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Refer To File #: 300165-0009

VIA EMAIL

October 2, 2014

Chairman Steve Lavagnino
Santa Barbara County
Board of Supervisors
105 East Anapamu Street
Santa Barbara 9310

Re: County Board of Supervisors, October 7, 2014 Meeting -- Agenda Item 14-00720
Regarding Proposed Ordinance to Implement Measure P ("Implementing
Ordinance")

Dear Chairman Lavagnino and Supervisors:

We represent PetroRock, LLC, and this letter is in reference to the proposed Implementing Ordinance to create an exemption process under Measure P if such measure is passed by the voters. In the Santa Barbara Planning Commission staff report regarding the Implementing Ordinance, it is stated that "in order to provide certainty for the community and to reduce litigation risk for the County, the purpose of the [Implementing Ordinance] is to codify a County process for considering and applying the exemptions stated in [Measure P]"

However, the Implementing Ordinance does just the opposite of its stated purposes! Rather, the Implementing Ordinance actually creates greater uncertainty for the community and greatly enhances the litigation risks. The reason for this additional chaos originates in a badly written Measure P and Implementing Ordinance.

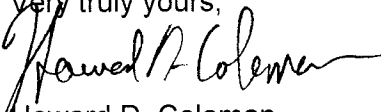
As to why the Implementing Ordinance increases the County's litigation risks and further uncertainty, let us take a look, for example, at how the Implementing Ordinance handles the "vested rights" exemption.¹ As will be seen by the chart below, the County's proposed process is not only overbearing, it will probably never actually be utilized since an oil company will find a more friendly venue by simply going to court. In other words, the Implementing Ordinance actually encourages litigation. The uncertainty is that any unsatisfactory result under the County Implementing Ordinance will simply be transformed into litigation.

¹ As to constitutionality exemptions, the Implementing Ordinance totally overlooks California's peculiar mineral rights law and thus implementation of Measure P acts as an automatic taking. Unlike Texas where the mineral owner owns the oil and gas "in place," in California, the mineral owner does not own the mineral rights in place. Rather, in California the mineral owner holds the exclusive right to extract oil and gas - a right of "capture." Only when the oil or gas is brought to the surface by extraction does the mineral owner actually own the produced oil and gas. Thus, in California, the mineral right is an "extraction" right. The heart of Measure P is to take away all currently used extraction methods and thus results in the taking of the mineral rights.

<u>Factors</u>	<u>Implementing Ordinance Process</u>	<u>Court Process</u>
• <u>County Costs</u>	Borne by oil company	Borne by the County
• <u>Standard of Review</u>	"Sufficient evidence to establish vested rights"	"More likely than not" that vested rights exist
• <u>Materials to be Submitted</u>	An attachment to the Implementing Ordinance package reflects that a laundry list of materials have to be produced by the oil company, many of which the County already has (the list is based on real estate development not oil and gas development).	Each side supplies documents it considers relevant
• <u>Finality</u>	None, as any decision could be subject to litigation	Finality

In comparing the Implementing Ordinance to the normal judicial process, it is easy for one to conclude that an oil company will pick the court route since the evidentiary standard, the process itself, and other factors make a judicial forum a more level and fair playing field.

As to what the Board of Supervisor should do, they should vote not to pass the Implementing Ordinance.

Very truly yours,

Howard D. Coleman
of Nossaman LLP

HDC:mif
cc: Michael C. Ghizzoni, Esq.