

**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**

**MOTION FOR CONDITIONAL APPROVAL
OF APPLICATIONS FOR PERMITS TO DRILL
AND FOR DISMISSAL**

Approach Operating, LLC, ("Approach"), through its undersigned attorneys, Montgomery and Andrews, P.A., (J. Scott Hall) moves the Commission enter its order providing for the conditional approval of drilling permits and for the conditional dismissal of these proceedings. In support, Approach states:

These adjudicatory proceedings were initiated before the Oil Conservation Division by the Board of County Commissioners of Rio Arriba County, New Mexico (the "County"). By their Application in NMOCD Case No. 14134, the County Commissioners invoked the Division's adjudicatory hearing process seeking the agency's determination whether the drilling of four wells under approved permits held by Approach will cause waste, violate correlative rights and will be injurious to human

health and the environment. At the request of the Division, Approach Operating, LLC was asked to submit for hearing six additional applications for permits to drill (“APD’s”) that were pending agency approval. Approach complied with the Division’s request and filed its Application on May 14, 2008.¹ A hearing on the merits for the two consolidated applications was held by one of the Division’s examiners on June 20-23, 2008.

On July 18, 2008, the Division Director issued Order No. R-12976 that effectively removed the case from the Division’s hearing process so that approval of the drilling permits at issue could be considered instead by the Oil Conservation Commission. The Order also had the effect of temporarily suspending the APD’s previously approved by the agency pending the hearing by the NMOCC. Subsequently, on January 27, 2009, Approach filed its Application in Case No. 14278 for the approval of APD’s for an additional fourteen wells in the same general vicinity.

In the interim, on April 24, 2008 the Board of County Commissioners of Rio Arriba County adopted Ordinance No. 2008-3 which *inter alia* directed the Rio Arriba County Planning and Zoning Department staff to prepare for adoption of new ordinances addressing the impacts of oil and gas development on the various resources in the County. The County Planning and Zoning staff was also directed to ensure a complete discussion of and participation in development of the new ordinance by residents, oil and gas operators, property owners and other interested parties. Approach was an active participant in the process initiated by the County, as were representatives of other operators, members of the public, representatives from the U.S. Forest Service, Bureau of Land Management, Jicarilla Apache Tribe, and the New Mexico Oil Conservation

¹ NMOCD Case No. 14141; In the Matter of Approach Operating, LLC for Approval of Six Applications for Permits To Drill, Rio Arriba County, New Mexico.

Division. After considerable effort on the part of all these participants, the County Planning and Zoning staff prepared and presented to the Board of County Commissioners a proposed ordinance to regulate oil and gas development. On May 20, 2009, the Board of County Commissioners adopted Ordinance No. 2009-01² establishing the County's comprehensive oil and gas regulatory program. In adopting the ordinance, the Board of County Commissioners made a summary finding:

All forms of development have the potential to negatively impact County resources and the environment through the introduction of contaminants and surface disturbance, which can lead to habitat degradation, fragmentation, and loss as well as degraded qualities of air, soil, and water. Considering oil and gas activities as a form of development, the County designs this Ordinance as a means to allow for the economically feasible development of oil and gas resources, which benefits the economy of the County, while ensuring the minimum possible impact on the environment and fulfilling the County's interest of protecting the health and welfare of County residents.

Ordinance No. 2009-01 sets forth criteria for oil and gas exploration and development activities and facilities and establishes a procedure for obtaining development permits and special use permits within the jurisdiction of the County's land use and zoning authority. The permitting process includes a notice and public hearing function. Of importance, Ordinance No. 2009-01 created two primary land-use zones within the County: (1) the Energy Resource Development District comprising the western portions of the County where oil and gas development is well established, and (2) the

² *Ordinance No. 2009-01. AN ORDINANCE INTENDED TO ADDRESS OIL AND GAS EXPLORATION, DRILLING, PRODUCTION, TRANSPORTATION, ABANDONMENT AND RECLAMATION WITHIN RIO ARriba COUNTY REQUIRING THE APPROVAL OF AN EXPLORATORY PERMIT FOR EXPLORATION ACTIVITIES RELATED TO OIL AND GAS AND PROVIDING FOR THE DIVISION OF THE COUNTY INTO TWO ENERGY RESOURCE DISTRICT; THE ENERGY RESOURCES DEVELOPMENT DISTRICT, AND THE FRONTIER DISTRICT, REQUIRING THE APPROVAL OF A SPECIAL USE PERMIT AND SUBSEQUENT NOTICE TO PROCEED FOR THE INSTALLATION, CONSTRUCTION, DEVELOPMENT AND OPERATION OF OIL AND GAS FACILITIES WITHIN THAT DISTRICT, AND FURTHER PROVIDING FOR THE PROCESSES AND CRITERIA FOR REQUESTING AND OBTAINING SUCH APPROVALS AND FEES FOR THE SAME, STANDARDS FOR OIL AND GAS FACILITIES, VARIANCES, APPEALS THE ENFORCEMENT OF THIS ORDINANCE AND OTHER RELATED MATTERS.*

Frontier Development District in eastern portions of the County where the design, performance and review standards for permitting are more rigorous and establish additional protocols for the protection and monitoring of fresh water supplies.

Approach has initiated the application process with Rio Arriba County to obtain special use permits for a number of the wells involved in these proceedings under the new procedures established under Ordinance No. 2009-01 (the “oil and gas ordinance”) and that process is well under way. An initial group of twelve well locations has been identified to the County and pursuant to the ordinance procedures, a pre-application meeting with the County’s Planning and Zoning Department staff has been held. On-site inspections for a number of the locations have taken place with the participation of County staff. Surface owners were in attendance at inspections at a number of locations, and were invited to participate in every circumstance.

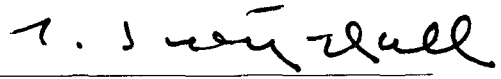
With Approach’s participation in the County’s new permitting process, the conduct of potentially duplicative hearings before both the Oil Conservation Commission and the County should be avoided. Therefore, Approach urges that the APD’s that are the subject of these proceedings may be approved administratively in the ordinary course of the Division’s established administrative approval process and that the Applications in these three cases may be dismissed. *Provided*, however, that the Division’s approvals for each of the wells should be subject to the express condition that the operator shall comply with the County’s oil and gas ordinance.

WHEREFORE, Approach Operating, LLC requests the Commission enter its order (1) 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, (2) vacating Order No. R-12976, and (3) dismissing the applications in these matters without prejudice.

Respectfully submitted,

MONTGOMERY & ANDREWS, P.A.

By: 

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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 this 31st day of August, 2009 as follows:

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J. Scott Hall

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

**IN THE MATTER OF THE APPLICATION OF THE BOARD
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**IN THE MATTER OF THE APPLICATION OF
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**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**
ORDER NO. R-12976-B

ORDER REMANDING TO THE DIVISION

This matter, having come before the Chair of the Oil Conservation Commission pursuant to the Motion To Remand to the Division filed by Approach Operating LLC, ("Approach"), through its undersigned attorneys, Montgomery and Andrews, P.A., (J. Scott Hall) with the concurrence of the Board of County Commissioners of Rio Arriba County, through their attorney, Adan E. Trujillo, and the Commission Chair finding the motion is well taken, ORDERS as follows:

1. The Applications for Pemits to Drill ("APD's") that are the subject of Case No. 14134, Case No. 14141 and Case No. 14278 that have not otherwise been withdrawn by Approach are remanded to the Division for disposition in accordance with regular administrative review and approval procedure by the Division's District III office for the following proposed wells:

- *Sena Well No. 2
- *Avella Sultemeier No. 2
- *Montano Well No. 1
- *Dora Spill Well No. 2
- *Dora Spill Well No. 3
- *Jeffrey Spill Well No. 1
- *Jeffrey Spill Well No. 3
- *Edward Spill Well No. 4

2. Pursuant to 19.15.14.10 B NMAC of the Division's rules and regulations, the Division's approvals of the APD's for each of the above-referenced wells, and for all other APD's submitted by Approach for wells it proposes to drill on its current leasehold in Rio Arriba County shall reflect the following condition: "*Applicant shall comply with all applicable county ordinances.*"

3. The APD's for the following wells are withdrawn and are accordingly dismissed from these cases:

Case No. 14143:

- *Sultemeier Well No. 1
- *Sena Well No. 1
- *Woolley Family LP Well No. 1

Case No. 14141:

- *Benjamin Trujillo Well No. 1
- *Rosemary Roller Well No. 1
- *Leo Valdez Well No. 1
- *Cloyd Hinkle No. 1
- *Anthony Garcia No. 1

Case No. 14278:

- *Rice Well No. 1
- *Rice Well No. 2
- *Montano Well No. 2
- *Dora Spill No. 1
- *Jeffrey Spill Well No. 2
- *Edward Spill No. 1
- *Edward Spill Well No. 2
- *Edward Spill Well No. 3

4. The Applications for adjudicatory hearing in Case No. 14134, Case No.14141 and Case No. 14278 are dismissed.


5. Order No. R-12976 is hereby vacated.

DONE at Santa Fe, New Mexico, on this day of October, 2009.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

MARK E. FESMIRE, P.E.
Director

Submitted by:
MONTGOMERY & ANDREWS, P.A.

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