

Jane E. Luckhardt  
[jluckhardt@daycartermurphy.com](mailto:jluckhardt@daycartermurphy.com)

July 31, 2014

**VIA U.S. MAIL AND ELECTRONIC TRANSMISSION**Santa Barbara County Board of Supervisors  
105 E. Anapamu Street, Suite 407  
Santa Barbara, CA 93101  
Attn: Clerk of the Board of SupervisorsRe: July 29, 2014 Board of Supervisor Meeting; Agenda Number 1  
Measure P Implementing Ordinances and General Plan Amendments

Dear Chair Lavagnino and Members of the Board:

I am writing to express the concerns of Lagomarsino Minerals, Inc. who are mineral owners in Santa Barbara County (“County”) about the recommended action to prospectively find the development of implementing ordinances and general plan amendments for Measure P exempt from the California Environmental Quality Act (CEQA) under Guidelines Section 15061(b)(3). During the hearing on July 28<sup>th</sup> Michael Ghizzoni, County Counsel, noted the numerous ambiguities created by the wording of the exemptions to Measure P on existing and future development of oil and gas resources. County Counsel also acknowledged the potential liability facing the County. We are concerned that the ordinances the County needs to defend itself from potential liability may be discretionary decisions. Therefore, the County will need to assess the environmental impacts of these ordinances and general plan amendments prior to adoption by the Board for those actions to be defensible.

As you know Measure P would ban petroleum operations using any of the specified methods including “any operation where the flow of hydrocarbons into a well are aided or induced with the use of injected substances including” water and steam. (Measure P, Policy 14, Definitions.) These operations would be “prohibited on all lands within the County’s unincorporated area.” (Measure P, Policy 6-5D.) And, no “discretionary entitlement shall be granted, modified, extended, or enforced . . . that is inconsistent with the provisions of the Initiative.” (Measure P; at all of the following: Section 35.50.030, Section 25-44, and Section 35.150.2.) As drafted and as confirmed by County staff the proposed ban could impact every existing and proposed well in the County and thereby, take valuable property rights without compensation.

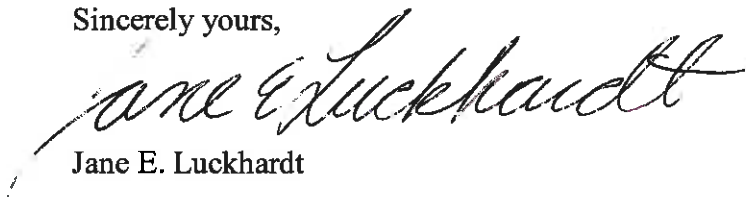
Section 5 of Measure P contains three exemptions in an attempt to enact the ban, take property rights, and avoid compensating those holding taken property rights. The language of the exemptions provides very little information on the process for considering and granting an exemption, the entity empowered to grant an exemption and the application of the law upon which exemptions can be granted. The exemptions pose questions such as can the County decide whether its denial of a permit is unconstitutional? Normally, this determination is made by another branch of government, the courts. Furthermore, how is County going to determine relief “only to the extent necessary to avoid the taking”? Also, is the County to make this determination when the application is filed or must an application be denied before the County can act? None of these items are described in Measure P.

A further area of uncertainty relates to the general scope of the exemptions. If the exemptions are construed through ordinances narrowly, the ordinances would expand the number and types of projects prohibited by the initiative. And if the exemptions are construed through ordinance broadly, the ordinances would decrease the number and types of projects prohibited by the initiative. In addition and as stated by County Counsel, Measure P could be used to bar well maintenance activities. Addressing the myriad of unresolved issues from Measure P through ordinances and general plan amendments could well move beyond implementation and into the realm of discretionary determinations by the County.

Courts have exempt city and county actions regarding initiatives when the actions by the city or county simply implement or follow the initiative. One court found The City of Berkeley did not need to conduct a CEQA analysis on a general plan update where it simply described a rent control initiative and took no action to expand, amend, or change it in any way. (*See Black Property Owners Assn. V. City of Berkeley*, 22 Cal. App. 4<sup>th</sup> 974, 986 [1994].) In this instance the County is taking affirmative action prior to the vote and will define the properties impacted by Measure P. In another holding the court found procedural implementation of an initiative exempt from CEQA when the activities were essentially ministerial such as application procedures. (*See Northwood Homes, Inc. v. Town of Moraga*, 216 Cal. App. 3<sup>rd</sup> 1197, 1206-1207 [1989].) Defining the exemptions to the initiative will define the ultimate projects included within the initiative and those exempt from the initiative. This definition of the exemptions will not simply be a ministerial act.

Therefore, the development of ordinances to address the exemptions may not simply implement the initiative but may in fact expand, contract and/or change the ordinance. Thus, the adoption of ordinances by the Board may not be exempt from CEQA.

Sincerely yours,



Jane E. Luckhardt