

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

**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**

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

CASES 14134, 14141

PRE-HEARING STATEMENT

COMES NOW, the Board of County Commissioners of Rio Arriba County, ("County"), by and through the undersigned attorneys, and for its Pre-Hearing Statement pursuant to NMAC 19.15.14.1211, states as follows:

A. The Names of the Party and the Party's Attorney

1. The Party Seeking Cancellation or Suspension of the above-referenced Applications for Permits to Drill (APDs) is the Board of County Commissioners of Rio Arriba County (the "County").

2. The County's undersigned Attorneys are Ted J. Trujillo and Adan E. Trujillo, 622 Paseo de Onate, Suite C, P.O. Box 2185, Espanola, NM 87532; telephone (505) 753-5150, fax (505) 753-4750.

B. Concise Statement of the Case

The applicant, Approach Operating LLC, ("Approach") filed its first set of four applications (APDs) on August 29, 2007, September 24, 2007 and October 11, 2007 on properties belonging to the following individuals:

Avella Sultemeier - API # 30-039-30342

John Sena - API # 30-039-30386

- API # 30-039-30394

Woolley Family LLP - API # 30-039-30397

The APD on the Woolley property is located at an elevation of approximately 9921.98 feet on the head waters of the Tierra Amarilla Creek, also known historically as the "Las Nutritas". This APD was approved on October 18, 2007 by the Deputy Oil & Gas Inspector of District #3 OCD field office.

The two APDs on the Sena property are located at elevations of 7955.78 feet and 7,823.36 feet, approximately 4 miles downstream on the Tierra Amarilla Creek from the Woolley property in close proximity to Highway 64. These APD were approved on October 18, 2007 by the Deputy Oil & Gas Inspector of District #3 OCD field office.

The APD on the Sultemeier property is located at an elevation of 7,590.73 off Highway 84, south of Tierra Amarilla and has had a well pad of about 2.0 acres constructed on it. This APD was approved on September 4, 2007 by the Deputy Oil & Gas Inspector of District #3 OCD field office.

A second set of six APDs was filed by Approach on April 23, 2008 on properties belonging to the following individuals:

Benjamin Trujillo

Avella Sultemeier

Rosemary Roller

Lco Valdez

Cloyd Hinkle

Anthony Garcia

The APDs on the properties of Anthony Garcia and Benjamin Trujillo are located on or near the Tierra Amarilla Creek, and the other four applications are located in close proximity to U.S. 84, south of Tierra Amarilla.

All six of these applications are pending approval of the OCD.

On April 17, 2008 the County filed a protest to cancel or suspend the first set of four applications, Hearing No. 14134, on the statutory grounds of preventing waste, violating correlative rights, and as not protective of human health and the environment. In May, 2008 the OCD consolidated the first set of four approved applications with the second set of six APDs pending approval with the consent of the parties.

The County's grounds for protesting the second set is also on the statutory grounds of preventing waste, violating correlative rights, and as not being protective of human health and the environment. The County seeks to stay the issuance of the second set of six applications on these statutory grounds.

Site visits to the proposed ten well sites disclosed several potential problems with the proposed siting or location of the well sites which would threatened the quantity and quality of the water resources in one of New Mexico's most important and productive watersheds.

C. County's Position Opposing Issuance of Applications

The County opposes the issuance of the applications both on substantive and procedural grounds. First, on April 24, 2008 the County imposed a moratorium of 120 days on any new drilling of oil and gas wells in the county in order to provide it with an opportunity to develop an ordinance which will more adequately protect its other natural resources in the context of new drilling, especially water quality issues. The County's ordinance will provide standards or requirements which among other resources will protect its water resources in the context of drilling. These standards or requirements will address areas that are not covered by the OCD rules and regulations, and the ordinance should be allowed to be implemented before the OCD makes a determination on the 10 APDS in order to meet its statutory duties under the water quality standards of New Mexico.

Second, the applications as approved and as requested raise obvious problems with the siting and set-backs of the wells which will likely be corrected by the county ordinance. The OCD regulations do not offer sufficient guidance to address each of these well applications in their approved and proposed locations near water courses or in critical habitat.

Third, the County's moratorium has been challenged by Approach in federal court and this Court should be allowed to decide the dispositive motions which will be filed on or before July 1, 2008, before the OCD decides on these applications.

See Approach Oil & Gas, Inc. and Approach Operating LLC. v. Board of County Commissioners of the County of Rio Arriba, No. CIV 08-464 KBM/WDS.

D. Names of the Fact Witnesses and Expert Witnesses and Fields of Expertise

1. Steven T. Finch, M.S. Mr. Finch is a hydrologist for John Shomaker and Associates. Mr. Finch's area of expertise is hydrology.

2. Terence Boyle, Ph.D. Mr. Boyle's area of expertise is stream toxicology, ecology, environmental impact analysis, ecological risk assessments, water quality evaluation and assessments of environmental contaminants.

3. Patricio Garcia, Director of Planning and Zoning Department for County of Rio Arriba or Gabriel Boyle, Assistant Director of Planning and Zoning Department for County of Rio Arriba.

4. Bernadette Gonzales, Planning and Zoning Department Mapper

5. Don Schreiber

6. All landowners subject to OCD permits granted to Approach

7. All landowners subject to pending APD's from Approach

8. All witnesses identified by Approach Operating LLC

E. Approximate Time Needed to Present Case

The County anticipates that the better part of one day, if not more, will be required to present this case.

F. Identification of Any Procedural Matters to Be Resolved Before Hearing

In researching the issues to be heard by the OCD and in the USDC lawsuit the County has discovered that there is an issue regarding the ownership of the mineral estate in certain, if not all, of the 10 applications submitted by Approach. Based on its preliminary research findings, the County filed its answer to Approach's federal complaint and has denied that Approach is the owner of the mineral estate to the extent

alleged. The County now has a Motion for Continuance of the OCD matters in order to allow it to fully brief the ownership issues and file a dispositive motion on the ownership. This preliminary matter should be resolved before the hearing.

Respectfully submitted,

LAW OFFICES OF TED J. TRUJILLO


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Certificate of Service

I hereby certify that a true and correct copy of the foregoing was faxed to counsel of record on the 17th day of June, 2008 to J. Scott Hall, Montgomery & Andrews, P.A., P.O. Box 2307, Santa Fe, New Mexico 87504-2307.


Ted J. Trujillo