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Via E-Mail and U.S. Mail

Board of Supervisors
County of Santa Barbara
105 East Anapumu Street
Santa Barbara, CA 93101

Re: Impact Analysis Report on Initiative to Ban High-Intensity
Petroleum Operations; June 13, 2014 Board Meeting

Dear Honorable Supervisors:

We write on behalf of the Santa Barbara County Water Guardians to comment on the County's Impact Analysis Report ("Report") regarding the Initiative to Ban High-Intensity Petroleum Operations ("Initiative"). We commend the County on its quick work in analyzing the Initiative's effects, and believe the Report will be very helpful to your Board and the general public. We do wish, however, to correct an inaccurate passage in the Report suggesting that the Initiative purports to regulate routine well maintenance and would prohibit ongoing maintenance activities. This conclusion is simply incorrect, as the plain language of the measure demonstrates.

The Report states, at page 2, that "[o]ne hundred percent of the active wells use at least one secondary or enhanced recovery technique identified in the measure, if for no other reason, than well maintenance." It then gives examples of types of maintenance activities that it assumes would be covered by the Initiative's definition of high-intensity petroleum operations, thereby implying that any well maintenance would be prohibited.

The Report's assumptions are incorrect. Those wells that are currently using cyclic steaming or other high-intensity petroleum operations may continue to operate and maintain their wells under the Initiative. As its vested rights clause provides, the Initiative does *not* apply to existing facilities and operations, including maintenance operations.

Nor would the Initiative prohibit routine well maintenance activities that commence after the measure's effective date. As explained below, such activities are *not* included in the Initiative's definition of high-intensity petroleum operations and would not be affected by the Initiative.

The Initiative's Vested Rights Exception Clarifies that Ongoing Petroleum Extraction and Maintenance Activities Can Continue.

The Report's discussion of maintenance activities, at page 2, references "active wells" in a manner suggesting that the Initiative would apply to such wells. This is not the case. In fact, the Initiative's vested rights clause clarifies that the measure does *not* apply to existing facilities and operations, including maintenance operations. Rather, the measure only applies prospectively, to prohibit new land uses in support of high-intensity petroleum operations. Operators of existing wells may continue to conduct maintenance activities as they have in the past.

We are concerned that the Report could mislead the public into believing that existing oil and gas recovery operations, including ongoing maintenance activities, must cease. The Report should be corrected to remove this suggestion.

The Initiative's Plain Language Does Not Include a Ban on Routine Well Maintenance.

The Report's suggestion that the Initiative would prohibit routine well maintenance activities as part of its prohibition of secondary and enhanced recovery techniques is also inaccurate.

To elucidate the Initiative's scope, we turn first to its plain language. Nothing in the Initiative's text states or suggests that the measure bans routine well maintenance. The Initiative prohibits land uses in support of "high-intensity petroleum operations," which it defines to include (1) well stimulation treatments, and/or (2) secondary and enhanced recovery operations. Neither of these terms includes routine maintenance activities.

The Initiative defines "well stimulation treatments" to mean "any treatment of a well designed to enhance oil and gas production or recovery by increasing the permeability of the formation." Because routine maintenance activities do not "increase the permeability" of the underground geologic formation, they plainly do not constitute hydraulic fracturing treatments or acid well stimulation treatments covered by this

definition. Nor are well maintenance activities “designed to enhance oil and gas production or recovery.”

The Initiative defines “secondary and enhanced recovery operations” to mean “any operation where the flow of hydrocarbons into a well are aided or induced with the use of injected substances including but are not limited to the introduction or injection of water and natural gas, steam, air, CO₂, nitrogen, chemical substances and any other substance or combination thereof.” The referenced injections are not conducted to maintain normal operations of the well, but to “aid” and “induce” recovery. Routine maintenance is not included.

Moreover, “secondary and enhanced recovery operations” is a well understood term and has never been interpreted to include the maintenance activities discussed in the Report. The Initiative does not adopt a new or somehow overbroad definition of this term. Rather, its definition is taken directly from the County’s own Petroleum Code. Petroleum Code §25-4. The County’s established regulatory practice makes clear that routine maintenance activities are not included in this definition. For instance, the Petroleum Code requires well operators to file a “notice of intention” and satisfy any additional requirements of the petroleum administrator prior to engaging in secondary or enhanced recovery operations. *Id.* §§ 25-8(b), 25-30. The County does not require operators to submit a notice of intention prior to conducting routine maintenance activities. Accordingly, such activities must not be included in the term.

Finally, the Initiative clarifies the scope of high-intensity petroleum operations through its illustrative list of covered operations, which include hydraulic fracturing, acid well stimulation treatments, waterflood injection, steamflood injection, and cyclic steam injection. *See Harris v. Capital Growth Investors XIV*, 52 Cal. 3d. 1142, 1160 (1991) (“general words will be construed as applicable only to persons or things of the same general nature or class as those enumerated”). Critically, routine maintenance activities are *not* included in this listing of advanced oil and gas development technologies. The Initiative’s purpose and findings also make clear that the measure is not intended to prohibit routine maintenance activities.

Of course, the Initiative would not allow acid matrix stimulation treatments or acid fracturing treatments in the guise of “maintenance” activities. These activities are prohibited under the Initiative’s definition of “acid well stimulation treatment.” Initiative § 2. If operators believe they need clarification as to permitted maintenance activities, Section 6.E of the Initiative permits the County to pass regulations to provide such guidance.

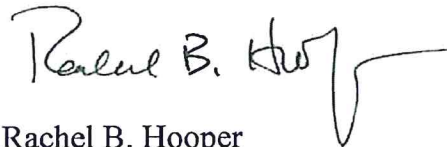
Conclusion.

Accordingly, to ensure that the public is provided accurate information about the Initiative's scope and effect, we respectfully request that the discussion of maintenance activities on page 2 of the Report be removed. This revision would also ensure the Report's internal inconsistency, as the document elsewhere acknowledges that the Initiative's definition of high-intensity petroleum operations does not include maintenance activities. For example, the Report determines, at page 3, that 11 percent of the permitted, proposed, and anticipated new wells would *not* use high-intensity petroleum operations "over the life of the project." Although these new projects would conduct routine maintenance activities, the Report here correctly determines they would not constitute high-intensity petroleum operations.

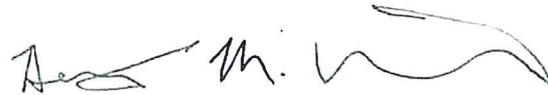
Thank you for considering these comments. Again, we are pleased with the County's swift action to prepare this Report, and trust it will be helpful to the voters.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Rachel B. Hooper



Heather M. Minner

cc: Michael C. Ghizzoni, County Counsel
Mona Miyasato, County Executive Officer

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