

June 12, 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 June 13, 2014 Meeting, Departmental Agenda Item No. 1, the Initiative to Ban "High-Intensity Petroleum Operations"

Dear Chair Lavagnino and Honorable Supervisors:

We are writing on behalf of our client, Santa Maria Energy, LLC ("Santa Maria Energy"), regarding the Initiative to Ban "High-Intensity Petroleum Operations" (the "Initiative"). Santa Maria Energy has significant concerns about the impact the Initiative will have on mineral rights in Santa Barbara County.

"The *Takings Clause* is 'designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.'" *Arkansas Game and Fish Comm'n v. United States* 133 S.Ct. 511; 184 L.Ed.2d 417 (2012), citing *Armstrong v. United States* 364 U.S. 40, 49 (1960). The Initiative, if passed into law, will force mineral owners to bear public burdens, which in all fairness should be borne by the public as a whole. Santa Maria Energy strenuously objects to the Initiative's attempt to take valuable property rights, without compensation, and without regard for the outright deprivation of all economically beneficial use of the mineral interests of property owners in this County. See *Lucas v. South Carolina Coastal Council*, 505 U. S. 1003, 1014 (1992).

As we are certain you have heard from other affected parties, the Initiative effects an unconstitutional taking by eliminating all economically viable use of these mineral interests without payment of just compensation. Indeed, because of the breadth of methods barred by the Initiative, the vast majority of property owner's mineral rights will be rendered valueless. In short, the Initiative will leave such property owner's with no way to commercially produce oil or gas from its property; none. Accordingly, those who have invested heavily in mineral interests within the County will be left with nothing and their only choice will be to challenge the

County's Initiative based on the United States and California Constitutions, and seek either the rescission of the Initiative or full and just compensation for the taking of their property.

Aside from the *per se* takings issue, we also note that the Initiative will prove to be a procedural quagmire for the County and the Board of Supervisors. In this regard, the Initiative would provide a process by which the County Board of Supervisors would review a property owner's claim that the Initiative effects an unconstitutional taking. The Board could then grant an exception to the prohibition, but only if it finds a taking, and only to the extent necessary to avoid the taking. The County Board's exception must be limited, and "allow additional or continued land uses only to the minimum extent necessary to avoid such a taking." *Id.* This section of the Initiative injects a number of legal uncertainties related to the procedure the County might use if the Initiative becomes law.

Fundamentally, it is legally questionable for the County to pass on the constitutionality of its own denial of a permit. That is the province of the federal and state courts. If the process is legal, there are still further issues left unresolved. For example, a typical takings case is based on a final action of the governmental entity denying a permit that the applicant contends constitutes a taking of property without compensation. Here, however, the Initiative would have the County Board make a determination of whether there was a taking, and then grant an exception "only to the extent necessary to avoid the taking."

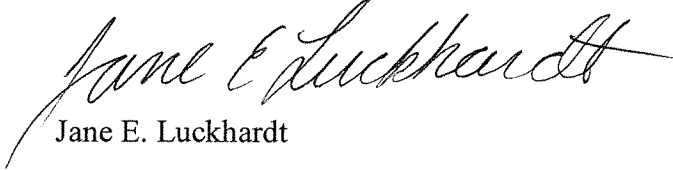
It is unclear *when* the County would make that determination. For example, the County could decide whether there is a taking or not at the time it considers the application for the permit and acts upon it. Alternatively, the County could deny the permit (which would by that point have caused the applicant to incur significant expense), and then require the applicant to make an affirmative claim that the denial constitutes a taking. Furthermore, the County Board would need to determine the extent of exception such that it would allow only some percentage of potential production to meet the Initiative's "only to the extent necessary" requirement.

Santa Maria Energy is concerned, therefore, that the Initiative will not only cause an unconstitutional taking of valuable property rights, but that it will also put in place a procedural labyrinth guaranteed to force mineral owners to incur excessive and unnecessary fees before having the courts determine their constitutionally-guaranteed rights.

On behalf of Santa Maria Energy, we request the County do everything within its power to avoid what will prove to be an expensive mistake. We urge you not to adopt the Initiative at your June 13, 2014 meeting.

Sincerely yours,

DAY CARTER & MURPHY LLP

A handwritten signature in cursive script, reading "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 Holdings, LLC