

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

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

CASE NO. 14134

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

CASE NO. 14141

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

CASE NO. 14278

**INTERVENOR RICE FAMILY LIVING TRUST'S
SUGGESTION OF JURISDICTIONAL IMPEDIMENT**

Intervenor Rice Family Living Trust (the "Trust") hereby respectfully suggests to the Oil Conservation Commission ("Commssion") that it lacks subject matter jurisdiction to act in this case at this time because Applicant Approach Operating, LLC ("Approach") has failed to provide personal notice of this proceeding to parties whose interests may be adversely affected by

Commission actions.

It is now well settled under New Mexico law that the Oil Conservation Division and the Commission do not have subject matter jurisdiction to act in adjudicatory proceedings unless and until all parties whose interests are affected in the adjudication have been provided with personal notice of the pendency of the adjudication, and given an opportunity to participate in the adjudication. Johnson v. New Mexico Oil Conservation Commission, 127 N.M. 120 (1999), Uhden v. New Mexico Oil Conservation Commission, 112 N.M. 528 (1991). Whether the requirements of procedural due process are founded on the United States and the New Mexico constitutions or on statutory and regulatory requirements, the result is the same: any action taken by the Division or the Commission in the context of an adjudication is void unless all parties potentially affected by the adjudication have been provided with personal notice. See Johnson, 127 N.M. at 127; Uhden, 112 N.M. at 531, see also Martinez v. Maggiore, 133 N.M. 472 (2002), Eldorado at Santa Fe v. Cook, 113 N.M. 33 (1991).

In this case, the Commission is requested to take action that will have a direct affect on (1) the rights of surface owners where Approach proposes to locate its wells and (2) the rights of other interested and affected parties to assure that surface water quality, groundwater quality, human health, and the environment are not adversely affected by the decision. Under these circumstances, the adversely affected parties are entitled – by the United States and New Mexico constitutions and by the New Mexico Oil and Gas Act and its implementing regulations – to personal notice of this adjudication. Nonetheless, Approach has not provided any such personal notice. Under such circumstances, the Commission does not have the jurisdiction to take action in these consolidated cases.

The Trust respectfully requests that it be given an opportunity to fully brief the jurisdictional issue raised herein, and that the Commission hold a hearing on its jurisdiction to act in this case at the regularly scheduled Commission meeting of December 16, 2009.

Respectfully submitted,

 /s/ Steven Sugarman
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Attorney for Proposed-Intervenor Rice Family
Living Trust

I hereby certify that a true and correct copy of the foregoing was sent by e-mail to Ms. Cheryl Bada (attorney for the Commission) at cbada@state.nm.us, by e-mail to Mr. J. Scott Hall (attorney for the Applicant) at shall@montand.com and, by e-mail to Mr. Adan Trujillo (attorney for Rio Arriba County) at adantrujillo@gmail.com on this 5th day of October, 2009.

 /s/ Steven Sugarman
Steven Sugarman