impact  
12 would do to the value of the property and the proposed sale  
13 price.

14 Q. Well, let me ask you, then, with regard to this  
15 experience in dealing with Approach, is this your first contact  
16 with the oil and gas industry in any fashion?

17 A. Yes. Other than people trying to show me -- what  
18 do they call it -- POS's or offer documents to buy securities.  
19 But I've never -- that's about the only one.

20 Q. All right. Based on your experience with  
21 Approach, how do you feel these issues between property owners  
22 and, you know, development companies such as Approach should  
23 proceed?

24 A. I think -- I respect their rights. However, as a  
25 landowner, I think they need to respect my rights as well. I

1 mean, you just don't go on somebody's property and do things  
2 without consulting anybody on anybody's private property. So I  
3 think any type of -- this type of development should be done in  
4 a coordinated effort.

5 I think we had some fruitful discussions at the site.  
6 And I wish that's the way it had originally started, because we  
7 would have perhaps not even put the site there and spent the  
8 money. But, you know, I think that's the way it should start  
9 rather than getting something in the mail that says we're going  
10 to put it in right there. And you go, well, how did you get  
11 there?

12 And I think I asked -- I guess going back to the  
13 other question is, how do you place a value on what you want to  
14 compensate me for? The money is not, you know -- the money is  
15 a big issue because the value of the land is more important to  
16 me than getting \$5,000 or \$6,000 from these folks.

17 Losing \$14,000 a year on my elk permits -- if that  
18 elk outfitter cannot get elk on the property, he's going to  
19 say, "I want to cancel the contract, Leo."

20 Regardless of whether you are in there or not,  
21 because these people would be in there. And that's why I had  
22 discussed with them the ability for them to accommodate the  
23 hunting season.

24 Q. And what accomodation did they make on the  
25 hunting season?

1           A. They said they would talk about it and I think  
2 they had mentioned to me that they were going to hire a  
3 consultant to address that whole issue with big game hunting  
4 and so forth.

5           Q. But no determination was made at this point?

6           A. I've had no further communication with them since  
7 we had the site visit on May the 27th.

8           MR. T. TRUJILLO: Mr. Hearing Examiner, I pass the  
9 witness.

10          MR. BROOKS: Very good. Mr. Hall?

11                                   CROSS-EXAMINATION

12 BY MR. HALL:

13           Q. Good afternoon, Mr. Valdez. I have a couple of  
14 questions for you.

15                   Is it fair to say that Approach did consult with you;  
16 is that right?

17           A. Not initially.

18           Q. Well, weren't they required by law to provide you  
19 with written notice by mail of their plans? Isn't that what  
20 they did?

21           A. If you're specifying what type of consulting they  
22 did, yes, they did advise me through correspondence; that is  
23 correct.

24           Q. Do you have the exhibit notebook, Exhibit 18?

25           A. Yes, yes.

1 Q. If you would turn to that.

2 A. What exhibit was that?

3 Q. 18. That's the letter. Is that your first  
4 contact with Approach?

5 A. I don't recall. I believe I had somebody call me  
6 before I got this that they had hired Metes & Bounds to do a  
7 survey -- before I got this.

8 Q. So before you received a letter in the mail, you  
9 knew that the well was being proposed?

10 A. Sure.

11 Q. Okay. You had subsequent follow-up conversations  
12 with Approach's landman?

13 A. Say that again, sir.

14 Q. You had subsequent conversations with Approach's  
15 landman after you received that letter?

16 A. Yes.

17 Q. And is it fair to say you don't oppose drilling  
18 on your land? In fact, you proposed three alternate locations  
19 to Approach?

20 A. I would -- if I had my druthers, I wouldn't. But  
21 I understand that if they have proven rights to be on there to  
22 drill, I don't believe I have the right to stop them. I'm not  
23 in favor of it, but needless to say, they have those rights.

24 Q. You say you were concerned with the erosion and  
25 silting of your ponds?

1 A. Yes.

2 Q. Pollution? If these wells can be drilled in an  
3 environmentally responsible manner, is that agreeable to you?

4 A. That's a bit term, environmentally responsible.  
5 It would have been a lot more specific than that.

6 Q. Say if erosion were controlled?

7 A. Well, I think there's a lot of issues under  
8 environmental control. I do a lot of financing for lots of  
9 types of projects, water, sewer, and typically we have an  
10 environmental assessment for a those issues and in some cases,  
11 we have to hire an environmental impact to see whatever  
12 effects. And it's not just erosion. It's the water levels,  
13 water contamination, groundwater contamination, surface water  
14 contamination.

15 So I think when you say environmental issues, I think  
16 those all would have to be addressed in a plan of development  
17 that would be acceptable to myself and the County, because I  
18 would assume that they're going to have some type of ordinances  
19 that would adhere to that. But to say I would accept something  
20 without knowing what the actual details were, the answer is: I  
21 don't know.

22 Q. Well, in fact, Exhibit 18 transmitted to you, the  
23 proposed agreement, addressed many of those concerns; isn't  
24 that right?

25 A. They were outlined, but I don't think they

1 were -- they were not necessarily addressed in detail, no.

2 Q. Well, we can go through it. If you look at  
3 Page 1, it talks about compensation. Page 2, roads, pipelines,  
4 location of facilities. Page 3, roads, traffic, minimization  
5 of surface use. Paragraph 11, drainage, removal, restoration.

6 A. Well, if you look at everything, they start, "To  
7 the extent reasonable, practical" -- you want to define what  
8 "reasonable, practical" is? Until then I'd say, well, you've  
9 haven't addressed all these issues. But I don't think that  
10 determination itself addresses the issue.

11 Q. Did you propose additional terms to Approach that  
12 would address those to your satisfaction?

13 A. I don't think we got into that detail. I think  
14 that the well site itself would have been -- where we would  
15 have ended up with the well site, then we would have discussed  
16 those other items in detail. Because I think every site has  
17 its own issues.

18 If you look at all the other sites that we saw,  
19 Mr. Sena's, the Sultemeier's property and others, they all  
20 have -- they're all different sites. They all have different  
21 issues. And I think words "to the extent reasonable,  
22 practical," is an open-ended term.

23 Q. You're open to discussions, it sounds like; is  
24 that it?

25 A. Yes, I am. I am open to discussions, but not to

1 the point that, you know, I'm going to be -- what's the word?  
2 That I have really no say in where the site is going to be and  
3 what those -- how those issues will be addressed. I think it  
4 has to be in a cooperative fashion.

5 The term that was used at the meeting when we met  
6 was, "We'll see if we can accommodate you."

7 Well, what's that mean? And I think the issues with  
8 the elk permits, the hunting, going in and out of the property,  
9 should be addressed in this kind of a document, not by a  
10 handshake.

11 Q. The entirety of your property is located west of  
12 the highway?

13 A. Yes.

14 Q. Is that right?

15 A. Yes, it is.

16 Q. I'm trying to picture it in my mind, since I go  
17 up there and -- there is hunting to the west of the highway.  
18 How close to the highway do you allow hunting? Let me ask you  
19 that.

20 A. Once the hunt -- the outfitters are inside the  
21 fence line, he can start hunting on my property.

22 Q. Except for the elk hunting, I guess?

23 A. I mean, I let them -- when they're actually --  
24 when they're looking with binoculars, they are actually outside  
25 of my property, but they are on my aunt's property, which is

1 all right because we conduct the hunting jointly.

2 Q. Okay. Can I ask you what do you have your  
3 property listed for?

4 A. \$1,800 an acre.

5 Q. How many acres do you have?

6 A. 974 and change.

7 Q. Thank you, Mr. Valdez.

8 MR. HALL: That concludes my cross.

9 MR. BROOKS: Thank you. Any redirect?

10 MR. T. TRUJILLO: No redirect, Mr. Hearing Examiner.

11 MR. BROOKS: Very good. You may call your next  
12 witness.

13 MR. A. TRUJILLO: Mr. Hearing Examiner, would it be  
14 okay if I take two minutes to fill this water bottle up and ask  
15 several questions of my expert witness before we proceed?

16 MR. BROOKS: That would be fine.

17 [Recess taken from 1:59 p.m. to 2:01 p.m., and  
18 testimony continued as follows:]

19 MR. A. TRUJILLO: The County of Rio Arriba calls  
20 Steven T. Finch.

21 MR. BROOKS: Steven Finch?

22 THE WITNESS: Mr. Hearing Examiner, I have not been  
23 sworn.

24 MR. BROOKS: Okay. We need silence, please.

25 [Witness sworn.]

1 MR. A. TRUJILLO: Mr. Hearing Examiner, I have some  
2 preliminary matters. If I could be so kind as to remove Rio  
3 Arriba County Exhibit No. 19 from your binder so we can  
4 substitute it with an updated memorandum.

5 MR. BROOKS: Okay.

6 MR. HALL: If I can get two minutes to look at it?

7 MR. A. TRUJILLO: I believe Mr. Finch will testify  
8 that the only thing that is different in this memorandum is the  
9 date. But if you would like your two minutes, please feel  
10 free.

11 We will be introducing into evidence, if admissible,  
12 Rio Arriba County Exhibit No. 51, which is Steven T. Finch's  
13 PowerPoint presentation.

14 MR. BROOKS: This was not produced in advance.

15 MR. A. TRUJILLO: It was not produced until this  
16 morning, no.

17 MR. BROOKS: Okay.

18 MR. HALL: I'm ready, Mr. Examiner.

19 MR. A. TRUJILLO: We move to supplement Exhibit 19  
20 with Mr. Finch's new memorandum.

21 MR. BROOKS: Okay. Mr. Finch's memorandum has not  
22 been offered in evidence, so you can proceed and make a  
23 predicate for it, if you wish.

24 MR. A. TRUJILLO: I'm offering it into evidence.

25 MR. BROOKS: Okay. Normally we make a predicate with

1 the witness before we offer it into evidence, but if Mr. Hall  
2 has no objection, we can go ahead and admit it now.

3 MR. HALL: Did you write the exhibit?

4 THE WITNESS: I did.

5 MR. HALL: No objection.

6 MR. BROOKS: Exhibit 19 will be admitted.

7 [Applicant's Exhibit 19 admitted into evidence.]

8 MR. BROOKS: At the next recess, I will bring down my  
9 three-hole punch so everyone can punch it and get it into the  
10 binder.

11 MR. A. TRUJILLO: The County would offer  
12 Exhibit No. 20, the resume of Steven T. Finch, Jr. into  
13 evidence.

14 MR. BROOKS: Are there any objections?

15 MR. HALL: No objections.

16 MR. BROOKS: 20 is admitted.

17 [Applicant's Exhibit 20 is admitted into evidence.]

18 STEVEN TAYLOR FINCH  
19 after having been first duly sworn under oath,  
20 was questioned and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. A. TRUJILLO:

23 Q. Mr. Finch, can you state your name for the  
24 record.

25 A. Steven T. Finch, Jr.

1 Q. All right. Let's go over Exhibit 20 a little  
2 bit. Can you tell us about your educational background.

3 A. I got a Bachelor in Science in geology from Sul  
4 Ross State University, which is located in Alpine, Texas. And  
5 I got a Master of Science degree in geology from North Arizona  
6 University in Flagstaff, Arizona. And my thesis topic was in  
7 aqueous geochemistry of -- and the area related to that thesis  
8 was the San Juan Mountains around Silverton, a full analysis of  
9 the surface waters in that area for four-year period.

10 Q. Okay. What is your current occupation?

11 A. My current occupation, I'm Vice President and  
12 Senior Hydrogeologist and Geochemist with John Shomaker and  
13 Associates Incorporated. We're a water resource and  
14 environmental consulting firm out of Albuquerque, New Mexico  
15 that has been in business for more than 30 years.

16 Q. Why don't you tell us a little bit about the  
17 specific kinds of projects or studies you undertake as a  
18 hydrologist for Shomaker and Associates.

19 A. Well, I have a summary of project  
20 responsibilities, but I'll just kind of make it short and  
21 sweet. Mostly what I do is more on the analysis side of  
22 hydro-geology, which looks at -- we look at groundwater  
23 resources for water supply development, protection of water  
24 from contaminants. I've also done some geologic work related  
25 to issues of water resources in areas of oil and gas

1 development in both the San Juan Basin and the Ortiz Mesa area.

2 I've worked on regional water plans for the  
3 Interstate Stream Commission. Modeled a lot of -- most of the  
4 basins in New Mexico, developed detailed groundwater flow  
5 models that incorporate the surface and groundwater components  
6 of those areas. I've done lots of water rights, expert  
7 reports, and stuff like that.

8 Q. Now, can you tell us a little bit or maybe a  
9 brief summary of some of the publications that you've performed  
10 in the fields of hydrology and geology?

11 A. Okay. Yeah, there are some publications I would  
12 like to point out. I think I have a list of them in here on  
13 Page 3. The third one down in 1991 is related to my thesis  
14 research in the San Juan Mountains, which I looked at the  
15 surface water and soil chemistry of high alpine meadows up by  
16 Silverton. And that was published. And then also I've looked  
17 at the San Juan Basin pretty extensively related to oil and gas  
18 development and implications on water resources related to deep  
19 well injection and coal bed methane well completion practices,  
20 fracture analysis. Some of those publications were done for  
21 the -- what used to be the Gas Research Institute.

22 And then -- what else. I believe it's not listed on  
23 here. I've done a detailed analysis of the groundwater and  
24 surface water flow of -- what is it called? Basically, the  
25 northwestern corner of New Mexico which includes the San Juan

1 Basin and the Chama Basin. And that was done for the Jicarilla  
2 Apache Nation.

3 Q. Have you ever been qualified as an expert in a  
4 judicial or quasi-judicial proceeding?

5 A. I have. Several New Mexico State Engineer  
6 hearings, and also I was once in this room before for oil and  
7 an OCD hearing.

8 MR. A. TRUJILLO: I offer Mr. Finch as an expert  
9 witness in the fields of hydrology and geology.

10 MR. HALL: No objection.

11 MR. BROOKS: He's so qualified.

12 Q. (By Mr. A. Trujillo): Mr. Finch, are you  
13 familiar with the watershed that is the subject matter of this  
14 hearing?

15 A. I am. I'm familiar both with it from the  
16 perspective of the map, and I've been throughout that watershed  
17 numerous times on other studies.

18 Q. Why don't -- what would you call that watershed?

19 A. I call it the Rio Chama Watershed, which  
20 encompasses the Rio Chama and all the tributaries.

21 Q. Now, were you involved in a matter before the  
22 State Engineer called Rancho Lobo?

23 A. I was.

24 Q. Now, can you tell us a little bit about that in  
25 terms of its geographical proximity to these applications for

1 this area?

2 A. Right. It was a State Engineer hearing on the  
3 transfer of water rights from around Heron Lake up to the  
4 headwaters near the Colorado/New Mexico boarder north or east  
5 of -- north and east of Chama. So it was on the -- let me see  
6 if I can find myself in here. See, there's the highway.

7 Okay. So this is the Rio Brazos here. And the Chama  
8 is coming down through the center of the map. But in the  
9 northeastern corner of the map are the headwaters of Rio  
10 Brazos. And that hearing involved a detailed analysis of those  
11 water rights transfer up to those headwaters and what the  
12 impacts would be of that transfer. There was marked well  
13 drilling, extensive geological analysis of that system, at  
14 around 10,000 feet.

15 Q. Now, Mr. Finch, in preparation for your  
16 testimony, did you prepare any materials that you'd like to  
17 incorporate into your testimony?

18 A. Well, I have the technical memorandum which I  
19 believe you just discussed.

20 Q. How about a PowerPoint presentation?

21 A. And a PowerPoint presentation. And in the  
22 PowerPoint presentation I have an outline of topics. The  
23 PowerPoint presentation also, for convenience, includes the  
24 tables and illustrations that are in my technical memo. So  
25 hopefully we can concentrate on that.

1 Q. Mr. Finch, I think we've established your  
2 familiarity with this area, but have we -- have you had an  
3 opportunity to study or at the very least, look over the  
4 different applications for permits to drill to familiarize  
5 yourself with their locations?

6 A. What I did in preparation of my testimony was I  
7 looked at the four permits and six applications. And I looked  
8 at the information I had available for the area of where these  
9 permits and applications are located, both from the surface  
10 water and groundwater perspective. And then I formulated my  
11 opinions from that existing information. I did not make a site  
12 visit.

13 Q. Now, if you don't mind, maybe we could go ahead  
14 and get into your PowerPoint presentation.

15 A. Okay.

16 Q. Now, what can you tell us about this slide,  
17 Mr. Finch?

18 A. For convenience, and probably to help me keep it  
19 more organized, I have outlined the things that I am prepared  
20 to talk about that I thought were important for my testimony  
21 and that relate to the surface water resources of the region.

22 And then I want to talk about the location of the  
23 proposed and permitted wells to those surface water features.  
24 I have some general description of water groundwater resources  
25 of the region.

1 I want to talk about some of the proposed oil well  
2 drilling methods and construction that were to the permits  
3 themselves.

4 And then there's some significant things that are in  
5 the Rio Chama Regional Water Plan that was adopted by the  
6 Interstate Stream Commission that I have put forth as evidence  
7 and the basis for some of my opinions.

8 And then it says "Conclusions," which are basically  
9 my expert opinions.

10 Q. Now, what can you tell us about this map?

11 A. This is a general map of precipitation for the  
12 State of New Mexico. And you can see for the most part the  
13 yellow, orange, and red as very low precipitation and there's a  
14 few little splotches of -- what would you call it? Going from  
15 blue to the purple color which are the higher mountains and  
16 where precipitation occurs in a few spots within the state.

17 Now, the significance of those few little dots of  
18 high precipitation in the high elevations is that's where most  
19 of our stream flow is generated for the State of New Mexico.  
20 The southern San Juan Mountains in Rio Arriba County have one  
21 little area, and that's our area of interest in the north  
22 central part of that map at the top.

23 Q. Based upon this map, are you able to give us an  
24 estimation of what the average annual precipitation is in the  
25 areas affected by these proposed oil wells?

1           A. I've got another map from the Region Water Plan  
2 that zooms in on this area of interest of what we're talking in  
3 the Rio Chama Watershed.

4           Q. Okay.

5           A. This map is out of the Rio Chama Regional Water  
6 Plan and it's also a precipitation contour map. And these  
7 green and dark green colors are higher precipitation in the  
8 range from, oh -- it's over 20. I think it's 23 to 38 inches  
9 per year. Up in the corner here is a little location map so  
10 you can see where you are. The little blue dot in that  
11 location map represents the Rio Chama Watershed as well as the  
12 dotted outline on the map itself.

13           Q. Now, let me ask you a question: Are the affected  
14 areas in that dot?

15           A. The proposed permits -- the well permits and the  
16 proposed -- or applications are in the area of that circle  
17 there, the red circle. And I believe there's a little faint  
18 line. This faint line going through the red circle is the, I  
19 guess what you're calling TA Creek or -- that tributary to the  
20 Rio Chama.

21           Q. For the record, then, could you tell us what some  
22 of the different colors mean according to the average annual  
23 precipitation?

24           A. The lighter -- they're labeled. The lighter blue  
25 colors represent different rates of precipitation that occur

1 throughout the year. And so you can see there's a contour line  
2 surrounding each color scheme going from 12 inches all the way  
3 up to 38 inches.

4 Q. Now, in terms of the area inside the red dot,  
5 what is the average annual precipitation in those areas? What  
6 is the range of average annual precipitation?

7 A. On the western edge it looks like it could be as  
8 low as 18 inches and then as high as -- definitely over  
9 30 inches to the eastern edge.

10 Q. How does that compare, then, to the average  
11 annual precipitation for New Mexico?

12 A. That's extremely high. And like I said, that's  
13 what generates most of our stream flow within the state, other  
14 than the water that comes in from other states.

15 Q. What slide number is this?

16 A. This is, I believe, No. 41. One other thing I  
17 need to point out here, if that's all right, this dark black  
18 line coming straight through the middle of the watershed is the  
19 Rio Chama. And you can see west of that line it's pretty much  
20 the same color blue. It's a lighter blue color. There's not  
21 much precipitation. I think it's 14 to 16 inches per year.  
22 And you also don't see many streams or tributaries coming into  
23 the Rio Chama.

24 These faint lines that flow into that segment of the  
25 Rio Chama are all the tributaries being the Brazos, TA Creek

1 and the others. That's what's coming off this big blob of  
2 precipitation where it's green.

3 So, you know, that's the evidence of how the streams  
4 flow, where it's coming from from that area in the headwaters  
5 of those mountains.

6 Q. Now, what you're saying, Mr. Finch, then, is that  
7 the majority of the tributaries to the Rio Chama flow from east  
8 to west?

9 A. To the Rio Chama. And on the west side of the  
10 Rio Chama, it generates very little stream flow.

11 Q. Now, are you familiar with the oil and gas  
12 drilling actives that take place on the western portion of Rio  
13 Arriba County?

14 A. Yes. I've done quite a bit of work for the  
15 Jicarilla Apache Nation with regards to that.

16 Q. Is there anything else about this slide that you  
17 would care to share with us?

18 A. No, that's all.

19 Q. Now, Slide No. 5. What can you tell us about  
20 this slide?

21 A. This is a table that I prepared. I took it right  
22 out of the New Mexico Water Quality Control Commission stream  
23 standards, and for this segment of the Rio Chama from  
24 approximately El Vado Lake up to Colorado, which includes the  
25 area that we're interested in and all the tributaries.

1           And the significance of this -- I mean, these aren't  
2 all the constituents in those standards, but there are several  
3 designated uses such as the high quality cold water fishery,  
4 domestic water supply, and wildlife habitat that have very  
5 strong standards for streams and that is to protect the good  
6 quality of water that's already there. That's the main purpose  
7 of this slide. And you can see, for instance, the standard for  
8 turbidity is less than 10 units.

9           Q. Now, when you say less than 10 units, can you  
10 elaborate on that for the record?

11          A. Yeah. There's the -- down there at the bottom of  
12 the table is a description of what those units are. I have a  
13 hard time pronouncing that word, so I encourage others to read  
14 them, so -- but that's the standard unit that turbidity is  
15 measured in.

16          Q. And, of course, you've already stated that  
17 this -- these standards are applicable to the Tierra Amarilla  
18 Creek?

19          A. That's right. For the whole watershed area that  
20 we're talking about.

21          Q. Now, Slide No. 6. Did you prepare this map?

22          A. I did. I prepared it with the assistance of my  
23 staff. And what it is, it's a topographic map that encompasses  
24 all of the permits and the applications. There's four permits  
25 and six applications. And the permits are little yellow dots.

1 And applications, I believe, are triangles, and that's what  
2 distinguishes the two.

3 Q. How did you locate these permits and applications  
4 on the map?

5 A. I took the -- fortunately, took the latitude and  
6 longitude directly off the permits and applications -- or the  
7 permit or the application, whichever was available.

8 Q. Now, what does this map tell you about the  
9 locations of these permits and applications?

10 A. It gives me a general idea of where the wells are  
11 sited with respect to surface water features. And then once I  
12 have it -- you know, these are all geo-referenced so then I can  
13 compare them to other images and maps to do my analysis.

14 Q. I think this is -- can you explain to us, then,  
15 basically the general flow of water from -- it appears to me  
16 that it flows up from the upper right-hand corner.

17 A. It does. Over in the northwest corner of the map  
18 is --

19 Q. Would you mind using the pointer?

20 A. Sure. Tierra Amarilla is here. And then you go  
21 up -- is it Highway 84? Is that correct? Oh, 64. I get them  
22 mixed up. You go up TA Creek drainage. This is one watershed.  
23 And then you get towards the top right here, and I didn't put a  
24 watershed on there, but most all this area drains into the TA  
25 Creek.

1 Q. Maybe you could show us with your pointer in  
2 which direction.

3 A. Well, it comes from -- like, for instance, from  
4 the bottom of the map, it flows to the north into the creek.  
5 And from the top up here, it flows generally south. Some of  
6 these flow east or west to the creek. All the general flow is  
7 east to west.

8 Q. Is it right, then, that all of these locations  
9 for these maps where these applications of permits have been  
10 placed received water flow directly towards them?

11 A. Yes.

12 Q. Would that be accurate to say?

13 A. Not all of them. Some of them are -- I believe  
14 down there, the Sultemeier location, Hinkle and the Leo Valdez  
15 are in a separate watershed from the TA Creek.

16 Q. Are you familiar with the watershed that those  
17 applications are part of?

18 A. It's the general, you know, regional Rio Chama  
19 Watershed, but not specific drainages. I didn't get into any  
20 details of each little drainage. Some of them are unnamed.

21 Q. Maybe then you could indicate to the Hearing  
22 Examiner which of these applications, then, seem to have water  
23 flow towards them.

24 A. Well, they all do in the springtime. That's one  
25 of the key points, is that there's snow melt runoff and sheet

1 flow. So it'll be water flowing over the lands during the  
2 spring.

3 Q. Maybe you could explain to us, what is sheet  
4 flow?

5 A. Sheet flow is when the ground is fully saturated,  
6 it can't filtrate -- the surface water can't filtrate so it  
7 runs off all at once. In areas where the land surface gradient  
8 is not steep and there's no channels for it to concentrate in,  
9 it'll run off as if it's covering like a sheet.

10 Q. Would it be safe to say, then, that the ground is  
11 a sponge that's reached the saturation so that the excess water  
12 just rolls off it then?

13 A. Yeah. I think there's some geologic slides that  
14 I would like to -- when we get down the road, I'd like to kind  
15 of point that out, how the geology plays a role in the surface  
16 water.

17 Q. Is there anything else about this slide that  
18 you'd care to share with the Hearing Examiner?

19 A. No. I think that's a pretty basic location map.

20 Q. Now, this slide is labeled Table 3, Summary of  
21 Approach Operating, LLC, Well Permit Information. What can you  
22 tell us about this slide?

23 A. Okay. I took the information right directly off  
24 the -- these are just for the four permits. And then you see  
25 the column to the left has the well API number, and then the

1 name of the well, the elevation, and then the depth of water,  
2 distance to nearest fresh water, and distance to nearest  
3 surface water. These are all things that I obtained from each  
4 individual permit. That's what was put on the permit.

5 And the reason why I did that is I wanted a summary  
6 of the information provided on the permit and then I wanted to  
7 check it with my maps and information I had available to see if  
8 it was correct.

9 Q. Did you do that?

10 A. I did.

11 Q. And what did that indicate?

12 A. I think what it shows is that they were very  
13 general. You see a lot of greater thans, greater than 100 for  
14 depth to water. There was one note of maybe 83 feet, greater  
15 than 1,000 feet to the nearest freshwater well, and then the  
16 distance to nearest surface water, you know, generally --  
17 there's a few that are greater than 200 and two that are  
18 greater than 1,000.

19 Q. Now --

20 A. I found those surface water distances to be  
21 incorrect. And then the distance to the nearest freshwater  
22 well is very difficult to determine. And I believe the  
23 testimony of Ms. Sultemeier kind of hit on that topic.

24 Q. In what way? Let's --

25 A. There's a lot of the well -- let me back up.

1 That land has been inhabited for a long time. I mean,  
2 everybody is aware of that. There are a lot of wells in the  
3 area that were drilled before the basin was declared by the  
4 State Engineer, so they have no permit numbers. There are no  
5 records of these wells. So the distance to the nearest  
6 freshwater well is, I think, really difficult to determine  
7 without doing a site-specific survey. That's what I was  
8 getting at with that.

9 Q. Okay. So are you saying, then, that  
10 Ms. Sultemeier's well is pre-State Engineer?

11 A. It very well could be. And it could have water  
12 rights attached to it that have not been declared yet.

13 Q. And what would that mean? What's the  
14 significance of that?

15 A. Well, that's a value to the land. And -- I mean,  
16 to me, the water rights -- that whole area has been adjudicated  
17 and water rights -- there are no new appropriations for water,  
18 so you can only deal with what's been given out. And  
19 additional rights are worth quite a bit of money.

20 Q. So Ms. Sultemeier, she could have the potential  
21 for new water rights?

22 A. She could have --

23 MR. HALL: I object. Calls for speculation if she  
24 has water rights.

25 MR. BROOKS: Sustained.

1 Q. (By Mr. A. Trujillo): Steve, in terms of your  
2 examination of the distance to surface water, you indicated  
3 that you found those to be incorrect. Can you be more specific  
4 as to which API numbers were incorrect?

5 A. Yeah. There's two things. There's the distance  
6 to nearest surface water.

7 Q. Let's start with that.

8 A. Let me go through this real quick.

9 Q. Sure.

10 A. There are three things on there: Depth of water  
11 that was deemed from the permit; the distance to the nearest  
12 freshwater well, which I touched on; and the distances to the  
13 nearest surface water. Now, from maps and stuff, you can get  
14 an idea of what the distance is to the nearest surface water,  
15 especially with the wonderful imagery we have available today,  
16 you know, the Google Earth and all that kind of stuff.

17 Q. Right.

18 A. It's difficult to determine what the distance is  
19 to the nearest freshwater well, as I explained previously. And  
20 the same thing for depth to water. Without doing a site  
21 investigation, there's no way to determine what depth to water  
22 is, which I think -- and we will discuss later -- has an  
23 important bearing on how the Pit Rule was implemented.

24 To me what this is calling out for is a siting  
25 evaluation for well permits. And -- because you can only guess

1 at what's there without any site-specific data.

2 Q. Okay. Now, I'm going to ask that question again,  
3 because I want to know which of these applications seem to be  
4 incorrect in terms of distance to the nearest surface water?

5 A. Okay.

6 Q. Is there a better slide that would show that?

7 A. There's a better slide. Let's go to the  
8 Woolley --

9 Q. Actually, Mr. Finch, if I could ask one more  
10 follow-up question then: So as I understand it, the depth to  
11 water on the permit, the distance to the nearest freshwater  
12 well, and the distance to the nearest surface water well all  
13 seem to be very general in nature; is that right?

14 A. Yes.

15 Q. Now, would that lead you to believe that there  
16 was no hydrological study, evaluation, inspection of any kind  
17 done before these applications were submitted?

18 A. Based on what's put on the permits?

19 Q. Just what's on there.

20 A. That's what leads me to believe that there wasn't  
21 any type of well siting or hydrological evaluation for siting  
22 these wells.

23 Q. Okay. Now, Steve, I see a Figure 2 aerial  
24 photograph showing the Woolley Family LP No. 2 well permit  
25 location. It looks like it's located off of Highway 64. Did

1 you produce this? Is this a photograph?

2 A. This is. This is one of those Google Earth  
3 images that I pulled up and then we geo-referenced the image  
4 and put the location of where the well is supposed to be on the  
5 permit.

6 Q. Now, what elevation is that well, if you know?

7 A. Well -- it's approximately 10,000 feet. And from  
8 this image, it's hard to, you know, pull out the details  
9 without looking at it up close and all that. But there's a  
10 couple of things I would like to point out.

11 You may be able to see, if I can remember exactly  
12 where they are, but all these -- there's actually surface water  
13 shown right there. That's a pond.

14 Q. Okay. I'm sorry --

15 A. Right above the well right off of Highway 64 to  
16 the north of the circle and below the label, there is a body of  
17 water. And you'll see a lot of these clearings that don't have  
18 trees throughout this area. This is high alpine area where the  
19 headwaters of the TA Creek and Rio Chama are. And these are  
20 basically wetlands.

21 This imagine was obviously after all the snow had  
22 melted. I don't have the exact month. I believe it's a 2003  
23 image. But what this -- this is also a similar setting to that  
24 Rancho Lobo case that we were talking about earlier where this  
25 ground stays fully saturated and it slowly -- it becomes

1 surface water then subsides into the ground. So the depth of  
2 water in this type of setting based on other similar sites in  
3 the area is typically from 0 to 25 feet.

4 Q. Do you recall offhand or can we click back to the  
5 next slide to find out what the applicant claims is depth to  
6 water in this location?

7 A. Oh, it was greater than 100.

8 Q. Now, it seems to me that if my eyes don't fail  
9 me, that right where the dot is there appears to be a clearing  
10 there as well.

11 A. There is. The dot is in a clearing.

12 Q. Is that a wetland?

13 A. I'm not a biological expert, but based on  
14 hydrology, it appears to be a wetland to me, which raises  
15 another point. I'm not quite sure what the full details of the  
16 permitting process are for wells issued by the OCD, but it  
17 seems like any development in a wetland or a water course will  
18 require a separate permit from the Army Corps of Engineers,  
19 which is usually called a 404 Permit. And I didn't see  
20 anything --

21 MR. HALL: I'm going to object and ask that his  
22 testimony be stricken. He indicated earlier he wasn't familiar  
23 with the subject matter to which he's testifying.

24 MR. A. TRUJILLO: I think that any witness who has an  
25 opinion regarding something and the knowledge that they have

1 acquired is competent to at least inform this Hearing Examiner  
2 of that knowledge. Whether or not this Hearing Examiner choses  
3 to belief that testimony or give it its proper weight is  
4 another matter. But to have it stricken from the record is  
5 extremely improper.

6 MR. HALL: The question called for factual testimony  
7 about his knowledge of the permitting process that he said he  
8 didn't know.

9 MR. BROOKS: I'm going to sustain the objection. It  
10 is a question of law and it's not established that he has any  
11 expertise in that particular area, so I will sustain the  
12 objection.

13 Q. (By Mr. A. Trujillo): Now, Mr. Finch, I want to  
14 talk to you about these wetlands, then. If you look at the  
15 bottom left-hand corner of the Figure 2, there appears to be a  
16 scale there. Can you give us an estimation of what the  
17 distance is from the nearest pond?

18 A. Well, the nearest --

19 Q. Is it --

20 A. It's less than 500 feet. But all those open  
21 areas are ponded in the springtime, so it would be in a pond.  
22 It's not -- those don't show the pond right after snow melt.  
23 But that -- all those open areas have ponded water. That's why  
24 they're called wetlands.

25 Q. Now, is this a slide that might indicate what

1 your discovery was of the discrepancy between Approach's  
2 application in terms of distance to surface water? Or is there  
3 another slide?

4 A. I have one more, but it doesn't -- it's the same  
5 thing, but for the other location. If you want, we can go to  
6 that.

7 Q. Okay. Now, this, I believe, says Figure 3 aerial  
8 photograph showing Sultemeier No. 1, Sena No. 1, and Sena No. 2  
9 permit locations. Did you prepare this slide?

10 A. I did.

11 Q. Now, what can you tell us, then, about this  
12 slide?

13 A. Well, I found -- what really struck my  
14 attention -- got my attention -- was the Sena No. 2 and the  
15 Sultemeier No. 1 are right in the bottom of drainages.

16 Q. Can you explain that a little more?

17 A. Well, you can see on the Sena No. 2 that there's  
18 a drainage pattern right through the well site. And that well  
19 is right there in that drainage. And we saw testimony on the  
20 Sultemeier No. 1. It's down in the bottom of where that box  
21 canyon is.

22 Q. Could you point that out again?

23 A. That's labeled as Sultemeier No. 1 in the lower  
24 left-hand corner of the map.

25 Q. Could you trace the drainage for us, maybe tell

1 us where you --

2 A. Yeah, this drainage --

3 Q. Where does it begin?

4 A. It begins way up here close to Highway 64.

5 There's a ridge, and all this drains down to the south past the  
6 well site and comes out to Highway 84. And that's the drainage  
7 for the Sultemeier No. 1 which has that box canyon.

8 Q. Now, Mr. Finch, I see there's another scale in  
9 the bottom left-hand corner. If you could tell us the from the  
10 top of that drainage to the Sultemeier well, can you estimate  
11 for us what kind of a drop that is or what the distance is  
12 there?

13 A. It's going to be -- you know, that's kind of a --  
14 it's much closer than what's on the permit. We're talking  
15 about less than 100 feet. And it's hard to determine from that  
16 scale.

17 Q. Maybe you didn't understand my question. I'm  
18 curious to know from the top of that drainage how far you think  
19 it is?

20 A. From this drainage down to the -- oh, I got you.  
21 I thought you meant from the well point to the actual -- where  
22 the drainage was. I see what you mean, yeah. That's  
23 different.

24 I'd say that's almost a mile long. From the top of  
25 this drainage down to the bottom that contains the Sultemeier

1 No. 1 well location.

2 Q. Now, is there anything else you'd like to share  
3 with us regarding this slide?

4 A. No. I think that's the general features. Well,  
5 let's see. There's one other thing. You know, you can see  
6 down gradient of all these, the Sena No. 1, Sena No. 2.  
7 There's irrigated lands. There's acequia systems in there as  
8 was testified to earlier. Over by the Sultemeier No. 1,  
9 there's that well that was discovered. There's out -- this box  
10 canyon opens up into a meadow where all that water flows out  
11 into. So these are all what you would call maybe -- if there  
12 was a contamination release at the well location, it would end  
13 up in these fields where there's agriculture and where people  
14 are using the land for things that relate to water.

15 Q. Well, what about just even a well pad's effect on  
16 that drainage? Is there --

17 A. A well pad -- I mean, depending how many you  
18 have -- for instance, if this became a viable oil and gas field  
19 and you went a 40-acre spacing, then you really start to  
20 compound the effects of well pads on the disruption of the  
21 hydrologic system. And not only from a quantity standpoint,  
22 but from erosion which leads to water quality. So you could  
23 reduce flows, surface water flows. You could create water  
24 quality impacts that weren't there before.

25 Q. Anything else in this slide?

1 A. No, that's it.

2 Q. Now, this slide is titled Ground Water Resources.  
3 It appears to be another map. Could you just walk us through  
4 what this map depicts?

5 A. I apologize for not having much more than a scale  
6 and a north arrow, but this map was taken from the New Mexico  
7 Bureau of Geology's state geologic map. And I did throw the  
8 well locations on here.

9 Q. Okay.

10 A. You can see them where they are labeled.  
11 Highway 64 is not very well -- it's not appropriately drawn on  
12 this map. That's why it looks different than the others. It's  
13 because this is a state geologic map. It's fairly crude.

14 But I wanted to point out what these different  
15 geologic units are and what they mean as far as groundwater  
16 resources and how that affects surface water. This Q well --  
17 which is basically QLEC -- it's like a light-patterned -- it's  
18 on top of the mountains. That's like a quaternary deposit that  
19 essentially acts as a sponge and a storage reservoir. So it  
20 will absorb water from snow melt and then after the snow melt,  
21 it releases water and that's what keeps the TA Creek perennial.  
22 You know, you have this as essentially like a storage reservoir  
23 throughout the rest of the year.

24 The green -- this green color here that's  
25 predominately in the western and southwestern portion of the

1 map, that's the Mancos Shale. The Mancos Shale pretty much  
2 impedes water. It doesn't filtrate surface water very well.  
3 So that's what also helps maintain stream flow through this  
4 area. So you have a high potential for runoff in this green  
5 area because of the shaley component to the underlying ground.

6 Not shown on here along the stream bed is a  
7 quaternary deposit and, as a matter of fact, in most of the  
8 tributaries and the small streams and arroyos, those alluvial  
9 deposits over most of the shallow wells obtain their  
10 groundwater supply from them. Now, those alluvial depositions  
11 are very sensitive to surface water quality impacts because  
12 they are recharged from the surface water readily year round.

13 Q. And could you just for my own -- could you do  
14 that again for where those formations are?

15 A. Oh, they follow the -- not what's shown here.  
16 They follow the creeks and the drainages we showed on the other  
17 map.

18 Q. Now, what was the name of that formation?

19 A. It's just alluvial sediments. The other thing  
20 is, there are wells in the region that produce from the Mancos  
21 Shale and the underlying Dakota Formation. So these are the  
22 same formations that are being targeted for oil and gas  
23 production. There is fresh water in some of those sand lenses  
24 that are being produced for water supply.

25 Q. What you're saying is that some wells are

1 actually --

2 A. Yeah. I'll show an example of some of those.

3 Q. Now, what can you tell us, then, about -- right  
4 in the middle of the slide, there's a geographic formation that  
5 has the acronym Kls. Now, on the bottom left-hand corner of  
6 it, there appears to be a formation that has some stripes  
7 across it.

8 A. Yeah. That's the Mesaverde. It's for Kmvs. K  
9 stands for Cretaceous. That's the age of the rocks. And the  
10 other -- like MV stands for the name of the formation, which is  
11 the Mesaverde. And this is the Lewis Shale. And so these, the  
12 Lewis Shale and the Mesaverde are younger than the Mancos  
13 Shale. That's why they look like they're stacked on top like  
14 pancakes.

15 Q. And the Mesaverde is shale as well?

16 A. They are sandstone in the Mesaverde as well as  
17 the Mancos Shale. So it's inner-bedded rocks. I have another  
18 slide that will show the cross-sectional profile of these  
19 rocks.

20 Q. Okay.

21 A. This is taken right out of the Rio Chama Regional  
22 Water Plan, and I apologize for the scale of it. I couldn't  
23 make it any bigger without it going off the map. But you can  
24 see all this green is -- this big thick green section is the  
25 Mancos Shale. And then there is a stipple pattern underneath

1 it that is the Dakota Sandstone. And between the Dakota  
2 Sandstone and the Mancos Shale is that Graneros Formation, and  
3 the Graneros is what they are targeting for oil and gas.

4 Q. Who?

5 A. That's what's put on the oil and gas drilling  
6 permits. And an important feature here, this cross section,  
7 you know, there's a hard-to-read scale on the depth or  
8 elevation of the slices through the earth, but this is from  
9 east to west and these rocks are dipping to the west. And  
10 groundwater flows down dips in those sandstone beds. And there  
11 are cases where some of those sandstone beds have a high  
12 pressure because they're recharged up high in the mountains and  
13 when you drill into them, they will artesian. And the reason  
14 why I'm mentioning this is because the State Engineer has  
15 special requirements for completion of artesian wells to  
16 prevent upward leaking of water through the casing and whatnot.

17 Q. Can you use the pointer again to indicate where  
18 you think that there might be a possibility for some artesian,  
19 an artesian phenomenon?

20 A. Yeah. This is the top of the mountain up there.  
21 in this area.

22 Q. The top of the mountain --

23 A. Say, the upper headwaters of the TA Creek or  
24 something. And as you go down dip in low spots, you can maybe  
25 get artesian water by drilling down into those sandstones.

1 Q. Now, what would be -- maybe you could walk us  
2 through what a typical artesian phenomenon might sort of --

3 A. It probably -- if it's all right, I can talk  
4 about that when we talk about the proposed well completion for  
5 the oil and gas wells.

6 Q. Sure.

7 A. Just wanting to kind of lay the foundation for  
8 the artesian waters.

9 Q. Okay. This slide is titled Summary of Water  
10 Supply Well Depth and Water Levels.

11

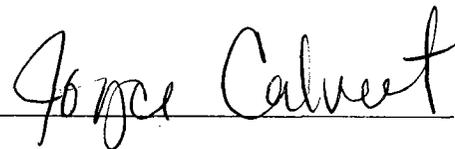
1 REPORTER'S CERTIFICATE

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I, JOYCE D. CALVERT, Provisional Court Reporter for the State of New Mexico, do hereby certify that I reported the foregoing proceedings in stenographic shorthand and that the foregoing pages are a true and correct transcript of those proceedings and was reduced to printed form under my direct supervision.

I FURTHER CERTIFY that I am neither employed by nor related to any of the parties or attorneys in this case and that I have no interest in the final disposition of this proceeding.

Signed this 23rd day of June, 2008.



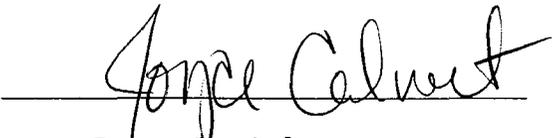
JOYCE D. CALVERT  
New Mexico P-03  
License Expires: 7/31/08

1 STATE OF NEW MEXICO )  
2 COUNTY OF BERNALILLO )

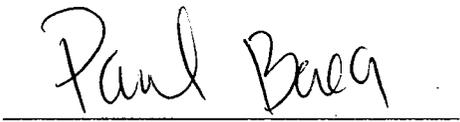
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I, JOYCE D. CALVERT, a New Mexico Provisional Reporter, working under the direction and direct supervision of Paul Baca, New Mexico CCR License Number 112, hereby certify that I reported the attached proceedings; that pages numbered 1-234 inclusive, are a true and correct transcript of my stenographic notes. On the date I reported these proceedings, I was the holder of Provisional License Number P-03.

Dated at Albuquerque, New Mexico, 23rd day of June, 2008.



Joyce D. Calvert  
Provisional License #P-03  
License Expires: 7/31/08



Paul Baca, RPR  
Certified Court Reporter #112  
License Expires: 12/31/08