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Fax Cover

DATE: September 2, 2009

TIME: 6:45P

Send To: Oil Conservation Commission

Attention: Cheryl Bada

Fax Number: 505 476-3220

From: Adán E. Trujillo

Phone Number: 505 753-4751

Number of Pages, Including Cover: 8

☐ Urgent ☐ Reply ASAP ☐ Please Contact ☐ Please Review ☐ For Your Information

Comments:

Please see attached Response to Motion for Conditional Approval for Permits to Drill and for Dismissal

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TJT

P.O. Box 2185 Española, NM 87532

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

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

CASE NOS. 14134, 14141, 14278

**RESPONSE TO MOTION FOR CONDITIONAL
APPROVAL FOR PERMITS TO DRILL AND FOR DISMISSAL**

COMES NOW, the Board of County Commissioners of Rio Arriba County, (the "County"), by and through the undersigned attorneys, and in response to Approach Operating LLC's ("Approach") Motion for Conditional Approval of Applications for Permits to Drill and for Dismissal, states as follows:

1. The County opposes the granting of Approach's Motion for Conditional Approval of Applications for Permits to Drill and for Dismissal.
2. Approach's Motion does not state a basis for its approval other than that Approach is currently in the process of obtaining County approval for the above-referenced applications and that "potentially duplicative hearings" before the Commission and the County "should be avoided."
3. The County emphasizes that the mere potential for duplicative hearings is not an adequate basis for conditional approval of Approach's APDs, as well as dismissal of the County's timely protest of the afore-mentioned cases.
4. Approach's Motion indicates that conditional approval of its APDs and dismissal of the County's protest with the express provision that Approach comply with

the County's oil and gas ordinance would resolve any potential issues or concerns raised by the County in its protests.

5. Recent events have taken place in the County's review process of Approach's proposed well-sites that indicate Approach's position regarding its APDs contradicts its Motion.

6. On August 21, 2009 a site inspection between County officials, landowners and Approach took place on a number of Approach's proposed sites.

7. At one specific site, the County indicated to Approach its concerns with the particular site and asked Approach to propose alternative locations for the well-site. *See Affidavit of Patricio Garcia, attached.*

8. Ralph Manoushagian, Executive Vice President of Approach, stated to County officials that Approach intended to proceed with the placement of the well-site as proposed, and that OCD approval of the aforementioned site pre-dated enactment of Rio Arriba County Ordinance 2009-01, the County's regulation governing oil and gas activities within the County.

9. The County disagrees with Approach's position that proposed well-sites in the above-referenced case numbers predate the County's oil and gas ordinance and are therefore "grandfathered in". The County maintains that all of the well-sites proposed in the aforementioned case numbers are subject to its ordinance.

10. If Approach maintains this position, it will undermine the County authority or regulation, and dismissal by the Commission of the afore-mentioned case numbers would leave the County with no state regulatory mechanism to challenge the APDs.

11. Approach's position raises jurisdictional questions regarding authority and regulation over certain APDs in the aforementioned case numbers, and conditional approval and dismissal of the County's timely protest creates a situation wherein the County may be deprived of its administrative due process rights with regards to its protest of Approach's APDs with the Commission.

12. Additional concerns outside of the County's zoning and land use jurisdiction may exist, and said issues would be properly heard by the Commission in the hearing that is presently on the Commission's docket. Conditional approval of Approach's APDs and dismissal of the County's protest would deprive the County of the administrative remedy it has triggered with the Division for adjudicatory review of the APDs.

13. In its prayer for relief, Approach's Motion requests that the Commission enter an Order "authorizing the Division's District III office to approve the referenced Applications for Permits to Drill subject to the express condition in each case that the operator will comply with the County's oil and gas ordinance." Motion at 4-5.

14. Such an Order would bypass the Division's administrative review and approval process by declaring that the APDs as submitted shall be approved, subject only to an external condition that Approach comply with the County's ordinance. In such a scenario, the Commission would approve Approach's APDs without undergoing any administrative review of the permits that have been submitted.

15. Such a scenario is tantamount to substituting the County's review authority for the OCD's regulatory oversight, which is wholly inappropriate.

16. The County's oil and gas ordinance is a zoning and land use regulation that for the most part focuses on, but is not limited to, surface disturbance, reclamation, environmental impacts, nuisance, mitigation of visual impacts, setbacks, traffic, emergency preparedness and water quality. The OCD's regulatory oversight of oil and gas wells deals with additional technical issues including but not limited to drilling programs, well spacing, waste disposal, and "downhole" issues.

17. An Order from the Commission directing the Division to approve outright Approach's APDs would substitute the County's land use review for the OCD's and would bypass the OCD's administrative review of the APDs' technical proposals.

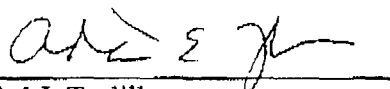
18. Approach is not prejudiced by the denial of its Motion.

19. The County is in receipt of Approach's Motion for Continuance filed on September 2, 2009 and concurs that said Motion should be granted, and that a hearing on Approach's Motion for Conditional Approval of Applications for Permits to Drill and for Dismissal should be held in lieu of the docketed hearing on the merits of the APDs, currently scheduled for September 9, 2009.

Wherefore, the County requests that Approach's Motion for Conditional Approval of Applications for Permits to Drill and for Dismissal be denied.

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 on the 2nd day of September, 2009 to J. Scott Hall, Montgomery & Andrews, P.A., P.O. Box 2307, Santa Fe, New Mexico 87504-2307, at fax number (505) 982-4289.


Adán E. Trujillo

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

**IN THE MATTER OF THE APPLICATION OF THE BOARD
OF COUNTY COMMISSIONERS OF RIO ARRIBA COUNTY
FOR CANCELLATION OR SUSPENSION OF APPLICATIONS
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OPERATING, LLC, RIO ARRIBA COUNTY, NEW MEXICO**

CASE NOS. 14134, 14141, 14278

AFFIDAVIT OF PATRICIO GARCIA

I, Patricio Garcia, Director of Community Development for the County of Rio Arriba, hereby state as follows:

1. On August 21, 2009, I attended a site inspection of proposed oil and gas well-sites on the property of the Sultemeier family with Approach Resources.
2. Also in attendance were Gabriel Boyle, Planning and Zoning Director for Rio Arriba County, Beth Sultemeier, land owner, Ms. Sultemeier's brother, and representatives from Approach Resources.
3. At the site inspection for the well-site termed "Sultemeier #1", I witnessed Gabriel Boyle state to the representatives from Approach that he had concerns with the particular site, and that alternative sites should be proposed.
4. I witnessed Ralph Manoushagian respond to Mr. Boyle that Approach intended to proceed with the site as proposed. Mr. Manoushagian also stated that this particular site had been permitted by the Oil Conservation Division prior to the County's ordinance.
5. My understanding of the conversation between Mr. Boyle and Mr. Manoushagian was that Approach Resources believed that prior approval by the OCD of

this particular site meant that the County could not require Approach to propose alternate sites.

FURTHER AFFIANT SAYETH NAUGHT.

Patricio Garcia

Patricio Garcia

Subscribed and sworn to before me this 2 day of September, 2009, by Patricio

Garcia, personally.

Patricio Garcia

NOTARY.

My Commission Expires: December 21, 2010