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July 28, 2014

VIA EMAIL

Santa Barbara County Board of Supervisors
105 East Anapamu Street, Room 407
Santa Barbara, CA 93101

Re: Board of Supervisors July 29, 2014 Meeting, Departmental Agenda Item 1 (No. 14-00610), Recommendations Regarding Measure P Implementing Measures

Dear Chair Lavagnino and Honorable Members of the Board of Supervisors:

We write on behalf of a coalition of Santa Barbara County taxpayers, consumers and energy producers to express our disappointment with and concern about the Impartial Analysis regarding Measure P2014. As is now clear from virtually everything your staff has advised the Board, ***Measure P will prohibit virtually all existing (and future) oil and gas production in the County, cost working men and women their jobs, result in the loss of millions in annual tax revenues, impose millions in new costs and expenses on the County, and expose the County to hundreds of millions of dollars of liability and related costs for takings of mineral rights and oil and gas production.***

We respectfully suggest that this Board has an obligation to let the public know the disastrous impact Measure P would have on the County.

In an apparent attempt to insulate the County from the massive financial liability for takings of property rights without compensation as required by the Constitution, County staff has recommended that the Board adopt implementing measures for Measure P. Not only will this "shield" do little to protect the men and women who will lose their jobs, to avoid the shutdown of an industry or to avoid Measure P's other adverse economic consequences to the County, but it will exacerbate the problem the County faces by creating an expensive new bureaucracy that will cost County taxpayers millions.

The Board Letter states that the implementing ordinances are intended to "provide certainty and to reduce litigation risks for the County." But that simply begs the question. It is incumbent on this Board to inform the electorate what the litigation risks to the County are and whether the Board and County Counsel view these risks as real. The Impartial Analysis did not address what these litigation risks are or indicate County Counsel's view as to the materiality of these risks. It is clear, however, that by this action County Counsel and the Board view these

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risks as substantial. And we certainly agree. The County could well be held liable for hundreds of millions if not billions of dollars in compensation for takings of property. And in any event, the mere cost of defending the inevitable takings lawsuits surely will be in the tens of millions of dollars.

Before making any decision on any implementing ordinance in an apparent attempt to blunt Measure P's effects, this Board has a duty to disclose these impacts to the voters. Otherwise, any pre-election measures designed to implement Measure P would inevitably be seen by voters as an implied endorsement of Measure P by the Board, improperly misleading voters into thinking that passage of Measure P is inevitable and without risk to the County. Why else would the Board be doing this if they did not agree that Measure P will prohibit virtually all existing (and future) production?

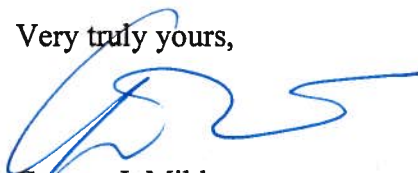
Should the Board move forward with the consideration of implementing measures for Measure P, the Board must also fulfill its duty to inform the voters of the real-world impact of Measure P – *that it will stop virtually all production in the County* – and the substantial financial risks the County faces if Measure P is passed.

Attached as Attachment A is a more detailed discussion of the takings issue and why the so-called "savings" clause will not shield the County from liability.

But isn't the real issue before the Board the need to tell the public what the actual impacts will be from Measure P? Shouldn't this Board make clear what you have been told by your staff – that Measure P will prohibit virtually all oil and gas production in the County and the County could be liable for massive takings damages to holders of mineral rights and operating companies? The County's solvency is at risk.

We ask that you embrace your duty to inform the voters of the true impact that Measure P will have on the people of Santa Barbara.

Very truly yours,



George J. Mhlsten
of LATHAM & WATKINS LLP

cc: Michael C. Ghizzoni, County Counsel

ATTACHMENT A

Measure P2014 Exposes The County To Substantial Takings Liability

As discussed in detail in our letter of May 20, 2014, with which the County appears to be in agreement based on the Board Letter, Measure P could effect a regulatory taking of property under the 14th Amendment to the United States Constitution and its counterpart in the California Constitution (Art. I, § 19). As a result, if adopted, Measure P exposes the County to hundreds of millions of dollars – if not billions of dollars – in potential liability to impacted oil and gas producers, property owners, and royalty owners.

A regulatory taking occurs not only where a government regulation deprives a property owner of all “economically viable use of his land,” *Agins v. Tiburon*, 447 U.S. 255, 260 (1980), but also where the regulation works an economic detriment on the property rights of a land owner and sufficiently interferes with his “distinct investment-backed expectations,” *Penn Central Transp. Co. v. New York City*, 438 U.S. 104 (1978). Oil and gas operators, property owners, and mineral rights holders in Santa Barbara County have literally hundreds of millions of dollars (if not billions of dollars) in “investment-backed expectations” regarding the extraction of oil and gas from land within the County. And the County will be forced to pay “just compensation” to each and every operator, property owner, and mineral rights holder who suffers a regulatory taking as a result of Measure P. The County should expect hundreds if not thousands of lawsuits from operators, property owners, and mineral rights holders.

Importantly, in addition to the loss of jobs, the closure of local businesses servicing the oil and gas industry and the virtual shutdown of the industry, the County’s takings liability will dwarf the loss of taxes and revenues resulting from the shutdown of the oil and gas industry. This massive liability is separate from, and in addition to, the reduction or outright elimination of oil-related property taxes that would result if Measure P were passed. And that alone is substantial. According to the Impact Analysis Report prepared by County Staff pursuant to Elections Code § 9111, presented to the Board on June 13, 2014 (the “Impact Analysis Report”), this currently amounts to \$16.4 million annually. (Impact Analysis Report, at 3.) Similarly, the above-described takings liability does not include the \$291.4 million in annual “economic impact” that the oil and gas industry currently generates in Santa Barbara County. (*Id.* at 4 [citing 2013 UCSB Economic Forecast Project, “Santa Barbara Onshore and Natural Gas Industry Economic Impact Study”].) This loss of revenue and economic activity will inevitably have a significant impact on the taxpayers of Santa Barbara County.

Furthermore, all of the negative economic consequences of Measure P would result from cessation of oil and gas production methods and maintenance procedures that have been conducted safely and without negative consequences in the County for decades. Though Measure P is falsely stylized as a measure to stop hydraulic fracturing and acid well stimulation, which does not even occur today in the County, it is so broadly worded that it will reach much further, stopping all existing and future oil and gas production. And as is clear, Measure P will provide no benefit to the citizens of the County; rather, it will impose massive costs and liabilities on the County.

The Purported “Savings Clause” Does Not Shield the County from Liability

Proponents of Measure P have argued that the shutdown of virtually all existing oil and gas production and prohibition of virtually all future oil and gas production would not effect a regulatory taking without just compensation in light of Measure P’s “savings clause.” County staff appears to disagree based on its recommendation that the Board move forward with implementing ordinances that they state would “reduce litigation risks for the County” as a result of “the current broad use of methods in the County that would be prohibited if the measure is adopted, without applying the exemptions stated in the Measure.” The County is racing to try and insulate itself.

So, at best, Measure P will wipe out an entire industry, it will shut down companies across the County that service and depend on the oil and gas industry, and will eliminate jobs, but all is okay since the County can spend millions to create a bureaucracy to see if any existing oil and gas operations qualify for a “vested right” or some unknown and diminished level of production can be permitted for the County to avoid liability for a regulatory taking.

As discussed in our May 20 letter, the “savings clause” or Measure P’s “exemptions” – which provide for the adjudication of claims for exemptions from Measure P’s requirements by the Board, an entity that is not equipped to evaluate such claims from a legal standpoint – will not shield the County from liability.

As you may know, oil and gas projects are dynamic and constantly evolving, requiring a continuous flow of permits and other approvals in order to continue operations (including, *e.g.*, Oil Drilling and Production Plans, Land Use Permits, Conditional Use Permits, Coastal Development Permits, and Drilling Permits for individual wells). Pursuant to Measure P, however, no permit may be granted that is inconsistent with Measure P’s requirements, presumably subject to the exemptions set forth in the “savings clause.”

Thus, each and every application for a new permit or other approval would apparently require an adjudication by the Board regarding whether an exemption applies under the “savings clause,” which, in turn, likely would result in a takings claim by the property owner if his claim for an exemption was denied (or granted only in part), which ultimately would result in hundreds (and likely thousands) of takings claims being asserted against the County. The clause’s purpose of eliminating the greatest constitutionally permissible use of each property will inevitably result in liability for numerous permanent takings where the County oversteps that constitutional line, and the County will in any event be liable for damages caused when drilling and extraction operations are shut down for months or years as the County struggles to process permit applications that will number in the hundreds if not thousands.

The resources necessary both to adjudicate the voluminous claims for exemptions contemplated by Measure P, to litigate the takings claims that would inevitably be filed as a result, and to pay victorious claims would be staggering. The County’s solvency will be in the hands of individual judges adjudicating the myriad takings claims that would arise if Measure P goes into effect. The economic uncertainty for the County will be enormous, and no amount of process adopted by the County can ameliorate it.