

STATE OF NEW MEXICO  
DEPARTMENT OF ENERGY, MINERALS AND NATURAL RESOURCES  
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

**RESPONSE TO PROPOSED INTERVENOR'S  
MOTION FOR AN ORDER REQUIRING PRODUCTION OF  
INFORMATION RELATING TO THE PENDING APPLICATIONS**

Approach Operating, LLC, ("Approach"), through its counsel, Montgomery and Andrews, P.A., (J. Scott Hall), for its response to the Motion for An Order Requiring Production of Information Relating to the Pending Applications, states:

Proposed Intervenor (Dwight E. Rice, Trustee, Rice Trust) has filed a motion in Case No. 14278 which seeks to have the Commission order Approach to produce information that "includes, but is not limited to" possible environmental impacts of operations. Proposed Intervenor wants the information for all wells for which APD's are pending, "both on an individual-well basis and on a landscape scale." The motion should be denied for the following reasons:

(1) The Motion is premature. The APD's for two alternate locations on the Rice Trust's surface have been withdrawn (Rice No. 1 and Rice No. 2 Wells). Once representatives from Approach, Rice Trust, and Rio Arriba County's Planning and Zoning Department have been able to convene an on-site meeting<sup>[1]</sup> to conduct a survey and select a well location, site-specific data gathering can begin and an APD for the Rice No. 3 Well will be submitted. This has not yet happened. It is expected this will occur over the next few months. Until then, there is no APD on the Rice Trust surface presently pending before the Division for approval.

(2) Substantially all that the Rice Trust is asking the Commission to order produced<sup>[2]</sup> will be assembled in connection with Approach's applications for special use permits to be submitted to Rio Arriba County pursuant to the County's recently implemented Oil and Gas Ordinance 2009-001.<sup>[3]</sup> The Rice Trust, through counsel, has also demanded such data be provided as a pre-condition to allowing Approach to conduct surveys and pre-application on-site meetings on its lease under the Surface Owners Protection Act ("SOPA") and under Ordinance 2009-001. Through counsel, Mr. Rice has been told that he will be provided with all such information relating to the Trust's surface that is required to be provided under SOPA, Ordinance 2009-001 and other applicable laws or regulations as such information becomes available. The Rice Trust's counsel has also been told that it cannot make supplying such information a pre-condition to the preliminary on-site planning visits as such a position would frustrate the operation of the County's ordinance.<sup>[4]</sup>

In addition, it should be noted that the accumulation of the very information the Rice Trust seeks has been delayed due to the Rice Trust's lack of cooperation with the efforts of Approach to propose locations and to schedule on-site visits. Over the last several months, Approach has attempted to solicit the surface owner's input on alternate locations, but without

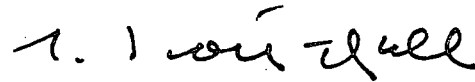
success. Approach has also proposed no fewer than seven dates to schedule on-site visits with Mr. Rice and Rio Arriba County Staff. These proposed dates were either rejected or received no response. Only recently, Rice Trust counsel has requested that the on-site visit be delayed to late October. That request is being accommodated, but further delay will necessarily result. As a consequence, it is expected that the information will not be gathered, processed and submitted until sometime in 2010.

With respect to Item D, this too is premature. This information is not presently available. It is not presently known what, if any, well stimulation or completion techniques will be used. Further, such information would be in the possession of the well servicing company. At such time as these matters are known, all disclosures will be made as required by law.

Respectfully submitted,

MONTGOMERY & ANDREWS, P.A.

By: \_\_\_\_\_



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<sup>[1]</sup> Rio Arriba County Oil and Gas Ordinance 2009-001, Sections 2.2 and 6.6.

<sup>[2]</sup> Items A and B. Item C: A lease boundary map has been provided, as well as topographic maps and area of review and setback inventory spreadsheets for the alternate locations.

<sup>[3]</sup> These items are addressed, *inter alia*, in the following sections of the Ordinance: Section 4.1-Exploration Permits; Section 5.1 and 5.4 -Development Permits; Section 6.17-Water Quality and Quantity; Section 6.18-Groundwater Monitoring; Section 6.19-Groundwater Sampling and Reporting; Section 8-1(A) through (O)-Special Use Permit Application Contents and Submittal.

<sup>[4]</sup> Ordinance 2009-001, Section 6.7.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was delivered to counsel of record on this 6<sup>th</sup> day of October, 2009 as follows:

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