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DAY CARTER MURPHY

5620 American River Dr., Suite 205  
Sacramento, CA 95804  
T: 916.570.2500

DAY CARTER MURPHY LLP

Jane E. Luckhardt  
jluckhardt@daycartermurphy.com

October 5, 2014

VIA EMAIL

Santa Barbara County Board of Supervisors  
105 East Anapamu Street, Room 407  
Santa Barbara, CA 93101  
Attn: Clerk of the Board

Re: Board of Supervisors October 7, 2014 Meeting, Departmental Agenda Item No. 1,  
Implementing Ordinances for Measure P

Dear Chair Lavagnino and Honorable Supervisors:

We are writing on behalf of our client, Santa Maria Energy, LLC ("Santa Maria Energy"), regarding the proposed amendments to Santa Barbara County ("County") zoning codes and general plan policies to implement Measure P ("Ordinance"). Santa Maria Energy has significant concerns about the adoption of the Ordinance prior to the election. Because of the County's well-founded concerns about its potential liability if Measure P passes, County Staff has attempted to craft an ordinance to limit the County's exposure to the extent possible from claims that will inevitably result from Measure P. We too feel the County will be placed in a very difficult position by Measure P. Unfortunately, this Ordinance cannot solve the problems created by Measure P. We have previously filed comment letters on the Ordinance and Measure P, and incorporate those letters by reference:

- Letter to Santa Barbara County Planning Commission dated September 2, 2014 expressing concerns with the Ordinance, and
- Letter to County Board of Supervisors dated June 12, 2014 expressing concerns regarding Measure P.

Santa Maria Energy's concerns with the Ordinance include: 1) timing, by adopting the Ordinance prior to the vote on Measure P a voter could assume the Board supports Measure P; 2) conclusory statements in the findings that the Ordinance will provide certainty wherein Measure P itself leaves many unanswered questions regarding well maintenance, vested rights and takings; 3) claims the Ordinance provides a clear process when the significant details regarding

information needed to make a showing have yet to be defined; and 4) the Ordinance process itself may be futile act for projects employing steam or acidizing technologies.

**Adoption of the Ordinance creates the impression Measure P is a forgone conclusion.** Santa Maria Energy appreciates the efforts made by County Staff to clarify the Ordinance does not endorse or prejudge the outcome of the election on Measure P. Nonetheless, not everyone reads the background information created by County Staff. The act of adopting the Ordinance prior to the election still leaves the impression passage of Measure P is presumed and potentially supported by the Board of Supervisors. Therefore, we request consideration of the Ordinance be delayed until after the election.

**Adoption of the Ordinance cannot create certainty.** The statements in the findings that the Ordinance will provide certainty are misleading. Unfortunately, the Ordinance cannot provide certainty to what will become case by case determinations that must be made by the County and are inherently fact specific. Whenever an existing or future operation is subject to another discretionary review, the outcome is not certain. Creation of a process does not create certainty. Another process creates another decision point and another opportunity for challenge. We note the Water Guardians' request for notice cannot be interpreted to mean anything other than their intent to challenge determinations by the County. (See Letter to Santa Barbara County Planning Commission dated August 21, 2014 from Rachel Hooper of Shute, Mihaly & Weinberger LLP at 2-3). Thus, existing and future operations are now subject to another avenue under which their projects can be challenged, creating yet additional uncertainty.

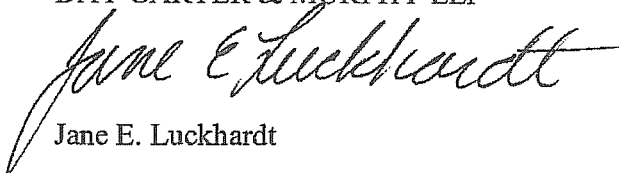
**The information requirements are undefined.** The Ordinance requires "sufficient evidence" to be provided. Since each situation will be unique, the information needed to meet this standard will be different for each project. The Ordinance does not provide enough specifics for an applicant to understand what information will be necessary to obtain an exemption from the County. Furthermore, for a takings determination, questions about what level of production, number of wells or amount of development meets Measure P's "only to the minimum extent necessary to avoid a taking" requirement has yet to be determined and is fraught with uncertainty.

**For thermally enhanced recovery projects, the Ordinance process would be a futile act.** The entire exercise of applying for a permit may in and of itself be a futile act if the method of extraction includes one of many banned practices, such as acidizing or steam injection. Through this Ordinance, the County is creating a process by which a mineral rights holder must complete the entire permitting review, committing extensive resources and multiple years, prior to knowing whether the proposed project qualifies for a taking exemption, despite the fact it knows the proposed extraction method is banned by Measure P. The courts do not require an entity to perform a futile act prior to filing a takings claim with the courts. Thus, mineral rights holders may not need to go through the Ordinance process of completing permitting for a banned practice because that exercise would be considered a futile act.

On behalf of Santa Maria Energy, we request the County correct the misleading statements and delay adoption of the Ordinance until after the election. Finally, we are not convinced the Ordinance is exempt from review under the California Environmental Quality Act as it expands the reach and requirements of Measure P, especially when the process itself may be a futile act.

Sincerely yours,

DAY CARTER & MURPHY LLP

A handwritten signature in cursive script that reads "Jane E. Luckhardt". The signature is written in black ink and is positioned above the printed name.

Jane E. Luckhardt

Enclosure

cc: Michael C. Ghizzoni, Santa Barbara County Counsel  
Beth Marino, Santa Maria Energy, LLC