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June 12, 2014

## VIA HAND DELIVERY

Santa Barbara County Board of Supervisors  
105 E. Anapamu Street, Suite 407  
Santa Barbara, CA 93101  
Attn: Clerk of the Board

2014 JUN 12 AM 3:45  
COUNTY OF SANTA BARBARA  
CLERK OF THE  
BOARD OF SUPERVISORS

### Re: Initiative Banning Oil Drilling in Santa Barbara County

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

We are writing on behalf of our clients, ERG Operating Company and ERG Resources, LLC, regarding the proposed ballot Initiative to Ban "High-Intensity Petroleum Operations" in Santa Barbara County. We are writing to notify the Board that, if adopted, the Initiative would effectively ban key aspects of our client's ongoing permitted and future planned oilfield operations, and thus effect a regulatory taking of our client's property without compensation, in violation of the U.S. and California Constitutions.

Our clients own the majority of the minerals in the Cat Canyon Oilfield in Northern Santa Barbara County. This includes several hundred wells and thousands of acres of land. They produce several thousand barrels of oil each day from the oilfield. They have approximately 30 full time employees and as many as 200 contractors working in the oilfield on a daily basis.

The proposed Initiative has been innocuously framed as merely a ban on the controversial practice of "hydraulic fracturing." However, the Initiative also precludes "Secondary and Enhanced Recovery Operations," which are defined as "any operation where the flow of hydrocarbons into a well are aided or induced with the use of injected substances..." In other words, the Initiative bans the use of *any* substances—including (but not limited to) air, steam, and even water when these substances are used to aid the flow of hydrocarbons to a well.

Our client's operations are unique in that their production is almost entirely derived by thermally stimulating the oil to improve production. In this process, they take briny, non-potable

water that is produced with the oil and convert it to steam to enhance production. Our client does not use any fresh water in their steaming operation, nor do they engage in hydraulic fracturing operations. Nevertheless, because their production is almost entirely derived through thermal stimulation, the Initiative precludes critical aspects of both their existing permitted and future planned operations.

For example, the proposed Initiative prohibits the re-injection of produced water. To be clear, re-injecting water into a formation after it has been produced is not “fracking.” Rather, this activity is an integral part of our client’s existing oil field operations, both in terms of the steam they use to stimulate production, as well as a method for handling excess produced water. If water from existing wells cannot be re-injected, those wells will cease to operate, since there is no other viable place for the produced water to go. As a result, if enacted, the Initiative would end both the operations of current wells and the drilling of new ones using conventional, long-practiced and safe methods.

In addition, the proposed Initiative bans the injection of other common substances used in routine well maintenance operations, such as anti-scaling agents, which prevent well corrosion, and biocides, which prevent algae buildup in wells. Even existing oil fields and wells that are approved by the County and DOGGR require on-going permits for construction and maintenance activities. If the County cannot issue permits for this work, which it could not if the Initiative were adopted, all production from existing fields, including our client’s operations, will stop prematurely. If anti-scaling agents and biocides cannot be used, these existing wells will deteriorate and production will stop.

Framed as a land use regulation, the Initiative would ban virtually all methods of extracting oil and gas from the Cat Canyon Oilfield. As such, the Initiative would deprive ERG Operating Company and ERG Resources, LLC of all or virtually all economically viable use of its property and deprive it from realizing its investment-backed expectations regarding these valuable mineral resource assets. And because the Initiative does not provide for compensation to ERG and other impacted oil producers and royalty owners, the Initiative is a classic example of a regulatory taking in violation of the U.S. and California Constitutions. Please be advised our client will aggressively pursue litigation against the County if the Initiative becomes law. While there has been no determination of the full extent of damages at this time, it is reasonable to assume damages would exceed hundreds of millions of dollars.

In addition to inviting massive takings liability, the Initiative also puts the County’s tax base in peril. The County Assessor determines the value of property tax assessments, in part, based on the projection of recoverable mineral reserves. As an effective ban on virtually all methods of extracting oil and gas in the County, currently valuable reserves will no longer be recoverable. The Initiative will cause property tax valuations to plummet, and in many cases refunds will be due. The County will suffer the loss of tens of millions of dollars in property tax revenues annually, placing its schools, police, fire, libraries – virtually every County program – at risk. The Board must consider the Initiative’s crippling financial impacts on the County’s ability to provide basic services.

Honorable Board Members  
Santa Barbara County Board of Supervisors  
June 12, 2014  
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Feel free to contact me if you have questions or wish to discuss.

Respectfully submitted,

HOLLISTER & BRACE

By 

Peter L. Candy

PLC/crr

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