Exhibit I

This page intentionally left blank.

JRG

Jeffery R. Gilles, Founding Partner
Aaron Johnson, Partner
Paul A. Rovella, Partner
Jason Retterer, Partner
Robert E. Rosenthal, Partner
David W. Baleh
Peter D. Brazil
Patrick S. M. Casey
Kendra L. Clark
Jeffrey S. Lind
Nevin P. Miller
Sergio H. Parra
Ronald A. Parravano
Matthew R. Rankin
E. Soren Diaz, Of Counsel
Doug K. Dusenbury, Of Counsel

January 31, 2018

Via U.S. Mail

Monterey County Planning Commission
Monterey County Government Center - Board of Supervisors Chambers
168 W. Alisal St.
Salinas, CA 93901

RE: Trio Petroleum Use Permit Application (PLN160146) for Drilling Exploration Wells and Temporary Oil & Gas Production Testing
File No.:5877.001

Dear Chair Vandevere and Members of the Planning Commission:

Our office represents Trio Petroleum, Inc. ("Trio") on the above referenced application. On January 31, 2018, the Planning Commission is scheduled to consider adopting a resolution that denies Trio's Use Permit for drilling and production testing four (4) exploration oil and gas wells based on the Planning Commission's direction to staff at its December 13, 2017 hearing. We have carefully reviewed the proposed findings for denial of Trio's Use Permit and urge the Planning Commission to reconsider its decision because the findings that the Planning Commission is being asked to adopt are not supported by substantial evidence. On the contrary, all of the evidence before the Planning Commission, including the expert findings and conclusions of the Mitigated Negative Declaration and supporting Initial Study (a copy of which is incorporated within the December 13, 2017 staff report) and your Planning staff's analysis in their December 13, 2017 staff report, supports approval Trio's application.

Finding No. 2 of the proposed resolution purports to identify evidence to support a findings that Trio's proposed Use Permit is somehow detrimental to the health and safety of persons residing or working in the vicinity of the proposed use. However, this evidence consists entirely of unsubstantiated opinions and speculation that is contradicted by the conclusions of the Initial Study and Mitigated Negative Declaration. Noticeably missing from the "evidence" to support Findings No. 2 are references to any technical reports, studies, data, or other expert opinion that are typically identified and, in fact, legally required to support findings. For example, the "evidence" in subsection "a)" is simply a political statement that

broadly slanders oil and gas exploration in general and suggests that Trio's exploratory wells will be injurious to County residents because it results in carbon emissions and groundwater contamination. However, there is no such evidence in the record, quite to the contrary, in fact, as reflected in the findings (see Section 4.1) of draft Resolution of approval that Staff presented to the Planning Commission at your December 13, 2017 hearing, which was based in great part on the Initial Study conducted by RMA Planning's environmental contractor, Rincon Consultants Inc.

As it relates to carbon emissions and the suggestion that the use permit will have adverse air quality impacts, the Initial Study undertook a comprehensive analysis of potential air quality impacts (See Section 3, pps. 33-41 and Section 7, pp.s 61-65, relating to Greenhouse Gas Emissions) and concluded that all impacts were either less than significant or could be mitigated to a less than significant level. Moreover, the Monterey Bay Air Pollution Control District wrote a letter regarding the project (attached as Exhibit G to your Dec. 13, 2017 Staff Report) and did not identify any potentially significant air quality impacts that would be injurious to Monterey County residents. Therefore, the "evidence" of potential air quality and climate change impacts which is described in subsections "a)," "b)," and "c" that purportedly supports denial of Trio's use permit does not exist and is contradicted by the Initial Study.

Similarly, the Initial Study concluded that the project would not contaminate or otherwise impact hydrology or surface or groundwater quality (See Section 9, pp.s 69 – 74). As it relates specifically to potential impacts to groundwater, the Initial Study explains:

> "The proposed project would drill and test wells at a depth of 4,000 to 6,500 feet. Public-supply wells are typically drilled to depths of 200 to 650 feet, which is intended to approach the bottom of the groundwater basin (Source: IX.57). All four wells would be at depths lower than the groundwater table, which would protect the groundwater table from potential water quality degradation. Furthermore, as discussed above, the wells would be required to be sealed from the groundwater table. Casing lines the inside of the borehole to ensure that materials within the borehole would not contact groundwater and water quality would not be affected. In addition, the applicant must comply with State standards for casing. Therefore, based on the applicant's compliance with all federal, State, and local regulations regarding oil well construction, the oil wells would be sealed from the groundwater table and water that may be pumped to the surface during exploration and production activities would not be drawn from the public supply sources (as noted above, groundwater wells are located at far shallower depths than the proposed exploratory wells). **Therefore, the pumping of oil during exploration and production would not affect the availability or quality of groundwater drawn from the public supply wells."** (Emphasis added)

Therefore, the "evidence" in subsection "d)" that states "Oils coming up from the wells from the productive underground geologic zone could escape the zone and migrate into other geologic zones that might contain fresh or usable water" is not true and is again contradicted by expert opinion and analysis in the Initial Study. Moreover, if there was any potential for this project to impact the Salinas Valley Groundwater Basin then surely the Central Coast Regional Water Quality Control Board and the County's Health Department would have expressed concerns about this project, but no such concerns were raised or expressed to the County.

Finally, the draft resolution cites Measure Z as "evidence" to support denial in section "e)" based on comments made to the Planning Commission at its December 13, 2017 hearing. At the time of the Planning Commission hearing, the superior court had not made a decision on Measure Z. However, on December 28, 2017, the superior court invalidated several policies in Measure Z, including Policy LU-1.23, which prohibited the drilling of new wells such as the exploratory wells that are the subject of Trio's use permit application. (See "Intended Decision," attached as **Exhibit A**). The superior court ruled that this provision was preempted by state and federal law, including the federal Safe Drinking Water Act ("SDWA"). As part of its ruling, Judge Wills disagreed with the proponents of Measure Z that Measure Z is "essential" to protect drinking water from endangerment based on a finding they cited in Measure Z. The Judge concluded that the County is not authorized to make such a finding because "when as here, the EPA has conferred primacy of a state, the SDWA expressly charges the state with determining whether a regulation is essential to protect drinking water."

Moreover, the declaration of Steven Bohlen that was submitted in the Measure Z litigation provides expert opinion that refutes all of the Measure Z findings that the Planning Commission is being asked to rely upon as evidence to support a denial of Trio's Use Permit (attached as **Exhibit B**). Accordingly, the Measure Z findings are not "evidence" to support a denial of Trio's Use Permit.

In addition to the Bohlen declaration, numerous expert declarations were submitted to the court regarding the extensive regulation of oil well construction and production. Burton R. Ellison, who is a registered professional geologist in the State of California and former District Deputy for the State of California, Division of Oil, Gas, and Geothermal Resources ("DOGGR") provided declaration regarding the extensive regulations that apply to well drilling and construction, including applicable regulatory requirements that ensure that water quality is protected (attached as **Exhibit C**). Accordingly, there is no legal basis for denying the use permits on the grounds that the project will adversely affect groundwater quality.

Finally, the proposed denial of Trio's temporary use permit, which effectively prevents Trio from exercising its lease right to extract and produce oil and gas resources on the property that is the subject of the temporary use permit, is an unconstitutional taking of Trio's property rights. Because "[t]he right to remove oil and gas from the ground is a property right," *Maples v. Kern Cty. Assessment Appeals Bd,* 103 Cal. App. 4th 172, 186 (2002), the holder of such interest is entitled to the same constitutional protections against takings as any other property owner. See *Pennsylvania Coal Co. v. Mahon,* 260 U.S. 393, 415-416 (1922) (recognizing a landowner's right to extract oil from a property); see also *Model v. Virginia Surface Min. and Reclamation Ass 'n, Inc.,* 452 U.S. 264, 296-297 (1981). Accordingly, the proposed denial of Trio's application renders worthless Trio's significant investment in securing the oil and gas rights on this property, including, for example, the millions of dollars spent conducting sophisticated 3D modeling of the underlying geology of the property in order to identify potential oil bearing zones for possible exploration.

We would respectfully request that the Planning Commission adopt the resolution conditionally approving the use permit that was presented to the Planning Commission on December 13, 2017 (attached as **Exhibit D**). While members of the Planning Commission may be philosophically opposed to oil exploration and production in Monterey County, that is not a legal basis for denying Trio's Use Permit. There must be specific concrete evidence in the record that demonstrates that Trio's use permit is somehow detrimental to the public health and safety. No such evidence exists or has been presented to the County. On the other hand and as documented in the staff report on December 13, 2017, Trio's proposed application is consistent with the general plan and zoning requirements and there is an overwhelming amount of evidence in the record before the Planning Commission that Trio's proposed temporary test wells will not have an impact on water quality, air quality, or any other environmental resources.

Sincerely,

Jason S. Retterer

cc: Supervisor Simon Salinas
Carl Holm
Jacqueline Onciano, Secretary to the Planning Commission
Bob Schubert

Attachments

EXHIBIT A

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MONTEREY

CHEVRON U.S.A., INC, et al. **Plaintiffs/Petitioners** **vs.** **COUNTY OF MONTEREY** **Defendant/Respondent**	**Case No.: 16CV003978** **INTENDED DECISION**
Protect Monterey County; Dr. Laura Solorio, M.D., **Intervenors**	

This matter came on for court trial on November 13, 14, and 15, 2017. All sides were represented through their respective attorneys. The matter was argued and taken under submission.

This intended decision resolves factual and legal disputes, and shall suffice as a statement of decision as to all matters contained herein. (Cal. Rules of Court, rule 3.1590(c)(1).)

Factual Background

This action involves challenges to a Monterey County ordinance, known as "Measure Z," a County initiative approved by the electorate in the November 2016 election. The measure, which relates to oil and gas operations exclusively, prohibits on all lands within the County's

unincorporated area 1) well stimulation treatments — measures by which oil-producing companies render underground formations more permeable to facilitate the extraction of oil (including but not limited to hydraulic fracturing, aka "fracking"), effective immediately; 2) underground wastewater injection and impoundment of wastewater, with a five-year phase out period; and 3) drilling any new wells for the recovery of, or to aid in the recovery of, oil or gas, effective immediately. It also provides for two possible extensions of the five-year underground injection and impoundment phase-out period, for a total possible extension of 15 years.

To understand the meaning and effect of Measure Z, as well as its potential interplay with existing state and federal regulations, evidence on the background and nature of oil operations in Monterey County was not only appropriate but also necessary.

There is no fracking currently taking place in Monterey County. Because of the sandy nature of oil bearing strata in Monterey County oil fields, fracking is not necessary to extract oil. There are only two or three reported instances of fracking ever occurring in Monterey County, all of which occurred approximately a decade ago.

The oil producing fields in Monterey County are principally located in the southern Monterey County areas of San Ardo and Lynch Canyon,[1] arid, sparsely populated regions well inland from the coastline. Oil drilling and production has been carried on in San Ardo for nearly 70 years and in Lynch Canyon for nearly 55 years. The oil deposits are highly viscous (i.e., thick), and exist at levels in the range of 1,800-2,200 feet or more underground. There are two oil-bearing formations in San Ardo: the Lombardi Sands Formation which currently produces oil, and the Aurignac Sands Formation, which lies at a level below the Lombardi and is sufficiently depleted of its oil reserves that it is now used to dispose of water extracted from the Lombardi. The oil-producing formation in Lynch Canyon is the Lanigan sand, a porous, highly permeable sand that occurs at approximately 1,700 feet underground.

There exists naturally in these formations, accompanying the oil deposits, a huge volume of water laden with salt and hydrocarbons (95% water volume for every 5% of oil, by

[1] Petitioner Trio Petroleum LLC operates primarily at the Hangman Hollow Oil Field, just west of Lynch Canyon. Other Petitioners own mineral rights in oil and gas leases in areas such as the Monroe Swell Oil Field, which is northwest of the San Ardo Field and produces from similar formations (Sunset Exploration, Inc.); Hames Valley (Bradley Minerals, Inc.); and the Paris Valley and McCool Ranch oil fields (California Resources Corporation).

one expert's estimation). Because of the highly viscous nature of the oil deposits, the oil must be heated by injecting steam underground in order to make it more fluid so that it can be pumped out. In San Ardo, as oily water is pumped out of the ground, it is placed into storage tanks where the oil and water settle out and separate. The extracted water is then dealt with in one of three different ways. It is either 1) purified, in part (and the purified water placed back into the ground to recharge the water table and maintain wetlands); 2) treated and injected into the ground as steam at the Lombardi formation level to heat the viscous oil deposits; or 3) reinjected — with the oil removed but otherwise untreated and in its natural state — along with the saline brine extracted in the reverse osmosis purification process, into the Aurignac Formation. As the pumped out water is subjected to these processes, it must be stored temporarily.[2]

All of the water used for steam injection comes from the underground, pumped-out water (after some treatment). The process of removing oil and naturally occurring water necessarily results in less volume to occupy the space previously occupied by the extracted oil/water and, consequently in colder, naturally occurring water encroaching into that space. This in turn requires extraction of the encroaching cold oil/water and further steam injection to maintain the temperature (and lower viscosity) of the oil so that it can be removed. As the oil/water is extracted, the perimeter of the area that needs to be heated expands — necessitating further steam injection and new wells at the increasing periphery of the area from where the recoverable oil lies.

Oil cannot be extracted without the continuous drilling of new steam injection wells. Unless steam is continuously added, the underground steamed area (known as a "steam chest") cools and the oil is no longer extractable. Oil production would then decline relatively quickly and come to a complete halt in five years or less.

[2] Oil producers such as Eagle Petroleum, LLC (Eagle), which operates out of the Lynch Canyon, also inject steam and produced water into underground formations. Eagle injects steam into the Lanigan Formation and produced water into either the Lanigan Formation or the Santa Margarita Formation.

Procedural Background

Measure Z's effective date was initially set to be December 16, 2016. However, on December 14, 2016, Petitioners Chevron, U.S.A., et al., and other associated Petitioners[3] (Chevron), and Aera Energy LLC (Aera), filed petitions for writ of mandate alleging that Measure Z 1) was preempted by state and federal law; 2) effected a facial taking of their property; and 3) violated their due process rights. On that same date, the court approved separate stipulations between Chevron and the County and Aera and the County to stay implementation of Measure Z indefinitely. Separate suits by 1) the California Resources Corporation (CRC); 2) National Association of Royalty Owners-California, Inc., plus 61 individual and corporate entities (NARO); 3) Trio Petroleum LLC, Bradley Minerals, Inc., Monroe Swell Prospect, J.V., and Sunset Exploration, Inc. (Trio); and 4) Eagle Petroleum, LLC (Eagle) followed.[4] Those parties made similar arguments, but also advanced claims that Measure Z created inconsistencies within the County General Plan, and that Measure Z violated the "single-subject" rule.

On March 17, 2017, the court granted a petition for intervention from Protect Monterey County (PMC), the advocacy group responsible for drafting Measure Z and the bulk of the campaign in its favor, and from Dr. Laura Solorio, a founding member of the group and signatory of the Measure (collectively, Intervenors). On April 18, 2017, the court ordered that the case be split into several phases. "Phase I" was "limited to challenges to the validity of the ordinance on its face. And that includes interpretation." (RT 3:14-17.) On June 7, 2017, the court consolidated all six cases for purposes of "Phase I" trial only. On June 14, 2017, the court designated the Chevron case (case number 16CV003978) as the lead case, and ordered that all pleadings related to the trial and briefing of "Phase I" be filed in that case.[5]

---

[3] Besides Chevron, other Petitioners in 16CV003978 include Key Energy Services, LLC, Ensign United States Drilling (California) Inc., Maureen Wruck, Gazelle Transportation, LLC, Peter Orradre, Martin Orradre, James Orradre, Thomas Orradre, John Orradre, Stephen Maurice Boyum, and the San Ardo Union Elementary School District.

[4] Unless otherwise noted, the Plaintiffs and Petitioners in all six cases are referred to collectively herein as "Petitioners."

[5] The other case numbers consolidated include 16CV003980 (Aera); 17CV000790 (CRC); 17CV000871 (NARO); 17CV001012 (Trio); and 17CV000935 (Eagle).

Standing

Intervenors' positions regarding standing — which bear directly upon the relevance of certain evidence submitted by Petitioners (and to which Intervenors object) — have ranged from non-opposition to vacillation to equivocation to opposition.

At the case management conference held on June 7, 2017, the County stated, "as [standing] relates to the mineral rights owners . . ., we would need to see documents" (RT 29:17-19), and added that it "would prefer to defer any fight, if it's necessary, over standing, to a later phase (RT 29:21-25) . . . . [F]or purposes of Phase I . . ., without prejudicing our rights to later argue standing, we will not raise it" (RT 30:20-22). The court next inquired of Intervenors as to their position, and Intervenors' counsel stated, "[s]o I just want to be clear about the standing issue. Clearly, if they show us documents that we have mineral rights and therefore we have some kind of financial interest to come into court, we're not going to have an objection to that. But we should distinguish the standing issue from the broader issue of pursuit of exclusive remedies; therefore, standing to sue at this point. So we're happy to defer that issue as well because there are exclusive remedy provisions in the measure we have talked about, the vested rights procedure before the County." (RT 31:4-16.)

In support of their opening briefs, Petitioners submitted declarations reciting the nature of their respective ownership interests and attaching a large number of exhibits such as deeds and conveyances of mineral rights. Intervenors, after having stated at the case management conference that they demanded proof of the Petitioners' interests and arguing that Petitioners lacked standing, then objected repeatedly to Petitioners' proofs of ownership and lease interests on the ground that they were "irrelevant to this stage of the proceedings." Additionally, in their merits brief, Intervenors argued, ". . . Petitioners have no standing to obtain relief from the Court on this issue [of the preemption of the Measure's provisions regarding well stimulation treatments and fracking]." (Intervenors' Opposition Brief (Phase I Facial Claims) at p. 34:18-19 and fn. 27.)

Next, at a trial management conference held on November 6, 2017, one week before the Phase I trial commenced, the Court asked Intervenors to clarify their position regarding standing — pointing out that if there was a challenge to one or more Petitioners' standing to raise the

Phase I claims, it should be resolved at this stage of the proceedings, not left for debate later on. (RT 5:21-6:21.) The morning of trial, Petitioners and the County filed a joint statement in which they concurred that Petitioners had standing to pursue the claims briefed in the Phase I trial. That same morning, Intervenors filed a supplemental trial management conference statement in which they announced that they "do not concede that [Petitioners] has [*sic*] submitted evidence sufficient to establish their standing either during Phase 1 proceedings or in any subsequent phases."

Intervenors then submitted a brief mid-trial which stated that not only did they challenge Petitioners' standing to challenge the well stimulation treatment portion of the Measure, but also objected to their standing to contest *any* portion of Measure Z: "As to Petitioners' challenges to LU-1.22 [the underground injection and impoundment prohibitions] and LU-1.23 [the no new wells prohibitions], Petitioners have not submitted supporting evidence to demonstrate standing as to each and every one of the named parties, and thus Intervenors do not concede their standing for any purpose." (Intervenors' Brief Re Plaintiffs' Standing to Challenge Measure Z LU-1.21, at p. 3:9-11.) Intervenors thus further placed in issue each Petitioner's practice of, and need to utilize, 1) underground injection and storage; and 2) new well drilling to aid in the recovery of oil and gas.

Whether this is deliberate obfuscation or genuine confusion on the part of Intervenors, it renders highly relevant numerous declarations and exhibits submitted by Petitioners that go to the issue of standing.

Administrative Record

The court admitted the administrative record into evidence.

Additional Evidence Presented

In addition to the administrative record, the parties offered evidence in support of their briefing, requests for judicial notice, and stipulated facts. The parties raised myriad objections.

Before addressing the parties' objections, particularly those on relevance grounds, the court notes that the scope of the Phase I facial challenges trial was not limited to the issue of

facial takings challenges.[6] It also included standing (as discussed *ante*, Intervenors raised this issue), preemption, due process procedural and vagueness challenges, a single-subject rule challenge, and general plan consistency challenges.

The court rules on the parties' objections as follows:

1.0 Intervenors' objections to evidence submitted by Chevron

1.1 Declaration of Burton Ellison (Ellison Dec.)

The following objections are overruled: 1, 3, 5 (as to the first sentence), 6 (as to lack of foundation), 7, 8 (an agency's interpretation of its own regulations is accorded deference), 9-10, 11 (as to the first sentence only), 12-24, and 25 (overruled as to the first sentence).

The following objections are sustained: 2, 4, 5 (as to the second sentence only as argumentative), 6 (as a legal opinion), 11 (as to the last sentence on the grounds that the declarant's opinion of the true purpose of Measure Z is irrelevant), 25 (as to the last sentence), 26-27, and 28 (as to the words "to the detriment of the citizens of California").

1.2 Declaration of Dallas Tubbs (Tubbs Dec.)

The following objections are overruled: 1-21, 22 (except as to the words "this prohibition would also prevent Chevron from engaging . . .," since it would interpret the ordinance); 23-27, and 29-33.

The following objections are sustained: 22 (only as to the words "this prohibition would also prevent Chevron from engaging . . .," which amounts to an interpretation of the ordinance), 28 (as to the words "Measure Z would have substantial impacts on the ability to continue capital investment within the current field . . ." as irrelevant to this stage of the proceeding), 34 (as to the words "the impending shutdown of the field precludes the necessary capital investment needed to operate an oil field of this size" as irrelevant to this stage of the proceeding).

---

[6] Contrary to Intervenors' claims, facial regulatory takings claims *do* permit the presentation of some evidence. (See *Keystone Bituminous Coal Assn. v. DeBenedictis* (1987) 480 U.S. 470, 495-496; *NJD, Ltd. v. City of San Dimas* (2003) 110 Cal.App.4th 1428, 1448 ["we are not holding that no evidence may be received in a facial regulatory takings case"].) Evidence is necessary to determine whether a statute "deprive[s] an owner of '*all* economically beneficial use' of her property. [Citation.]" (*Lingle v. Chevron U.S.A. Inc.* (2005) 544 U.S. 528, 538, italics in original.)

1.3 Declaration of James Latham (Latham Dec.)

The following objections are overruled: 1-2, 3 (except as to the words " . . . thus condemning all such resources," an improper legal opinion), 4-8, 10 (except as to the second sentence concerning the purported economic damage Measure Z's implementation could cause, irrelevant to this stage of the proceedings), 11, 12 (on the ground stated), 13, 16-17, 18 (as to the words "[g]iven the large volume of produced water that is extracted as part of Chevron's operations, any disposal method other than reinjection would be completely unworkable"; sustained as to the balance), and 19.

The following objections are sustained: 2, 3 (as to the words "thus condemning all such resources" as an improper legal opinion), 9 (improper legal opinion), 10 (irrelevant to the extent it references damage to the local and regional economies; otherwise relevant), 14 (improper legal argument and opinion), 15 (same), 18 (except for the words "[g]iven the large volume of produced water that is extracted as part of Chevron's operations, any disposal method other than reinjection would be completely unworkable"; the balance is a legal opinion), 20 (not relevant for purposes of this stage of the proceedings), 21 (same), 22 (same), 23 (same), and 26 (same).

There are no objections numbered 24 or 25 to this declaration.

1.4 Declaration of John Orradre

All three objections are overruled.

1.5 Declaration of Catherine Reimer

The following objections are overruled: 1-8, and 14.

Objection number 9 is sustained.

There are no objections numbered 10-13 to this declaration.

1.6 Declaration of Nathaniel Johnson

The only objection is overruled.

1.7 Declaration of Myron Backhaus

This declaration essentially was offered to authenticate six different bottled samples of water collected from different phases of the oil recovery, injection, storage, and disposal process at the San Ardo field. These bottles were used as demonstrative evidence during Chevron's presentation of the case, but were of limited probative value. Intervenors' objections on the

grounds that evidence is beyond the scope of what is allowed at the Phase I proceeding is overruled. The evidence was submitted late, however, and its only probative value is to underscore what is already in the evidence presented by Petitioners. Sustained on these grounds.

2.0 Objections to Petitioner CRC's evidence submitted in its opening brief

2.1 Declaration of Kimberly Bridges (Bridges Dec.)

The following objections by Intervenors are overruled: 1, 2 (to the extent the words "[t]oday, CRC is California's largest oil and natural gas producer on a gross-operated basis" are subject to the objection), 3, 4, 5, and 8-30.

The following objections are sustained for purposes of Phase I of these proceedings: 2 (except for the words "[t]oday, CRC is California's largest oil and natural gas producer on a gross-operated basis"), and 6-7.

2.2 Declaration of Justin McMahon (McMahon Dec.)

The following objections of Intervenors are overruled: 1, 2 (except as to the sentence "[t]his would give CRC a peak oil rate of ~2,800 barrels per day"), and 3-6.

The following objection is sustained: 2 (only as to the words "[t]his would give CRC a peak oil rate of ~2,800 barrels per day").

2.3 Declaration of Richard Miller (Miller Dec.)

All objections are overruled.

2.4 Declaration of Adam Smith

The following objections are overruled: 1, 2, and 4-10.

The following objection is sustained: 3.

2.5 Declaration of Heather Welles (Welles Dec.)

All objections are overruled.

2.6 Supplemental Declaration of Heather Welles

The objections on the grounds stated are sustained; this proceeding occurred after the filing deadline for Petitioners' reply briefs.

3.0 Intervenors' objections to the evidence submitted by Petitioner Aera

All objections are overruled.

4.0 Intervenors' objections to Evidence submitted by Petitioner Eagle

4.1 Declaration of Mary Jane Wilson. (Wilson Dec.)

The following objections are overruled: 1, 6 (although it is cumulative and of little additional probative value in light of other evidence presented by the parties), 7, 23-24, 25 (relevant to lack of standing), 26, 28-30, 32-34, 35 (as to the paragraph beginning "nor does it let the reader know . . ."), 38 (the secondary evidence rule is the only ground stated for objection), and 39.

The remaining objections are sustained; much of the material is objectionable because it is argumentative, not relevant, cumulative, or not the proper subject of expert opinion.

4.2 Declaration of Samuel Allen Monroe.

Intervenors' objection to paragraph 23 is sustained. All other objections are overruled.

5.0 Intervenors' objections to evidence submitted by Petitioner NARO

5.1 Declaration of Wayman T. Gore, Jr. (Gore Dec.)

Objection 8 is sustained. All other objections are overruled.

5.2 Declaration of Steven Bohlen

The following objections are overruled: 1, 2, 4, 9-13, and 20 (only as to the words "Oil and Gas operators are required by law to report spills, even small spills of a gallon or two of hazardous substances. Once reported, the operator is required to remediate the spill immediately and to demonstrate remediation to an inspector"), 22, 32, 33, 40, and 42. The remaining objections are sustained.

5.3 Supplemental Declaration of Wayman T. Gore, Jr.

All objections are overruled.

6.0 Objections to the Petitioners' Joint Request for Judicial Notice (JRJN)

Intervenors' objections are largely blanket; Intervenors fail to pinpoint specific objections to particular items in an orderly fashion. While Intervenors voice many generalizations regarding what is and is not properly the subject of judicial notice, these generalizations are not helpful. Moreover, many of the documents proffered are the official acts of governmental agencies, while some are statements made on behalf of the County and thus qualify as admissions of a party

opponent, both of which overcome Intervenors' hearsay objections. Yet others are in themselves documents constituting acts having legal significance without regard to their truth.

With the foregoing in mind, the court sustains objections to the following items for which Petitioners request judicial notice: 1, 2 (only to the extent of emails contained therein; the report by Supervising Appraiser McFarlane of the Monterey County Assessor's Office and the Fiscal Impact statement of the County Assessor are allowed), 3 (not relevant), 6, 16, 21-22, 36 (not relevant), 37-55, 66 (no date; relevance not shown), and 67-68.

The remaining objections are overruled.

7.0 Petitioners' objections to the County's and Intervenors' Requests for Judicial Notice

Both objections are sustained.

8.0 The County's objections to Petitioners' use of the deposition of the County's expert declarant Alan Burzlaff

The court was clear that no discovery was to take place, yet Petitioners ignored this direction and took Mr. Burzlaff's deposition. For both this reason, and because Mr. Burzlaff's interpretation of Measure Z is not relevant, all objections are sustained.

Discussion

Petitioners challenge Measure Z on several grounds. Petitioners argue that 1) Measure Z violates the California Constitution's single-subject rule; 2) Measure Z is preempted, in whole or in part, by state and/or federal law; 3) Measure Z effects a facial regulatory taking of Petitioners' property; 4) Measure Z creates internal inconsistencies in Monterey County's General Plan; and 5) Measure Z violates Petitioners' substantive and procedural due process rights.

1. The Single-Subject Rule

Petitioner CRC argues that Measure Z violates the California Constitution's single-subject rule. CRC contends that Measure Z's main purpose was to ban fracking and that Policies LU-1.22 and LU-1.23, the Measure's additional two prohibitions on 1) wastewater injection and impoundment; and 2) new wells, respectively, are not "reasonably germane" to that purpose. CRC further contends that Intervenors purposely used fracking — a technique not currently employed in Monterey County — as a political hook to deceive voters into approving the remainder of Measure Z, which it asserts would end oil and gas production in the County.

1.1 Legal Background

The California Constitution provides, "[a]n initiative measure embracing more than one subject may not be submitted to the electors or have any effect." (Cal. Const. art. II, § 8(d).) This "single-subject rule" — itself, adopted by initiative — "is a constitutional safeguard adopted to protect against multifaceted measures of undue scope." (*Brosnahan v. Brown* (1982) 32 Cal.3d 236, 253.) The rule was intended "to attempt to avoid confusion of either voters or petition signers and to prevent the subversion of the electorate's will. [Citation.]" (*Senate of State of Cal. v. Jones* (1999) 21 Cal.4th 1142, 1156 ["*Jones*"].)

The single-subject rule is liberally construed to sustain initiatives that "fairly disclose a reasonable and common sense relationship among their various components in furtherance of a common purpose." (*Brosnahan, supra*, 32 Cal.3d at p. 253.) "An initiative measure does not violate the single-subject requirement if, despite its varied collateral effects, *all of its parts are reasonably germane* to each other, and to the general purpose or object of the initiative." (*Legislature v. Eu* (1991) 54 Cal.3d 492, 512, italics in original, internal citations omitted.) Notwithstanding this language, it is not *necessary* that a measure's several provisions be "reasonably germane" *to each other*. (*Californians For An Open Primary v. McPherson* (2006) 38 Cal.4th 735, 764, fn. 29.) In fact, the test requires only that the separate provisions of an initiative "be reasonably germane *to a common theme, purpose, or subject*." (*Ibid.*, italics added.) Nor is it necessary for an initiative proponent to show "that each one of a measure's several provisions was capable of gaining voter approval independently of the other provisions." (*Brosnahan, supra,* 32 Cal.3d at p. 253.) Nevertheless, the single-subject rule "obviously forbids joining disparate provisions which appear germane only to topics of excessive generality such as 'government' or 'public welfare.'" (*Ibid.*)

Measure Z passes the reasonably germane test. The three provisions prohibit land uses in support of well stimulation treatments (such as fracking) and wastewater injection and impoundment, together with barring the drilling of new oil and gas wells. All three prohibitions pertain to specific production techniques the oil and gas industry uses in production operations. The common theme among these measures is stated by the official title of the initiative, the "Protect Our Water: Ban Fracking and Limit Risky Oil Operations Initiative." (AR 152.)

Measure Z's 15 findings detail the significant environmental, "health, safety, welfare, and quality of life" impacts these practices assertedly have in the County. (AR 152-154.) Measure Z's provisions are reasonably germane to a common theme then, because they address potential environmental, safety, and social impacts of oil and gas production.

By contrast, the cases CRC cite involve provisions linked only by "excessive generality." (*Brosnahan, supra,* 32 Cal.3d at p. 253.) For example, in *California Trial Lawyers Assn. v. Eu* (1988) 200 Cal.App.3d 351, 355, 358, the proposed 120-page, 67-section ballot initiative stated it was intended to control insurance costs, and in particular, "the constantly increasing premiums charged to California purchasers of liability insurance." Section 8, "located inconspicuously" in the middle of the measure, provided insurance companies with protection from future campaign contribution regulations that could be aimed at insurers. (*Id.* at p. 356.) In defending the challenge, the insurers claimed that, because the initiative at issue "deals generally with the regulation of insurance industry practices and [the campaign contribution provision] relates to a specific aspect of those practices, the latter section ipso facto satisfies the 'reasonably germane' test." (*Id.* at pp. 359-360.) The court rejected this defense on two grounds:

"First, the express purpose of the initiative is to control the cost of insurance, not generally to regulate the practices of the insurance industry. Second, we cannot accept the implied premise of Association's analysis, i.e., that any two provisions, no matter how functionally unrelated, nevertheless comply with the constitution's single-subject requirement so long as they have in common an effect on any aspect of the business of insurance. Contemporary society is structured in such a way that the need for and provision of insurance against hazards and losses pervades virtually every aspect of life. [The insurers'] approach would permit the joining of enactments so disparate as to render the constitutional single-subject limitation nugatory." (*Id.* at p. 360.)

Similarly, in *Chemical Specialties Manufacturers Assn., Inc. v. Deukmejian* (1991) 227 Cal.App.3d 663, 670-671, the Court of Appeal sustained a single-subject challenge to an initiative entitled the "Public's Right to Know Act" because the Act covered an overly broad subject. Specifically, the measure contained sections requiring public disclosure of information in a number of unrelated areas such as nursing homes, seniors' health insurance, household toxic

products, and statewide initiative or referendum campaigns. (*Id.* at p. 666.) The measure's supporters claimed that its provisions were all reasonably germane to the subject of "public disclosure i.e. truth-in-advertising." (*Id.* at p. 670.) The Court found this to be a "subject of excessive generality," explaining, "the object of providing the public with accurate information in advertising is so broad that a virtually unlimited array of provisions could be considered germane thereto and joined in this proposition, essentially obliterating the constitutional requirement." (*Id.* at p. 671.)

Measure Z raises none of these concerns. All three policies in effect prohibit specific production techniques in a single industry. Additionally, all three policies further the common goal of protecting the public from the purportedly harmful effects of these practices on the environment, public safety, and quality of life. Hence, Measure Z does not violate the single-subject rule. (See *Brosnahan, supra*, 32 Cal.3d at p. 253.)

1.2 Voter Deception

Alternatively, CRC argues that even if the reasonably germane test is satisfied, Measure Z violates the single-subject rule because voters were misled by its proponents' campaign as to the true purpose of the initiative. CRC maintains that these proponents used the controversial topic of fracking, a practice the parties concede is not currently used in Monterey County (see Stipulated Facts, ¶ 29), as a "political hook" for their real agenda: destroying the oil and gas industry by effectively banning certain production techniques. CRC insists that highly technical knowledge — which the average voter lacks — is required to understand the true impact of Measure Z upon the oil and gas industry. (See, e.g., Tubbs Dec., ¶¶ 32-60.)

CRC is correct that the single-subject rule was enacted, in part, to prevent voter deception. (*Jones, supra*, 21 Cal.4th at p. 1156.) And it is true that Measure Z goes much further than the simplistic "anti-fracking" campaign label suggests. But however distasteful oversimplification and political puffery may be, CRC has failed to identify authority for its contention that a proponent's use of misleading campaign material and/or proponent-submitted ballot materials stands as an independent ground for invalidating an initiative under the single-subject rule. Instead, CRC justifies its argument with isolated excerpts from the California

Supreme Court's decision in *Jones*, and by reference to a concurring opinion in *Manduley v. Superior Court* (2002) 27 Cal.4th 537.

1.2.1 *Jones*

Jones involved a challenge to Proposition 24, the "Let the Voters Decide Act of 2000." (*Jones, supra*, 21 Cal.4th at p. 1147.) Proposition 24 revised provisions of the law related to state legislator compensation. (*Id.* at pp. 1147-1148.) The Proposition also transferred the power to reapportion state legislative, congressional, and Board of Equalization districts from the Legislature to the California Supreme Court. (*Id.* at pp. 1148-1149.) The Court held that addressing these two issues in concert violated the single-subject rule. The Court reasoned that the reapportionment proposal involved "a most fundamental and far-reaching change in the law" that "clearly represent[ed] a separate 'subject' within the meaning of the single-subject rule upon which a clear expression of the voters' intent is essential." (*Id.* at pp. 1167-1168.) It therefore concluded that authorizing this provision together with the provisions regarding state officer compensation "would inevitably create voter confusion and obscure the electorate's intent with regard to each of the separate subjects included within the initiative, undermining the basic objectives sought to be achieved by the single-subject rule." (*Id.* at p. 1168.)

CRC claims that *Jones* also stands for the proposition that the Court "can even hypothesize a further claim that there will be instances where [the Court] might just strike the statute down just on the fact that it was brought in such a misleading and deceptive way." In support of this claim, CRC cites to footnote 12 of *Jones*. (*Id.* at p. 1163, fn. 12.) In fact, the *Jones* Court never reached this issue. Footnote 12 provides:

"As noted, in a separate argument petitioners assert that the misleading nature of the initiative petition with regard to this significant point is itself a sufficient basis upon which to disqualify the measure from the ballot. In light of our conclusion that the measure violates the single-subject rule, *we need not determine whether the misleading nature of the initiative petition in itself would support an order restraining election officials from placing the measure on the ballot.*" (*Id.* at p. 1163, fn. 12, italics added; see also *id.* at pp. 1152-1153 [because the court held that the initiative violated the single-subject rule, the court "need not reach the question[]

whether . . . its allegedly misleading aspects are sufficient, in themselves, to warrant an order withholding the measure from the ballot"].)

Although it did not reach the voter deception argument, the Court nevertheless summarized the petitioner's arguments in its introduction. (*Id.* at pp. 1150-1153); CRC cites to this *summary* to support its claim. For example, CRC quotes *Jones* at page 1151 for the proposition that, in applying the single-subject test, the court must take "special care to ensure that voters are not manipulated by one part of the new law 'that the proponent views as politically popular . . . .'" This language is convenient for CRC, since it insists that Intervenors used fracking as a "hook for other, unrelated provisions." But the language CRC quotes simply describes one of the *Jones petitioner's contentions*.

Further, in arguing that campaign behavior may be a factor in the single-subject inquiry, CRC places great emphasis on the Court's citation to a newspaper article, describing it as "one of the key pieces of evidence" upon which the Court relies. (*Id.* at p. 1151, fn. 5.) However, the Court's sole reference to the article is in a footnote in the section of the Court's opinion summarizing the petitioner's contentions, in which the court notes merely that the article in question was an attachment to the underlying petition. (*Ibid.*) Nothing in *Jones* supports CRC's claim that the Court relied on the newspaper article in reaching its decision.

CRC also notes *Jones*' "holding" that "a provision governing legislative salaries was unrelated to the purported purpose of addressing 'legislative self-interest,'" because, as the Court stated, "[a]lthough the text of Proposition 24 obscures this point, in reality . . . members of the Legislature do *not* control their own salaries (and thus cannot 'raise their own pay,' as the initiative implies)." (*Id.* at p. 1163, italics in original.) CRC relies on this statement in analogizing Measure Z to *Jones*, claiming that just as Proposition 24 falsely represented the Legislature's power to control their own salaries, a politically controversial issue, Intervenors misled voters by focusing their campaign nearly entirely on fracking, an equally politically charged issue, even though fracking is not presently employed in Monterey County. (Stipulated Facts, ¶ 29.)

CRC's carve-out of a single sentence of the Supreme Court's opinion is misleading; *Jones* did not hold as CRC contends. Rather, in the relevant passage, the Court primarily

addressed an alternative argument advanced by proponent's counsel as to the *subject* of Proposition 24, not a false premise *within* Proposition 24.

Proposition 24's proponent initially asserted that "voter approval" was the "single subject" to which the initiative pertained. (*Id.* at pp. 1161-1162.) The Court rejected this subject as far too broad to satisfy the rule. (*Id.* at p. 1162.) In the alternative, the proponent suggested the initiative's provisions were reasonably germane to "the objective of dealing with the problem of 'legislative self-interest.'" (*Id.* at p. 1163.) The proponent pointed out that one purpose of the measure was to "'combat the self-interest of individual legislators,'" and hence, the measure declared, "'Legislators should not be entitled to raise their own pay or draw their own districts without obtaining approval of the voters.'" (*Ibid.*) The Court rejected this argument, explaining,

"We need not determine in this case whether an initiative matter that includes provisions dealing with a number of subject matter areas as diverse as legislator salaries and reapportionment would satisfy the single-subject requirement if each of the separate areas addressed by the provision poses a potential conflict of interest between the personal interests of legislators and the public interest. Even if we were to assume that the theme or objective of remedying 'legislative self-interest' is not excessively broad and would permit the combination of such otherwise unrelated proposals, the initiative before us cannot properly be defended on this basis. Although the text of Proposition 24 obscures this point, in reality, under existing law, members of the Legislature do *not* control their own salaries (and thus cannot "raise their own pay," as the initiative implies)." (*Id.* at p. 1163, italics in original.)

The Court consequently *deemed it unnecessary* to consider this *alternative* theory argued by counsel because it was predicated on a falsehood. The Court did *not*, as CRC states, hold that the single-subject rule was violated *because* of the falsehood.

In sum, *Jones* does not support CRC's voter deception argument.

1.2.2 *Manduley*

The closest CRC gets to providing support for its deception argument is in its citation to *Manduley v. Superior Court* (2002) 27 Cal.4th 537. There, in a concurring opinion, Justice Moreno addressed the deception issue, stating, "at the very least, an initiative should not pass muster under the single-subject rule unless its provisions are reasonably encompassed within the

title and summary of the initiative." (*Id.* at p. 587.) Justice Moreno likened to this to the inquiry "whether a party was unfairly surprised by a provision in a contract of adhesion, rendering that provision unconscionable. [Citation.]" (*Ibid.*) Justice Moreno also noted that "the subject encompassed by the title and summary should be reasonably specific, not a broad, generic subject such as crime or public disclosure. [Citation.]" (*Id.* at p. 588.)

However persuasive the opinion of a California Supreme Court Justice may be, it is not, on its own, controlling precedent. (See *People v. Stewart* (1985) 171 Cal.App.3d 59, 65 [to qualify as precedent, a "majority of the court" must agree on a point of law].) Nevertheless, even if this court were to apply Justice Moreno's test, Measure Z would still "pass muster." (*Manduley, supra*, 27 Cal.4th at p. 587.) Measure Z's official title is the "Protect Our Water: Ban Fracking and Limit Risky Oil Operations Initiative." (AR 152.) The title provides notice that the initiative will, at minimum, address fracking and the effect of oil operations on the County's water. Additionally, Measure Z expressly explains that its purpose is to protect the County's "water, agricultural lands, air quality, scenic vistas, and quality of life by prohibiting the use of any land within the County's unincorporated area for well stimulation treatments, including, for example, hydraulic fracturing treatments (also known as 'fracking') and acid well stimulation treatments. The Initiative also prohibits and phases out land uses in support of oil and gas wastewater (which the Initiative defines) disposal using injection wells or disposal ponds in the County's unincorporated area. The Initiative also prohibits drilling new oil and gas wells in the County's unincorporated area." (*Ibid.*)

Accordingly, the title and summary of Measure Z "reasonably encompass" its provisions. (*Manduley, supra*, 27 Cal.4th at p. 587.) Moreover, the title and summary are "reasonably specific" as to the subject of the initiative: limiting the risk of harm to the public interest purportedly posed by certain of the oil and gas industry's production techniques. (*Id.* at p. 588.)

In sum, Measure Z does not violate the single-subject rule.

2. Preemption

Petitioners argue that state and federal law preempt Measure Z.

2.1 State Oil and Gas Law

Oil and gas operations in California are governed by Division 3 of the Public Resources Code (Pub. Resources Code, § 3000, et seq.) and its implementing regulations (Cal. Code Regs., tit. 14, § 1712, et seq.). Division 3 addresses oil and gas exploration and extraction in detail, including notices of intent to drill and abandon (§§ 3203, 3229); bonding (§§ 3204-3207); abandonment of wells (§ 3208); recordkeeping (§§ 3210-3216); blowout prevention (§ 3219); use of well casing to prevent water pollution (§ 3220); protection of water supplies (§§ 3222, 3228); repairs (§ 3225); regulation of production facilities (§ 3270); waste of gas (§§ 3300-3314); subsidence (§ 3315-3347); well spacing (§§ 3600-3609); unit operations (§§ 3635-3690); and regulation of oil sumps (§§ 3780-3787).

The State of California Department of Conservation's Division of Oil, Gas, and Geothermal Resources (DOGGR) is the state agency appointed to administer oil and gas activities. (See Pub. Resources Code, § 3100, et seq.) DOGGR has a dual mandate to promote the development of the state's oil and gas resources, and to supervise such operations "to prevent, as far as possible, damage to life, health, property, and natural resources," including the water supply. (Pub. Resources Code, § 3106.) DOGGR regulations are extensive. (See, e.g. Cal. Code Regs., tit. 14, §§ 1722-1722.9, 1723, 1723.7, 1724, 1724.1, 1775.) These regulations are intended to be "statewide in application for onshore drilling, production and injection operations." (*Id.*, § 1712.)

Effective January 1, 2014, DOGGR's obligation to regulate the oil and gas industry's use of well stimulation treatments (WSTs), including hydraulic fracturing, was codified by SB 4. (Pub. Resources Code, § 3150, et seq.) SB 4 charged DOGGR with creating permanent regulations specific to WSTs. (Pub. Resources Code, § 3160, subd. (b)(1)(A).) DOGGR's regulations, which created a state permitting system for WSTs, went into effect in July 2015. (Cal. Code Regs., tit. 14, §§ 1761, 1780-1789.)

Further, in California, the U.S. EPA has delegated to DOGGR the authority to permit and regulate "Class II" injection wells under the Underground Injection Control (UIC) program. (40 C.F.R. § 147.250.) The UIC program falls under the federal Safe Drinking Water Act (42 U.S.C. § 300f, et seq.), the purpose of which is to protect "underground sources of drinking water" (40

C.F.R. § 144.1). The Class II injection category includes wells used to enhance oil recovery through the injection of fluids, including steam and water. (*Id.*, § 144.6(B).) All UIC projects are subject to DOGGR approval. (Cal. Code Regs., tit. 14, § 1724.10.) DOGGR strictly regulates UIC projects, enforces testing and equipment requirements, and requires both monthly reporting of injection activity and chemical analysis of injection fluids. (*Id*, §§ 1724.9, 1724.10.)

2.2 Preemption Law

Under state law, Petitioners bear the burden of proving preemption. (*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1149.) Voter-approved initiatives, such as Measure Z, are "subject to the same constitutional limitations and rules of construction as are other statutes." (*Legislature v. Deukmejian* (1983) 34 Cal.3d 658, 675.)

"Under article XI, section 7 of the California Constitution, '[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.'" (*Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897-898.) However, "[l]ocal legislation in conflict with general law is void. Conflicts exist if the ordinance duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication." (*Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 747, internal citations omitted.)

"Local legislation is duplicative of general law when it is coextensive therewith. [¶] Similarly, local legislation is contradictory to general law when it is inimical thereto. [¶] Finally, local legislation enters an area that is fully occupied by general law when the Legislature has expressly manifested its intent to fully occupy the area, or when it has impliedly done so in light of one of the following indicia of intent: (1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the locality." (*Sherwin-Williams*, *supra*, 4 Cal.4th at p. 898, internal citations omitted.)

Likewise, the federal Supremacy Clause empowers Congress to preempt state and local law. (*California Grocers Assn. v. City of Los Angeles* (2011) 52 Cal.4th 177, 193, citing U.S. Const., art. VI, cl. 2.) "There are four species of federal preemption: express, conflict, obstacle, and field." (*Viva! Internat. Voice for Animals v. Adidas Promotional Retail Operations, Inc.* (2007) 41 Cal.4th 929, 935.) Express preemption occurs when Congress "define[s] explicitly the extent to which its enactments pre-empt state law." (*English v. General Electric Co.* (1990) 496 U.S. 72, 78.) "[C]onflict preemption will be found when simultaneous compliance with both state and federal directives is impossible." (*Viva!, supra*, 41 Cal.4th at p. 936.) Preemption also occurs when state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." (*Crosby v. Nat. Foreign Trade Council* (2000) 530 U.S. 363, 373, citation omitted.) Courts will infer field preemption "when it is clear . . . that Congress intended, by legislating comprehensively, to occupy an entire field of regulation." (*Capital Cities Cable, Inc. v. Crisp* (1984) 467 U.S. 691, 699.) "[F]or the purposes of the Supremacy Clause, the constitutionality of local ordinances is analyzed in the same way as that of statewide laws. [Citation.]" (*Hillsborough County, Fla. v. Automated Medical Laboratories, Inc.* (1985) 471 U.S. 707, 713.)

Courts are "reluctant to infer legislative intent to preempt a field covered by municipal regulation when there is a significant local interest to be served that may differ from one locality to another." (*Fisher v. City of Berkeley* (1984) 37 Cal.3d 644, 707.) "The inherent local police power includes broad authority to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within a local jurisdiction's borders, and preemption by state law is not lightly presumed." (*City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, 738.) Thus, "when local government regulates in an area over which it traditionally has exercised control, such as the location of particular land uses, California courts will presume, absent a clear indication of preemptive intent from the Legislature, that such regulation is not preempted by state statute." (*Big Creek, supra*, 38 Cal.4th at 1149.)

2.3 Well Stimulation Treatments

Measure Z's Policy LU-1.21 prohibits "[t]he development, construction, installation, or use of any facility, appurtenance, or above-ground equipment, whether temporary or permanent, mobile or fixed, accessory or principal, in support of well stimulation treatments . . . within the County's unincorporated area." (AR 155.)

"Well stimulation treatments" are defined as "any treatment of a well designed to enhance oil and gas production or recovery by increasing the permeability of the formation. Well stimulation treatments include, but are not limited to, hydraulic fracturing treatments and acid well stimulation treatments. Well stimulation treatments do not include steam flooding, water flooding, or cyclic steaming and do not include routine well cleanout work, routine well maintenance, routine removal of formation damage due to drilling, bottom hole pressure surveys, or routine activities that do not affect the integrity of the well or the formation." (AR 155.)

Policy LU-1.21 defines the term "hydraulic fracturing treatment" as a WST "that, in whole or in part, includes the pressurized injection of hydraulic fracturing fluid or fluids into an underground geologic formation in order to fracture or with the intent to fracture the formation, thereby causing or enhancing the production of oil or gas from a well." (AR 155.) Further, Policy LU-1.21 defines "acid well stimulation treatment" as a WST "that uses, in whole or in part, the application of one or more acids to the well or underground geologic formation." (*Ibid.*)

Petitioners argue that state law preempts Policy LU-1.21.

2.3.1 Standing

Intervenors contend that Petitioners lack standing to challenge the WST prohibition because they have conceded they neither use WSTs nor are likely to do so in the future. Petitioners respond that the parties stipulated not to raise standing at this phase of the proceedings. Petitioners further respond that they have standing because they are concerned that Measure Z's definition of "acid well simulation treatment" may include certain well maintenance performed with hydrochloric acid.

Only parties with a real interest in a dispute have standing. (Code Civ. Proc., § 367.) A real party in interest is defined as "the person possessing the right sued upon by reason of the substantive law." (*Powers v. Ashton* (1975) 45 Cal.App.3d 783, 787.) Challenges to standing are

jurisdictional; they "may be raised at any time in the proceeding. [Citations.]" (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 438; *Payne v. United California Bank* (1972) 23 Cal.App.3d 850, 859 ["The question of standing to sue is one of the right to relief and goes to the existence of a cause of action against the defendant"].) Accordingly, the fact that the parties have stipulated not to raise standing in this phase of the proceedings is immaterial.

A party has standing to bring a petition for writ of mandate where "there is not a plain, speedy, and adequate remedy, in the ordinary course of law. It must be issued upon the verified petition of the party beneficially interested." (Code Civ. Proc., § 1086.) The "beneficially interested" requirement "has been generally interpreted to mean one may obtain the writ only if the person has some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large. [Citations.]" (*Carsten v. Psychology Examining Com.* (1980) 27 Cal.3d 793, 796.) "The petitioner's interest in the outcome of the proceedings must be substantial, i.e., a writ will not issue to enforce a technical, abstract or moot right. The petitioner also must show his legal rights are injuriously affected by the action being challenged." (*Braude v. City of Los Angeles* (1990) 226 Cal.App.3d 83, 87, internal citations omitted; see also *Lujan v. Defenders of Wildlife* (1992) 504 U.S. 555, 560 [to have standing, a party "must have suffered an 'injury in fact' — an invasion of a legally protected interest which is (a) concrete and particularized . . . ; and (b) "actual or imminent, not 'conjectural' or 'hypothetical'"].)

Petitioners concede they do not presently use WSTs and are unlikely to do so in the future. (See, e.g, Stipulated Facts, ¶ 29; Wilson Dec., ¶¶ 30, 32 [Eagle]; Miller Dec., ¶ 17 [CRC]; Declaration of Charles G. Kemp (Kemp Dec.), ¶ 3, Ex. A, p. 51 [Aera]; Tubbs Dec., ¶ 42 [Chevron]; Gore Dec., ¶ 10 [NARO].) Petitioners nevertheless argue they have standing to challenge the WST prohibition on several grounds.

First, Petitioners are disquieted that a perceived ambiguity in the definition of "acid well stimulation treatment" could potentially subject them to adverse action under Measure Z. A Chevron declarant explains, "Well cleanout and maintenance operations may involve the use of hydrochloric acid. This type of cleanout is not considered well stimulation so long as the maintenance operations comply with the acid volume thresholds set pursuant to DOGGR's

regulations. However, because Measure Z does not incorporate DOGGR's regulations into its provisions," it is "unclear" how the County will determine whether these cleanouts are permissible or prohibited. (Tubbs Dec., ¶ 53.)

To determine whether the use of acid in oil operations constitutes a WST under SB 4, the Legislature directed DOGGR to "establish special values for acid volume applied protruded foot of any individual stage of the well or for total acid volume of the treatment, or both, based upon a quantitative assessment of the risks posed by acid matrix stimulation treatments that exceed the specified threshold value or values in order to prevent, as far as possible, damage to life, health, property, and natural resources pursuant to Section 3106." (Pub. Resources Code, § 3160, subd. (B)(1)(C).) DOGGR did so. (Cal. Code Regs., tit. 14, § 1761, subd. (a)(1)(A)(ii)-(iii), (a)(3).)

Measure Z declares that its definition of "acid well stimulation treatment" "tracks the state law." (AR 152.) Indeed, Measure Z's definition is *identical* to the definition of that term under state law. (Pub. Resources Code, § 3158.) Moreover, Measure Z exempts "routine well cleanout work" and "routine well maintenance" from its definition of WST. (AR 152.) Consequently, to the extent Petitioners' well cleanout and maintenance operations do not exceed DOGGR thresholds, the court construes Measure Z to except those operations from its definition of WST.

The court's construction is supported by the canon of constitutional doubt. That canon requires that this court "adhere to the precept that a court, when faced with an ambiguous statute that raises serious constitutional questions, should endeavor to construe the statute in a manner which *avoids* any doubt concerning its validity." (*People v. Leiva* (2013) 56 Cal.4th 498, 506-507, italics in original, internal citations omitted.) The canon reflects the judgment that "courts should minimize the occasions on which they confront and perhaps contradict the legislative branch.' [Citation.]" (*People v. Gutierrez* (2014) 58 Cal.4th 1354, 1373.)

Petitioners contend that this interpretation of the WST prohibition would not bind other parties and hence, that the purported ambiguity would expose them to the risk of enforcement. However, should the WST prohibition ultimately be enforced against Petitioners, they would then have standing to object to such enforcement in this court.

Petitioners claim Intervenors would then argue such a challenge was time-barred. (See Gov. Code, § 65009, subd. (c)(1) [90-day bar on facial challenges to general plan amendments].) This is possible, but any such claim would be defeated by the doctrine of equitable tolling. That doctrine is "designed to prevent unjust and technical forfeitures of the right to a trial on the merits when the purpose of the statute of limitations—timely notice to the defendant of the plaintiff's claims—has been satisfied." (*Appalachian Ins. Co. v. McDonnell Douglas Corp.* (1989) 214 Cal.App.3d 1, 38.) "Where applicable, the doctrine will suspend or extend a statute of limitations as necessary to ensure fundamental practicality and fairness. Broadly speaking, the doctrine applies when an injured person has several legal remedies and, reasonably and in good faith, pursues one. Thus, it may apply . . . where a first action, embarked upon in good faith, is found to be defective for some reason." (*McDonald v. Antelope Valley Community College Dist.* (2008) 45 Cal.4th 88, 99-100, internal citations omitted.) It would be inequitable to bar Petitioners from prosecuting a facial challenge to Policy LU-1.21 when they lacked standing to bring such a challenge within the statutory period.

Petitioners also argue that even if they lack beneficial interest standing they nevertheless have standing under the "public interest exception." That exception provides, "where the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty, the [petitioner] need not show that he has any legal or special interest in the result, since it is sufficient that he is interested as a citizen in having the laws executed and the duty in question enforced.' [Citation.]" (*Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 166.) "When the duty is sharp and the public need weighty, the courts will grant a mandamus at the behest of an applicant who shows no greater personal interest than that of a citizen who wants the law enforced. [Citations.] When the public need is less pointed, the courts hold the petitioner to a sharper showing of personal need." (*McDonald v. Stockton Met. Transit Dist.* (1973) 36 Cal.App.3d 436, 440.) Here, Petitioners do not seek to enforce a public right, but rather, seek to preserve a private right to benefit economically from WSTs. (See *Weiss v. City of L.A* (2016) 2 Cal.App.5th 194, 205-206.) And, even if Petitioners otherwise qualified for public interest standing, the application of the doctrine is within the court's discretion. (*Save the Plastic Bag Coalition, supra,* 52 Cal.4th at p. 170, fn. 3 ["we do not

suggest that public interest standing is freely available to business interests lacking a beneficial interest in the litigation. No party, individual or corporate, may proceed with a mandamus petition as a matter of right under the public interest exception"].)

Relatedly, Petitioners contend that the WST prohibition is "of great public interest" and that this fact alone suffices to confer standing. Indeed, courts have occasionally relied on this rationale to find standing. (See, e.g., *California Water & Tel. Co. v. Los Angeles County* (1967) 253 Cal.App.2d 16, 26.) However, this has generally occurred when other factors favoring standing are present. (*Ibid.*) "The fact that an issue raised in an action for declaratory relief is of broad general interest is not grounds for the courts to grant such relief in the absence of a true justiciable controversy. [Citations.]" (*Zetterberg v. State Dept. of Public Health* (1974) 43 Cal.App.3d 657, 662.) Finally, Petitioners imply that they may qualify for taxpayer standing. (See, e.g., *Harman v. San Francisco* (1972) 7 Cal.3d 150, 159.) Petitioners do not explain how this doctrine applies here.

In sum, unless and until Petitioners or another party actually propose or engage in WSTs, the question whether LU-1.21 is preempted is not ripe for adjudication and is therefore best left for another day. (See *Braude*, *supra*, 226 Cal.App.3d at p. 87; *California School Emp. Assn v. Sequoia Union High School Dist.* (1969) 272 Cal.App.2d 98, 104 [a "court will not undertake to decide abstract questions of law at the request of a party who shows no substantial right that can be affected by a decision either way"].)

2.4 Wastewater Injection and Impoundment

Policy LU-1.22 provides, "The development, construction, installation, or use of any facility, appurtenance, or above-ground equipment, whether temporary or permanent, mobile or fixed, accessory or principal, in support of oil and gas wastewater injection or oil and gas wastewater impoundment is prohibited on all lands within the County's unincorporated area." (AR 155.)

Policy LU-1.22 defines "oil and gas wastewater injection" as "the injection of oil and gas wastewater into a well for underground storage or disposal." Policy LU-1.22 defines "oil and gas wastewater impoundment" as "the storage or disposal of oil and gas wastewater in depressions or basins in the ground, whether manmade or natural, lined or unlined, including percolation ponds

and evaporation ponds." Finally, Policy LU-1.22 defines "oil and gas wastewater" as "wastewater brought to the surface in connection with oil or natural gas production, including flowback fluid and produced water." (AR 155.)

Petitioners argue that state and federal law (and state law enacted in furtherance of federal law) preempt Policy LU-1.22. Specifically, Petitioners assert that 1) Policy LU-1.22 conflicts with state law, and is thus preempted; the SDWA's express language forbids local governments from impairing or impeding state underground injection programs; 2) the EPA has approved DOGGR's regulatory scheme, which conflicts with Measure Z; 3) Policy LU-1.22 stands as an obstacle to the SDWA's purposes; and 4) the SDWA occupies the field of oil and gas wastewater injection.

The County and Intervenors contend that 1) Policy LU-1.22 is a valid exercise of the County's police power; 2) the SDWA authorizes Measure Z's ban on underground injection because it is "essential" to protect County drinking water; 3) the SDWA contains a "savings clause," which refutes Petitioners' suggested inference of field preemption; and 4) Measure Z aligns with, rather than frustrates, the SDWA's policy goals.

2.4.1 State Preemption

2.4.1.1 Field Preemption

Petitioners argue that the extensive legal and regulatory scheme described above fully occupies the field of oil and gas regulation in California. Petitioners also argue that the historical trend of increased state regulation of the oil and gas industry evinces the Legislature's intent to occupy the field. (See, e.g., Pub. Resources Code, §§ 3130-3132, 3150-3161; Cal. Code Regs., tit. 14, §§ 1761, 1780-1789.) Petitioners cite a 1976 California Attorney General opinion in support of these claims.[7] In that opinion, the Attorney General stated that State oil and gas law preempts "nearly all local regulations of oil and gas production" because local regulation of such resources "would subject development of the state's fuel resources to [a] checkerboard of regulations' . . . . Such local regulation could obviously interfere with and frustrate the state's conservation and protection regulatory scheme." (59 Ops.Cal.Atty.Gen 461, 469, 477 (1976)

[7] "Opinions of the Attorney General, while not binding, are entitled to great weight." (*California Assn. of Psychology Providers v. Rank* (1990) 51 Cal.3d 1, 17, internal citations omitted.)

[JRJN, Ex. 32], internal citation omitted.) The Attorney General explained, "[w]here the statutory scheme or Supervisor specifies a particular method, material or procedure by a general rule or regulation or gives approval to a plan of action with respect to a particular well or field or approves a transaction at a specified well or field, it is difficult to see how there can be any room for local regulation . . . . [¶] We observe that these statutory and administrative provisions appear to occupy fully the underground phases of oil and gas activities." (*Id.* at p. 478.)

The County and Intervenors essentially concede in briefing that state oil and gas law preempts local law as to "technical, downhole activities." However, they characterize Measure Z as a land use regulation addressing surface, as opposed to subsurface activities. They observe that the Attorney General wrote that, as to regulation concerning "land use, environmental protection, aesthetics, public safety, and fire and noise prevention, local governments may impose regulations more stringent than those imposed by the state so long as they do not conflict with, frustrate the purposes of, or destroy the uniformity of the Supervisor's statewide regulatory conservation and protection program. As we have stated, these latter activities appear to be, for the most part, surface activities." (*Id.* at p. 478.) The County and Intervenors reason that Measure Z does not prohibit wastewater injection and impoundment, but rather, prohibits *surface* equipment and activities "*in support of*" these techniques and hence, that Policy LU-1.22 is a valid exercise of the County's police power. There are several problems with this claim.

First, Measure Z's purported prohibition on certain "land uses" is clearly a pretextual attempt to do indirectly what it cannot do directly. (See 59 Ops.Cal.Atty.Gen at p. 478 ["there will . . . be a conflict with state regulation when a local entity, attempting to regulate for a local purpose, *directly or indirectly* attempts to exercise control over subsurface activities"].) Nothing in Measure Z or in Intervenors' brief provides a meaningful distinction between wastewater injection and impoundment on the one hand, and surface equipment and activities in support of wastewater injection and impoundment on the other. And tellingly, Intervenors conceded at argument that Measure Z does not merely regulate surface land uses but instead, "specifically prohibit[s] wastewater injection for storage and disposal."

Second, the County and Intervenors' focus on the distinction between surface and subsurface activities is an oversimplification.[8] At bottom, the relevant issue is not whether the activity regulated takes place on the surface or below the surface, but rather whether Measure Z regulates the *conduct* of oil and gas operations or their permitted *location*. (59 Ops.Cal.Atty.Gen at p. 478; see *Big Creek Lumber*, *supra*, 38 Cal.4th at pp. 1152, 1157.) The County and Intervenors are correct that, in general, the County may exercise its broad police power to regulate land use, even to the extent of prohibiting oil and gas production in specific zones or in the County as a whole. (*Pacific Palisades Assn v. City of Huntington Beach* (1925) 196 Cal. 211, 217; *Beverly Oil Co. v. City of Los Angeles* (1953) 40 Cal.2d 552, 555; *Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach* (2001) 86 Cal.App.4th 534.) However, this does not answer the question whether state law preempts the use of that police power, an issue that none of the cases the County and Intervenors cite addressed. (59 Ops.Cal.Atty.Gen at p. 467 ["[a]s has been said, these cases without exception fail to consider any conflict between local and state authority"].)

Moreover, even if the County and Intervenors' argument were accepted, it would change nothing. Measure Z's prohibition of WSTs is not a ban on the *location* of oil and gas drilling or restrictions on the use to which operators may put land. Rather, Policy LU-1.21 regulates a specific *production technique* used by operators on lands upon which oil and gas development is permitted. Such regulation directly conflicts with DOGGR's mandate.[9] (Pub. Resources Code, § 3106, subd. (b) ["The Supervisor shall . . . supervise the drilling, operation, maintenance, and abandonment of wells so as to permit the owners or operators of the wells to utilize all methods and practices known to the oil industry for the purpose of increasing the ultimate recovery of

---

[8] At argument, Intervenors, who were represented on this point by a certified law student, appeared to abandon this distinction entirely, contending it to be "artificial" because, inter alia, subsurface activity "is accompanied inherently by surface activities" and by accompanying surface land uses. This claim both directly contradicts Intervenors' briefing and cannot be reconciled with Measure Z's focus on surface uses in support of subsurface activities.

The court further notes that Intervenors' counsel failed to present or file a copy of a signed consent form from their clients authorizing a certified law student to appear on their behalf. (Cal. Rules of Court, Rule 9.42(d)(3)(D).) The court reminds Intervenors' counsel of its obligation to observe this rule in the future.

[9] For this reason, Intervenors' claims that state oil and gas regulation do not preempt "zoning restrictions" or "local land use law" are accurate, but beside the point.

underground hydrocarbons . . ."]; 59 Ops.Cal.Atty.Gen at p. 478 [The state's "statutory and administrative regulatory scheme . . . exclude[s] local regulation in each instance where the Supervisor or his regulatory program approves or specifies plans of operation, methods, materials, procedures or equipment to be used by the operator . . ."].)

Intervenors respond that the statutory and regulatory scheme with respect to state oil and gas operations is relevant only to the "technical requirements" of operations, not to the question whether those operations may be permitted in the first place. Intervenors contend that local governments retain the police power to proscribe such operations, and that Measure Z is merely an exercise of that power. But Measure Z is a ban on specific production techniques *not* a total ban on oil operations.

In short, California's state oil and gas legal and regulatory scheme fully occupies the area of the manner of oil and gas production. Because Policy LU-1.22 seeks to regulate the manner of oil and gas production by restricting particular production techniques, namely wastewater injection and impoundment, it is "in conflict with general law," and is therefore preempted. (*Morehart, supra,* 7 Cal.4th at p. 747.)

2.4.1.2 Policy LU-1.22 is "contradictory" to general law.

Policy LU-1.22 is also preempted because it is "contradictory" of general law. (*Sherwin-Williams, supra,* 4 Cal.4th at p. 898.) Public Resources Code, section 3106, subdivision (b), provides, "[t]he supervisor *shall* also supervise the drilling, operation, maintenance, and abandonment of wells *so as to permit the owners or operators of the wells to utilize all methods and practices known to the oil industry for the purpose of increasing the ultimate recovery of underground hydrocarbons* and which, in the opinion of the supervisor, are suitable for this purpose in each proposed case. To further the elimination of waste by increasing the recovery of underground hydrocarbons, it is hereby declared as a policy of this state that the grant in an oil and gas lease or contract to a lessee or operator of the right or power, in substance, to explore for and remove all hydrocarbons from any lands in the state [and] . . . to do what a prudent operator using reasonable diligence would do . . . including, but not limited to, *the injection of air, gas, water, or other fluids into the productive strata* . . . when these methods or processes employed have been approved by the supervisor . . . ." (Italics added.)

By enacting this statute, the Legislature expressly declared the state's policy regarding, inter alia, wastewater injection. Policy LU-1.22, then, is irreconcilable with state policy. (See *Fiscal v. City & County of S.F.* (2008) 158 Cal.App.4th 895, 914-915 [local law was "irreconcilable, clearly repugnant, and so inconsistent" with state law that "the two cannot have concurrent operation"].)

2.4.1.3 The effect of "savings clauses"

The County and Intervenors argue that three statutes indicate the Legislature did not intend to preempt the field of oil and gas regulation.

2.4.1.3.1 Public Resources Code, section 3690

Both the County and Intervenors contend Public Resources Code, section 3690 undermines Petitioners' preemption argument. Section 3690 is expressly limited to a single chapter of Division 3 dealing with unitized operations.[10] The County and Intervenors acknowledge this, but insist the statute demonstrates the Legislature "expressly intended not to preempt the field." Intervenors argues that this section applies here because it "directly covers operations on unitized fields like those at issue."

These claims are not persuasive. As the Attorney General noted in its opinion on which both the County and Intervenors heavily rely, "[t]his declaration in Public Resources Code section 3690 applies only to 'any existing rights' and only to the provisions of 'this chapter,' *i.e.*, chapter 3.5." (59 Ops.Cal.Atty.Gen at p. 473.) Petitioners' preemption arguments do not rely upon Chapter 3.5. Moreover, the fact that no other chapter of Division 3 contains such a provision indicates that the statute was intentionally limited to Chapter 3.5. (*Gikas v. Zolin* (1993) 6 Cal.4th 841, 852 ["The expression of some things in a statute necessarily means the exclusion of other things not expressed"].)

[10] Section 3690 provides, "*[t]his chapter* shall not be deemed a preemption by the state of any existing right of cities and counties to enact and enforce laws and regulations regulating the conduct and location of oil production activities, including, but not limited to, zoning, fire prevention, public safety, nuisance, appearance, noise, fencing, hours of operation, abandonment, and inspection." (Italics added.)

2.4.1.3.2 Public Resources Code, sections 3206.5 and 3320.1, subdivision (c)

Finally, the County argues that Public Resources Code, sections 3206.5 and 3320.1, subdivision (c), blunt Petitioners' preemption argument. Section 3206.5 authorizes cities and counties to request that DOGGR 1) provide information concerning non-producing oil wells; and 2) determine "whether the wells should be plugged and abandoned." Section 3206.5 also authorizes DOGGR to compel operators to provide reasons why non-producing wells should not be plugged and abandoned. Section 3320.1, subdivision (c), preserves local governments' right of eminent domain in order to address land subsistence problems related to oil or gas pools. The County maintains that these provisions evince the Legislature's intent to "include and work with local agencies." But these statutes neither confer authority on local governments to regulate the manner of oil production nor suggest DOGGR's authority to do so is non-exclusive. At best, they recognize only that oil and gas production operations are subject to both state and local oversight, a premise implicit in the discussion *ante*, concerning the distinction between regulating the manner of oil production and the location of that production.

2.4.1.4 Federal Preemption

Petitioners also contend that Policy LU-1.22 directly conflicts with the Safe Water Drinking Act (SWDA)'s express terms.

The SDWA directed the EPA to oversee underground injection throughout the United States. (42 U.S.C. § 300h, et seq.) Nevertheless, the SDWA provides that states may obtain "primary enforcement responsibility" to enforce the SDWA's UIC program if they have adopted and implemented adequate standards and enforcement measures. (42 U.S.C. § 300h-1.) In 1982, the EPA granted DOGGR this primary enforcement responsibility for the State of California. (40 C.F.R. § 147.250.)

The SDWA establishes certain minimum requirements and restrictions for state UIC programs. (42 U.S.C. § 300h(b).) As relevant here, a state program "may not prescribe requirements which interfere with or impede" underground injection "unless such requirements are essential to assure that underground sources of drinking water will not be endangered by such injection." (42 U.S.C. § 300h(b)(2).) Petitioners maintain that Measure Z is in direct conflict

with this provision. The County and Intervenors respond that Congress structured the SDWA to establish minimum standards that leave room for more stringent local regulation, such as Measure Z. They further respond that Policy LU-1.22 is a land use policy decision the County made because it determined that the Policy was "essential" to protect County drinking water.

It is true that the SDWA generally does not bar states from enacting supplemental or more stringent restrictions on UIC programs. (See 42 U.S.C. § 300h-1(b)(1)(B)(3); 40 C.F.R. § 145.1(g).) The SDWA expressly provides that it does not "diminish any authority of a State or political subdivision to adopt or enforce any law or regulation respecting underground injection but no such law or regulation shall relieve any person of any requirement otherwise applicable under this subchapter." (42 U.S.C. § 300h-2(d).) "Congress intended that states retain authority respecting underground injection so long as it does not impinge on the UIC program administered by the EPA." (*Bath Petroleum Storage, Inc. v. Sovas* (N.D.N.Y. 2004) 309 F.Supp.2d 357, 367-368.)

As an initial matter, there is a significant difference between stringent regulation and outright proscription; "surely the prohibition above prevents such local law from altogether preventing UIC activity." (*EQT Production Company, supra*, 191 F.Supp.3d at p. 601, affd. on other grounds (4th Cir. 2017) 870 F.3d 322.)[11] Measure Z prohibits underwater injection notwithstanding that DOGGR, in implementing its UIC program, has established regulations requiring DOGGR approval for any injection or disposal project, together with extensive filing, notification, operating, and testing requirements for such projects. (Cal. Code Regs., tit. 14, §§ 1724.06, 1724.10.) Where "the state has undertaken to allow UIC wells, [that] action operates to diminish the counties' powers to prohibit them." (*EQT Production Company, supra*, 191 F.Supp.3d at p. 601.)[12]

---

[11] On appeal, the Fourth Circuit resolved the dispute on state preemption grounds and thus, found it unnecessary to reach the federal preemption issue. (*Id.* at p. 332.) Nevertheless, the trial court's opinion on that point was not superseded; it remains persuasive authority. (*Credit Managers Assn of California v. Countrywide Home Loans, Inc.* (2006) 144 Cal.App.4th 590, 598.)

[12] In addition, although the SDWA's "savings clause" explicitly preserves some local authority *under state law*, the County lacks the authority under state law to regulate the manner of oil and gas production. (Pub. Resources Code, § 3106, subd. (b); 59 Ops.Cal.Atty.Gen at p. 478; see *Big Creek Lumber, supra*, 38 Cal.4th at pp. 1152, 1157.)

Intervenors contend that the SDWA's prohibition on regulations "which interfere with or impede" underground injection (42 U.S.C. § 300h(b)(2)) is limited to federally mandated UIC programs. Intervenors maintain that the SDWA's "savings clause" (42 U.S.C. § 300h-2(d)) applies to the entire Act, effectively trumping Title 42 United States Code section 300h(b)(2), as applied to local governments. Consequently, Intervenors assert that the obligation not to "interfere with or impede" underground injection applies to the state but not its subdivisions. This claim suffers from at least two defects.

First, the text of the "savings clause" does not support this reading. Although the statute preserves local authority "respecting underground injection," that authority is qualified by the subsequent phrase providing that a law enacted under that authority "shall [not] relieve any person of any requirement otherwise applicable under this subchapter." (42 U.S.C. § 300h-2(d).) A local law like Measure Z, then, cannot relieve the County[13] of its obligation not to "prescribe requirements which interfere with or impede" underground injection programs. (42 U.S.C. § 300h(b)(2).) Second, Intervenors' argument would lead to states possessing less authority than their own political subdivisions, an absurd result. "[T]he superior, overriding power of the state must enable the state to occupy the field to the exclusion of its own subdivisions, lest its superiority be circumscribed." (*EQT Production Company, supra*, 191 F.Supp.3d 583 at p. 601.)

The County and Intervenors further argue that Measure Z is not preempted because it is "essential" to protect drinking water from endangerment, an express exception to the SDWA's prohibition on regulations that prescribe requirements "which interfere with or impede" underground injection. In support of this argument, the County and Intervenors cite Measure Z's Finding 5, which states that wastewater injection and disposal present "a risk of water pollution and soil contamination." (AR 153.) There are three problems with this claim.

First, the County and Intervenors incorrectly assume that the County is authorized to make this finding. In truth, when as here, the EPA has conferred primacy on a state, the SDWA expressly charges that state with determining whether a regulation is essential to protect drinking water. (42 U.S.C. § 300h(b)(2) [regulations for "*State* underground injection control programs

[13] Although the statute refers to a "person," the subchapter's definition of the term expressly includes a "State [or] municipality . . . ." (42 U.S.C. § 300f(12).)

may not prescribe requirements which interfere with or impede" underwater injection "unless such requirements are essential to assure that underground sources of drinking water will not be endangered by such injection"], italics added.) Had Congress intended political subdivisions to make such determinations, it could have so stated. After all, it expressly referenced political subdivisions in the "savings clause" upon which the County and Intervenors rely. (42 U.S.C. § 300h-2(d); see *EQT Production Company, supra*, 191 F.Supp.3d at p. 602 ["wastewater properly injected into UIC wells pursuant to state and federal law does not become pollution simply because the [County] says so"].)

Second, the State has recently indicated that such a finding is the province of DOGGR and the State and Regional Water Boards. In 2015, the Legislature amended the Public Resources Code to add Article 2.5, "Underground Injection Control" (§§ 3130-3132), to its oil and gas conservation chapter. That Article requires DOGGR, prior to proposing an aquifer exemption to the EPA, to "consult with the appropriate regional water quality control board and the state board," provide a public comment period, hold a joint public hearing, and if both DOGGR and the State Water Board "concur that the exemption proposal merits consideration for exemption," submit the proposal to the EPA. (Pub. Resources Code, § 3131.)

Third, the State, through DOGGR and the State Water Board, has already followed this process — at least as to San Ardo — and determined that underground water injection will not endanger the relevant water sources. (JRJN, Exs. 27-29; Petitioners' Supplemental JRJN, Exs. 3-4.) That determination trumps Measure Z's findings. Policy LU-1.22 would directly undermine the authority and contradict the expert opinion of two state agencies charged by the EPA to make the requisite determinations. (40 C.F.R. § 147.250; JRJN, Ex. 73; see also Pub. Resources Code, §§ 3106, 3131.) Therefore, Policy LU-1.22 "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." (*Crosby, supra*, 530 U.S. at p. 377.)

The County and Intervenors contend that this conclusion "stands the SDWA on its head." They note that Congress' "overriding concern" in enacting the law was to assure "the safety of present and potential sources of drinking water" not to encourage underwater injection. (*Phillips Petroleum Co. v. U.S. E.P.A.* (10th Cir. 1986) 803 F.2d 545, 560.) They maintain that Measure Z promotes this purpose.

It is true that the SDWA is primarily concerned with protecting drinking water. However, "[t]he principal legislative history explains that . . . [Congress] contemplated regulation, not prohibition, because of the importance of avoiding needless interference with energy production and other commercial uses." (*W. Neb. Resources Council v. U.S. EPA* (8th Cir. 1991) 943 F.2d 867, 870.) Thus, Congress intended the SDWA's prohibition on interfering with or impeding underground injection "to assure that constraints on energy production activities would be kept as limited in scope as possible while still assuring the safety of present and potential sources of drinking water." (H.R. Rep. No. 93-1185, 93rd Cong., 2d Sess., reprinted in 4 1974 U.S. Code, Cong. & Admin. News 6454, 6480-6484.) As discussed *ante*, the EPA delegated the role of insuring the safety of drinking water to the State not the County. (42 U.S.C. § 300h(b)(2); 40 C.F.R. § 147.250; JRJN, Ex. 73.)

Hence, the SDWA preempts Policy LU-1.22.[14]

2.5 New Wells

Policy LU-1.23 provides, "The drilling of new oil and gas wells is prohibited on all lands within the County's unincorporated area. This Policy LU-1.23 does not affect oil and gas wells drilled prior to the Effective Date and which have not been abandoned." Policy LU-1.23 defines "oil and gas wells" as "wells drilled for the purpose of exploring for, recovering, or aiding in the recovery of, oil and gas." (AR 156.)

Petitioners argue that state law preempts Policy LU-1.23 because the Policy is a ban on a production technique rather than a true land use regulation. The County and Intervenors respond that ample decisional authority supports the County's right to ban the drilling of new wells.

Preliminarily, the Court observes that, as with Policy LU-1.22, Policy LU-1.23 directly conflicts with the SDWA. Policy LU-1.23's prohibition on new wells extends to wells drilled "for the purpose of . . . aiding in the recovery of [] oil and gas." By its plain language then, Policy LU-1.23 prohibits the drilling of injection wells necessary for oil operators to inject wastewater, effectively banning wastewater injection. (Tubbs Dec., ¶¶ 38-41.) Consequently, Policy LU-1.23 "interfere[s] with or impede[s]" California's UIC program, and as such, is preempted. (42 U.S.C. § 300h(b)(2).)

[14] In light of this conclusion, the court need not reach Petitioners' federal field preemption argument.

Moreover, Policy LU-1.23 impermissibly prohibits certain production techniques. For example, Petitioners have shown that their operations require them to drill new wells for purposes of injecting steam to maintain the "steam chest," an enhanced oil recovery technique necessary to their profitable operation. (Tubbs Dec., ¶¶ 42-47.) Petitioners also drill new wells to dispose of excess produced water and concentrated brine (a byproduct of Petitioner Chevron's reverse osmosis water treatment plant). (*Id.*, ¶¶ 38-41.) Accordingly, Policy LU-1.23 directly conflicts with DOGGR's mandate. (Pub. Resources Code, § 3106, subd. (b) ["it is hereby declared as a policy of this state that the grant in an oil and gas lease or contract to a lessee or operator of the right or power, in substance, to explore for and remove all hydrocarbons from any lands in the state [and] . . . to do what a prudent operator using reasonable diligence would do . . . including, but not limited to, the injection of air, gas, water, or other fluids into the productive strata . . . when these methods or processes employed have been approved by the supervisor . . . "]; 59 Ops.Cal.Atty.Gen at p. 478 [California's "statutory and administrative regulatory scheme . . . exclude[s] local regulation in each instance where the Supervisor or his regulatory program approves or specifies plans of operation, methods, materials, procedures or equipment to be used by the operator . . ."].)

Finally, the County and Intervenors' authorities authorizing prohibitions on the locations upon which new oil wells may be drilled are inapposite. (See, e.g. *Pacific Palisades*, *supra*, 196 Cal. at p. 217; *Beverly Oil Co.*, *supra*, 40 Cal.2d at p. 555; *Hermosa Beach*, *supra*, 86 Cal.App.4th at p. 534.) As discussed *ante*, at best these cases stand for the proposition that the County has the authority under the police power to prohibit new wells. They do not, however, address preemption. (See 59 Ops.Cal.Atty.Gen at p. 467; *Hermosa Beach*, *supra*, 86 Cal.App.4th at pp. 545-546.) The mere fact that the County may legislate in an area under the police power does not divest the State of the superior right to occupy the relevant field and/or adopt contradictory law. (See *EQT Production Company*, *supra*, 191 F.Supp.3d at p. 601 [where "the state has undertaken to allow UIC wells, [that] action operates to diminish the counties' powers to prohibit them"].)

2.6 Severability

The foregoing thus raises the question whether the invalidity of parts of Measure Z causes the entire Measure to fail. Measure Z's Section 9 contains a severability clause.[15] "Although not conclusive, a severability clause normally calls for sustaining the valid part of the enactment, especially when the invalid part is mechanically severable . . . . Such a clause plus the ability to mechanically sever the invalid part while normally allowing severability, does not conclusively dictate it. The final determination depends on whether the remainder . . . is complete in itself and would have been adopted by the legislative body had the latter foreseen the partial invalidity of the statute . . . or constitutes a completely operative expression of the legislative intent . . . [and is not] so connected with the rest of the statute as to be inseparable." (*Santa Barbara Sch. Dist. v. Superior Court* (1975) 13 Cal.3d 315, 331.)

Three criteria must be satisfied to show the valid portions of the law are severable from the invalid portion(s): "the invalid provision must be grammatically, functionally, and volitionally separable." (*Gerken v. Fair Political Practices Com.* (1993) 6 Cal.4th 707, 714.) To be grammatically severable, the "valid and invalid parts" of the initiative must be able to "be separated by paragraph, sentence, clause, phrase, or even single words." (*People's Advocate, Inc. v. Superior Court* (1986) 181 Cal.App.3d 316, 331.) To be functionally severable, "the sections to be severed, though grammatically distinct, must be capable of independent application" and of separate enforcement. (*Id.* at pp. 331-332.)

Finally, to be volitionally severable, "[t]he remaining portions must constitute an independent operative expression of legislative intent, unaided by the invalidated provisions . . . [and cannot] be inextricably connected to them by policy considerations." (*Barlow v. Davis* (1999) 72 Cal.App.4th 1258, 1263.) In the context of an initiative, "[t]he test is whether it can be said with confidence that the electorate's attention was sufficiently focused upon the parts to be severed so that it would have separately considered and adopted them in the absence of the

[15] "If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, part, or portion of this Initiative is held to be invalid or unconstitutional by a final judgment of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Initiative. The voters hereby declare that this Initiative, and each section, subsection, paragraph, subparagraph, sentence, clause, phrase, part, or portion thereof would have been adopted or passed even if one or more sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, parts, or portions were declared invalid or unconstitutional."

invalid portions." (*Gerken, supra*, 6 Cal.4th at pp. 714-715.) "[I]f a part to be severed reflects a 'substantial' portion of the electorate's purpose, that part can and should be severed and given operative effect." (*Id.* at p. 715, citing *Santa Barbara Sch. Dist., supra*, 13 Cal.3d at pp. 331-332.) When applying this test, courts "look to the initiative measure's text and the ballot materials for guidance . . . ." (*Id.* at p. 717.)

Because this court has found that Policies LU-1.22 and LU-1.23 are preempted, the court must determine whether Policy LU-1.21 survives in their absence. Policy LU-1.21 passes all three severability tests.

Policy LU-1.21 is grammatically separable from the remainder of Measure Z. It is entirely contained in its own section of the initiative. Policy LU-1.21 is functionally severable for much the same reason. The ban on WST is capable of application irrespective of whether the other prohibitions stand.

As to volitional severability, the court can "say with confidence" that the electorate would have separately considered the ban on WST and adopted it "in the absence of the invalid provisions." (*Gerken, supra*, 6 Cal.4th at pp. 714-715.) Measure Z's official title is "Protect Our Water: Ban Fracking and Limit Risky Oil Operations Initiative." (AR 152.) Measure Z declares that its purpose "is to protect Monterey County's water, agricultural lands, air quality, scenic vistas, and quality of life by prohibiting the use of any land within the County's unincorporated area for well stimulation treatments, including, for example, hydraulic fracturing treatments (also known as 'fracking') and acid well stimulation treatments." (*Ibid.*) The measure notes that its proponents drafted the initiative in direct response to the Board of Supervisors' decision not to adopt a WST moratorium. (*Ibid.* [Finding 2].) In fact, 11 of Measure Z's 15 findings refer directly to WSTs. (AR 152-154 [Findings 1-9, 11, and 13].) Additionally, the official materials provided to voters placed great emphasis on WSTs. (AR 364, 387.)

It is true, as Petitioners point out, that proponents often promoted the WST and wastewater provisions injection prohibitions as complementary. (AR 364, 387.) Nevertheless, there can be no doubt that the WST prohibition was a "substantial portion" of Measure Z's purpose. (*Gerken, supra*, 6 Cal.4th at p. 715.) And, given the campaign's focus on the fracking ban, the court believes the electorate would prefer "to achieve at least some substantial portion of

their purpose" rather than see the whole initiative be invalidated. (*Santa Barbara Sch. Dist.*, *supra*, 13 Cal.3d at p. 332.)

Accordingly, Policy LU-1.21 is severable from the remainder of Measure Z.

3. Takings

Petitioners also contend that Measure Z will end all oil and gas operations in Monterey County, effecting a facial regulatory taking of their property, and entitling them to just compensation under the United States and California Constitutions. The County and Intervenors disagree. They also argue that Petitioners have failed to exhaust their administrative remedies, namely the procedure prescribed by Section 6(C) of Measure Z.

Because exhaustion of administrative remedies is "a jurisdictional prerequisite to resort to the courts," the court will take up this issue first. (*Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 293.)

3.1 Administrative Remedies

Measure Z's Section 6(C) allows a landowner to apply for an exception to its provisions if he or she "contends that application of this Initiative effects an unconstitutional taking of property . . . ." If a landowner so contends, the County Board of Supervisors "may grant . . . an exception to application of any provision . . . if [it] finds, based on substantial evidence that both (1) the application of that provision of this Initiative would constitute an unconstitutional taking of property, and (2) the exception will allow additional or continued land uses only to the minimum extent necessary to avoid such a taking." (AR 160.)

The County and Intervenors argue that Petitioners have failed to exhaust this procedure, and hence that their facial takings claims must be denied. The County and Intervenors are incorrect. Petitioners' challenge is facial and thus, a legal issue for which "case-specific factual inquiry is not required." (*Del Oro Hills v. City of Oceanside* (1995) 31 Cal.App.4th 1060, 1076.) Facial challenges are not subject to the exhaustion requirement. (*Ibid.*; *State of California v. Superior Court (Veta Co.)* (1974) 12 Cal.3d 237, 251; see also *City of Santa Barbara v. Adamson* (1980) 27 Cal.3d 123, 135.)

Further, even if this were not the case, the County and Intervenors' argument would still fail. The exhaustion doctrine "has not hardened into inflexible dogma. [Citation.]" (*Ogo*

Associates v. City of Torrance (1974) 37 Cal.App.3d 830, 834.) For example, the exhaustion rule does not apply "where an administrative remedy is . . . inadequate . . . ." (*Tiernan v. Trustees of Cal. State University & Colleges* (1982) 33 Cal.3d 211, 217; *Action Apartment Assn v. Santa Monica Rent Control Bd.* (2001) 94 Cal.App.4th 587, 611.) Section 6(C) is inadequate in several respects.

Action Apartment is instructive. There, Santa Monica landlords were required to place tenant security deposits in an interest-bearing account, but were not initially required to pay the interest accrued from those accounts to their tenants. (*Action Apartment, supra*, 94 Cal.App.4th at p. 595.) However, a 1999 ordinance required landlords to pay tenants three-percent interest on security deposits held for at least one year. (*Ibid.*) A group of landlords sued, complaining that the ordinance worked a regulatory taking. The Rent Control Board successfully demurred, but the Court of Appeal reversed, finding that the landlords had stated a takings claim. (*Id.* at p. 621.)

On appeal, the Board claimed that the landlords had failed to exhaust their administrative remedies, i.e. the general and/or individual rent adjustment process. (*Id.* at p. 611.) The Court disagreed because, inter alia, it found that these procedures "d[id] not offer an . . . adequate remedy." (*Id.* at pp. 612-615.) Specifically, the Court noted, 1) the challenge to the regulations "present[ed] a dispositive question within judicial, not administrative, competence"; 2) the administrative process was "not likely to resolve the dispute in a manner that makes judicial review unnecessary" because the City's 3,200 landlords would be required to file individual petitions, notwithstanding that the key issue was facial, and therefore identical as to each affected landlord; 3) "[t]he dispute [could] efficiently and inexpensively be resolved in a judicial forum"; and 4) the processing of each individual rent petition imposed "a severe time and financial burden on a landlord [and] require[d] a long administrative process . . . ." (*Id.* at p. 615, internal citations omitted.)

Section 6(C) suffers from many of the same defects. First, although the Board undoubtedly possesses substantial expertise in some areas, the decision whether a taking has occurred is a legal one; "an administrative agency is not competent to decide whether its own action constitutes a taking . . . ." (*Hensler v. City of Glendale* (1994) 8 Cal.4th 1, 16.) Thus,

"[t]he Board's expertise is of no assistance here." (*Action Apartment, supra*, 94 Cal.App.4th at p. 615.)

Second, the County would require potentially hundreds of mineral rights owners[16] and oil and gas operators to file individual petitions for exceptions. To the extent the issues raised are facial, such individual processes would be highly inefficient; such disputes could more "efficiently and inexpensively be resolved in a judicial forum." (*Action Apartment, supra*, 94 Cal.App.4th at p. 615.) Indeed, this court is engaged in just such an undertaking. Additionally, to the extent as-applied takings claims are at issue, the Board would be required to engage in complex, lengthy factual determinations as to each of the potentially hundreds of affected parties. (See JRJN, Ex. 35; Supplemental JRJN, Ex. 5; AR 373.) Such a procedure would impose "a severe time and financial burden on each rights holder." (*Action Apartment, supra*, 94 Cal.App.4th at p. 615.) And, because so many parties would be affected, Section 6(C) "inherently and unnecessarily precludes reasonably prompt action except perhaps for a lucky few." (*Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129, 172.)

Third, the procedure would almost certainly require judicial review. An applicant would likely appeal both a Board decision to reject an exception in its entirety and one to grant an exception only in part. Similarly, any member of the public might claim public interest standing to challenge a decision to fully or partially grant an exception. (See *Save the Plastic Bag, supra*, 52 Cal.4th at p. 166; *Waste Management of Alameda County, Inc. v. County of Alameda* (2000) 79 Cal.App.4th 1223, 1236-1237.) Such challenges appear highly likely in light of Measure Z supporters' public statements respecting the exception process. (See, e.g., JRJN Ex. 36, at pp. 36:5-8, 39:17-18 (July 25, 2017 Board meeting transcript) ["We should have an absolute minimum of exemptions if at all . . . . We did not vote to allow the oil companies to have exemptions to work around the vote"].) Thus, the administrative procedure would do little but impose "a severe time and financial burden on each rights holder." (*Action Apartment, supra*, 94 Cal.App.4th at p. 615.) In fact, the burden here would be significantly greater than the one imposed upon the landlords in *Action Apartment* because the lengthy delay in resolving

[16] In 2016 alone, the County issued 281 mineral rights property tax assessments. (Welles Dec., ¶ 2.)

exception applications would likely cause grievous, fatal damage to Petitioners' operations. (Tubbs Dec., ¶¶ 52, 57-60; Kemp Dec., Ex. A, pp. 52-55.)

Further, Section 6(C) violates due process because it runs a serious risk of "arbitrary and discriminatory application." (*Grayned v. City of Rockford* (1972) 408 U.S. 104, 109.) Section 6(C) provides that the Board "may" grant an exception if a taking occurs, and even then, shall do so "only to the minimum extent necessary to avoid such a taking." (AR 160.) The Board thus has discretion to grant or deny exceptions to similarly or identically situated parties. For example, the Board could find that Measure Z effects a taking as to Chevron and Aera, but choose only to except Chevron. The Board also has authority to grant exceptions with different parameters to similarly or identically situated parties. Thus, the Board could choose to except Trio from Measure Z's wastewater impoundment and disposal prohibitions but not as to the new wells prohibition, while granting the opposite exception to Eagle. Finally, the Board could choose to grant exceptions only to larger producers, such as Chevron, or only to smaller mineral rights holders, such as those represented by NARO. And, because the Board is an elected body, it would likely be subjected to significant political pressure in making each of these decisions.

Section 6(C) also violates due process because it fails to provide the Board with an adequate standard to determine both whether a taking has occurred and the scope of any potential exception. (See *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 231 [laws "must provide a standard or guide against which conduct can be uniformly judged by courts and administrative agencies"].) Section 6(C) states that these decisions shall be made "based on substantial evidence" (AR 160), but "substantial evidence" is a standard of review, not a burden of proof (see, e.g. Code Civ. Proc., § 1094.5, subd. (c); *JKH Enterprises, Inc. v. Department of Industrial Relations* (2006) 142 Cal.App.4th 1046, 1062).

Nevertheless, Intervenors claim the application of Section 6(B) in concert with Section 6(C) would "always avoid an impermissible taking." Section 6(B) provides, "[t]he provisions of this Initiative shall not apply to the extent, but only to the extent, that they would violate the constitution or laws of the United States or the State of California." (AR 160.) Intervenors cite *San Mateo County Coastal Landowners' Assn. v. County of San Mateo* (1995) 38 Cal.App.4th

523, as a case in which they claim that a court "recognized the validity" of a provision nearly identical to Section 6(B).

San Mateo involved a facial challenge to a land use ordinance authorizing the County to impose open space or other easements as a condition of subdivision map and plan approvals. (38 Cal.App.4th at p. 545.) The ordinance contained language virtually identical to Section 6(B). The court reasoned that a facial challenge was untenable because, inter alia, that language gave the county "the flexibility to avoid potentially unconstitutional application of easement requirements," by declining to impose conditions before a taking could occur. (*Id.* at p. 547.) *San Mateo* is distinguishable. There, a taking would only occur if and when the County imposed one or more easements as a condition of project approval. At that stage, the County could avoid any such taking as to specific property by appropriate design of the easement(s). Here, any taking would occur *upon Measure Z's taking effect*. Section 6(C) could theoretically reduce or eliminate that taking, but only after the fact, and, as discussed *ante*, its procedure is sufficiently convoluted that it risks arbitrary and discriminatory application. Additionally, it is so lengthy that it would impose a significant financial burden on property owners in the interim, possibly up to and including a total loss of all economic value of the relevant property before the administrative process — and the nearly certain ensuing litigation — is complete. (Tubbs Dec., ¶¶ 52, 57-60; Kemp Dec., Ex. A, pp. 52-55.) Section 6(B) does not ameliorate these issues.[17]

In short, Petitioners were not required to exhaust their administrative remedies, both because their claims are facial in nature (*Del Oro Hills*, *supra*, 31 Cal.App.4th at p. 1076), and because Section 6 constitutes a wholly "inadequate" administrative remedy (*Tiernan*, *supra*, 33 Cal.3d at p. 217).

3.2 Whether Measure Z effects a taking

Petitioners assert that Measure Z's dramatic effect on the economic value of their mineral rights amounts to a taking under the state and federal Constitutions, entitling them to just compensation.

[17] Moreover, Section 6(B) does little more than state the obvious. *No law* applies to the extent it violates the United States Constitution.

3.2.1 Takings Law

The takings clause of the Fifth Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment, requires a governmental entity to pay just compensation when it "takes" private property for public use. California Constitution, article I, section 19 contains a comparable provision.[18]

A taking may be either physical or regulatory. A physical taking occurs when the government physically occupies, takes possession of, or destroys property. (See, e.g., *United States v. Pewee Coal Co.* (1941) 341 U.S. 114, 115.) A regulatory taking occurs when a "regulation goes too far," such that it is effectively the equivalent of a physical taking. (*Pennsylvania Coal Co. v. Mahon* (1922) 260 U.S. 393, 415; *Hensler, supra*, 8 Cal.4th at p. 13 ["[A] 'regulatory taking' . . . results from the application of zoning laws or regulations which limit development of real property"].) Petitioners contend Measure Z effects a regulatory taking. Regulatory takings are divided into facial and as-applied challenges. "In facial takings claims, "[the court] look[s] only to the regulation's general scope and dominant features, rather than to the effect of the application of the regulation in specific circumstances." (*Hodel v. Virginia Surface Min. and Reclamation Assn, Inc.* (1981) 452 U.S. 264, 295.) By contrast, an as-applied challenge requires the court to engage in "essentially ad hoc, factual inquiries" exploring the economic impact of the specific application of a regulation to a particular property. (*Kaiser Aetna v. U. S.* (1979) 444 U.S. 164, 175.) Petitioners argue that Measure Z is an invalid regulatory taking on its face.

In a facial challenge, the court must determine whether "the mere enactment" of a law effects a taking. (*Suitum v. Tahoe Regional Planning Agency* (1997) 520 U.S. 725, 736, fn. 10.) "The test to be applied in considering this facial challenge is fairly straightforward. A statute regulating the uses that can be made of property effects a taking if it "denies an owner economically viable use of his land' . . . . [Citation]." (*Hodel, supra*, 452 U.S. at pp. 295-296.) Such challenges face an "uphill battle" (*Keystone, supra*, 480 U.S. at p. 495) because a

[18] Article I, section 19 also requires compensation for damage to property, and hence "protects a somewhat broader range of property values . . . . [Citations.]" (*Varjabedian v. City of Madera* (1977) 20 Cal.3d 285, 298.) Nevertheless, that distinction is irrelevant to the issues in this case, and in any event, "the takings clause in the California Constitution is "construed congruently with the federal clause.' [Citation.]" (*Lockaway Storage v. County of Alameda* (2013) 216 Cal.App.4th 161, 183.)

challenger must show that the law requires an owner of real property to "sacrifice *all* economically beneficial uses" of his property (*Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 1019, italics in original).

Before addressing the merits of the takings challenges, the court notes that, unlike in the preemption context, Petitioners are not all similarly situated. Broadly speaking, Petitioners may be broken into two groups: 1) Petitioners that have exercised their oil rights and have active wells (i.e., Chevron, Aera, Eagle, Trio, and some members of NARO); 2) and those that have not (CRC and the remaining members of NARO). The court will address each situation separately.

3.2.2 CRC and some members of NARO

A group of Petitioners, including CRC and some members of NARO, are mineral rights and oil and gas lease owners. A mineral owner has "the exclusive right to drill for and produce oil, gas and other hydrocarbons." (*Cassinos v. Union Oil Co.* (1993) 14 Cal.App.4th 1770, 1782.) Oil and gas lessees possess similar rights. "All other rights" are retained by the surface owner. (*Phillips Petroleum Co. v. County of Lake* (1993) 15 Cal.App.4th 180, 185.) The Takings Clause applies to mineral rights estates. (*Pennsylvania Coal Co., supra,* 260 U.S. at p. 414; *Braly v. Board of Fire Commissioners* (1958) 157 Cal.App.2d 608, 610 [a party's mineral rights are "as much entitled to protection as the property itself"; restrictions on that right may constitute a regulatory taking].)

CRC leases mineral rights in over 44 parcels of land in Monterey County; 40 contain no oil and gas wells. (Bridges Dec., ¶ 9; McMahan Dec., ¶¶ 2-9.) The four remaining parcels contain infrastructure, but each requires new wells to be drilled for production to occur. (McMahan Dec., ¶¶ 2-8.) CRC also owns mineral rights in 23 separate parcels, none of which contain wells. (Bridges Dec., ¶¶ 30-31; McMahan Dec., ¶ 9.) Many members of NARO also own or lease parcels with heretofore unexercised mineral rights.

Accordingly, CRC must drill new wells to extract any economic value from either their mineral rights or their oil and gas leases. (McMahan Dec., ¶¶ 2-8.) Policy LU-1.23 prohibits the drilling of any new wells countywide. Consequently, should it take effect, Measure Z would effect a facial regulatory taking of CRC's and some members of NARO's property. (*Lucas*,

supra, 505 U.S. at p. 1019; Miller Dec., ¶¶ 28-29.)[19] However, because the court has found that Policies LU-1.22 and LU-1.23 are preempted,[20] the court need not determine an appropriate remedy for the taking.

3.2.3 The remaining Petitioners

The remaining Petitioners are in a different position. All either own active oil and gas operations or receive royalties from those operations. These Petitioners (the remaining Petitioners) claim that the prohibitions on new wells and on wastewater injection and impoundment will ultimately result in a complete elimination of their economic value.

The remaining Petitioners contend that the prohibition on drilling new wells will severely impact operations in at least two ways. First, they maintain that new wells must be drilled to maximize oil recovery through "side-tracking." (Tubbs Dec., ¶ 51.) Side-tracking is the practice of "mill[ing] a hole through the existing well casing and drill[ing] a new bottom hole that is adjacent to the current well. Side-track operations are done specifically to re-establish production from the same portion of the reservoir as the original well. The use of sidetracks is often essential to repair damaged wells and to access additional areas of hydrocarbons that are in close proximity to the current bottom hole of the well." (*Ibid.*)

Second, the remaining Petitioners explain that new wells are essential to "steam flooding" an enhanced oil recovery technique in which producers inject steam into underground formations to heat oil, thereby decreasing its viscosity and facilitating its recovery. (Tubbs Dec., ¶¶ 43-45.) Over time, the remaining Petitioners have used steam flooding to create a "steam chest," a large collection of steam which fills a significant, subsurface portion of the production area. (Tubbs Dec., ¶ 44.) The remaining Petitioners assert that the maintenance of this steam chest is critical to the economically feasible production of oil in the County. (Tubbs Dec., ¶¶ 57-59; Latham Dec., ¶¶ 14-15.) But "the constant encroachment of water from the edges of the steam chest can quickly quench the steam and cause the collapse of the steam chest." (Tubbs Dec., ¶ 47.) The remaining Petitioners explain that, to avoid this result, they "must continuously

[19] For the same reasons (discussed *ante*), that the proposed exemption process is an inadequate administrative remedy, it also fails to vitiate the taking.

[20] Neither CRC nor NARO assert that the WST prohibition would affect their business.

replace or side-track non-productive wells, add infill horizontal wells, and drill new wells at the perimeter of the steam chest . . . ." (Tubbs Dec., ¶ 47; Latham Dec., ¶¶ 14, 22.) Thus, the remaining Petitioners predict Measure Z's immediate ban on new wells would cause production to "exponentially decline" by 20-25% per year. (*Id.*, ¶¶ 52, 60; Kemp Dec., Ex. A, p. 53.)

The remaining Petitioners also insist that the prohibitions on wastewater injection and impoundment will effectively end their operations after Measure Z's phase-out period is complete. They note that, absent the ability to inject wastewater, there is no viable method to dispose of the over 100 million barrels of water produced yearly. (Kemp Dec., Ex. A, pp. 39, 48, 54; Tubbs Dec., ¶ 48.) Moreover, Petitioner Chevron argues that Policy LU-1.22 would force it to halt the operation of its reverse-osmosis water treatment facility, a critical means for disposing of wastewater. (Tubbs Dec., ¶¶ 35-41.) The facility would be unable to continue because 1) it must impound wastewater prior to treatment; and 2) the reverse-osmosis process generates a concentrated brine stream, which must be injected underground to continue operations. (Tubbs Dec., ¶ 41, 55.) Finally, the remaining Petitioners opine that the wastewater injection prohibition will effectively end steam flooding, which relies on injecting steam produced by wastewater through injection wells. (Kemp Dec., Ex. A, p. 52; Tubbs Dec., ¶ 54.) This too, they assert, would lead to "the complete shutdown of operations." (Tubbs Dec., ¶ 54.)

The court has little doubt that Measure Z would cripple oil production in Monterey County. However, the remaining Petitioners have not met their burden to show "the mere enactment" of Measure Z effects a facial taking of their property. (*Suitum, supra,* 520 U.S. at p. 736, fn. 10.) To prove a facial taking has occurred, a property owner must show that the law will result in the "sacrifice [of] *all* economically beneficial uses" of her property. (*Lucas, supra,* 505 U.S. at p. 1019, italics in original.) The United States Supreme Court has explained that, under this rule, "a statute that 'wholly eliminated the value' of Lucas' fee simple title clearly qualified as a taking. But our holding was limited to 'the extraordinary circumstance when *no* productive or economically beneficial land use is permitted.' The emphasis on the word 'no' in the text of the opinion was, in effect, reiterated in a footnote explaining that the categorical rule would not apply if the diminution in value were 95% instead of 100%. Anything less than a 'complete elimination of value,' or a 'total loss,' the Court acknowledged, would require the kind of

analysis applied in *Penn Central.*" (*Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency* (2002) 535 U.S. 302, 330, internal citations and footnotes omitted.)

Although the implementation of Measure Z might *ultimately* result in the end of oil and gas operations in Monterey County, the Measure's "mere enactment" plainly would not. Policy LU-1.22 provides for a minimum of a five-year phase-out period before its prohibitions are effective. And, although the new well prohibition is immediate, as the remaining Petitioners concede, it would only cause production to "exponentially decline" by 20-25% *per year*. (*Id.*, ¶¶ 52, 60; Kemp Dec., Ex. A, p. 53.) Until oil operations were terminated then, the remaining Petitioners would still be able to derive value from their existing oil wells and ongoing operations.[21]

Nevertheless, this does not mean the remaining Petitioners would be without a remedy. But for this court's finding that Policies LU-1.22 and LU-1.23 are preempted,[22] the remaining Petitioners would have the option of proceeding with an as-applied takings claim "governed by the standards set forth in *Penn Central Transp. Co. v. New York City*, 438 U.S. 104 . . . (1978)." (*Lingle, supra*, 544 U.S. at p. 538.)

4. General Plan Consistency

Petitioner NARO argues that Measure Z creates internal inconsistencies in the County's General Plan.

"The general plan is atop the hierarchy of local government law regulating land use. It has been aptly analogized to 'a constitution for all future developments.' [Citation.]" (*Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176, 1183.) "[T]he general plan and elements and parts thereof comprise an integrated, internally consistent and compatible statement of policies for the adopting agency." (Gov. Code, § 65300.5.) This principle "has been uniformly construed as promulgating a judicially reviewable requirement 'that the elements of the general plan comprise an integrated internally consistent and compatible

[21] At argument, Chevron suggested that the costs of winding down operations and shutting-in idle wells would more than make up for any economic value derived from operations in the interim. However, Chevron has not presented sufficient evidence to support this claim.

[22] Petitioners do not assert that the WST prohibition would effect a taking, so the court need not address that issue.

statement of policies.' [Citations.]" (*Concerned Citizens of Calaveras County v. Board of Supervisors* (1985) 166 Cal.App.3d 90, 96–97.)

NARO claims Measure Z creates several inconsistencies within the General Plan. NARO contends that 1) Policies LU-1.21 and LU-1.23 are inconsistent with LU-1.22; 2) LU-1.21 and LU-1.22 are inconsistent; and 3) LU-1.22 is inconsistent with certain Policies under the Public Services Element of the General Plan. All of these contentions are mooted by this court's finding that Measure Z's Policies LU-1.22 and LU-1.23 are preempted.

NARO further contends that an internal inconsistency exists between Measure Z and General Plan Policies ED-1.2, ED-2.1, and ED-4.4. NARO explains that these Policies "mandate promoting sustainable economic growth, enhancing the competitiveness of Monterey County's key industrial clusters and working with stakeholders of key industry clusters to support those clusters." NARO asserts that Measure Z will seriously damage the County's economy, in violation of various aspects of these Policies.

Absent Policies LU-1.22 and LU-1.23, this argument must also fail. NARO's own expert has stated both that WSTs are not currently in use and that "it is highly unlikely" they will be employed in the future. (Gore Dec., ¶10.) Any damage to the economy stemming from Measure Z, then, must be the result of Policies LU-1.22 and LU-1.23. Because these policies are preempted, NARO's claim is meritless.

Moreover, Measure Z includes provisions to ensure its consistency with the General Plan. Section 7(F) directs the County "to amend the Monterey County General Plan . . . and other ordinances and policies affected by this Initiative as soon as possible . . . to ensure consistency between the provisions adopted in this initiative and other sections of the General Plan . . . ." (AR 160.) NARO does not explain why this provision is insufficient to remediate any purported inconsistency. (See *Citizens for Planning Responsibly v. County of San Luis Obispo* (2009) 176 Cal.App.4th 357, 378.)

In short, the court finds that Policy LU-1.21 is consistent with the General Plan.

5. Petitioners' remaining arguments

The court's conclusions above render it unnecessary either to reach Petitioners' remaining arguments or to proceed to any subsequent stage of these proceedings

Disposition

Measure Z's Policies LU-1.22 and LU-1.23 are preempted in their entirety by superior law. Further, Section 6(C) is an inadequate, unconstitutional administrative remedy.

The court directs Petitioners' counsel to prepare appropriate judgments and writs consistent with this decision, present them to opposing counsel for the County and Intervenors for approval as to form, and return them to this court for signature.

The court's orders and stays in case numbers 16CV003978 and 16CV003980 remain in effect as to all portions of Measure Z with the exception of Policy LU-1.21 as interpreted by the court.

Trial materials are returned to parties submitting the same.

Date: 4/28/17

Thomas W. Wills
Judge of the Superior Court

//

//

//

//

//

//

//

//

//

//

//

CERTIFICATE OF MAILING
(Code of Civil Procedure Section 1013a)

I do hereby certify that I am employed in the County of Monterey. I am over the age of eighteen years and not a party to the within stated cause. I placed true and correct copies of the **INTENDED DECISION** for collection and mailing this date following our ordinary business practices. I am readily familiar with the Court's practices for collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Services in Salinas, California, in a sealed envelope with postage fully prepaid. The names and addresses of each person to whom notice was mailed is as follows:

Theodore J. Boustous, Jr.
Jeffrey D. Dintzer
Matthew C. Wickersham
333 S Grand Ave 54th Floor
Los Angeles CA 90071

Todd W. Smith
1101 Fifth Street Suite 100
San Rafael CA 94901

Andrew A. Bassak
1 Embarcadero Center 30FL
San Francisco CA 94111

David W. Balch
318 Cayuga St
Salinas CA 93901

Donald C. Oldaker
1430 Truxtun Avenue Suite 900
Bakersfield CA 93301

Jacqueline M., Zischke
PO Box 1115
Salinas CA 93902

Edward S. Renwick
444 S Flower Street Suite 2530
Los Angeles CA 90071

Dimitri Daniel Portnoi
400 S Hope St #1435
Los Angeles CA 90071

Matthew T. Kline
Barton H. Thompson
Heather Welles
1999 Avenue of the Stars Ste 700
Los Angeles CA 90067

Lucas A. Messenger
Bernice Conn
Michael A. Giebelson
2049 Century Park East Suite 3400
Los Angeles CA 90067-3208

Hollin N. Kretzman
1212 Broadway Suite 800
Oakland CA 94612

Deborah A. Sivas
Peter Broderick
559 Nathan Abbott Way
Stanford CA 94305-8610

Charles J. McKee
Robert Shaw
168 W Alisal St 3FL
Salinas CA 93901-2680

Gene Tanaka
Shawn Hagerty
500 Capitol Mall Suite 1700
Sacramento CA 95814

Date: December 28, 2017

Clerk of the Court,

By: _____
Diana Valenzuela, Deputy Clerk

EXHIBIT B

DECLARATION OF STEVEN BOHLEN. IN SUPPORT OF PETITIONERS' AND PLAINTIFFS' OPENING BRIEF FOR THE PHASE 1 PROCEEDINGS

I, Steven Bohlen, hereby declare:

1. I received my M. S. and Ph.D. degrees from the University of Michigan in the fields geology and geochemistry. The topic of my Ph.D. research concerned the evolution of the Earth's crust, particularly with respect to the flow of geologic fluids – water, chloride brines, oil and gas – through the continental crust and the impact of fluids on Earth evolution.

2. For twenty years I have conducted research on the nature and flow of geologic fluids through the crust as a tenured professor at Stony Brook University (State University of New York) and a consulting professor at Stanford University. This research work has been published in various leading international journals and includes over 80 research papers and more than 100 other forms of publications – conference abstracts, book chapters, National Academy studies, US government reports.

3. I have served for 6 years as the Associate Chief Geologist for Science and Chief Scientist at the US Geological Survey. The research programs (line items in the Federal budget for the US Geological Survey) for which I have directed and prioritized include the National Earthquake Hazards Reduction Program, the Energy Resources Program, the Surficial Processes Program and the Climate Change Program. Together these programs represented over $100M of annual investment in Federal funded research and development to, for example, understand seismic source mechanisms and reduce the risk of earthquakes, understand the environmental impacts of oil and gas development, understand surface and near surface impacts of the built environment on surface geologic processes (erosion, ground water contamination, etc.), and understand the consequences of the use of fossil fuels.

4. I served as the Executive Director of the Ocean Drilling Program and the Integrated Ocean Drilling Programs for over 8 years, as the President and CEO of Joint Oceanographic Institutions, a systems integration and naval architecture firm providing facilities and services to the international oceans community. These programs have provided most of the

documented evidence for the environmental changes the Earth has undergone over the past 70 million years. This information has been gleaned from cores of sediments and rocks obtained by an ocean-going drilling vessel from the world's ocean basins and continental shelves. This state of the art research drilling vessel has obtained permission to drill in some of the most fragile ecosystems on the planet, such as the Great Barrier Reef, for example, because of its exceptional safety and environmental record, even when drilling to depths of over a mile into ocean sediments that lay several thousand meters below the surface of the ocean.

5. In 2014, I was appointed by Governor Edmund G. Brown Jr. as a senior advisor for oil and gas issues and to lead the California Division of Oil, Gas, and Geothermal Resources (DOGGR). During my tenure as the State Oil and Gas Supervisor and the State's head regulator for all oil and gas activities in the State, regulations for well stimulation and well treatments (commonly referred to as hydraulic fracturing or fracking, shorthand for a suite of well-completion techniques) were developed and enacted as directed by California Senate Bill 4 (Pavley, 2014). These regulations are without peer in their breadth, comprehensiveness, transparency, required record-keeping and environmental stewardship. In addition, the State began the process to update its exemptions for specified geologic formations containing oil-laden water from the Safe Drinking Water Act in accord with the State's agreement with the US Environmental Protection Agency.

6. From 2014 through 2016, I also served on the science advisory board for the US EPA national scientific study on the hazards of hydraulic fracturing and other well stimulation and completion practices entitled, "*Assessment of the Potential Impacts of Hydraulic Fracturing for Oil and Gas on Drinking Water Resources*". This study was initiated and completed under the Obama Administration.

7. I currently lead the advanced energy technologies and energy security programs at the Lawrence Livermore National Laboratory.

8. I have been asked to review the "Measure Z Findings of Fact", and to express my opinions regarding the factual, technical and regulatory issues raised by Measure Z. My opinions are as follows:

9. Finding No. 1 Is That Monterey County Does Not Have a Permitting Process and Regulations Specifically for Oil and Gas Production Operations

In my opinion, Monterey County does not have a permitting process and regulations specifically for oil and gas production for a very good reason. None is needed as the oversight and regulation of oil and gas activities has been assigned by the state legislature to the Division of Oil, Gas and Geothermal Resources (DOGGR) and managed effectively by DOGGR for over 100 years. It is also my opinion, based on discussions when I was the Division Supervisor that the County did not have the expertise to regulate down-hole oil and gas activities and that a hodge podge of local down-hole rules would interfere with DOGGR's regulatory role. I also learned that before I became Supervisor the California Attorney General's office had given an opinion that local government did not have the power to regulate down-hole activities because those activities had been preempted by the State of California.

Most counties in the State of California do not have permitting processes and regulations specifically for oil and gas production operations. In general, counties have issued general use permits following the review and evaluation process by the CA Division of Oil, Gas, and Geothermal Resources leading to a State permit for the drilling of an oil, gas or geothermal well. Upon receiving authority delegated in the early 1980s by the US EPA for regulation of EPA Class II wells (those for the development of oil and gas and the reinjection of water produced with the oil and gas) in accordance with the Safe Drinking Water Act, the State identified DOGGR as the State agency responsible for the implementation of the delegated requirements. Counties throughout the State have recognized that the entity responsible for permitting oil and gas activities is DOGGR. For each permit issued, DOGGR reviews and evaluates all aspects of every drilling operation, including, but not limited to, the magnitude of well-drilling operations, roads to be built (if any), land area disturbed, well construction and completion plans, geological formations and units within the formations to be drilled, proximity to residential areas and environmentally sensitive areas, and produced water management. The Division also works in close coordination with the State Water Resources Control Board to ensure that drilling permits are awarded in full compliance not only with the Federal Safe Drinking Water Act, but also in

accord with State water protection requirements. Furthermore, the Division is responsible for conducting an environmental review to ensure that the requirements of CEQA have been met including the mitigation of any identified environmental impacts. Even Kern County, the locus of over 80% of the State's oil and gas production, did not, until recently, have any county mandated processes or regulations associated with oil and gas development. The fundamental foundation on which the Kern county process is based is the permitting requirements, process and procedures of the DOGGR and the issuance of a drilling permit by the State.

10. Finding No. 2 Is That Monterey County Supervisors Have Failed to Enact Needed Protections.

In my opinion, the County Supervisors, instead of failing in their duties, chose not to pursue the enactment of protections beyond those being implemented by the state after learning from the state all that was being done to regulate well stimulation activities in the state and realizing the County did not have the expertise to regulate those activities.

In the summer of 2014, the Monterey County Board of Supervisors requested that a representative of the CA Division of Oil, Gas and Geothermal Resources provide the Board with information on the current status of well stimulation and hydraulic fracturing in the State, the emergency regulations for hydraulic fracturing put in place by the State as required by Senate Bill 4 (2014, Pavley), and progress toward the establishment of permanent regulations, required to be submitted to the Legislative Law Office for review and acceptance by December 31, 2014, and enacted no later than July 1, 2015.

Jason Marshall, the Deputy Director of the Department of Conservation, the department within which the DOGGR sits, spoke to the Board, and provided a comprehensive review of hydraulic fracturing within the State, the actions the DOGGR was taking with respect to regulation of these practices and the status of rulemaking in accord with SB 4. The Deputy Director also engaged the board in an extensive question and answer session. The Department and the Division provided additional information and answered additional questions by the Board subsequent to Mr. Marshall's testimony.

11. Finding No 3 Is That Fracking Could Become Widespread in Monterey County.

In my opinion, this finding is not supported by geologic data, previous widespread oil exploration in the county, and the results of the USGS undiscovered oil and gas potential assessment for the Monterey Formation in California.

This finding raises the specter of oil wells being drilled all over Monterey County and that each well will require the use of hazardous chemicals in the well completion process that necessarily leads to the degradation of ground water resources. These combined assertions address complex issues in simplistic and misleading terms leading to an incorrect finding.

It is true that the Monterey Formation underlies a portion of Monterey County. However, the geologic setting and the fact that the Monterey Formation, the putative target of oil and gas production in the county, has numerous surficial expressions (geologic outcrops), whatever oil existed in the formation has long ago leaked away. California is well known for its natural oil seeps, the result of oil-bearing formations outcropping on land or at the ocean margin nearly ubiquitously south of the Golden Gate Bridge.

Though it is true that chemicals are used in the completion of most wells in California, the blanket characterization of these chemicals as highly hazardous can overstate their exotic chemistry and level of hazard. In some cases hazardous chemicals are not even used. This is known in detail in California because the details of the chemicals used in each well stimulation treatment in the State must be reported to the State as part of the well stimulation regulatory requirements enacted in 2015. The name, chemical formula, volume, and handling of chemicals must be reported. Many of these chemicals are well known, sometimes have uses in the home, and are closely akin to such substances as bleach (biocide), lemon juice (acid), food additives (guar gum). Given the volumes of chemical used and chemical combinations, the State tracks and regulates the use of chemicals used in well completions, and provides this information to the public on DOGGR webpages.

In addition, in certain types of rocks, those rich in clay minerals such as the Monterey Shale, the chemicals, water and sand used to create fractures and permeability within the rock are

often absorbed by the rock and sequestered – bonded to the interlayers of the clay minerals that make up the rock. Furthermore, as required by regulation and the primacy agreement the State has with the US EPA for the management of the Underground Injection Control program (the program that regulates the injection of fluids into EPA Class II wells as part of oil and gas operations), the geologic formations into which fluids are injected must show geologic containment. That is, the oil and gas operator must demonstrate to the DOGGR and the State Water Resources Control Board that the geologic conditions are such that the injected fluids will not migrate beyond the specified geologic layer or zone into which they are injected.

Geologists have long known that geologic strata can contain fluids and gases, sometimes very high-pressure fluids and gases, for geologically long periods of time, millions of years. Were rocks not able to contain fluids for long periods, oil and gas deposits would never accumulate. Hence the case for (or against) containment can be made with careful geologic analysis. Geologic containment, therefore, provides a robust barrier against the contamination of other water bearing strata by fluids injected as part of oil and gas development.

The specific strata within a geologic formation into which hydraulic fracturing fluids are injected contain hydrocarbons, and the operator hopes that those hydrocarbon accumulations are sufficiently plentiful so that the value of the oil and gas produced exceeds the costs of extraction. Any water held within the formation at the time of hydraulic fracturing will be in equilibrium with the oil and gas and will therefore have benzene and other volatile, cancer-causing hydrocarbon components, rendering the water unfit for consumption by humans, animals or for use in agriculture. Such water is expensive to clean to standards required for human consumption.

An important distinction of oil and gas-bearing strata globally, including within Monterey County and across the state, is the fact that water contained therein will be unfit for use without treatment. It will contain hydrocarbon components that are toxic in quantities exceeding standards for use, and difficult for current technology to economically clean for human use.

As for the specter of Monterey County having oil and gas wells throughout the County, in 2015, the US Geological Survey released its evaluation of the potential for undiscovered oil and

gas resources within the Monterey Formation in California.

(https://pubs.usgs.gov/fs/2015/3058/fs20153058.pdf).

The study was comprehensive in that it considered the geologic information, well logs, and other information obtained by looking at hundreds of well records of wells that penetrated the Monterey Shale. The most important finding of this investigation is that the potential for as yet undiscovered oil and gas resources in the Monterey Formation in CA is exceedingly low, and near zero in areas other than those west of Bakersfield and in the Los Angeles Basin. The USGS concluded that the Monterey Formation was likely the source rock for much of the oil found in higher-level geologic strata in the State, and it had long ago lost its oil through migration to higher levels in most places..

Aside from the fact that over half of the County is underlain by crystalline rocks with no hydrocarbon potential whatsoever, the US Geologic Survey analysis casts grave doubts on the assertion that oil and gas production will ever expand beyond the South County area plan for oil and gas extraction in Monterey County.

12. Finding N0. 4 Is That Oil and Gas Production Operations, Including Those Enabled by Fracking, Use Limited Water Supplies That Should Be Preserved for Agricultural and Municipal Uses.

In my opinion, this finding makes the a priori assumption that any water used for hydraulic fracturing is too much and ignores the water use data for oil and gas operations versus agriculture, municipal and other uses. The finding is undermined by the fact that the oil industry operating in Monterey County has produced far more water for beneficial use than has been consumed for well completion practices.

Water consumption by the oil and gas industry for use in hydraulic fracturing and other well completion techniques represents a tiny fraction of the water use anywhere in the State. The well stimulation regulations that went into effect in 2015 require operators to report the source or sources of water used for well stimulation, the volume, and the water management plan for so-called flow back water (water that returns to the surface immediately after well stimulation (fracturing) and water produced as a part of oil extraction (so-called produced water). Because of

these requirements, the amount of water use is well known.

However, unlike in other parts of the country, such as in the oil shales in North Dakota, Texas, and Colorado (to name a few) and in the gas shales in Pennsylvania, Texas, Oklahoma, Wyoming (to name a few), areas in which the geology and resource potential favor very long wells and the stimulation of these wells requires hundreds of thousands to a few million gallons of water per well, the geology and resource potential in CA, and therefore the stimulation techniques, are very different. Data obtained by the DOGGR as a result of reporting requirements indicate that the average well stimulation treatment in CA is approximately 50,000 gallons of water, and the median amount of water used is somewhat less than 50,000 gallons, meaning that more wells use less than 50,000 gallons of water than those using more. Furthermore the data indicate that a growing proportion of this water is recycled or is unfit for use by humans.

To place 50,000 gallons of water in context, golf courses in CA use in excess of an acre-foot per week to maintain fairways and greens, with some using over an acre-foot of water a day during hot summer days. An acre-foot of water is the amount of water covering an acre to a depth of one foot or 325,851 gallons.

In contrast, Chevron in Monterey County cleans water produced in the oil extraction process to standards meeting or exceeding those required for agricultural purposes and provides 1,600 acre feet annually to the agricultural industry. Hence the industry provides the County with more water than it uses in its oil development practices.

13. Finding No. 5 Is That Oil and Gas Production Operations, Including Fracking, and Oil and Gas Wastewater Injection and Surface Disposal Present a Risk of Water Pollution and Soil Contamination That Monterey County Cannot Afford.

In my opinion, this finding greatly exaggerates the risk of spills and ignores comprehensive state regulations requiring notification of even small spills and requirements for rapid clean up and remediation of any spills.

Oil and gas operators are required by law to report spills, even small spills of a gallon or two of hazardous substances. Once reported, the operator is required to remediate the spill immediately and to demonstrate remediation to an inspector. Hence the risk to ground or surface

water from spills from fracturing chemicals or other substances used in oil and gas production is extremely low.

The "Findings of Fact" refer to the injection of water produced along with oil into water-bearing rocks (aquifers) protected by the Safe Drinking Water Act (SDWA). This statement is misleading in that it implies that the oil and gas industry is contaminating geologic formations containing water fit for human consumption. Such formations are protected under the Safe Drinking Water Act, and as noted above, the DOGGR is the State agency designated to enforce all provisions of the Act.

As part of a state-wide well review in 2014, the State Oil and Gas Supervisor identified wells that appeared to be injecting waste water (produced water) from oil and gas operations via injection wells that had been improperly permitted into geologic formations not exempted from the SDWA. Further analysis indicated that such was the case. However, analysis by the DOGGR has demonstrated that for all but a few tens of wells in Kern County, the improperly permitted wells were injecting fluids into formations that contained hydrocarbons. As noted above, the water in formations containing hydrocarbons is not usable. In fact, the presence of hydrocarbons is one of the most important criteria for the exemption of a formation from the SDWA. The DOGGR, in close consultation with the State Water Resources Control Board, is developing information packages to support exemption applications for the US EPA for those wells in the State improperly permitted in previous decades.

The implication that the oil and gas industry is injecting waste water into geologic formations in Monterey County that contain potable water or water useable by agriculture is not supported by the thorough well review and analysis undertaken by the DOGGR and the SWRCB.

14. Finding No. 6 Is That Expanding Oil and Gas Production Operations and Continuing to Drill New Oil and Gas Wells Is Incompatible with Monterey County's Vision for the Future.

In my opinion, this finding greatly exaggerates the risks of impacts on water supply, quality, air quality, earthquake risk, scenic and biological resources.

This finding asserts that oil and gas production operations in the county will inevitably

expand well beyond those areas that have been producing oil for many years. Further it may imply that the risks extant for decades by existing oil and gas activities are now no longer acceptable, even without evidence that the risks have translated into hazardous impacts.

Current oil and gas operations in Monterey County have provided the county with economic revenue, jobs, and water for agricultural use for many years, and these operations have, apparently, not been considered incompatible with Monterey's vision for the future. As noted previously in this declaration, the geologic formations underlying Monterey County are not consistent with oil and gas accumulations. In fact, granitic crystalline rocks and other formations devoid of any oil and gas potential whatsoever underlay much of the county. The areas of the county with formations with even the potential, however slight, of oil and gas accumulations lie under the Salinas Valley. The primary target formation is the Monterey Formation, and the USGS assessment has cast grave doubts on any likelihood of finding any significant oil and gas. Records of wells drilled in Monterey County archived by DOGGR show a record of many dry holes in the county. That is, in decades past, wells drilled in the hopes of finding oil in new areas of the county beyond those areas already discovered in the southern part of the county, have demonstrated the lack of economic oil and gas deposits. Even in the early years of this century when oil was valued at nearly $140 a barrel, a time when many exploratory wells were being drilled, supported by high prices, all over the state in the hope of finding additional new oil and gas discoveries, there was very limited expansion of the oil and gas fields in Monterey County. That is, at a time when economic incentives were driving new oil and gas exploration around the state, Monterey County saw little of this activity. The obvious conclusion to be drawn is that the oil and gas potential for the county is extremely limited. Therefore, the greatest likelihood of additional oil and gas wells will be around existing wells in an area already well established as a small, but economically viable, oil producing area in the south of the county. Hence any perceived risks noted in this finding will be similar in kind and magnitude to those that have been acceptable to the county for decades.

15. Finding No 7 Is That Expanding Oil and Gas Production Operations in Monterey County Is Inconsistent With Our Agricultural Heritage and Rural Character.

In my opinion, this finding asserts that oil and gas operations are inconsistent with agriculture and this assertion is contradicted by the many oil and gas operations that operate compatibly with agriculture across the state.

During my tenure as the Oil and Gas Supervisor and head of DOGGR, I had the opportunity to inspect many of the oil and gas producing areas in the state. These included downtown Los Angeles as well as some of the most remote areas of the state. In many places, oil production was occurring on active farmland. In many areas in the southern San Joaquin Valley given predominately to agriculture, oil and gas wells can be seen pumping seemingly randomly across the agricultural landscape. Were oil operations incompatible with agriculture, this would not be the case. Hence the assumption of expanding oil and gas operations, itself a supposition not supported by the data, interfering with ongoing agricultural practices, is also not supported by observations of both agriculture and oil coexisting compatibly in many, many locations across the state.

16. Finding 8 Is That Wastewater Injection and Fracking Will Increase the Already High Risk of Earthquakes in Monterey County.

In my opinion, this finding confuses and conflates the seismic risk from significant and impactful tectonic earthquakes with earthquakes induced by the injection of water produced with oil and gas into deep disposal wells in other parts of the US, most notably northern and central portions of the State of Oklahoma. Thus, this finding incorrectly asserts that oil and gas activities will increase the risk of tectonic earthquakes, as deep disposal wells disposing of large volumes of produced water do not exist in California.

Assertions that oil and gas activities in shales and other so-called unconventional oil and gas-bearing formations causes earthquakes are exaggerated, but this topic is complicated and entangles many different issues concerning earthquake risk, well stimulation practices and produced water disposal. In short, though it is true that there are a few wells that have been stimulated by hydraulic fracturing known to have caused felt earthquakes, these wells are few in

number, and the cases routinely used as evidence proving increased seismic risk are exceptionally unusual in their depth and large volume of water used for fracturing (several million gallons of water). Only a few such wells have been drilled in California, and there is no expectation such wells will be drilled often in the state owing to the geological conditions in this state that are very different from those in other states such as Texas, North Dakota, Colorado, Pennsylvania in which the oil and gas wells are deep with long laterals and are stimulated with large volumes (millions of gallons) of water. To put this in perspective, out of over a million wells drilled in North America and stimulated using hydraulic fracturing in the past 15 years, fewer than about 20 of these operations have any felt seismicity associated with them, and the kinds of wells associated with seismicity are not those that are drilled in the state, let alone Monterey County.

What is true is that unregulated injection of large volumes of produced water into a restricted number of EPA Class II disposal wells have caused felt, and even damaging, earthquakes. Such earthquakes occur in parts of the country where injection of produced water was increased dramatically into wells never designed for such large volumes of water. The best examples are north-central and central Oklahoma and northeast Ohio.

However, California contrasts markedly in many respects. The state as over 1900 permitted disposal wells that are regulated, and the volumes injected, date and time are required to be submitted to the state. The state's disposal wells are drilled into geologically young formations with substantial amounts of porosity, and therefore formations capable of accepting significant amounts of water without increasing reservoir pressures enough to induce earthquakes. Indeed, because the state is blessed with a seismic network second only to that which exists in Japan, seismologists from universities, the state and federal agencies have the opportunity to study seismicity in the state in exquisite detail, and they have been able to do so over decades.

Only recently has there been any indication of any correlation of seismicity with injection in disposal wells in California, and even the recent data are not definitive. A new, highly detailed study of seismicity in the southern San Joaquin Valley (Goebel and others, Geophysical Research Letters, 10.1002, 2015, 1092-1099) finds that there *could* be the potential for seismicity induced by increased injection. However, the data are equivocal, and the circumstances existing

in California and in Oklahoma, for example, (which most use as the example to claim increased risk of earthquakes) are quite different (Goebel, The Leading Edge, 2015, 640-648).

The state's regulations governing well stimulation completion practices, including hydraulic fracturing, anticipated concern caused by the potential connection between seismicity and hydraulic fracturing. The state requires that, during well drilling and stimulation activities, operators monitor the California Integrated Seismic Network, which posts earthquake events and their locations (including depths) in near real time. If a seismic event occurs near by in excess of moment magnitude of 2.8 – below the felt threshold, drilling and stimulation activities must cease immediately so a geologic assessment can be conducted by the State Geological Survey to assess earthquake risk prior to the resumption (or not) of drilling activities.

Recent analysis by the US Geological Survey of relatively large earthquakes have found that oil and gas activities, such as those around Long Beach, CA, are implicated with significant seismic activity. However, the circumstances are quite different than elsewhere in the state and harken to a bygone era. In the 1930s and 40s, the Los Angeles Basin was the world's supplier of petroleum. One could call southern California the Saudi Arabia of the world at that time without exaggeration. Millions upon millions of barrels of oil were pumped from super-giant (of which only a handful have been found globally) oil-bearing reservoirs. So much oil was extracted that the associated subsidence threatened to submerge the docks of Long Beach Harbor, some 30-40 feet of subsidence. In such extreme cases, seismicity, some of it damaging, can be linked to oil and gas activities, and this behavior has been observed in a few places around the world. That said, circumstances historically extant in Long Beach, bare absolutely no resemblance to the circumstances in Monterey County, or even Kern County for that matter.

This brief tour of the connection between oil and gas activities and seismicity outlines the boundaries of the nature of earthquakes linked to oil and gas drilling, well completion and extraction. What is clear is that large volumes matter, depth of wells matter, and geology matters. The seismicity noted has been caused without exception by large volumes (millions of barrels) of extracted or injected fluids, into deep wells (exceeding a few thousand feet in depth), into a limited range of geological conditions. None of these conditions exist in Monterey County.

Assertions that additional oil and gas activities in the county increase the risk of seismicity is simply not supported by data collected from areas in which there is a connection, sometimes distant, linking the two.

17. Finding No. 9 Is That Expanding Oil and Gas Production Will further Degrade Our Air Quality.

Given the rural character of the oil-bearing areas of Monterey County and the short time period required for well drilling (few days) and for well completion (few hours), in my opinion this finding overstates the risk for degraded air quality. However, in the development of the regulations for well stimulation under SB 4, the DOGGR worked closely with the California Air Resources Board as that Board worked to develop statewide regulations regarding air emissions from the oil and gas industry. In addition, the Air Quality Management District has jurisdiction of air quality at oil production sites and related facilities and issues permits to both construct and operate these facilities. Hence any emissions from such operations have a strong regulatory framework to protect health.

18. Finding No 10 Is That Expanding Oil and Gas Production Operations Could Degrade Our Scenic Vistas and Reputation as a Destination.

In my opinion, this finding is based on the false premise that oil and gas operations will proliferate throughout the county, and is therefore unfounded.

As noted previously in this declaration, the potential for widespread development of oil and gas reserves beyond those known to be present in the southern portion of the county is so low as to approach or be zero. Previous unsuccessful exploratory drilling, the near surface outcrops of formations that have any potential at all for containing oil (hence the oil has migrated out of the rock), and the USGS assessment of the Monterey Formation all support this negative conclusion. Furthermore, the geologic formations that underlie the scenic vistas and natural places noted in this Finding are crystalline rock or formations that do not, geologically speaking, host oil and gas deposits. Hence these would not be targets for any oil and gas production in any case. All data point to the same conclusion – oil and gas development will not expand save incrementally around known oil and gas producing areas in the county. Thus, Monterey County's scenic beauty

and quiet natural spaces are safe from oil and gas development.

19. Finding No. 11 Is That Expanding Oil and Gas Production Operations Could Harm the County's Biological Resources.

In my opinion, leaving aside the issue that county-wide expansion of oil and gas activities is extremely unlikely, this finding ignores the active role the DOGGR plays in reviewing the potential impacts of even a single oil and gas well on biological resources as part of its responsibilities to assess permit applications in light of California environmental requirements (CEQA). Therefore this Finding is unsubstantiated.

As noted previously in this declaration, the DOGGR is required to review all permit applications to ensure that any activities permitted meet standards set by the California Environmental Quality Act. The Division reviews each permit application for environmental impacts and has wide authority to require offsets, modifications to drilling plans, or deny a permit on the basis of inadequate protection of the environment, including, but not limited to, threatened or endangered species, sensitive habitats, erosion potential, noise, etc.

20. Finding No. 12 That We Must Protect the Monterey Bay National Marine Sanctuary.

In my opinion, this Finding makes the specious argument that via its connection to aquifers through which water flows into Monterey Bay, the Bay water quality could be threatened by increased oil and gas activities.

The requirements for underground injection control regulation, as spelled out in the Safe Drinking Water Act, and delegated to the state for implementation by the Division of Oil, Gas and Geothermal Resources, require geologic containment of injected fluids. As noted previously in this declaration, geologic containment can be demonstrated (or disproven) with a detailed geologic analysis, which is required by the Division and by the State Water Resources Board before a drilling permit can be granted. Furthermore, there is no evidence for undiscovered oil and gas bearing formations in areas bounding the Bay. The combination of safeguards required by the Safe Drinking Water Act, and the absence of the potential for oil and gas development in areas surrounding the Bay renders this finding meaningless. The Bay is far more susceptible to

much greater risk from oil releases by oil tankers importing oil into the state than from any putative onshore oil and gas activities, though I do not know if such tanker-related risks have been carefully evaluated. The state imports over one million barrels of oil a day, much of it by ocean-going tanker ships.

21. Finding No. 13 Is That Reliance on Oil and Gas Extraction Is Not the Way to Grow a Healthy Economy in Monterey County.

In my opinion, this Finding ignores the wider picture that the healthy economy Monterey seeks is based on oil and gas and the Finding inherently makes the argument that others should bear the problems Monterey County claims with oil and gas development so county residents can use oil and gas for their more natural pursuits.

Tourism, an expanding agricultural sector, and more jobs and technologies, require, at this time and for the near future, oil and gas to propel progress. California produces only one third of the oil it uses every day. Two thirds of the oil, over a million barrels of oil per day, must be imported. Over 80% of the oil refined in the state is used for transportation fuels, mostly gasoline for consumption in the state, because Californians drive nearly a billion miles a day for business and pleasure. The healthy sustainable economy Monterey County seeks can only be obtained via the utilization of hydrocarbon-based fuels. The oil and gas must come from somewhere, and obtaining it from within California confers economic, environmental and safety benefits unrecognized by this Finding.

22. Finding No. 14 Is That Monterey County's Oil is Particularly Carbon-intensive

In my opinion, this finding is undermined by the lack of a life-cycle analysis to demonstrate that the carbon intensity of the oil extracted from oil fields within Monterey County is greater than the carbon intensity of oil imported from overseas that might be required to replace oil from the county.

It is true that the carbon footprint of oil extracted from within the County is relatively large by California standards. However, were the county not to produce oil, given that the state must import two-thirds of its oil, there is no guarantee that the imported oil needed to make up the

shortfall would have a lower carbon footprint. Such oil would be produced in areas not likely to have environmental regulations of the level of California and would have to be transported considerable distance across the globe. Furthermore many additional carbon emitting activities need to be considered. The carbon footprint of ocean spill clean up, the potential for environmental damage from invasive species from tanker transport, as well as the potential for the degradation of the California coastline and marine ecosystem degradation were a tanker spill to occur neeed to be evaluated in the context of the carbon footprint of oil from Monterey County.

It is likely that the safest, most environmentally friendly and lowest carbon pathway to satisfying California's petroleum needs is via in-state production with the oil being transported to refineries in the state via pipeline.

23. Finding No 15 Is That Expanded Oil and Gas Production Operations Will Contribute to Climate Change.

In my opinion, this finding is focused only on the use of fossil fuels and incorrectly labels the production of oil in the state as the sole contributor to climate change in the county.

This Finding contradicts previous Findings that state that the healthy economy Monterey County seeks is a low-carbon economy, one based on tourism and agriculture – activities that themselves are fossil-fuel dependent and lead to climate change. Furthermore, one of the largest global emitters of climate change inducing emissions worldwide is agriculture. Agricultural emissions are three-fold: emissions from farm animals and farm vehicles, emissions from fertilizer decomposition, and emissions from oxidizing carbon in the soil as a result of tilling. Such emissions around the globe account for over 2 billion tons of CO2 equivalent annually, or 5% of global carbon emissions. If agricultural activities were to increase in the county, emissions of CO2 from the county might actually increase, not decrease as implied in this Finding. Lacking a life-cycle analysis of carbon in the county, the argument that increases in the county's oil and gas production will lead to greater carbon emissions misses the point that increases in other desired activities might increase emissions even more. This Finding myopically focuses on oil and gas production and ignores the climate change inducing emissions of other industries and activities in the county.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 10, 2017 in Livermore, California.

By: _____
Dr. Steven Bohlen

EXHIBIT C

THEODORE J. BOUTROUS JR. (SBN 132099)
JEFFREY D. DINTZER (SBN 139056)
MATTHEW C. WICKERSHAM (SBN 241733)
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue, 54th Floor
Los Angeles, CA 90071-3197
Telephone: (213) 229-7000
Facsimile: (213) 229-7520
Electronic Mail: jdintzer@gibsondunn.com

Attorneys for Petitioners and Plaintiffs
CHEVRON U.S.A. INC.; KEY ENERGY SERVICES, LLC; ENSIGN UNITED STATES DRILLING (CALIFORNIA) INC.; MAUREEN WRUCK; GAZELLE TRANSPORTATION, LLC; PETER ORRADRE; MARTIN ORRADRE; JAMES ORRADRE; THOMAS ORRADRE; JOHN ORRADRE; STEPHEN MAURICE BOYUM; and SAN ARDO UNION ELEMENTARY SCHOOL DISTRICT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MONTEREY

CHEVRON U.S.A. INC, et al.,

Petitioners and Plaintiffs,

v.

COUNTY OF MONTEREY, et al.,

Respondents and Defendants.

CASE NO. 16-CV-3978 (Consolidated for purposes of Phase 1 with Case Nos. 16-CV-3980, 17-CV-0790, 17-CV-0871, 17-CV-0935, and 17-CV-1012)

DECLARATION OF BURTON R. ELLISON IN SUPPORT OF CHEVRON PLAINTIFFS' OPENING BRIEF FOR THE PHASE 1 PROCEEDINGS

Action Filed: December 14, 2016

Trial Date: None set

I, Burton R. Ellison, declare:

1. I, Burton R. Ellison, am a registered professional geologist in the State of California, and from June 2011 to October 2013, I was employed as District Deputy for the District Four Office in Bakersfield for the State of California, Division of Oil, Gas, and Geothermal Resources ("DOGGR"). In all, I worked at DOGGR for twenty four years up to the time of my retirement in October 2013. I am currently a senior geologist for E&B Natural Resources Management Corporation. Applying my background and knowledge of the industry from both the public and private sector, I was asked to draft this declaration discussing DOGGR's role in regulating oil and gas in California. Attached as Exhibit A is a true and correct copy my Resume outlining my education and work experience. I have personal knowledge of the following facts, and if called to testify to these facts, could and would do so completely.

Measure Z Litigation and DOGGR

2. As an initial matter, I am familiar with the Monterey County Ordinance known as Measure Z. While the purpose of my declaration is to use my own extensive background in the oil and gas industry in California to attest to DOGGR's oversight of that industry, I also discuss Measure Z herein where I believe it will be helpful to the Court's understanding of the issues.

3. DOGGR's Oil and Gas Laws and Regulations have proven successful in protecting the environment, and accomplishing DOGGR's mandate. DOGGR has a long history of regulating the oil and gas industry and has effectively protected the environment and the citizens of California. It is therefore important to understand how Measure Z impacts DOGGR's jurisdiction. The prohibitions found in Measure Z are in direct conflict with DOGGR's mandate "to encourage the wise development of oil and gas resources." (Pub. Resources Code, § 3106, subd. (d).) Just by way of example, prohibition of water disposal wells and surface disposal impoundments is ultimately a prohibition on oil production. It is common knowledge that if an operator cannot dispose of produced water, the operator cannot produce the wells and make oil. Measure Z failed to demonstrate the need for a prohibition on water disposal wells. Class II injections wells as regulated by DOGGR, are the safest and most efficient method of produced water disposal. This is simply one introductory example of the tension between DOGGR and Measure Z.

DOGGR Laws and Regulations

4. The Division of Oil, Gas, and Geothermal Resources (DOGGR) supervises the drilling, operations, maintenance, and abandonment of oil, gas, and geothermal wells, preventing damage to life, health, property, and natural resources, underground and surface waters suitable for irrigation or domestic use, and oil, gas, and geothermal reservoirs. DOGGR's mandated responsibilities are set forth in a broad regulatory framework in Section 3000 et seq. of the *Public Resources Code* and Title 14, Chapter 4 of the *California Code of Regulations.* DOGGR's mandate also encourages the wise development of California's oil, gas, and geothermal resources while protecting the environment. As outlined in Section 3106 (b) of the Public Resources Code, "[t]he supervisor shall also supervise the drilling, operation, maintenance, and abandonment of wells so as to permit the owners . . . of the wells to utilize all methods and practices known to the oil industry for the purpose of increasing the ultimate recovery of underground hydrocarbons and which, in the opinion of the supervisor, are suitable . . . in each proposed case." (Pub. Resources Code, § 3106, subd. (b).)

5. During my employment at DOGGR, I understood the mandated responsibilities of DOGGR, set forth in the regulatory framework introduced above, to be a dual mandate. First and foremost that mandate is to protect life, health, property, water resources, and the oil and gas resources from damage. Second, DOGGR's mandate is to encourage the wise development of the hydrocarbon resources by allowing the owner of a well to use all methods to increase the ultimate recovery of the resources provided these methods do not damage life, health, property, water resources, and the oil and gas resources. I also understood that prohibiting a well owner from using all safe methods to recover as much of the hydrocarbon resources as possible to be unlawful.

6. DOGGR accomplishes its mandate through an abundance of programs, which include: well permitting and testing, oversight of production and injection operations, environmental lease inspection including inspection of oilfield tanks, pipelines, surface impoundments (limited to fencing and netting), and sumps, idle well testing, orphan and hazardous well plugging, well stimulation treatment, and subsidence monitoring. Surface impoundments are more widely regulated by the

Regional Water Quality Control Board. (Title 23, Division 3, Chapter 9, of the California Code of Regulations.)

7. As a result of DOGGR's well permitting and testing program, California has some of the strongest well construction standards in the nation, which are within DOGGR's jurisdiction of oversight. Before an oil operator can drill a new well, rework, redrill, deepen, or abandon a well, the operator must file a Notice of Intention to carry out these operations. A Notice of Intent is required if the proposed operation involves "permanently altering in any manner the casing." (Pub. Resources Code, § 3203, subd. (b).) Operation "shall not commence until approval is given by the supervisor or district deputy." (Pub. Resources Code, § 3203, subd. (a).) The notice shall contain the pertinent data the supervisor requires on division printed forms. (Pub. Resources Code, § 3203, subd. (a).) Division engineers review the notice for compliance with the regulations. A Permit to Conduct Well Operations ("Permit") is issued if the well work program stated on the notice satisfies the applicable laws and regulations. The Permit also states the conditions of approval such as but not limited to, well placement, the type of blowout prevention equipment and hole fluid required, casing and cementing requirements, well testing requirements, and specifies the operations and/or well tests that need to be witnessed by DOGGR engineers.

8. "Each well shall have casing designed to provide anchorage for blowout prevention equipment and to seal off fluids and segregate them for the protection of all oil, gas, and freshwater zones. All casing strings shall be designed to withstand anticipated collapse, burst, and tension forces with the appropriate safety design factor . . . ." (Cal. Code Regs., tit. 14, § 1722.2.) Wells are constructed in stages with multiple casing strings in a telescoping fashion. Casing program and casing requirements are very specific and standards are set for the conductor casing, surface casing, intermediate casing, and production casing. In general, the different casing setting depths and design criteria is based on geologic conditions, whether the well is a prospect well or in an oil field with known field conditions, the presence of drilling conditions such as lost circulation zones or anomalous pressure zones, and the need to segregate oil and gas zones from freshwater zones. As the well is drilled, these casing strings may be required to be pressure tested (positive and negative pressure tests) and these tests are witnessed by DOGGR inspectors. The tests ensure the wells'

mechanical integrity by checking for pressure leaks or fluid entry. There are myriad types of equipment used to accomplish these tasks including but not limited to a drilling rig, mud pumps, mud motors, drill pipe, drilling collars and drill bits.

9. Each casing string is required to be cemented to seal the annular space to ensure zonal isolation. Zonal isolation means fluids from one geologic zone will not migrate up or down to another geologic zone. Cement is placed in the space between the open hole and casing and forms a barrier to fluid migration. The cementing requirements for the different casing strings varies but the purpose is the same. To ensure the well is cemented properly, "[t]he appropriate Division district deputy may require a cement bond log, temperature survey, or other survey to determine cement fill behind casing. If it is determined that the casing is not cemented adequately by the primary cementing operation, the operator shall recement in such a manner as to comply with the above requirements." (Cal. Code Regs., tit. 14, § 1722.4.)

10. According to the regulations, "[b]lowout prevention and related well control equipment shall be installed, tested, used, and maintained in a manner necessary to prevent an uncontrolled flow of fluid from a well. [DOGGR] publication No. MO 7, 'Blowout Prevention in California,' shall be used by Division personnel as a guide in establishing the blowout prevention equipment requirements specified in the Division's approval of proposed operations." (Cal. Code Regs., tit. 14, § 1722.5.)

11. The regulations further state: "When sufficient geologic and engineering information is available from previous drilling or producing operations, operators may make application to the Supervisor for the establishment of field rules, or the Supervisor may establish field rules or change established field rules for any oil or gas field." (Cal. Code Regs., tit. 14, § 1722, subd. (k).) Attached as Exhibit 25 to the Request for Judicial Notice is a true and correct copy of the DOGGR's Field Rules for the San Ardo Field.

12. In the context of Measure Z, new and replacement wells are needed throughout the life of an oil field. Prohibiting new well drilling will result in premature loss of oil and gas production. The facts found in Measure Z do not support a need to prohibit drilling new wells. In my opinion, the true motivation of Measure Z is to shut down oil operations.

13. DOGGR also has jurisdiction over proper abandonment of wells. Proper abandonment of wells, using the appropriate equipment and machinery, is critical to preventing damage to the environment, usable groundwater, and the oil and gas resources. DOGGR's abandonment requirements in open hole (no casing) are different than the requirements for wells with casing. Sections 1723 – 1723.8 of the California Code of Regulations list the specific well abandonment requirements. In general, wells are abandoned by placing cement plugs across and above oil and gas zones, across the freshwater-saltwater interface (base of freshwater), and at surface to prevent wildlife and humans from falling in a well. The abandonment requirements are prescriptive and once completed, result in an abandoned well that is safe for the environment. DOGGR inspectors are on site to routinely witness the placing, location, and hardness of the various cement plugs. DOGGR inspectors will also insure that the appropriate equipment is being used for each of these critical tasks. All portions of the well not plugged with cement are required to be filled with heavy drilling mud.

14. **Underground Injection Control Program**- DOGGR has regulated Class II injection wells as far back as the 1940's and on September 29, 1982, was granted Primacy in the Regulation of Class II injection wells by the United States Environmental Protection Agency. During my career at DOGGR, I processed over 200 Underground Injection Control (UIC) Project applications and thousands of individual injection well permits. The following description of DOGGR's UIC program is based on my experience.

15. The purpose of the UIC program is to protect Underground Sources of Drinking Water (USDW). A USDW is an aquifer that contains water with a Total Dissolved Solids concentration of less than 10,000 mg/l. If the zone water is greater than 10,000 mg/l, the zone is not a USDW and injection is permissible. If a zone is oil and gas bearing and productive, the zone is exempt regardless of zone water quality and injection is permissible. Additional zones were also exempted for injection as part of the UIC Primacy Application and UIC Memorandum of Agreement between California Division of Oil and Gas and The United States Environmental Protection Agency.

16. The UIC project application and review process consists of a UIC application, DOGGR technical review, State and Regional Water Board review, and Public notification and if the

project is controversial, a public hearing is held. This is a strenuous process. Those projects that get approved are projects that are safe and protect USDW's. After the UIC project is approved, DOGGR has specific well construction standards that must be met. Also, all injection wells are subject to rigorous testing requirements.

17. Before injection can begin, UIC Project approval must be obtained from DOGGR. "This includes all EPA Class II wells and air- and gas-injection wells. The operator requesting approval for such a project must provide the appropriate Division district deputy with any data that, in the judgment of the Supervisor, are pertinent and necessary for the proper evaluation of the proposed project." (Cal. Code Regs., tit. 14, § 1724.6.) In general, the UIC project application consists of a statement of primary purpose, an engineering study, a geologic study, an injection plan, and offset operator notification. Section 1724.7 of the California Code of Regulations lists the UIC Project Data Requirements. The most important requirement is the "Area of Review" (AOR) where "[c]asing diagrams, including cement plugs, and actual or calculated cement fill behind casing, of all idle, plugged and abandoned, or deeper-zone producing wells within the area affected by the project, and evidence that plugged and abandoned wells in the area will not have an adverse effect on the project or cause damage to life, health, property, or natural resources." (Cal. Code Regs., tit. 14, § 1724.7, subd. (a)(4).) The area affected by the project or AOR typically includes a quarter mile buffer from the proposed injection wells. This distance can be increased or decreased based on engineering calculations. DOGGR engineers check each well in the AOR to ensure the well provides injection zone isolation. If a well is deficient in zonal isolation, the well must be repaired by remedial cementing or if possible, a reservoir monitoring program. Deficient wells that cannot be repaired to provide zonal isolation or cannot be monitored to ensure no fluid movement is taking place, is the main reason UIC project applications do not receive approval.

18. Ensuring mechanical integrity of injection wells is a major part of the UIC program. "Prior to commencing injection operations, each injection well must pass a pressure test of the casing-tubing annulus to determine the absence of leaks. Thereafter, the annulus of each well must be tested at least once every five years; prior to recommencing injection operations following the repositioning or replacement of downhole equipment; or whenever requested by the appropriate

Division district deputy." (Cal. Code Regs., tit. 14, § 1724.10, subd. (j)(1).) "[I]njection wells shall pass a second demonstration of mechanical integrity. The second test of a two-part MIT shall demonstrate that there is no fluid migration behind the casing, tubing, or packer. . . . The second part of the MIT must be performed within three (3) months after injection has commenced. Thereafter, water-disposal wells shall be tested at least once each year; waterflood wells shall be tested at least once every two years; and steamflood wells shall be tested at least once every five years." (Cal. Code Regs., tit. 14, § 1724.10, subd. (j)(2)-(3).)

19. **Environmental Lease and Facilities Inspection (includes AB 1960) –** The operator of a facility shall develop a spill contingency plan and all oil spills shall be promptly reported to the California Emergency Management Agency. Spill Contingency plans must satisfy the requirements listed in Section 1722.9 of the California Code of Regulations. The purpose of the spill contingency plans is to prevent oil spills and if a spill occurs, how to proceed with notification and clean-up.

20. DOGGR's environmental program has been in place since the 1960's and mainly focused on good "house keeping" practices. The focus was on oilfield wastes and refuse, properly fencing and screening oil sumps, well signs and well site and lease restoration. The passage of AB 1960 and the corresponding facility regulations, effective in 2011, further expanded DOGGR's jurisdiction over oil and gas operations in California. These laws increased DOGGR's environmental program to include tank and pipeline testing, set minimum standard for tank and pipeline construction, set requirements for leak detection on tanks and production facility secondary containment, and pipeline management plan. In addition to increased facility and environmental regulations, AB 1960 increased the amount the supervisor may impose as a civil penalty to $25,000.00 per violation, added a lifetime of the well bond for operators with a history of violations, and added the provision that authorized the district deputy to issue a cease and desist order for facilities with violations.

21. The result of the increased regulations was dramatic. The oilfields in District 4 got cleaner, oil spills were reduced, and operators were proactive in environmental compliance.

22. **Idle Well Testing Program-** DOGGR also has jurisdiction over the regulation of idle wells. DOGGR has regulated idle wells since the mid 1990's. On September 9, 2016, Governor

Brown signed into law Assembly Bill 2729. AB 2729 changed the definition of an "idle" well and "long term" idle well. Effective January 1, 2017, an idle well is defined, in part, as "any well that has had 24 consecutive months of not either producing oil or natural gas, producing water to be used in production stimulation, enhanced oil recovery, or reservoir pressure management, or being used for injection." (Pub. Resources Code, § 3008, subd. (d).) A long-term idle well is now defined as "any well that has been an idle well for eight or more years." (Pub. Resources Code, § 3008, subd. (e).) A portion of the bill's requirements took effect beginning January 1, 2017. Most of the new requirements, however, will not go into effect until January 1, 2018. This lag time will provide DOGGR with the time needed to develop the Idle Well Program and promulgate idle well regulations, as well as preparation time for operators to adapt to the new requirements.

23. DOGGR's idle well program consists of two main components – 1) idle well testing and 2) idle well management plans. Currently, and until the new idle well regulations are passed, all idle wells are required to be tested at 5 year idle and two years thereafter by determining the fluid level in the well. Additional testing beyond fluid level is at the discretion of the district deputy. Based on the fluid level results and the age of the idle well, the District Deputy may require casing pressure test and clean out tags. The purpose of the idle well testing program is to ensure no damage is occurring to freshwater or the oil and gas resources. If idle wells are found to have casing holes, the district deputy may order the operator to repair the well to prevent damage.

24. According to the Department of Conservation's website, "[b]eginning January 1, 2018, all operators must either 1) file and comply with an idle well management plan (IWMP) approved by the Division for addressing long-term idle wells or 2) pay annual fees for each idle well. This requirement applies to all operators regardless of the amount of bonding they may have in place." The purpose of the IWMP's is to reduce the number of long term idle wells in the state or contribute to a fund to abandon orphan wells.

25. **Well Stimulation Treatment-** On September 20, 2013, Governor Brown signed into law Senate Bill 4, which further expanded DOGGR's oil and gas oversight in California. SB 4 requires operators to obtain a permit from DOGGR to conduct well stimulation. Well stimulation treatment means a "treatment of a well designed to enhance oil and gas production or recovery by

increasing the permeability of the formation." (Pub. Resources Code, § 3157, subd. (a).) There are three types of well stimulation used in California: 1) Hydraulic Fracturing, 2) Acid Fracturing, and 3) Acid Matrix Stimulation. Prior to the passage of SB 4, well stimulation procedures were approved as part of the well permitting process.

26. With the passage of SB4 and the new Well Stimulation Treatment Regulations that went into effect on July 1, 2015, operators must conduct a cement evaluation of the well to be treated, complete a well stimulation treatment area analysis for potential conduits for fluid to migrate out of zone, prepare a well stimulation treatment design, submit a well stimulation permit application, provide independent neighbor notification and water testing, conduct pressure testing prior to well stimulation treatment, perform monitoring during a well stimulation treatment, track seismic monitoring after well stimulation treatment, conduct monitoring after a well, and submit a post –well stimulation treatment report. The new SB4 regulations combined with the California's well construction standards provides safeguards to the public and the environment from well stimulation treatment.

27. In the context of Measure Z, on August 2, 2017, I performed a review of DOGGR's online Well Stimulation Treatment Disclosure database and Well Stimulation Treatment (WST) Permit database and found that, starting in 2014, no wells received WST or applied for a permit to conduct WST in Monterey County. I concluded that Well Stimulation Treatment in Monterey County is not common. Since WST is rare, the threat to the public as claimed by Measure Z does not currently exist.

Summary and Conclusion

28. To conclude, in 2007, the Department of Conservation presented Chevron a special award for the installation of a reverse osmosis (RO) processing facility. The following true and correct excerpt from DOGGR's 2007 annual report describes the special award. *"**SPECIAL AWARD FOR CHEVRON U.S.A. INC.** Challenged with water cuts of 90-99 percent, Chevron U.S.A. Inc. installed a reverse osmosis (RO) processing facility in the San Ardo oil field. With the completion of the RO plant, Chevron is dewatering the Lombardi zone, reducing reservoir pressures to maximize the effects of a steam drive and expanding steam chest, lessening the demands on the*

North Area water disposal wells, providing fresh water for increased steam production, as well as recharging the freshwater aquifer. In recognition of this effort, the Department of Conservation presented a special award to Chevron U.S.A. Inc. for its Outstanding Commitment to Environmental Protection and Efficient Enhanced Oil Recovery".

29. Measure Z prohibits all injection and impoundment of produced water in five years from the effective date of Measure Z. This means that the impoundment of the purified produced water from Chevron's award winning RO plant must stop, resulting in a loss of beneficial surface recharge of fresh water. In my professional opinion, Measure Z will cause financial hardship to Chevron and other oil companies, without alleviating any harm that is being done by the current drilling operations or impoundments. On the contrary, the State of California recognized Chevron for its outstanding commitment to environmental protection and efficient enhanced oil recovery.

30. Measure Z prohibitions will result in a decrease in the ultimate recovery of the oil and gas resource in Monterey County to the detriment of the citizens of California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 11, 2017 in Bakersfield, California.

By: Burton R. Ellison
Burton R. Ellison, P.G. 7864

EXHIBIT A

Burton R. Ellison

10805 Queensbury Drive
Bakersfield, CA 93312
M: (661) 809-7548
bellison101@aol.com

Objective

Senior Geologist with a progressive Independent Oil and Gas Company.

Profile

Experienced Geologist with extensive knowledge of Southern San Joaquin Basin Oil and Gas Fields. Over 30 years working for Independent and Major Oil companies, and the State of California, Division of Oil, Gas, and Geothermal Resources.

Skills

- Well drilling and construction
- Oil and Gas well permitting
- Reserve Estimates
- Expert knowledge of UIC project application process
- Monitoring of Enhanced Oil Recovery Projects
- Geologic and Engineering report writing
- Economic evaluation of Producing Properties
- Well log interpretation/correlation, geologic formation and fault picks
- Construction of Structure Contour maps, cross-sections, and isopach maps
- Lease/Well management and operations
- CEQA and Land Use Process
- Supervision of Geologists and Engineers

Accomplishments

Over the past 24 years, I have worked for the Division of Oil, Gas, and Geothermal Resources, starting as a Field Engineer and progressing to District Deputy. Dedicated hard work and a passion for the Oil and Gas Industry, has provided me an extensive geologic knowledge of the San Joaquin Basin.

Professional Experience

December 1, 2013 to Present — **E&B Natural Resources Management Corporation** — Bakersfield, CA
Senior Geologist
Provide geologic and regulatory support for asset development.

June 2011 to October 2013 — **Division of Oil, Gas, and Geothermal Resources** — Bakersfield, CA
District Deputy
Managed an office of 50 Engineers, Geologists, and staff performing duties to regulate the Oil and Gas Industry. Responsible for supervising the Oil and Gas Industry and administering and enforcing the Oil and Gas Laws and Regulations. Issued permits to drill, rework, and abandon wells and injection project approvals.

January 2010 to May 2011 — **Division of Oil Gas and Geothermal Resources** — Bakersfield, CA
Senior Oil and Gas Engineer
Supervised the work of 12-15 Engineers and Geologists in the Environmental/CEQA unit and the Underground Control unit. Review permit and project applications for conformance with laws and regulations. Issued violations and Civil Penalties.

October 1999 to December 2009 — **Division of Oil, Gas, and Geothermal Resources** — Bakersfield, CA
Associate Oil and Gas Engineer
Reviewed applications for drilling, reworking, and abandonment of oil and gas wells.

Reviewed injection project applications for approval. Prepared enforcement actions such as civil penalties and formal orders. Project manager for State contracted well/facility abandonment and clean-up. Provided technical guidance to field engineers. Performed geologic field studies and reserve estimates.

April 1989 to September 1999 — **Division of Oil, Gas, and Geothermal Resources** — Bakersfield, CA
Energy and Mineral Resources Engineer
Performed routine well/lease inspections. Witnessed BOPE tests, WSO tests, and well abandonment operations. Performed Area of Review studies for UIC projects. Prepared Division comments for CEQA and construction site review.

July 1988 to April 1989 — **Chevron USA** — Bakersfield, CA
Geologic Technician
Assisted geologic staff in the construction of structure contour and isopach maps, cross-sections, and correlation of geologic markers.

March 1985 to June 1988 — **Ganong and Ellison, Petroleum Engineers and Geologists** — Bakersfield, CA
Junior Geologist
Preparation of structure contour maps, cross-sections, isochore and isopach maps, and volumetric reserve estimates. Witnessed electric log runs. Supervised the operations of four oil leases (9 wells) in Kern County.

Education and Training

1985 — **California State University, Bakersfield** — Bakersfield, CA, Kern
Bachelor of Science: Geology

California State University, Long Beach — Long Beach, CA, Los Angeles
Reservoir Engineering 5 unit Semester Course

Additional Experience/Registrations

California Professional Geologist, Registration #7864
City of Bakersfield Planning Commissioner (4 years)

EXHIBIT D

EXHIBIT B
DRAFT RESOLUTION

Before the Planning Commission in and for the County of Monterey, State of California

In the matter of the application of:
PORTER ESTATE COMPANY BRADLEY RANCH LLC (Trio Petroleum/PLN160146)
RESOLUTION NO. ----
Resolution by the Monterey County Planning Commission:

1) Adopting the Mitigated Negative Declaration; and
2) Approving a use permit to allow for temporary production testing for oil and gas; and
3) Adopting a Mitigation Monitoring and Reporting Program.

[PLN160146, Porter Estate Company Bradley Ranch LLC, four sites in the Hames Valley, South County Area Plan (APNs: 424-081-046-000, 424-081-050-000, 424-111-001-000, 424-081-084-000)]

The Porter Estates application (Trio Petroleum/PLN160146) came on for public hearing before the Monterey County Planning Commission on December 13, 2017. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Planning Commission finds and decides as follows:

FINDINGS

1. **FINDING:** **PROJECT DESCRIPTION** – The proposed project is a use permit to allow the temporary exploration for oil and gas at four well sites on four parcels in the Hames Valley (Hames Valley [HV] #1, #2, #3, and #4) as shown in Exhibit D. The permit will be conditioned to expire 18 months from the date that construction begins on the fourth and final well. Each of the three other wells may not be tested more than 18 months from the date that construction is started on the well. This permit authorizes exploration only; the applicant must apply for a subsequent use permit to convert any of the exploratory well sites to full production if commercial quantities of oil and gas are found.

   EVIDENCE: The application, project plans, and related support materials submitted by the project applicant to Monterey County RMA-Planning for the proposed development found in Project File PLN160146.

2. **FINDING:** **CONSISTENCY** – The project, as conditioned, is consistent with the applicable plans and policies which designate this area as appropriate for development.

   EVIDENCE: a) During the course of review of this application, the project has been

reviewed for consistency with the text, policies, and regulations in the:

- 2010 Monterey County General Plan;
- South County Area Plan; and
- Monterey County Zoning Ordinance (Title 21).

No conflicts were found to exist. No communications were received during the course of review of the project indicating any inconsistencies with the text, policies, and regulations in these documents.

b) The project properties are located in the Hames Valley on four parcels (Assessor's Parcel Numbers: 424-081-046-000, 424-081-050-000, 424-111-001-000, 424-081-084-000), South County Area Plan. One well site would be located on each parcel. The parcels are zoned F/40 and PG [Farming 40 acres per unit and Permanent Grazing]. Both zoning districts allow for the exploration for and removal of oil and gas with a use permit. Therefore, the project is an allowed land use for this site.

c) The properties consist of undeveloped agricultural land and non-native annual grassland.

d) The project planner conducted a site inspection on March 9, 2017 to verify that the project on the subject parcel conforms to the plans listed above. Well sites HV #1, #3, and #4 are accessed via existing agricultural and access roads. Well site HV #2 does not have an existing access road and the project would include construction of a 0.2-mile long access road. The sites contain undeveloped agricultural land and non-native grassland.

e) Measure Z amends the Monterey County General Plan Land Use Element to add Policy LU-1.23, and other similar policies. Policy LU-1.23 provides, "the drilling of new oil and gas wells is prohibited on all lands within the County's unincorporated areas. This Policy LU-1.23 does not affect oil and gas wells drilled prior to the Effective Date and which have not been abandoned." Measure Z's effective date is currently stayed, although the stay can be lifted by order of the Monterey County Superior Court or with six months' notice from the County of Monterey. With the stay in effect, the exploratory wells are consistent with County zoning if a Use Permit is granted.

f) As noted, the project site is designated Farmlands (HV #1, 2, and 4) and Permanent Grazing (HV #3) in the County's Land Use Plan for South County. The Farmlands land use designation permits a range of uses to conserve and enhance the use of the important farmlands in the County while providing opportunity to establish necessary support facilities for agricultural uses. The Permanent Grazing land use designation allows for a range of land uses to conserve and enhance the productive grazing lands in the County.

g) The site is zoned Farmlands (F/40) (HV #1, 2, and 4) and Permanent Grazing (PG) (HV #3) in the County's Zoning Code. The Farmlands zone allows for land uses that preserve and enhance productive and unique farmlands and the Permanent Grazing zone allows for land uses that preserve, protect, and enhance grazing lands. Under the County Code "The exploration for and the removal of oil and gas" is allowed on Permanent Grazing sites with a Use Permit (Monterey County Ordinance Code Chapter 21.34). In addition, "The exploration for and the removal of oil and gas" is also allowed on Farmlands with a Use

Permit (Monterey County Ordinance Code Chapter 21.30). The exploratory wells are consistent with County zoning if a Use Permit is granted notwithstanding Measure Z's prohibition on drilling of new oil and gas wells because the effective date of Measure Z is currently stayed. (See evidence e above.)

h) The project was referred to the South County Land Use Advisory Committee (LUAC) for review. Based on the LUAC Procedure guidelines adopted by the Monterey County Board of Supervisors, this application warranted referral to the LUAC because the permit application and land use matter may raise significant land issues that necessitate review prior to a public hearing by the Planning Commission.

i) The South County LUAC met on July 20, 2016 to discuss the application and any potential issues. The applicant gave a short presentation on the project and detail and parameters of the four exploratory wells and the method of drilling to allow for minimal ground disturbance. The LUAC voted 5-1-0-0 to recommend approval of the project.

j) The application, project plans, and related support materials submitted by the project applicant to Monterey County RMA-Planning for the proposed development found in Project File PLN160146.

3. 1 **FINDING:** **SITE SUITABILITY** – The site is physically suitable for the use proposed.

EVIDENCE: a) The project has been reviewed for site suitability by the following departments and agencies: RMA- Planning, Cal Fire South County Fire Protection District, RMA-Public Works, RMA-Environmental Services, Environmental Health Bureau, and Water Resources Agency. There has been no indication from these departments/agencies that the site is not suitable for the proposed development. Conditions have been incorporated by the Environmental Health Bureau to address handling of hazardous materials and by RMA-Environmental Services to address erosion, grading, drainage, and geohazardous conditions. RMA-Planning added conditions to clarify that the permit does not allow any use of well stimulation treatments and that restoration would occur following well production testing or long-term production. Conditions recommended have been incorporated.

b) The following reports have been prepared:
- Biological Assessment (LIB160229) prepared by Ed Mercurio, Biological Consultant, Salinas, California in June 2016.
- 3167-01 Trio Petroleum LLC. Hames Valley Project Letter Report (LIB160228) prepared by Pacific Legacy, Bay Area Division, Berkeley, California in May 2016.

The above-mentioned technical reports by outside consultants indicated that there are no physical or environmental constraints that would indicate that the site is not suitable for the use proposed. County staff has independently reviewed these reports and concurs with their conclusions.

c) The project has been conditioned to required full restoration of the site and requires that applicant to submit a performance bond equal to the

cost of full site restoration.

d) Staff conducted a site inspection on March 9, 2017 to verify that the site is suitable for this use.

e) The application, project plans, and related support materials submitted by the project applicant to Monterey County RMA - Planning for the proposed development found in Project File PLN160146.

4. 1 **FINDING:** **HEALTH AND SAFETY** - The establishment, maintenance, or operation of the project applied for will not under the circumstances of this particular case be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the County.

EVIDENCE:

a) The project was reviewed by the RMA - Planning, Cal Fire South County Fire Protection District, Public Works, Environmental Health Bureau, RMA-Environmental Services, and Water Resources Agency. The respective agencies have recommended conditions, where appropriate, to ensure that the project will not have an adverse effect on the health, safety, and welfare of persons either residing or working in the neighborhood.

b) Cal Fire South County Fire Protection District, RMA-Public Works, and Water Resources Agency did not recommend conditions.

c) On recommendation of RMA-Planning, the project has been conditioned to require that the applicant apply for a subsequent use permit to convert any of the exploratory well sites to full production if commercial quantities of oil and gas are found. The project has been conditioned to allow specific uses, which do not include the use of well stimulation, including hydraulic fracturing. The project has also been conditioned to required full restoration of the site if no commercial quantities of oil or gas are found. To ensure compliance the applicant is required to submit a performance bond equal to the cost of full site restoration.

d) The Environmental Health Bureau has conditioned the project to require the applicant to submit and maintain an up-to-date Business Response Plan and to ensure the maintenance of above ground storage tanks and the disposal of hazardous waste, including compliance with state and federal regulations related to handling of production fluids.

e) RMA-Environmental Services has conditioned the project applicant to submit a Waste Discharger Identification number certifying the project is covered under the California Construction General Permit and to ensure that the project is compliant with state and local regulations and the project's Geotechnical Report, which will be prepared as required by the project's conditions of approval.

f) Necessary public facilities will be provided by portable restrooms and will be temporary in nature. Each portable restroom facility will be pumped on an as-needed basis and will be removed if a well is plugged and abandoned. During the drilling phase water will be supplied by the property owner and a water tank would be set up and stored on-site.

g) Each well site will be equipped with a natural gas flare to burn off

natural gas if it is found during production testing, in accordance with Monterey Bay Air Resources District requirements. The project has been conditioned to ensure compliance with Monterey Bay Air Resources District requirements.

h) Staff conducted a site inspection on March 9, 2017 to verify that the site is suitable for this use.

i) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning for the proposed development found in Project File PLN160146.

5. 1 **FINDING:** **NO VIOLATIONS** - The subject property is in compliance with all rules and regulations pertaining to zoning uses, in the County's zoning ordinance. There are no violations.

EVIDENCE:

a) Staff reviewed Monterey County RMA - Planning Department records and is not aware of any violations existing on subject property.

b) Staff conducted a site inspection on March 9, 2017 and researched County records to assess if any violation exists on the subject property.

c) There are no known violations on the subject parcel.

d) Zoning violation abatement costs, if any, have been paid.

e) The application, plans and supporting materials submitted by the project applicant to Monterey County RMA-Planning for the proposed development are found in Project File PLN160146.

6. 1 **FINDING:** **CEQA (Mitigated Negative Declaration)** - On the basis of the whole record before the Monterey County Planning Commission, there is no substantial evidence that the proposed project, as designed, conditioned and mitigated, will have a significant effect on the environment. The Mitigated Negative Declaration reflects the independent judgment and analysis of the County.

EVIDENCE:

a) Public Resources Code Section 21080.d and California Environmental Quality Act (CEQA) Guidelines Section 15064.a.1 require environmental review if there is substantial evidence that the project may have a significant effect on the environment.

b) Monterey County RMA-Planning prepared an Initial Study-Mitigated Negative Declaration (IS-MND) pursuant to CEQA. The IS-MND is on file in the offices of RMA-Planning and is hereby incorporated by reference (PLN160146).

c) The IS-MND analyzed environmental factors potentially affected by the project including aesthetics, agricultural and forest resources, air quality, biological resources, cultural resources, geology/soils, greenhouse gas emissions, hazards/hazardous materials, hydrology/water quality, land use/planning, mineral resources, noise, population/housing, public services, recreation, transportation/traffic, tribal cultural resources, and utilities/services systems. The applicant has agreed to proposed mitigation measures relevant to air quality and biological resources that avoid the effects or mitigate the effects to a point where clearly no significant effects would occur. All other potentially significant effects identified in the IS-MND were determined to have a less than significant impact or no impact.

d) All project changes required to avoid significant effects on the

environment have been incorporated into the project and/or are made conditions of approval. A Condition Compliance and Mitigation Monitoring and/or Reporting Plan has been prepared in accordance with Monterey County regulations, is designed to ensure compliance during project implementation, and is hereby incorporated herein by reference. The applicant must enter into an Agreement to Implement a Mitigation Monitoring and/or Reporting Plan as a condition of the project approval.

e) The Draft IS-MND for PLN160146 was prepared in accordance with CEQA and circulated for public review form August 8, 2017 to September 8, 2017 (SCH No. 2017081015).

f) Due to the existing disturbed condition of the project site well sites HV #1 and HV #4 do not have the potential to support any special-status species. Well sites HV #2 and #3 and the proposed access road to exploration site HV #2 have potential to support silvery legless lizard, San Joaquin whipsnake, coast horned lizard, burrowing owl, pallid bat, Townsend's big-eared bat, American badger, Salinas pocket-mouse, and San Joaquin kit fox. Activities within the project site could also impact breeding of these species should they take up residence nearby in the surrounding habitats. The mitigation measures that were applied to the project will raise employee awareness of the environmental conditions through a Worker Environmental Awareness Program and will require preconstruction surveys to ensure special-status species are not present on site; work area delineation and/or flagging to mark site boundaries and avoid special-status species; avoidance and minimization measures for San Joaquin kit fox, American badger, and special-status bat species; removal of micro-trash and relocation of reptiles out of the work area; protection of trees; and condor best management practices (BMPs). The mitigation measures also require a mitigation plan if there are special-status species found on site during the pre-construction survey. Following implementation of these mitigation measures, biological impacts would be reduced to a less-than-significant level.

g) The project would have air quality impacts as a result of project construction. Project construction would exceed local NO_X thresholds and will require use of EPA Tier 4 construction equipment, consultation with the Monterey Bay Air Resources District regarding portable engines, and application of Monterey Bay Air Resources District BMPs. Following implementation of these mitigation measures, impacts to air quality would be reduced to a less-than-significant level.

h) Evidence that has been received and considered includes: the application, technical studies/reports (see Finding 3/Site Suitability), staff reports that reflect the County's independent judgement, and information and testimony presented during public hearings. These documents are on file in RMA-Planning (PLM160146) and are hereby incorporated herein by reference.

i) Staff analysis contained in the IS-MND and the record as a whole indicate that the project could result in changes to the resources listed in Section 753.5(d) of the California Department of Fish and Game (CDFG) regulations. All land development projects that are subject to environmental review are subject to a State filing fee plus the County recording fee, unless the Department of Fish and Wildlife determines

that the project will have no effect on fish and wildlife resources. Exploration well sites HV #2 and HV #3 and the proposed access road to exploration well site HV #2 have the potential to support silvery legless lizard, San Joaquin whipsnake, coast horned lizard, burrowing owl, pallid bat, Townsend's big-eared bat, American badger, Salinas pocket-mouse, and San Joaquin kit fox. As indicated above, the impacts have been mitigated to a less than significant level, but for purposes of the Fish and Game Code, the project may have a significant adverse impact on the fish and wildlife resources upon which the wildlife depends and requires payment of fees. The IS-MND was sent to the California Department of Fish and Wildlife for review, comment, and to recommend necessary conditions to protect biological resources in this area. Therefore, the project will be required to pay the State fee plus a fee payable to the Monterey County Clerk/Recorder for processing said fee and posting the Notice of Determination (NOD).

j) The County has considered the comments received during the public review period and they do not alter the conclusions in the IS-MND. The comments received from the Monterey Bay Air Resources District ask for application of the Air District's BMPs to reduce air quality and request consultation with the Air District Compliance Division on the matter or portable engines. Application of MBARD's BMPs and consultation with MBARD would not change the determination of the IS-MND, and impacts to air quality would remain less than significant following mitigation. Application of MBARD's BMPs and consultation and registration regarding portable engines has been added as a condition of approval for the project as shown in Exhibit C.

k) Monterey County RMA-Planning, located at 1441 Schilling Place, Salinas, California, 93901, is the custodian of documents and other materials that constitute the record of proceedings upon which the decision to adopt the negative declaration is based.

7. **FINDING:** **CEQA RECIRCULATION** – Recirculation of the CEQA IS-MND is not required.

EVIDENCE: a) Following circulation of the IS-MND suggestions by MBARD regarding nomenclature were incorporated into the IS-MND and Mitigation Measure AQ-2 was added requiring consultation and registration with MBARD for use of portable engines. MBARD Best Management Practices were also added as Mitigation Measure AQ-3 to reduce air quality emissions. Addition of Mitigation Measures AQ-2 and AQ-3 to the IS-MND would not change the project air quality findings because air quality construction impacts were already determined to be less than significant with mitigation. As stated in Section 15073.5(c) of the *State CEQA Guidelines*, measures or conditions of project approval may be added to an IS-MND after circulation if they are not required by CEQA, do not create new significant environmental effects, and are not necessary to mitigate an avoidable significant effect. Mitigation Measures AQ-2 and AQ-3 entail construction BMPs and consultation requested by MBARD and meets the requirements of Section 15073.5(c).

8. **FINDING:** **APPEALABILITY** - The decision on this project may be appealed to the Board of Supervisors.

EVIDENCE: a) Section 21.80.010.D of the Monterey County Zoning Ordinance states that the proposed project is appealable to the Board of Supervisors.

DECISION

NOW, THEREFORE, based on the above findings and evidence, the Planning Commission does hereby:

1. Adopt a Mitigated Negative Declaration; and
2. Approve a use permit to allow temporary production testing for oil and gas at four sites in the Hames Valley, subject to the attached conditions of approval and as shown on the plans attached hereto and incorporated herein by reference; and
3. Adopt the Mitigation Monitoring and Reporting Program.

PASSED AND ADOPTED this 13th day of December 2017 upon motion of xxxx, seconded by xxxx, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Jacqueline R. Onciano, Planning Commission Secretary

COPY OF THIS DECISION MAILED TO APPLICANT ON DATE

THIS APPLICATION IS APPEALABLE TO THE BOARD OF SUPERVISORS.

IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE CLERK TO THE BOARD ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE [DATE]

This decision, if this is the final administrative decision, is subject to judicial review pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6. Any Petition for Writ of Mandate must be filed with the Court no later than the 90th day following the date on which this decision becomes final.

NOTES

1. You will need a building permit and must comply with the Monterey County Building Ordinance in every respect.

   Additionally, the Zoning Ordinance provides that no building permit shall be issued, nor any use conducted, otherwise than in accordance with the conditions and terms of the permit granted or until ten days after the mailing of notice of the granting of the permit by the appropriate authority, or after granting of the permit by the Board of Supervisors in the event of appeal.

   Do not start any construction or occupy any building until you have obtained the necessary permits and use clearances from Monterey County RMA-Planning and RMA-Building Services Department office in Salinas.

2. This permit expires 1 year after the above date of granting thereof unless construction or use is started within this period. If construction or use is started within this period, this permit expires 18 months from the date that construction is started on the fourth and final well. Each of the three other wells may not be tested more than 18 months from the date that construction is started on the well.

Form Rev. 5-14-2014n

CENTER for BIOLOGICAL DIVERSITY
Because life is good.

January 30, 2018

Monterey County Planning Commission
168 West Alisal Street
1st Floor
Salinas, CA 93901

Re: Trio Petroleum Application for Conditional Use Permit (PLN160146)

Dear Honorable Commissioners:

On behalf of the Center for Biological Diversity, Protect Monterey County, their respective members, and the public, I am writing to urge the Commissioners to adopt the resolution denying Trio Petroleum LLC's conditional use permit (CUP) application PLN160146 (the "Application").

In November 2016, voters in Monterey passed Measure Z, which, among other restrictions, bans the use of land for drilling new wells. The overwhelming number of votes in favor of the Measure demonstrates that the majority of Monterey County residents want to put an end to endless expansion of oil and gas development. The Planning Commission rightly respected the will of voters in making the commonsense decision to deny Trio's Application at its December 13, 2017 hearing. In doing so, Commission also showed true leadership in guiding the county toward a cleaner, safer, and more sustainable future.

I. Background

Trio Petroleum LLC (Trio) seeks approval to drill four new exploratory wells in Hames Valley. According to its application, originally submitted July 1, 2016, each exploratory well site would contain a drilling rig over 100 feet tall, an open pit to collect drilling fluid and drill cuttings, and other apparatuses necessary to drill the wells. Each site would require over 450 hours of continuous drilling and involve the transportation, storage, use, and disposal of hazardous chemicals, many of which are unknown.

Trio anticipates that the four exploratory wells will lead to expanded oil and gas activity. At the December 13, 2017 Planning Commission Meeting, the representative for Trio stated, "these sites are probably going to be housing maybe 3 to 6 wells each…and those wells will be going to different places in that anticline."[1] He added, "We are going to locate multiple wells on those sites in the development situation…. That will be the end result, hopefully."[2]

[1] Monterey County Planning Commission Public Hearing, Dec. 13, 2017, Agenda Item #4, Testimony of Trio Petroleum representative, video available at

[2] Id.

Production is unlikely to stop with the four exploration wells. Trio has publicly stated "[b]eyond these four wells [in Hames Valley], Trio has additional well defined prospects on its leasehold."[3] Trio "estimates [Hames Valley] to contain hundreds of millions of barrels of recoverable oil and significant recoverable gas."[4]

Thus, despite Trio's attempt to minimize the impact of its Application, in reality it has the potential to trigger an extensive new wave of oil and gas development in the region. Oil and gas extraction is inherently speculative, and the economic feasibility of extracting fossil fuels at a profit is subject to global market fluctuations. Nevertheless, the potential for expansion far beyond the initial four exploratory wells should not be omitted from consideration and full evaluation required by law.

II. The Application Is Inconsistent with Measure Z.

As noted in the Application and IS-MND, Measure Z amended the Monterey County General Plan and County Code to prohibit certain land uses in unincorporated parts of the County. Among other restrictions, Measure Z prohibits land uses that support new wells. (Policy LU-1.23.)

Although the ordinance is currently the subject of litigation, there is a strong possibility that the courts will ultimately uphold Measure Z and order its implementation. Approval would be inconsistent with Measure Z and the will of the majority of voters who passed the initiative in 2016. In order to avoid approving a project that would directly conflict with Measure Z, the Commission should not approve any new drilling projects until the matter is resolved.

III. Approval Would Be Inconsistent with CEQA

The Initial Study and Mitigated Negative Declaration (collectively, the "IS-MND") prepared in support of this Application are seriously flawed and do not meet the minimum standards of the California Environmental Quality Act ("CEQA").[5] CEQA is meant to ensure that the public and decision-makers are fully informed about the true extent of harms that may arise from a given project. A local agency ordinarily must prepare an EIR on any project which *may* have a significant effect on the environment.[6] Conversely, an agency may adopt a negative declaration only if there is no substantial evidence that the project *may* have a significant effect on the environment.[7] When there is a "fair argument" that the foreseeable impacts of a project may be

---

[3] *Trio Petroleum LLC et al. v. Monterey County*, Case No. 17-CV-001012, Trio Petroleum Complaint at p. 8
[4] Id. at p. 9.
[5] Pub. Res. Code §§ 21000 et seq.; CEQA Guidelines, 14 Cal. Code Regs. §§ 15000 et seq.
[6] Pub. Res. Code, § 21151.
[7] Pub. Res. Code, § 21080, subd. (c)(1) and (2), italics added; see also Guidelines, § 15070; see also *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1399.

significant, an agency must prepare a full environmental impact report before approving a project.[8]

CEQA requires the disclosure and analysis of both direct and reasonably foreseeable indirect significant effects of the project.[9] Further, it is improper for agencies to "piecemeal" the review of a project's environmental impacts by examining only some stages of a project while omitting later stages. CEQA defines "project" as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment."[10] CEQA forbids segmenting a project into separate actions in order to avoid environmental review of the "whole of the action."

A. The IS-MND Fails to Evaluate Reasonably Foreseeable Impacts

Trio has stated openly that upon discovering oil and gas, it fully intends to drill dozens more wells to produce the estimated hundreds of millions of barrels of oil in Hames Valley. Despite the reasonably foreseeable expansion of oil and gas development, the IS-MND only analyzes the impacts from the first four wells.

By improperly and artificially limiting the scope of the analysis, the IS-MND erroneously concludes that the environmental impact of this project would be less than significant. Impacts to the environment, including air, water, geology and soil, biological resources, and climate, must include the harms that would result from Trio's foreseeable plans to develop the area for oil and gas extraction. There is quite clearly more than a "fair argument" that Trio's oil and gas development plans put the County's air, water, health, and climate at risk.

In addition, Trio claims its prospects in Hames Valley include "significant recoverable natural gas,"[11] but the IS-MND does not adequately disclose the impacts of this gas extraction. It estimates that 50,000 cf of gas will be flared per day, but does not account for fugitive emissions from short and long term operations.

B. The IS-MND Fails to Evaluate Significant Impacts to Water

Trio's proposed oil and gas development, as with all such projects, put surface and groundwater at risk.

The wastewater from oil and gas operations is a toxic mix of chemicals harmful to human health. A study of Kern County produced water showed high concentrations of benzene, a known carcinogen. In some samples, benzene concentrations were as high as 18.0 mg/L, thousands of

[8] Cal. Pub. Res. Code §§ 21100; 21151; CEQA Guidelines § 15064(a)(1) (f)(1).
[9] CEQA Guidelines, § 15126.2, subd. (a), 15064, subd. (d); see also § 21080, subd. (d), 21082.2, subd. (a); Guidelines, § 15064, subd. (a)(1).
[10] CEQA Guidelines § 15378(a); Pub. Res. Code § 21065.
[11] Trio Complaint at p. 9

times above safe levels for drinking water.[12] Water testing in this DEIR does not disclose benzene levels for a majority of samples.

A review of fracking flowback fluid similarly found high levels of benzene, as well as other harmful chemicals such as hexavalent chromium, naphthalene, toluene, and ethylbenzene.[13] These tests do not fully capture the extent of the risk because drilling muds, well completion fluids, biocides, solvents, surfactants, well maintenance acids, corrosion inhibitors, lubricants, and other fluids also contain a mix of harmful chemicals. Without full disclosure of these chemicals used throughout the oil and gas development process, it is impossible for the DEIR to accurately describe the full scope of threats to our water. The chemicals used and the manner in which it is handled will also vary from site to site, making a project-level EIR for all of oil and gas untenable.

Spills and leaks occur with troubling regularity in California. One survey found that there were 575 spills of produced water from 2011 to 2014, and 18 percent of those spills affected waterways.[14] There were 31 chemical spills in oil fields, nine of them acid spills.[15] One acid spill ruptured beyond a secondary containment apparatus and spilled 5,500 gallons of hydrochloric acid.[16] These high rates of accidents illustrate that spills are unavoidable. The number of incidents reported is likely smaller than the number of actual spills and leaks, either because they have not yet been discovered, or operators have not reported them. The data indicate that blowout rates of thermal EOR wells is four times higher than non-thermal recovery fields.[17]

C. The MS-MND Fails to Consider Health Impacts

A recent state-commissioned study by the CCST found that residents near active oil and gas wells are at higher risk of being exposed to harmful chemicals, and as a result have higher risk of developing health problems. Significant exposures can occur at least as far as two miles from an active well.[18]

---

[12] DOGGR, *Benzene in water produced in Kern County oil fields containing fresh water* (1993).
[13] Julie Cart, "High levels of benzene found in fracking waste water," Los Angeles Times, February 11, 2015 *available at* ; Center for Biological Diversity Press Release: Cancer-causing Chemicals Found in Fracking Flowback From California Oil Wells (Feb. 11, 2015) *available at*

[14] California Council of Science and Technology, *An Independent Scientific Assessment of Well Stimulation in California, Vol. II.* (CCST) at p. 127. (unless otherwise noted, all page references are to Volume II of the CCST SB 4 Well Stimulation report).
[15] CCST at 127.
[16] CCST at 128.
[17] Kern County Oil and Gas Ordinance draft Environmental Impact Report (2015) (DEIR) at 1157.
[18] CCST at 414

The public health risk to California is serious. About 5.4 million Californians live within *one* mile of an active oil and gas well[19], within the distance scientifically shown to increase the risks to populations. Many more millions live within the 2-mile radius that studies have found to increase the risk to people's health. The risk is particularly serious for vulnerable populations more susceptible to developing health effects from pollution exposure, such as children, the elderly, or pregnant women.

A rigorous study by Johns Hopkins University, which examined 35,000 medical records of people with asthma in Pennsylvania, found that people who live near a higher number of, or larger, active gas wells were 1.5 to 4 times more likely to suffer from asthma attacks than those living farther away, with the closest groups having the highest risk.[20] Increased asthma risks occurred during all phases of well development. A recent Yale University study identified numerous fracking chemicals that are known, probable, or possible human carcinogens (20 air pollutants) and/or are linked to increased risk for leukemia and lymphoma (11 air pollutants), including benzene, 1,3-butadiene, cadmium, diesel exhaust, and polycyclic aromatic hydrocarbons.[21]

Numerous studies suggest that higher maternal exposure to fracking and drilling can increase the incidence of high-risk pregnancies, premature births, low-birthweight babies, and birth defects. A study of 9,384 pregnant women in Pennsylvania found that women who live near active drilling and fracking sites had a 40 percent increased risk for having premature birth and a 30 percent increased risk for having high-risk pregnancies.[22] Another study found that pregnant women who had greater exposure to gas wells (measured in terms of proximity and density of wells) had a much higher risk of having low-birthweight babies; the researchers identified air pollution as the likely route of exposure.[23] In rural Colorado, mothers with greater exposure to natural gas wells were associated with a higher risk of having babies with congenital heart defects and possibly neural tube defects.[24]

---

[19] Natural Resources Defense Council, *Drilling in California: Who's at Risk?*, Oct. 2014, available at

[20] Rasmussen, Sara G. et al., Association Between Unconventional Natural Gas Development in the Marcellus Shale and Asthma Exacerbations, 176 JAMA Internal Medicine 1334 (2016).

[21] Elliott, Elise G. et al., A Systematic Evaluation of Chemicals in Hydraulic-Fracturing Fluids and Wastewater for Reproductive and Developmental Toxicity, 27 Journal of Exposure Science and Environmental Epidemiology 90 (2016).

[22] Casey, Joan A., Unconventional Natural Gas Development and Birth Outcomes in Pennsylvania, USA, 27 Epidemiology 163 (2016).

[23] Stacy, Shaina L. et al., Perinatal Outcomes and Unconventional Natural Gas Operations in Southwest Pennsylvania. 10 PLoS ONE e0126425 (2015).

[24] McKenzie, Lisa M., Birth Outcomes and Maternal Residential Proximity to Natural Gas Development in Rural Colorado, 122 Environmental Health Perspectives 412 (2014).

Other studies have found that residents living closer to drilling and fracking operations had higher hospitalization rates[25] and reported more health symptoms, including upper respiratory problems and rashes.[26]

D. The IS-MND Fails to Evaluate Air Impacts

The IS-MND does not include a complete list of potential air pollutants and potential airborne byproducts of oil and gas operations and assess the harm caused by each in order to better assess the true extent of the damage caused by the oil and gas industry.

Fugitive emissions can occur at every stage of extraction and production, often leading to high volumes of gas being released into the air. Oil and gas operations emit large amounts and a wide array of toxic air pollutants,[27] also referred to as Hazardous Air Pollutants, which are known or suspected to cause cancer or other serious health effects, such as reproductive effects or birth defects, or adverse environmental effects.[28] Air pollutants emitted by unconventional oil and gas production include toxic BTEX compounds (benzene, toluene, ethylbenzene, and xylene); volatile organic compounds (VOCs) such as methylene chloride; nitrogen oxides (NOx); particulate matter (including diesel exhaust); alkanes (methane, ethane, propane); formaldehyde; hydrogen sulfide; silica; acid mists; sulfuric oxide; and radon gas.[29] These toxic air contaminants and smog-forming chemicals (such as VOCs, NOx, methane and ethane) threaten local communities and regional air quality.

The reporting requirements recently implemented by the California South Coast Air Quality Management District ("SCAQMD") have shown that at least 44 chemicals known to be air toxics have been used in fracking and other types of oil and gas operations in California.[30] Through the implementation of these new reporting requirements, it is now known that operators have been using several types of air toxics, including crystalline silica, methanol, hydrochloric acid, hydrofluoric acid, 2-butoxyethanol, ethyl glycol monobutyl ether, xylene, amorphous silica fume, aluminum oxide, acrylic polymer, acetophenone, and ethylbenzene. Many of these chemicals

---

[25] Jemielita, Thomas et al., Unconventional Gas and Oil Drilling Is Associated with Increased Hospital Utilization Rates. 10 PLoS ONE e0131093 (2015).

[26] Rabinowitz, Peter M. et al., Proximity to Natural Gas Wells and Reported Health Status: Results of a Household Survey in Washington County, Pennsylvania, 123 Environmental Health Perspectives 21 (2015).

[27] Sierra Club et al. comments on New Source Performance Standards: Oil and Natural Gas Sector; Review and Proposed Rule for Subpart OOOO (Nov. 30, 2011) ("Sierra Club Comments") at 13.

[28] See "About Hazardous Air Pollutants" at U.S. Environmental Protection Agency, Hazardous Air Pollutants, (accessed Jan 5, 2017)

[29] McKenzie, Lisa M. et al., Human Health Risk Assessment of Air Emissions From Development of Unconventional Natural Gas Resources, 424 Science of the Total Environment 79 (2012) ("McKenzie 2012); Shonkoff, Seth B.C. et al., Environmental Public Health Dimensions of Shale and Tight Gas Development, 122 Environmental Health Perspectives 787 (2014) ("Shonkoff 2014").

[30] Center for Biological Diversity, Air Toxics One Year Report (June 2014) at 1.

also appear on the U.S. EPA's list of hazardous air pollutants.[31] EPA has also identified six "criteria" air pollutants that must be regulated under the National Ambient Air Quality Standards (NAAQS) due to their potential to cause primary and secondary health effects. As detailed below, concentrations of many of these pollutants—ozone, particulate matter, carbon monoxide, nitrogen oxides, sulfur dioxide and lead—have been shown to increase in regions where unconventional oil and gas recovery techniques are permitted.

VOCs, from car and truck engines as well as the drilling and completion stages of oil and gas production, make up about 3.5 percent of the gases emitted by oil or gas operations.[32] The VOCs emitted include the BTEX compounds – benzene, toluene, ethyl benzene, and xylene – which are listed as Hazardous Air Pollutants.[33] There is substantial evidence showing the grave harm from these pollutants.[34] Recent studies and reports confirm the pervasive and extensive amount of VOCs emitted by unconventional oil and gas extraction.[35] For example, a study covering sites near oil and gas wells in five different states including Colorado, Wyoming, Ohio, Pennsylvania, and Arkansas, found that concentrations of eight toxic volatile chemicals, including benzene, formaldehyde and hydrogen sulfide, exceeded federal health and safety standards, at times by several orders of magnitude.[36] Another study determined that vehicle traffic and engine exhaust were likely the sources of intermittently high dust and benzene concentrations observed near well pads.[37] Recent studies have found that oil and gas operations are likely responsible for elevated levels of hydrocarbons such as benzene downwind of the Denver-Julesburg Fossil Fuel

[31] U.S. Environmental Protection Agency, The Clean Air Act Amendments of 1990 List of Hazardous Air Pollutants, Technology Transfer Network Air Toxics Web Site, available at http://www.epa.gov/ttnatw01/orig189.html (accessed July 29, 2015).
[32] Brown, Heather, Memorandum to Bruce Moore, U.S.EPA/OAQPS/SPPD re Composition of Natural Gas for use in the Oil and Natural Gas Sector Rulemaking, July 28, 2011 ("Brown Memo") at 3.
[33] 42 U.S.C. § 7412(b).
[34] Colborn, T. et al., Natural Gas Operations from a Public Health Perspective, 17 Human and Ecological Risk Assessment 1039 (2011) ("Colborn 2011"); McKenzie 2012.

[35] McCawley, Michael., Air, Noise, and Light Monitoring Plan for Assessing Environmental Impacts of Horizontal Gas Well Drilling Operations (ETD-10 Project), West Virginia University School of Public Health, Morgantown, WV (2013) ("McCawley 2013"), available at http://www.dep.wv.gov/oil-and-gas/Horizontal-Permits/legislativestudies/Documents/WVU%20Final%20Air%20Noise%20Light%20Protocol.pdf; Center for Biological Diversity, Dirty Dozen: The 12 Most Commonly Used Air Toxics in Unconventional Oil Development in the Los Angeles Basin (Sept. 2013).
[36] Macey, Gregg P. et al., Air Concentrations of Volatile Compounds Near Oil and Gas Production: A Community-Based Exploratory Study, 13 Environmental Health 82 (2014) at 1.
[37] McCawley 2013.

Basin, north of Denver.[38] Another study found that oil and gas operations in this area emit approximately 55percent of the VOCs in northeastern Colorado.[39]

VOCs, NOx, methane, and ethane are potent ground-level (tropospheric) ozone precursors that are emitted by oil and gas drilling and fracking operations. Ozone can result in serious health conditions, including heart and lung disease and mortality.[40] Exposure to elevated levels of ozone is estimated to be cause ~10,000 premature deaths per year in the United States.[41] VOCs can form ground-level (tropospheric) ozone when combined with nitrogen oxides ("NO_X") from compressor engines, turbines, other engines used in drilling, and flaring,[42] in the presence of sunlight. This reaction can diminish visibility and air quality and harm vegetation. Many regions around the country with substantial oil and gas operations are now suffering from extreme ozone levels due to heavy emissions of these pollutants.[43] A recent study of ozone pollution in the Uintah Basin of northeastern Utah, a rural area that experiences hazardous tropospheric ozone concentrations, found that oil and gas operations were responsible for 98 to 99 percent of VOCs and 57 to 61 percent of NO_X emitted from sources within the Basin considered in the study's inventory.[44] A recent assessment of oxides of nitrogen (NOx) emitted from well sites showed that operator-reported numbers, based on false and unproven assumptions, are often drastically lower than what actual emissions could be.[45]

Ground-level ozone can also be caused by methane, which is leaked and vented at various stages of unconventional oil and gas development, as it interacts with nitrogen oxides and sunlight.[46] In addition to its role as a potent greenhouse gas, methane's effect on ozone concentrations can be

---

[38] Pétron, G. et al., Hydrocarbon Emissions Characterization in the Colorado Front Range – A Pilot Study, 117 J. Geophysical Research D04304 (2012) at 8, 13 ("Pétron 2012).

[39] Gilman, Jessica B. et al., Source Signature of Volatile Organic Compounds from Oil and Natural Gas Operations in Northeastern Colorado, 47 Environmental Science & Technology 1297 (2013) at 1297, 1303 ("Gilman 2013").

[40] U.S. Environmental Protection Agency, Integrated Science Assessment (ISA) for Ozone (O3) and Related Photochemical Oxidants (2013).

[41] Caiazzo, Fabio et al., Air Pollution and Early Deaths in the United States. Part I: Quantifying the Impact of Major Sectors in 2005, 79 Atmospheric Environment 198 (2013).

[42] *See, e.g.*, U.S. Environmental Protection Agency, Oil and Gas Sector: Standards of Performance for Crude Oil and Natural Gas Production, Transmission, and Distribution: Background Technical Support Document for Proposed Standards at 3-6 (July 2011); Armendariz, Al, Emissions for Natural Gas Production in the Barnett Shale Area and Opportunities for Cost-Effective Improvements (2009) ("Armendariz 2009") at 24.

[43] Armendariz 2009 at 1, 3, 25-26; Koch, Wendy, *Wyoming's Smog Exceeds Los Angeles' Due to Gas Drilling*, USA Today (May 9, 2011); Craft, Elena, Environmental Defense Fund, Do Shale Gas Activities Play a Role in Rising Ozone Levels? (2012); Colorado Dept. of Public Health and Environment, Conservation Commission, Colorado Weekly and Monthly Oil and Gas Statistics (July 6, 2012) at 12.

[44] Lyman, Seth & Howard Shorthill, Final Report: 2012 Uintah Basin Winter Ozone & Air Quality Study, Utah Department of Environmental Quality (2013) ("Lyman 2013"); *see also* Gilman 2013.

[45] Dr. Ranajit Sahu "On the Underestimation of NOx from Oil Well Drilling in Kern County, CA" (2015)

[46] Fiore, Arlene et al., Linking Ozone Pollution and Climate Change: The Case for Controlling Methane, 29 Geophys. Res Letters 19 (2002) ("Fiore 2002"); U.S. Environmental Protection Agency, Oil and Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews Proposed Rule, 76 Fed. Reg 52,738 (Aug 23, 2011).

substantial. One paper modeled reductions in various anthropogenic ozone precursor emissions and found that "[r]educing anthropogenic CH_4 emissions by 50% nearly halves the incidence of U.S. high-O_3 events . . . ."[47]

Ethane is also a potent precursor of ground-based ozone pollution as it breaks down and reacts with sunlight to create smog, as well as being a greenhouse gas. Ethane emissions have risen steeply in recent years due to U.S. oil and gas production. A recent study documented that ethane emissions in the Northern Hemisphere increased by about 400,000 tons annually between 2009 and 2014, with the majority coming from North American oil and gas activity, reversing a decades-long decline in ethane emissions.[48] Shockingly, about 60 percent of the drop in ethane levels that occurred over the past 40 years has already been made up in the past five years. At this rate, U.S. ethane levels are expected to hit 1970s levels in about three years. About two percent of global ethane emissions originate from the Bakken Shale oil and gas field alone, which emits 250,000 tons of ethane per year.[49] Because global ethane levels were decreasing until 2009, the U.S. shale gas boom is thought to be responsible for the global increase in levels since 2010. Oil and gas operations can also emit hydrogen sulfide. The hydrogen sulfide is contained in the natural gas and makes that gas "sour." Hydrogen sulfide may be emitted during all stages of operation, including exploration, extraction, treatment and storage, transportation, and refining. Long-term exposure to hydrogen sulfide is linked to respiratory infections, eye, nose, and throat irritation, breathlessness, nausea, dizziness, confusion, and headaches.[50]

The oil and gas industry is also a major source of particulate matter. The heavy equipment regularly used in the industry burns diesel fuel, generating fine particulate matter[51] that is especially harmful.[52] Vehicles traveling on unpaved roads also kick up fugitive dust, which is particulate matter.[53] Further, both NO_X and VOCs, which as discussed above are heavily emitted by the oil and gas industry, are also particulate matter precursors.[54] Some of the health effects

---

[47] Fiore 2002; *see also* Martin, Randal et al., Final Report: Uinta Basin Winter Ozone and Air Quality Study Dec 2010 - March 2011 (2011) at 7.
[48] Helmig, Detlev et al,, Reversal of Global Atmospheric Ethane and Propane Trends Largely Due to US Oil and Natural Gas Production. 9 Nature Geoscience 490 (2016).
[49] Kort, Eric A. et al., Fugitive Emissions From the Bakken Shale Illustrate Role of Shale Production in Global Ethane Shift. 43 Geophysical Research Letters 4617 (2016).
[50] U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Report to Congress on Hydrogen Sulfide Air Emissions Associated with the Extraction of Oil and Natural Gas (EPA-453/R-93-045) at i (Oct. 1993) ("USEPA 1993").
[51] Earthworks, Sources of Oil and Gas Pollution (2011).
[52] Bay Area Air Quality Management District, Particulate Matter Overview, Particulate Matter and Human Health (2012).
[53] U.S. Environmental Protection Agency, Regulatory Impact Analysis for the Proposed Revisions to the National Ambient Air Quality Standards for Particulate Matter (June 2012), http://www.epa.gov/ttnecas1/regdata/RIAs/PMRIACombinedFile_Bookmarked.pdfat 2-2, ("EPA RIA")
[54] EPA RIA at 2-2.

protected under claims of trade secrecy.[66] Even for chemicals that have been identified, many have little to no publicly available information regarding their toxicity. [67]

Recent studies show that drilling mud and bore waste discharge contains scores of chemicals that are harmful to human health and present a risk to water resources. Increasingly, chemicals are being added to drilling mud used to drill the bore hole. The chemicals are added to increase the density and weight of the fluids in order to facilitate boring, to reduce friction, to facilitate the return of drilling detritus to the surface, to shorten drilling time, and to reduce accidents.[68]

Not all chemicals used in drilling muds are known to the public, but the chemicals that have been identified are associated with serious harm to human health. A study of drilling mud in Wyoming revealed 36 chemicals, all of which having at least one harmful human health effect.[69] These chemicals included aluminum tristearate, Amoco-NT-45 process oil (Diesel 2), chromium, crystalline silica, distillates, drakeol, formic acid, gas oils (petroleum), lubricating oils (petroleum), monopentaerythritol, polyacrylamide/polyacrylate copolymer, sepiolite, xanthan gum.[70]

The health effects from exposure to these chemicals include damage to skin, eye, and sensory organs, the respiratory system, the gastrointestinal system and liver, the brain and nervous system, the immune system, kidneys, and blood and the cardiovascular system.[71] Chemicals found in drilling mud also have been linked to cancer, endocrine disruption, mutagenic harm, ecological harm, and other types of harm. Most chemicals have multiple health risks. A significant portion of the known chemicals can contaminate air, soil, and water through evaporation, solubility, and miscibility. Drill cuttings, which may be produced concurrently with drilling mud and other boring waste, can also contain dangerous heavy metals such as aluminum, mercury, cadmium, arsenic, chromium, copper, lead, nickel and zinc.[72] Exposure to these heavy metals can lead to numerous deleterious health effects for humans and wildlife. Several of these metals are listed as hazardous waste under California law.[73] Other chemicals possess characteristics that qualify them as hazardous waste under California law definitions.

---

[66] Shonkoff 2016 at 7 (finding 38 percent of chemicals withheld from disclosure to California Regional Water Quality Control Board investigation.

[67] *Id.* at 13.

[68] Colborn, Theo, *Natural Gas from a Public Health Perspective*, Human Ecol. Risk Assess. Vol. 17, 1039, 1044 (Sept. 2011) ("Colborn 2011")

[69] Colborn, Theo, Written Testimony before the House Committee on Oversight and Government Reform, hearing on the Applicability of Federal Requirements to Protect Public Health and the Environment from Oil and Gas Development (Oct. 31, 2007) Appendix C, p. 1.

[70] See Colborn and Schultz, Chart listing chemicals found in drilling and drilling muds.

[71] Colborn 2011 at 1048

[72] U.S. Environmental Protection Agency, Ocean Discharge Evaluation for Beaufort Exploration NPDES General Permit (Oct. 2012) p. 3-6, Table 3-3.

[73] See, e.g., 22 Cal. Code Reg. § 66261.24 (listing several chemicals considered hazardous waste).

Drilling muds and boring waste may also contain naturally occurring radioactive material ("NORMs") that are brought to the surface through drilling. Radioactive material such as radium has been discovered where oil drilling has occurred.[74] In fact, the use of horizontal or directional drilling, which Trio acknowledges it may use, may increase the amount of radioactive material brought to the surface in drill cuttings and drilling muds.[75] These too can potentially harm humans and wildlife through prolonged exposure.

More fundamentally, there are significant data gaps regarding what chemicals are used in oil and gas extraction. State disclosure requirements only cover hydraulic fracturing and other types of well stimulation. There are no disclosure requirements for drilling, well completion, well maintenance, enhanced oil recovery, and other processes.[76] As a result, there is little information regarding what kinds of chemicals are being used, and what risks they pose to public health and safety and the environment. Still others are protected under claims of trade secrecy.[77] Even for chemicals that have been identified, many have little to no publicly available information regarding their toxicity. [78]

Where, as here, there is substantial evidence to support a fair argument that drilling mud discharges may have a significant effect on the environment, preparation of an EIR is required.[79] This "fair argument" test "establishes a low threshold for initial preparation of an EIR, which reflects a preference for resolving doubts in favor of environmental review."[80]

VI. The Biological Opinion Does Not Include Recent Sightings of a Fully Protected Species.

The IS-MND's conclusion that impacts to biological resources is not supported. For example, the IS-MND asserts that impacts to the golden eagle, a Fully Protected Species under California law, are less than significant. It points to a biological opinion that concluded that the species was did not occur in the area. However, a more recent survey sighted the golden eagle in the project area, indicating that the area is occupied or used for foraging by this species.[81]

---

[74] Morgan, Rachel, "Isn't This Radiation Naturally Occurring?" Timesonline.com (Jan. 27. 2013); Warner et al. "Impacts of Shale Gas Wastewater Disposal on Water Quality in Western Pennsylvania" Environ. Sci. Technol. (Oct. 2013) available at

[75] See White, E. Ivan, "Consideration of Radiation in Hazardous Waste Produced from Horizontal Hydrofracking" (October 2012).

[76] Shonkoff, Seth et al., Preliminary Hazard Assessment of Chemical Additives Used in Oil and Gas Fields that Reuse Their Produced Water for Agricultural Irrigation in The San Joaquin Valley of California, PSE Healthy Energy (2016), ("Shonkoff 2016")

[77] Id. at 7 (finding 38 percent of chemicals withheld from disclosure to California Regional Water Quality Control Board investigation.

[78] Id. at 13.

[79] Pub. Res. Code §§ 21100, 21151; CEQA Guidelines § 15064(a)(1), (f)(1); *Communities for a Better Env't v. South Coast Air Quality Mgmt. Dist.*, 48 Cal. 4th 310, 319 (2010); *No Oil, Inc.*, 13 Cal. 3d at 82.

[80] *Architectural Heritage Assn. v. County of Monterey*, 122 Cal. App. 4th 1095 (2004).

[81] Application at p. 43 [golden eagle observed during March 9, 2017 site visit]

expert assessments have established global carbon budgets, or the total amount of carbon that can be burned while maintaining some probability of staying below a given temperature target. According to the IPCC, total cumulative anthropogenic emissions of CO_2 must remain below about 1,000 gigatonnes ($GtCO_2$) from 2011 onward for a 66 percent probability of limiting warming to 2°C above pre-industrial levels, and to 400 $GtCO_2$ from 2011 onward for a 66 percent probability of limiting warming to 1.5°C.[90] These carbon budgets have been reduced to 850 $GtCO_2$ and 240 $GtCO_2$, respectively, from 2015 onward.[91] Given that global CO_2 emissions in 2015 alone totaled 36 $GtCO_2$,[92] humanity is rapidly consuming the remaining carbon budget.

According to a large body of scientific research, the vast majority of global and US fossil fuels must stay in the ground in order to hold temperature rise to well below 2°C.[93] Studies estimate that 68 to 80 percent of global fossil fuel reserves must not be extracted and burned to limit temperature rise to 2°C based on a 1,000 $GtCO_2$ carbon budget.[94] For a 50 percent chance of limiting temperature rise to 1.5°C, 85 percent of known fossil fuel reserves must stay in the ground.[95] Effectively, fossil fuel emissions must be phased out globally within the next few decades.[96]

---

[90] IPCC, "2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change; Summary for Policymakers (2013), at 25; IPCC, Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change, R.K. Pachauri and L.A. Meyer (eds.) (2014), at 63-64 and Table 2.2.

[91] Rogelj, Joeri et al., Differences between carbon budget estimates unraveled, 6 Nature Climate Change 245 (2016), at Table 2.

[92] *See* Le Quéré, Corrine et al., Global Carbon Budget 2016, 8 Earth Syst. Sci. Data 605 (2016),

[93] The IPCC estimates that global fossil fuel reserves exceed the remaining carbon budget for staying below 2°C by 4 to 7 times, while fossil fuel resources exceed the carbon budget for 2°C by 31 to 50 times. *See* Bruckner, Thomas et al., Ch. 7: 2014: Energy Systems, in Climate Change 2014: Mitigation of Climate Change, Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change (2014), , at Table 7.2.

[94] To limit temperature rise to 2°C based on a 1,000 $GtCO_2$ carbon budget from 2011 onward, studies indicate variously that 80 percent (Carbon Tracker Initiative, Unburnable Carbon – Are the world's financial markets carrying a carbon bubble? (2013) ("Carbon Tracker Initiative 2013"), ;), 76 percent (Raupach, Michael et al., "Sharing a quota on cumulative carbon emissions," 4 Nature Climate Change 873 ("Raupach 2014"), and 68 percent (Oil Change International, The Sky's Limit: Why the Paris Climate Goals Require A Managed Decline of Fossil Fuel Production, (September 2016) ("Oil Change International 2016")) of global fossil fuel reserves must stay in the ground. *See* Carbon Tracker Initiative 2013; Raupach 2014; Oil Change International 2016.

[95] Oil Change International 2016 at 6.

[96] Joeri Rogelj et al. (2015) estimated that a reasonable likelihood of limiting warming to 1.5° or 2°C requires global CO_2 emissions to be phased out by mid-century and likely as early as 2040-2045. *See* Rogelj, Joeri et al., Energy system transformations for limiting end-of-century warming to below 1.5°C, 5 Nature Climate Change 519 (2015). Climate Action Tracker indicated that the United States must phase out fossil fuel CO_2 emissions

A 2016 analysis found that potential carbon emissions from developed reserves in currently operating oil and gas fields and mines would lead to global temperature rise beyond 2°C.[97] Excluding coal, currently operating oil and gas fields alone would take the world beyond 1.5°C.[98] To stay well below 2°C, the clear implication is that no new fossil fuel extraction or transportation infrastructure should be built, and governments should grant no new permits for new fossil fuel extraction and infrastructure.[99] Moreover, some fields and mines, primarily in rich countries, must close before fully exploiting their resources. The analysis concludes that, because "existing fossil fuel reserves considerably exceed both the 2°C and 1.5°C carbon budgets[, i]t follows that exploration for new fossil fuel reserves is at best a waste of money and at worst very dangerous."[100]

VIII. Commenters Request to Be Added to the Planning Commission's "List of Interested Persons"

It does not appear as though either is included on the "List of Interested Persons" that received notification of Trio's Application when it was first submitted on July 1, 2017. Both Protect Monterey County and the Center for Biological Diversity have a strong and longstanding interest in protecting the water, air, and land in Monterey County from the dangers of oil and gas activity. As such, the Commission should notify both stakeholders when oil and gas projects are proposed in the County. Protect Monterey County and the Center for Biological Diversity both request that they be added to the List of Interested Persons and be notified of future developments pertaining to this and other oil and gas projects.

IX. Conclusion

On behalf of Protect Monterey County and the Center for Biological Diversity, and supporters of Measure Z, we thank the Commissioners for denying this ill-conceived Application. The long term impacts are not aligned with Monterey County's path toward a safer, healthier, and sustainable future. We urge the Commission to adopt the staff's draft resolution to deny the Trio Application.

Thank you for showing strong leadership on this matter.

---

even earlier—between 2025 and 2040—for a reasonable chance of staying below 2°C. *See, e.g.* Climate Action Tracker, "USA" (last updated 25 January 2017),

[97] Oil Change International 2016 at 5.

[98] *Id.*, at 5.

[99] *Id.*

[100] *Id.*, at 17.

Sincerely,

Hollin Kretzmann
Staff Attorney
Center for Biological Diversity
1212 Broadway Suite 800
Oakland, CA 94612

Hollin Kretzmann for
Dr. Laura Solorio, MD
President
Protect Monterey County

1/31/18 #1 Trio Petroleum

Bokanovich, Karina T. x5383

From: Mibs McCarthy <mibsmccarthy@comcast.net>
Sent: Tuesday, January 30, 2018 9:25 PM
To: Holm, Carl P. x5103
Subject: Planning Commission January 31, 2018

To: Monterey County Planning Commission
RE: Your agenda for January 31, 2018

I oppose any new well permits that violate the intent of Measure Z.
The purpose of Measure Z is to protect, not find waivers, or angles that allow more exploitation.
The threat to long term potential damage is to be avoided.
The potential harm from more wells is real.
Please honor nature. Please help prevent environmental damage.
Please defend our natural resources.
I ask that the Commission deny new well permits that undermine our water future.

Mibs McCarthy
11 Via Las Encinas
Carmel Valley, CA 93924
831-659-1115

Bokanovich, Karina T. x5383

From: McDougal, Melissa x5146
Sent: Wednesday, January 31, 2018 8:53 AM
To: Bokanovich, Karina T. x5383
Subject: FW: Protect our coast!

From: Holm, Carl P. x5103
Sent: Wednesday, January 31, 2018 7:18 AM
To: McDougal, Melissa x5146 <McDougalM@co.monterey.ca.us>
Cc: Onciano, Jacqueline x5193 <oncianoj@co.monterey.ca.us>; Swanson, Brandon xx5334 <SwansonB@co.monterey.ca.us>; Strimling, Wendy x5430 <strimlingw@co.monterey.ca.us>; Dugan, John x6654 <DuganJ@co.monterey.ca.us>
Subject: Fwd: Protect our coast!

For PC

Sent from Carl Holm

Begin forwarded message:

From: Surfrider Foundation, Monterey Chapter <chair@monterey.surfrider.org>
Date: January 30, 2018 at 22:20:07 PST
To: <HolmCP@co.monterey.ca.us>
Subject: **Protect our coast!**
Reply-To: Surfrider Foundation, Monterey Chapter <chair@monterey.surfrider.org>

View this email in your browser

Following the theme of sacrificing the public's favorite natural areas for the benefit of oil and gas companies, the Trump administration has just announced plans to expand offshore drilling in the Atlantic, Pacific, Gulf of Mexico, and Arctic Ocean. This drastic proposal puts our nation's coastal communities, beaches, surf breaks, and marine ecosystems at risk of a catastrophic oil spill.

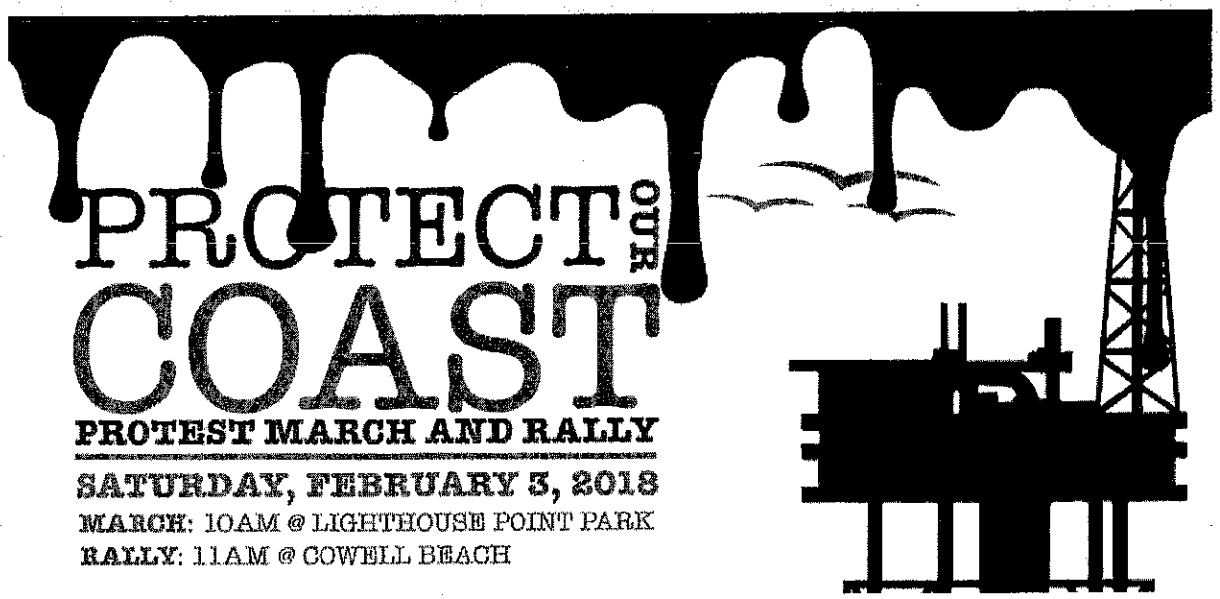
Let your voice be heard

The buoy behind your surf forecast

Monday, February 26 — 6:30pm

Pacific Grove Museum of Natural History

Do you check conditions on the daily? Join Monterey Surfrider and Dr. Henry Ruhl from CeNCOOS in a presentation and talk about the science and technology used to monitor currents, temperature, tides, and swell.



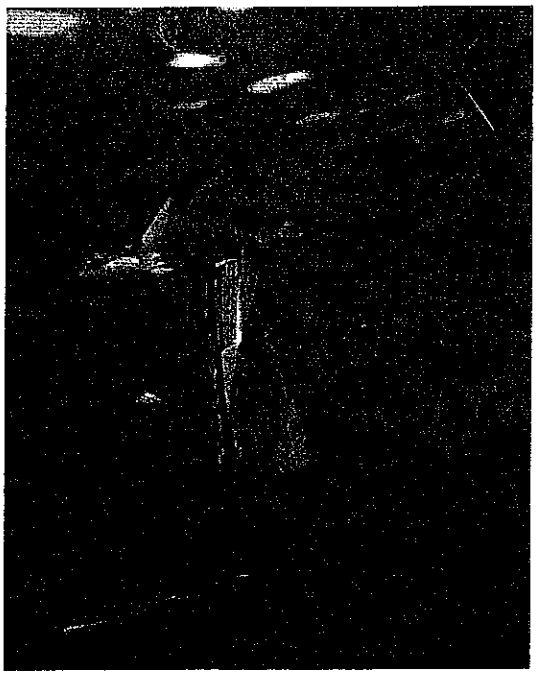
Please join our friends at Save Our Shores for a march and rally in protest of the proposed off-shore drilling in California.

Beach Cleanup at Seaside Beach

Sunday, February 25 — 10am to noon

Meet near Monterey Tides Hotel

Nobody likes to see trash on the beach, and much of that litter ends up in the ocean polluting the seas and harming marine life.



You have received this email because you signed up to be on our email list online at www.surfridermonterey.org or you signed up at one of our events or you are a dues paying member of our Chapter. In the case that you no longer wish to receive notifications from us, please click the unsubscribe button below. Thanks!

Our mailing address is:

Surfrider Foundation, Monterey Chapter

319 Forest Ave

Pacific Grove, CA 93950

Bokanovich, Karina T. x5383

From: Pat Venza <patvenza@me.com>
Sent: Wednesday, January 31, 2018 7:17 AM
To: Holm, Carl P. x5103
Subject: New oil wells

To: Monterey County Planning Commission
Your agenda for January 31, 2018

I oppose any new well permits that violate the intent of Measure Z.
The purpose of Measure Z is to protect, not find waivers, or angles that allow more exploitation.
The threat to long term potential damage it to be avoided.
The potential harm from more wells is real.
Please honor nature. Please help prevent environmental damage.
Please defend our natural resources.

I ask that the Commission deny more well permits that undermine our water future.

Patricia Venza
241 Soledad Dr.
Monterey, CA. 93940

Sent from my iPad

Bokanovich, Karina T. x5383

From: Mibs McCarthy <mibsmccarthy@comcast.net>
Sent: Tuesday, January 30, 2018 9:25 PM
To: Holm, Carl P. x5103
Subject: Planning Commission January 31, 2018

To: Monterey County Planning Commission
RE: Your agenda for January 31, 2018

I oppose any new well permits that violate the intent of Measure Z.
The purpose of Measure Z is to protect, not find waivers, or angles that allow more exploitation.
The threat to long term potential damage is to be avoided.
The potential harm from more wells is real.
Please honor nature. Please help prevent environmental damage.
Please defend our natural resources.
I ask that the Commission deny new well permits that undermine our water future.

Mibs McCarthy
11 Via Las Encinas
Carmel Valley, CA 93924
831-659-1115

Bokanovich, Karina T. x5383

From: McDougal, Melissa x5146
Sent: Wednesday, January 31, 2018 8:53 AM
To: Bokanovich, Karina T. x5383
Subject: FW: Planning Commission Meeting re Measure Z

From: Holm, Carl P. x5103
Sent: Wednesday, January 31, 2018 7:10 AM
To: McDougal, Melissa x5146 <McDougalM@co.monterey.ca.us>
Cc: Onciano, Jacqueline x5193 <oncianoj@co.monterey.ca.us>; Dugan, John x6654 <DuganJ@co.monterey.ca.us>; Swanson, Brandon xx5334 <SwansonB@co.monterey.ca.us>; Strimling, Wendy x5430 <strimlingw@co.monterey.ca.us>
Subject: Fwd: Planning Commission Meeting re Measure Z

For PC

Sent from Carl Holm

Begin forwarded message:

> **From:** Jennifer Haydu <jenhay72@gmail.com>
> **Date:** January 30, 2018 at 23:53:08 PST
> **To:** holmcp@co.monterey.ca.us
> **Subject: Planning Commission Meeting re Measure Z**
>
> To Carl Holm:
>
> I write this to you as resident of Monterey County, as a voter, as a proud CA citizen, as a business owner, and as a very concerned community member.
> I am also one of the many thousands who voted for Measure Z, which I will remind you passed as the will of the people.
>
> I oppose any new well permits that violate the intent of Measure Z.
> The purpose of Measure Z is to protect, not find waivers, or angles that allow more exploitation.
> The potential harm from more wells is real.
>
> Please honor nature. Please help prevent environmental damage.
> Please defend our natural resources. Think of the long term implications and risks your decision can have.
> Please do not disregard the voters who SPOKE CLEARLY when we passed Measure Z.
> I ask that the Commission deny more well permits that undermine our water future.
>
> Thank you,
>
> Jennifer Haydu

Monterey CA

Bokanovich, Karina T. x5383

From: McDougal, Melissa x5146
Sent: Wednesday, January 31, 2018 8:54 AM
To: Bokanovich, Karina T. x5383
Subject: FW: 1/31 PLANNING COMMISSION MEETING

From: Holm, Carl P. x5103
Sent: Wednesday, January 31, 2018 7:10 AM
To: McDougal, Melissa x5146 <McDougalM@co.monterey.ca.us>
Cc: Onciano, Jacqueline x5193 <oncianoj@co.monterey.ca.us>; Dugan, John x6654 <DuganJ@co.monterey.ca.us>; Swanson, Brandon xx5334 <SwansonB@co.monterey.ca.us>; Strimling, Wendy x5430 <strimlingw@co.monterey.ca.us>
Subject: Fwd: 1/31 PLANNING COMMISSION MEETING

For PC

Sent from Carl Holm

Begin forwarded message:

> **From:** dwilh333@aol.com
> **Date:** January 31, 2018 at 05:53:37 PST
> **To:** holmcp@co.monterey.ca.us
> **Subject: 1/31 PLANNING COMMISSION MEETING**
>
> TO: MONTEREY PLANNING COMMISSION
>
> I oppose any new well permits that violate the intent of Measure Z.
>
> Doug Wilhelm
> On Dolores 4 SE of 13th
> Carmel 93921

Bokanovich, Karina T. x5383

From: McDougal, Melissa x5146
Sent: Wednesday, January 31, 2018 8:54 AM
To: Bokanovich, Karina T. x5383
Subject: FW: Deny proposals for new oil production wells

From: Holm, Carl P. x5103
Sent: Wednesday, January 31, 2018 7:09 AM
To: McDougal, Melissa x5146 <McDougalM@co.monterey.ca.us>
Cc: Onciano, Jacqueline x5193 <oncianoj@co.monterey.ca.us>; Strimling, Wendy x5430 <strimlingw@co.monterey.ca.us>; Dugan, John x6654 <DuganJ@co.monterey.ca.us>; Swanson, Brandon xx5334 <SwansonB@co.monterey.ca.us>
Subject: Fwd: Deny proposals for new oil production wells

For PC

Sent from Carl Holm

Begin forwarded message:

> **From:** Jan Shriner <shrinerforsure@gmail.com>
> **Date:** January 31, 2018 at 06:40:43 PST
> **To:** holmcp@co.monterey.ca.us
> **Subject: Deny proposals for new oil production wells**
>
> Please oppose new oil well proposals.
>
> 2015 Congress lifted restrictions on exporting US petroleum products. US public will not benefit from sales.
>
> 2017 King City during public hearing by California Department of Conservation Division of Oil, Gas, and Geothermal Resources (DOGGR) staff told public the deeper, southern aquifers of the Salinas River Groundwater Basin (SVGB) will never be needed for irrigation or drinking water due to several reasons including two outrageous falsehoods and one error of omission.
>
> These reasons included the idea that agricultural lands of SVGB are being converted to residential properties and Marina Coast Water District (MCWD) is developing a desalination project in Moss Landing. In my public comments I mentioned that I sit on the Board of MCWD and that I would like to know if the farmers have been told about this trend for land use and that I wanted to be in the room when someone told Cal Am about this supposed MCWD project.
>
> The omission, I also stated in the DOGGR meeting, is that the staff had not mentioned a word about the SVGB as a highly critically overdrafted basin.
>
> These statements demonstrated a severe lack of information by DOGGR at the state level of regulation.

2017 during a Monterey County meeting about the creation of exemptions to the newly voter mandated Measure Z, I asked attorneys who facilitated the meeting that based on the premise the officials do not know what chemicals are used in petroleum production could we use a specific phrase in the consideration of exemptions "if the proposed project requesting exemption uses any known carcinogens or neurotoxins, exemption is denied?"

"No exemptions for any known carcinogens. No exemptions for any known neurotoxins."

Three attorneys jumped up to say "nothing new, this possibility for stating something like this can not be discussed in this process."

No carcinogens, no neurotoxins added to aquifers in a severely overdrafted groundwater basin is common sense for those of us who feel a responsibility to our youth and feel the need to do what is right as Americans or as global citizens.

California is leading the nation in sales of electric vehicles. The technologies and jobs are improving and increasing in the fields of renewable energy transition.

Deny proposals for new oil productions based on public health concerns and lead the way to wellness and clean, sustainable water.

Jan Shriner
Marina Resident

Bokanovich, Karina T. x5383

From: McDougal, Melissa x5146
Sent: Wednesday, January 31, 2018 8:53 AM
To: Bokanovich, Karina T. x5383
Subject: FW: request by oil company to drill 4 more wells i monterey co.

From: Holm, Carl P. x5103
Sent: Wednesday, January 31, 2018 7:11 AM
To: McDougal, Melissa x5146 <McDougalM@co.monterey.ca.us>
Cc: Onciano, Jacqueline x5193 <oncianoj@co.monterey.ca.us>; Dugan, John x6654 <DuganJ@co.monterey.ca.us>; Swanson, Brandon xx5334 <SwansonB@co.monterey.ca.us>; Strimling, Wendy x5430 <strimlingw@co.monterey.ca.us>
Subject: Fwd: request by oil company to drill 4 more wells i monterey co.

For PC

Sent from Carl Holm

Begin forwarded message:

> **From:** "al.schader@gmail.com" <alschader@gmail.com>
> **Date:** January 30, 2018 at 22:32:33 PST
> **To:** holmcp@co.monterey.ca.us
> **Subject: request by oil company to drill 4 more wells i monterey co.**
>
> To the planning board. As along time county resident, I'm a retired former member of the paciific grove marine rescue unit. tasked to watch for the welfare of out ocean. I'M very much against any more wells.We are trying to become free from the damage being done to out enviroment by the burning of fosil fuels .We all know very well the damage being done by them.Nitrioxcide in exhaust fumes polute farm land allong the road that have farm land growing crops that we need for food, the cattle wjo graze there eat the comtaminated grass, and we eat the beefthat inturn polutes us the consumer. I feel hat in truth most of the oil is now and will be sent over seas. Pleasse vote no on the permit as a group looking out for the citizens health and welfare of all people. thank you leonardbschader

Bokanovich, Karina T. x5383

From: Pat Venza <patvenza@me.com>
Sent: Wednesday, January 31, 2018 7:17 AM
To: Holm, Carl P. x5103
Subject: New oil wells

To: Monterey County Planning Commission
Your agenda for January 31, 2018

I oppose any new well permits that violate the intent of Measure Z.
The purpose of Measure Z is to protect, not find waivers, or angles that allow more exploitation.
The threat to long term potential damage it to be avoided.
The potential harm from more wells is real.
Please honor nature. Please help prevent environmental damage.
Please defend our natural resources.

I ask that the Commission deny more well permits that undermine our water future.

Patricia Venza
241 Soledad Dr.
Monterey, CA. 93940

Sent from my iPad

Bokanovich, Karina T. x5383

From: McDougal, Melissa x5146
Sent: Wednesday, January 31, 2018 8:53 AM
To: Bokanovich, Karina T. x5383
Subject: FW: Wells decision

-----Original Message-----
From: Holm, Carl P. x5103
Sent: Wednesday, January 31, 2018 7:18 AM
To: McDougal, Melissa x5146 <McDougalM@co.monterey.ca.us>
Cc: Strimling, Wendy x5430 <strimlingw@co.monterey.ca.us>; Onciano, Jacqueline x5193 <oncianoj@co.monterey.ca.us>; Swanson, Brandon xx5334 <SwansonB@co.monterey.ca.us>; Dugan, John x6654 <DuganJ@co.monterey.ca.us>
Subject: FW: Wells decision

For PC

Carl P. Holm, AICP
RMA Director

-----Original Message-----
From: Roberta Myers [mailto:rmyers1934@icloud.com]
Sent: Tuesday, January 30, 2018 10:13 PM
To: Holm, Carl P. x5103 <HolmCP@co.monterey.ca.us>
Subject: Wells decision

I sincerely hope the Commission will not grant permission for new wells before appeals are adjudicated. Meanwhile I cannot believe that would be in the best interest of the community, agriculture or the environment.
Sincerely
Roberta A Myers
781 Terry Street Monterey CA 93940

Sent from my iPhone

Bokanovich, Karina T. x5383

From: McDougal, Melissa x5146
Sent: Wednesday, January 31, 2018 8:54 AM
To: Bokanovich, Karina T. x5383
Subject: FW: Measure Z--don't frack-ture it!

From: Holm, Carl P. x5103
Sent: Wednesday, January 31, 2018 7:08 AM
To: McDougal, Melissa x5146 <McDougalM@co.monterey.ca.us>
Cc: Onciano, Jacqueline x5193 <oncianoj@co.monterey.ca.us>; Swanson, Brandon xx5334 <SwansonB@co.monterey.ca.us>; Strimling, Wendy x5430 <strimlingw@co.monterey.ca.us>; Dugan, John x6654 <DuganJ@co.monterey.ca.us>
Subject: Fwd: Measure Z--don't frack-ture it!

For PC

Sent from Carl Holm

Begin forwarded message:

> **From:** Myrleen Fisher <myrfisher@comcast.net>
> **Date:** January 31, 2018 at 07:05:47 PST
> **To:** holmcp@co.monterey.ca.us
> **Subject: Measure Z--don't frack-ture it!**
>
> To the Planning Commissioners:
>
> Big Money (Big Oil) is trying to wiggle it's way around the will of the people. Measure Z is our will. They are trying to exploit you. Be steadfast. Defend Monterey County. No New Drilling permits—PLEASE.
>
> Myrleen Fisher
> 3850 Rio Road, #90
> Carmel, 93923

Bokanovich, Karina T. x5383

From: Vicki Williams <vickimwilliams@gmail.com>
Sent: Tuesday, January 30, 2018 9:28 PM
To: Holm, Carl P. x5103
Subject: Monterey County Planning Commissioners, care of the Planning Commission's secretary

Please vote NO on the 4 new well that are being request. Protect water that is getting sparser and more polluted every day which affects our drinking water and the water for our food supply. Please not in our county and not our water.

Thanks,

Vicki Williams

Bokanovich, Karina T. x5383

From: John Pearse <pearsester@gmail.com>
Sent: Tuesday, January 30, 2018 9:40 PM
To: Holm, Carl P. x5103
Subject: No new oil wells

To: Monterey County Planning Commission
Your agenda for January 31, 2018

I oppose any new well permits that violate the intent of Measure Z.
The purpose of Measure Z is to protect, not find waivers, or angles that allow more exploitation.
The threat to long term potential damage it to be avoided.
The potential harm from more wells is real.
Please honor nature. Please help prevent environmental damage.
Please defend our natural resources.
I ask that the Commission deny more well permits that undermine our water future.

John Pearse
183 Ocean View Blvd
Pacific Grove, CA 93950

And yes, Public Water Now asked that I send this in to you. But I also strongly support it, primarily because it is at the heart of Measure Z, which won the election. It is as much about the value of elections and democracy, as it is about protecting our water.

Bokanovich, Karina T. x5383

From: Troy Ishikawa <ishikawatroy@yahoo.com>
Sent: Tuesday, January 30, 2018 9:33 PM
To: Holm, Carl P. x5103
Subject: Jan. 31 Planning Commission Mtg (8:45 am)

Dear Mr. Holm,

To: Monterey County Planning Commission
Your agenda for January 31, 2018

I oppose any new well permits that violate the intent of Measure Z.
The purpose of Measure Z is to protect, not find waivers, or angles that allow more exploitation.
The threat to long term potential damage is to be avoided.
The potential harm from more wells is real.
Please honor nature. Please help prevent environmental damage.
Please defend our natural resources.
I ask that the Commission deny more well permits that undermine our water future.

Sincerely,
Troy Ishikawa
26505 Mission Fields Rd.
Carmel, CA 93923

Bokanovich, Karina T. x5383

From: Jane Bell <ajjbell@redshift.com>
Sent: Tuesday, January 30, 2018 9:31 PM
To: Holm, Carl P. x5103
Subject: Public Remarks for the Planning Commission Hearing, 1/31/2018

Dear Ms. McDougal or Planning Commission staff,

Please distribute the remarks below to the members of the MC Planning Commission.

Thank you so much.

Dear Planning Commissioners,

I am grateful for the Commissioners' decision to deny the request to embark in exploratory drilling in an entirely new area of South County by the Trio Oil Company. This new drilling clearly violates Measure Z's prohibitions.

I have attended the DOGGR hearings in King City, and the trial of Measure Z vs. suing Oil Companies and many Board of Supervisors meetings. I list below some points that have stood out for me from all the information, some of **the main reasons that I urge you to adopt the Resolution denying their request for a permit for drilling in the new areas.**

• Current oil extraction practices present potential grave dangers to the public health, from earthquakes to leaking older pipes and fittings, toxic chemicals used. We can see how close many San Ardo oil pumps and proposed new sites are to the Salinas River and its aquifers. At the DOGGR hearings there were geological charts showing so-called barriers to oil contamination. Questions about earthquakes have not been adequately addressed. Questions about sources of such information (from the oil companies?) have not been addressed.

• The Oil Company lawyers testified in court that measure Z would put them out of business. The measure allows time for them to phase out business practices that are harmful. Furthermore, oil companies have known for years about huge artic ice-melt problems caused by carbon's effects on climate, (results from their own scientist in 1970's when, as they have admitted, others were hired to obscure the those scientific results). They have had much time to adjust, adapt, convert their business. Businesses often have to change.

• It is astounding to learn how much energy (and water) is used to extract oil, as well as transport it, refine it, dispose of the bi-products pumping them back into the ground. Therefore, much carbon is going into the atmosphere, even before oil is burnt for fuel. (It was recently reported that in Kern County solar power is being used in oil extraction processes. How ironic! Still a step in the right direction...)

• We have to look at the bigger picture and do everything we can to restore the balance of gases in our unique precious planet's atmosphere. The ice caps are melting at accelerating rates. The Great Barrier Reef and other major coral systems are dying. Huge glacier water supplies are disappearing. Pacific islands are inundated with salt-water and inhabitants cannot grow food as their ancestor have done from times immemorial. There was a fine balance between the plants and animals, CO_2 & O_2 exchanges. We are upsetting it in both directions.

Please support measure Z against the intimidating oil companies and support the majority who voted to protect our County. This measure in Monterey County is a small but important part in the urgent move toward sustainability. We are all on the same planet boat. Let's not sink it.

Thank you for your attention to this very important matter.

Sincerely,

Jane R. Bell

Bokanovich, Karina T. x5383

From: azoodsma@aol.com <ecklesmpg@aol.com>
Sent: Tuesday, January 30, 2018 10:12 PM
To: Holm, Carl P. x5103
Subject: Matter before the Monterey Co Planning Comission

Dear Planning Commission Members/Secretary

Regarding approval of new oil well drilling/where is it going to stop.

For sustainable agriculture, an effort to reverse extreme climate change, to prevent contamination of our water supply, to prevent air pollution, to limit harm to all life on earth: For the sake of these things common to all of us put in jeopardy by one thing-the short sighted desire for money. I urge you to vote no in regard to new oil wells.

Very truly yours,

Mark Magruder Eckles

Bokanovich, Karina T. x5383

From: Suzie Gabri <suzie_gabri@yahoo.com>
Sent: Tuesday, January 30, 2018 9:09 PM
To: Holm, Carl P. x5103
Subject: Trio oil company's request for new wells

Dear Commissioners,
My name is Suzie Gabri. I live in Pacific Grove. I encourage you to vote against Trio Oil Company's request for new wells. Do not let the oil companies tear apart our land and poison our water putting our water, air and climate in danger leaving devastation behind. Think about the environment, your children and next generation.
The Planning Commission should not approve this or any other project that would violate Measure Z. Please wait for the litigation to be resolved.
Thank you,
Suzie Gabri

1/31/18 #1 Trio Petroleum

Bokanovich, Karina T. x5383

From: Mibs McCarthy <mibsmccarthy@comcast.net>
Sent: Tuesday, January 30, 2018 9:25 PM
To: Holm, Carl P. x5103
Subject: Planning Commission January 31, 2018

To: Monterey County Planning Commission
RE: Your agenda for January 31, 2018

I oppose any new well permits that violate the intent of Measure Z.
The purpose of Measure Z is to protect, not find waivers, or angles that allow more exploitation.
The threat to long term potential damage is to be avoided.
The potential harm from more wells is real.
Please honor nature. Please help prevent environmental damage.
Please defend our natural resources.
I ask that the Commission deny new well permits that undermine our water future.

Mibs McCarthy
11 Via Las Encinas
Carmel Valley, CA 93924
831-659-1115

Bokanovich, Karina T. x5383

From: McDougal, Melissa x5146
Sent: Wednesday, January 31, 2018 8:53 AM
To: Bokanovich, Karina T. x5383
Subject: FW: Protect our coast!

From: Holm, Carl P. x5103
Sent: Wednesday, January 31, 2018 7:18 AM
To: McDougal, Melissa x5146 <McDougalM@co.monterey.ca.us>
Cc: Onciano, Jacqueline x5193 <oncianoj@co.monterey.ca.us>; Swanson, Brandon xx5334 <SwansonB@co.monterey.ca.us>; Strimling, Wendy x5430 <strimlingw@co.monterey.ca.us>; Dugan, John x6654 <DuganJ@co.monterey.ca.us>
Subject: Fwd: Protect our coast!

For PC

Sent from Carl Holm

Begin forwarded message:

> **From:** Surfrider Foundation, Monterey Chapter <chair@monterey.surfrider.org>
> **Date:** January 30, 2018 at 22:20:07 PST
> **To:** <HolmCP@co.monterey.ca.us>
> **Subject:** **Protect our coast!**
> **Reply-To:** Surfrider Foundation, Monterey Chapter <chair@monterey.surfrider.org>
>
> View this email in your browser
>
> 
>

Following the theme of sacrificing the public's favorite natural areas for the benefit of oil and gas companies, the Trump administration has just announced plans to expand offshore drilling in the Atlantic, Pacific, Gulf of Mexico, and Arctic Ocean. This drastic proposal puts our nation's coastal communities, beaches, surf breaks, and marine ecosystems at risk of a catastrophic oil spill.

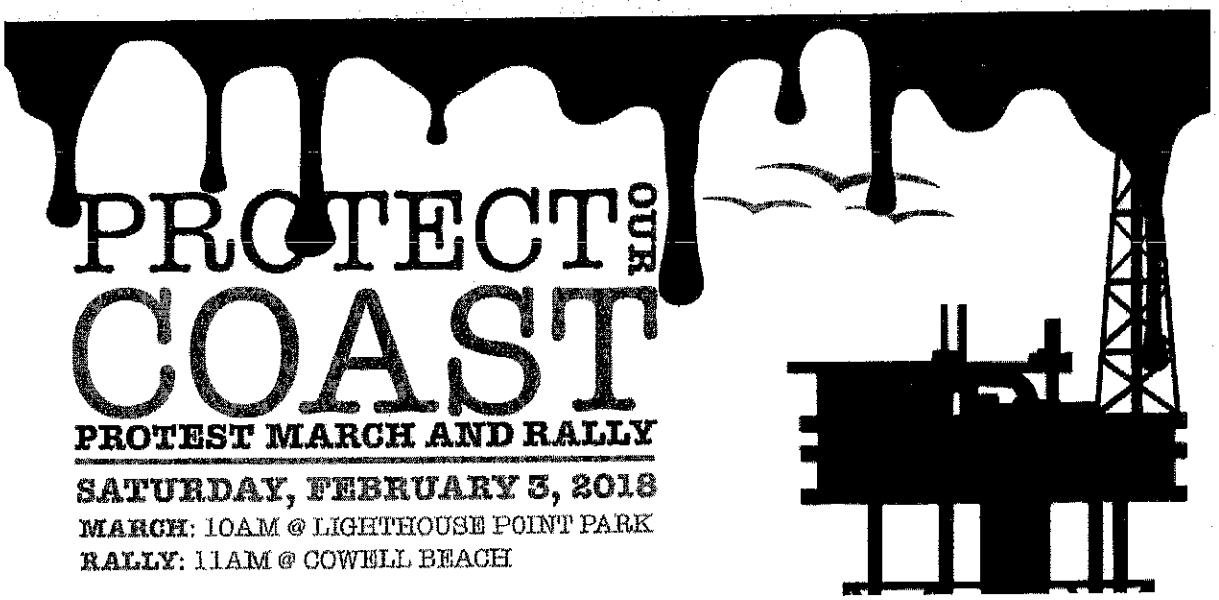
Let your voice be heard

The buoy behind your surf forecast

Monday, February 26 — 6:30pm

Pacific Grove Museum of Natural History

Do you check conditions on the daily? Join Monterey Surfrider and Dr. Henry Ruhl from CeNCOOS in a presentation and talk about the science and technology used to monitor currents, temperature, tides, and swell.



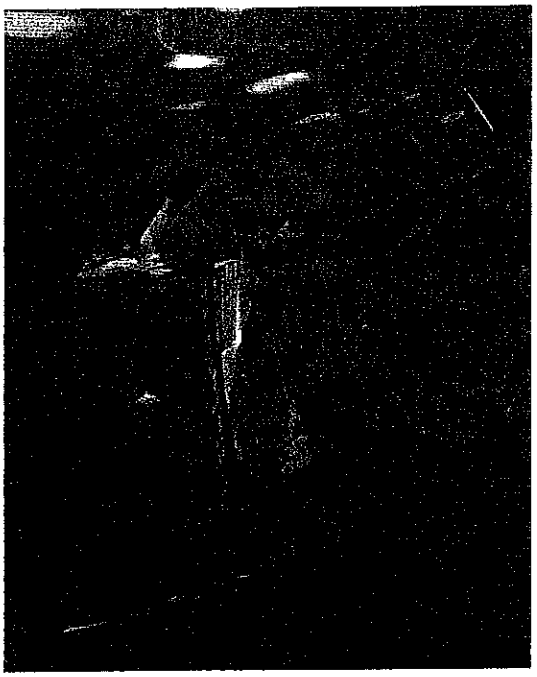
Please join our friends at Save Our Shores for a march and rally in protest of the proposed off-shore drilling in California.

Beach Cleanup at Seaside Beach

Sunday, February 25 — 10am to noon

Meet near Monterey Tides Hotel

Nobody likes to see trash on the beach, and much of that litter ends up in the ocean polluting the seas and harming marine life.



You have received this email because you signed up to be on our email list online at www.surfridermonterey.org or you signed up at one of our events or you are a dues paying member of our Chapter. In the case that you no longer wish to receive notifications from us, please click the unsubscribe button below. Thanks!

Our mailing address is:

Surfrider Foundation, Monterey Chapter

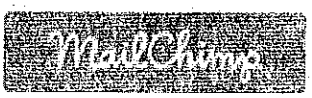
319 Forest Ave

Pacific Grove, CA 93950

Add us to your address book

Want to change how you receive these emails?

You can update your preferences or unsubscribe from this list.



Bokanovich, Karina T. x5383

From: Pat Venza <patvenza@me.com>
Sent: Wednesday, January 31, 2018 7:17 AM
To: Holm, Carl P. x5103
Subject: New oil wells

To: Monterey County Planning Commission
Your agenda for January 31, 2018

I oppose any new well permits that violate the intent of Measure Z.
The purpose of Measure Z is to protect, not find waivers, or angles that allow more exploitation.
The threat to long term potential damage it to be avoided.
The potential harm from more wells is real.
Please honor nature. Please help prevent environmental damage.
Please defend our natural resources.

I ask that the Commission deny more well permits that undermine our water future.

Patricia Venza
241 Soledad Dr.
Monterey, CA. 93940

Sent from my iPad

Bokanovich, Karina T. x5383

From: Mibs McCarthy <mibsmccarthy@comcast.net>
Sent: Tuesday, January 30, 2018 9:25 PM
To: Holm, Carl P. x5103
Subject: Planning Commission January 31, 2018

To: Monterey County Planning Commission
RE: Your agenda for January 31, 2018

I oppose any new well permits that violate the intent of Measure Z.
The purpose of Measure Z is to protect, not find waivers, or angles that allow more exploitation.
The threat to long term potential damage is to be avoided.
The potential harm from more wells is real.
Please honor nature. Please help prevent environmental damage.
Please defend our natural resources.
I ask that the Commission deny new well permits that undermine our water future.

Mibs McCarthy
11 Via Las Encinas
Carmel Valley, CA 93924
831-659-1115

Bokanovich, Karina T. x5383

From: McDougal, Melissa x5146
Sent: Wednesday, January 31, 2018 8:53 AM
To: Bokanovich, Karina T. x5383
Subject: FW: Planning Commission Meeting re Measure Z

From: Holm, Carl P. x5103
Sent: Wednesday, January 31, 2018 7:10 AM
To: McDougal, Melissa x5146 <McDougalM@co.monterey.ca.us>
Cc: Onciano, Jacqueline x5193 <oncianoj@co.monterey.ca.us>; Dugan, John x6654 <DuganJ@co.monterey.ca.us>; Swanson, Brandon xx5334 <SwansonB@co.monterey.ca.us>; Strimling, Wendy x5430 <strimlingw@co.monterey.ca.us>
Subject: Fwd: Planning Commission Meeting re Measure Z

For PC

Sent from Carl Holm

Begin forwarded message:

From: Jennifer Haydu <jenhay72@gmail.com>
Date: January 30, 2018 at 23:53:08 PST
To: holmcp@co.monterey.ca.us
Subject: Planning Commission Meeting re Measure Z

To Carl Holm:

I write this to you as resident of Monterey County, as a voter, as a proud CA citizen, as a business owner, and as a very concerned community member.
I am also one of the many thousands who voted for Measure Z, which I will remind you passed as the will of the people.

I oppose any new well permits that violate the intent of Measure Z.
The purpose of Measure Z is to protect, not find waivers, or angles that allow more exploitation.
The potential harm from more wells is real.

Please honor nature. Please help prevent environmental damage.
Please defend our natural resources. Think of the long term implications and risks your decision can have.
Please do not disregard the voters who SPOKE CLEARLY when we passed Measure Z.
I ask that the Commission deny more well permits that undermine our water future.

Thank you,

Jennifer Haydu

Monterey CA

Bokanovich, Karina T. x5383

From: McDougal, Melissa x5146
Sent: Wednesday, January 31, 2018 8:54 AM
To: Bokanovich, Karina T. x5383
Subject: FW: 1/31 PLANNING COMMISSION MEETING

From: Holm, Carl P. x5103
Sent: Wednesday, January 31, 2018 7:10 AM
To: McDougal, Melissa x5146 <McDougalM@co.monterey.ca.us>
Cc: Onciano, Jacqueline x5193 <oncianoj@co.monterey.ca.us>; Dugan, John x6654 <DuganJ@co.monterey.ca.us>; Swanson, Brandon xx5334 <SwansonB@co.monterey.ca.us>; Strimling, Wendy x5430 <strimlingw@co.monterey.ca.us>
Subject: Fwd: 1/31 PLANNING COMMISSION MEETING

For PC

Sent from Carl Holm

Begin forwarded message:

> **From:** dwilh333@aol.com
> **Date:** January 31, 2018 at 05:53:37 PST
> **To:** holmcp@co.monterey.ca.us
> **Subject: 1/31 PLANNING COMMISSION MEETING**
>
> TO: MONTEREY PLANNING COMMISSION
>
> I oppose any new well permits that violate the intent of Measure Z.
>
> Doug Wilhelm
> On Dolores 4 SE of 13th
> Carmel 93921

Bokanovich, Karina T. x5383

From: McDougal, Melissa x5146
Sent: Wednesday, January 31, 2018 8:54 AM
To: Bokanovich, Karina T. x5383
Subject: FW: Deny proposals for new oil production wells

From: Holm, Carl P. x5103
Sent: Wednesday, January 31, 2018 7:09 AM
To: McDougal, Melissa x5146 <McDougalM@co.monterey.ca.us>
Cc: Onciano, Jacqueline x5193 <oncianoj@co.monterey.ca.us>; Strimling, Wendy x5430 <strimlingw@co.monterey.ca.us>; Dugan, John x6654 <DuganJ@co.monterey.ca.us>; Swanson, Brandon xx5334 <SwansonB@co.monterey.ca.us>
Subject: Fwd: Deny proposals for new oil production wells

For PC

Sent from Carl Holm

Begin forwarded message:

> **From:** Jan Shriner <shrinerforsure@gmail.com>
> **Date:** January 31, 2018 at 06:40:43 PST
> **To:** holmcp@co.monterey.ca.us
> **Subject: Deny proposals for new oil production wells**
>
> Please oppose new oil well proposals.
>
> 2015 Congress lifted restrictions on exporting US petroleum products. US public will not benefit from sales.
>
> 2017 King City during public hearing by California Department of Conservation Division of Oil, Gas, and Geothermal Resources (DOGGR) staff told public the deeper, southern aquifers of the Salinas River Groundwater Basin (SVGB) will never be needed for irrigation or drinking water due to several reasons including two outrageous falsehoods and one error of omission.
>
> These reasons included the idea that agricultural lands of SVGB are being converted to residential properties and Marina Coast Water District (MCWD) is developing a desalination project in Moss Landing. In my public comments I mentioned that I sit on the Board of MCWD and that I would like to know if the farmers have been told about this trend for land use and that I wanted to be in the room when someone told Cal Am about this supposed MCWD project.
>
> The omission, I also stated in the DOGGR meeting, is that the staff had not mentioned a word about the SVGB as a highly critically overdrafted basin.
>
> These statements demonstrated a severe lack of information by DOGGR at the state level of regulation.

2017 during a Monterey County meeting about the creation of exemptions to the newly voter mandated Measure Z, I asked attorneys who facilitated the meeting that based on the premise the officials do not know what chemicals are used in petroleum production could we use a specific phrase in the consideration of exemptions "if the proposed project requesting exemption uses any known carcinogens or neurotoxins, exemption is denied?"

"No exemptions for any known carcinogens. No exemptions for any known neurotoxins."

Three attorneys jumped up to say "nothing new, this possibility for stating something like this can not be discussed in this process."

No carcinogens, no neurotoxins added to aquifers in a severely overdrafted groundwater basin is common sense for those of us who feel a responsibility to our youth and feel the need to do what is right as Americans or as global citizens.

California is leading the nation in sales of electric vehicles. The technologies and jobs are improving and increasing in the fields of renewable energy transition.

Deny proposals for new oil productions based on public health concerns and lead the way to wellness and clean, sustainable water.

Jan Shriner
Marina Resident

Bokanovich, Karina T. x5383

From: McDougal, Melissa x5146
Sent: Wednesday, January 31, 2018 8:53 AM
To: Bokanovich, Karina T. x5383
Subject: FW: request by oil company to drill 4 more wells i monterey co.

From: Holm, Carl P. x5103
Sent: Wednesday, January 31, 2018 7:11 AM
To: McDougal, Melissa x5146 <McDougalM@co.monterey.ca.us>
Cc: Onciano, Jacqueline x5193 <oncianoj@co.monterey.ca.us>; Dugan, John x6654 <DuganJ@co.monterey.ca.us>; Swanson, Brandon xx5334 <SwansonB@co.monterey.ca.us>; Strimling, Wendy x5430 <strimlingw@co.monterey.ca.us>
Subject: Fwd: request by oil company to drill 4 more wells i monterey co.

For PC

Sent from Carl Holm

Begin forwarded message:

> **From:** "al.schader@gmail.com" <alschader@gmail.com>
> **Date:** January 30, 2018 at 22:32:33 PST
> **To:** holmcp@co.monterey.ca.us
> **Subject: request by oil company to drill 4 more wells i monterey co.**
>
> To the planning board. As along time county resident, I'm a retired former member of the paciific grove marine rescue unit. tasked to watch for the welfare of out ocean. I'M very much against any more wells.We are trying to become free from the damage being done to out enviroment by the burning of fosil fuels .We all know very well the damage being done by them.Nitrioxcide in exhaust fumes polute farm land allong the road that have farm land growing crops that we need for food, the cattle wjo graze there eat the comtaminated grass, and we eat the beefthat inturn polutes us the consumer. I feel hat in truth most of the oil is now and will be sent over seas. Pleasse vote no on the permit as a group looking out for the citizens health and welfare of all people. thank you leonardbschader

Bokanovich, Karina T. x5383

From: Pat Venza <patvenza@me.com>
Sent: Wednesday, January 31, 2018 7:17 AM
To: Holm, Carl P. x5103
Subject: New oil wells

To: Monterey County Planning Commission
Your agenda for January 31, 2018

I oppose any new well permits that violate the intent of Measure Z.
The purpose of Measure Z is to protect, not find waivers, or angles that allow more exploitation.
The threat to long term potential damage it to be avoided.
The potential harm from more wells is real.
Please honor nature. Please help prevent environmental damage.
Please defend our natural resources.

I ask that the Commission deny more well permits that undermine our water future.

Patricia Venza
241 Soledad Dr.
Monterey, CA. 93940

Sent from my iPad

Bokanovich, Karina T. x5383

From: McDougal, Melissa x5146
Sent: Wednesday, January 31, 2018 8:53 AM
To: Bokanovich, Karina T. x5383
Subject: FW: Wells decision

-----Original Message-----
From: Holm, Carl P. x5103
Sent: Wednesday, January 31, 2018 7:18 AM
To: McDougal, Melissa x5146 <McDougalM@co.monterey.ca.us>
Cc: Strimling, Wendy x5430 <strimlingw@co.monterey.ca.us>; Onciano, Jacqueline x5193 <oncianoj@co.monterey.ca.us>; Swanson, Brandon xx5334 <SwansonB@co.monterey.ca.us>; Dugan, John x6654 <DuganJ@co.monterey.ca.us>
Subject: FW: Wells decision

For PC

Carl P. Holm, AICP
RMA Director

-----Original Message-----
From: Roberta Myers [mailto:rmyers1934@icloud.com]
Sent: Tuesday, January 30, 2018 10:13 PM
To: Holm, Carl P. x5103 <HolmCP@co.monterey.ca.us>
Subject: Wells decision

I sincerely hope the Commission will not grant permission for new wells before appeals are adjudicated. Meanwhile I cannot believe that would be in the best interest of the community, agriculture or the environment.
Sincerely
Roberta A Myers
781 Terry Street Monterey CA 93940

Sent from my iPhone

Bokanovich, Karina T. x5383

From: McDougal, Melissa x5146
Sent: Wednesday, January 31, 2018 8:54 AM
To: Bokanovich, Karina T. x5383
Subject: FW: Measure Z--don't frack-ture it!

From: Holm, Carl P. x5103
Sent: Wednesday, January 31, 2018 7:08 AM
To: McDougal, Melissa x5146 <McDougalM@co.monterey.ca.us>
Cc: Onciano, Jacqueline x5193 <oncianoj@co.monterey.ca.us>; Swanson, Brandon xx5334 <SwansonB@co.monterey.ca.us>; Strimling, Wendy x5430 <strimlingw@co.monterey.ca.us>; Dugan, John x6654 <DuganJ@co.monterey.ca.us>
Subject: Fwd: Measure Z--don't frack-ture it!

For PC

Sent from Carl Holm

Begin forwarded message:

> **From:** Myrleen Fisher <myrfisher@comcast.net>
> **Date:** January 31, 2018 at 07:05:47 PST
> **To:** holmcp@co.monterey.ca.us
> **Subject: Measure Z--don't frack-ture it!**
>
> To the Planning Commissioners:
>
> Big Money (Big Oil) is trying to wiggle it's way around the will of the people. Measure Z is our will. They are trying to exploit you. Be steadfast. Defend Monterey County. No New Drilling permits—PLEASE.
>
> Myrleen Fisher
> 3850 Rio Road, #90
> Carmel, 93923

Bokanovich, Karina T. x5383

From: Vicki Williams <vickimwilliams@gmail.com>
Sent: Tuesday, January 30, 2018 9:28 PM
To: Holm, Carl P. x5103
Subject: Monterey County Planning Commissioners, care of the Planning Commission's secretary

Please vote NO on the 4 new well that are being request. Protect water that is getting sparser and more polluted every day which affects our drinking water and the water for our food supply. Please not in our county and not our water.

Thanks,

Vicki Williams

Bokanovich, Karina T. x5383

From: John Pearse <pearsester@gmail.com>
Sent: Tuesday, January 30, 2018 9:40 PM
To: Holm, Carl P. x5103
Subject: No new oil wells

To: Monterey County Planning Commission
Your agenda for January 31, 2018

I oppose any new well permits that violate the intent of Measure Z.
The purpose of Measure Z is to protect, not find waivers, or angles that allow more exploitation.
The threat to long term potential damage it to be avoided.
The potential harm from more wells is real.
Please honor nature. Please help prevent environmental damage.
Please defend our natural resources.
I ask that the Commission deny more well permits that undermine our water future.

John Pearse
183 Ocean View Blvd
Pacific Grove, CA 93950

And yes, Public Water Now asked that I send this in to you. But I also strongly support it, primarily because it is at the heart of Measure Z, which won the election. It is as much about the value of elections and democracy, as it is about protecting our water.

Bokanovich, Karina T. x5383

From: Troy Ishikawa <ishikawatroy@yahoo.com>
Sent: Tuesday, January 30, 2018 9:33 PM
To: Holm, Carl P. x5103
Subject: Jan. 31 Planning Commission Mtg (8:45 am)

Dear Mr. Holm,

To: Monterey County Planning Commission
Your agenda for January 31, 2018

I oppose any new well permits that violate the intent of Measure Z.
The purpose of Measure Z is to protect, not find waivers, or angles that allow more exploitation.
The threat to long term potential damage is to be avoided.
The potential harm from more wells is real.
Please honor nature. Please help prevent environmental damage.
Please defend our natural resources.
I ask that the Commission deny more well permits that undermine our water future.

Sincerely,
Troy Ishikawa
26505 Mission Fields Rd.
Carmel, CA 93923

Bokanovich, Karina T. x5383

From: Jane Bell <ajjbell@redshift.com>
Sent: Tuesday, January 30, 2018 9:31 PM
To: Holm, Carl P. x5103
Subject: Public Remarks for the Planning Commission Hearing, 1/31/2018

Dear Ms. McDougal or Planning Commission staff,

Please distribute the remarks below to the members of the MC Planning Commission.

Thank you so much.

Dear Planning Commissioners,

I am grateful for the Commissioners' decision to deny the request to embark in exploratory drilling in an entirely new area of South County by the Trio Oil Company. This new drilling clearly violates Measure Z's prohibitions.

I have attended the DOGGR hearings in King City, and the trial of Measure Z vs. suing Oil Companies and many Board of Supervisors meetings. I list below some points that have stood out for me from all the information, some of **the main reasons that I urge you to adopt the Resolution denying their request for a permit for drilling in the new areas.**

• Current oil extraction practices present potential grave dangers to the public health, from earthquakes to leaking older pipes and fittings, toxic chemicals used. We can see how close many San Ardo oil pumps and proposed new sites are to the Salinas River and its aquifers. At the DOGGR hearings there were geological charts showing so-called barriers to oil contamination. Questions about earthquakes have not been adequately addressed. Questions about sources of such information (from the oil companies?) have not been addressed.

• The Oil Company lawyers testified in court that measure Z would put them out of business. The measure allows time for them to phase out business practices that are harmful. Furthermore, oil companies have known for years about huge artic ice-melt problems caused by carbon's effects on climate, (results from their own scientist in 1970's when, as they have admitted, others were hired to obscure the those scientific results). They have had much time to adjust, adapt, convert their business. Businesses often have to change.

• It is astounding to learn how much energy (and water) is used to extract oil, as well as transport it, refine it, dispose of the bi-products pumping them back into the ground. Therefore, much carbon is going into the atmosphere, even before oil is burnt for fuel. (It was recently reported that in Kern County solar power is being used in oil extraction processes. How ironic! Still a step in the right direction...)

• We have to look at the bigger picture and do everything we can to restore the balance of gases in our unique precious planet's atmosphere. The ice caps are melting at accelerating rates. The Great Barrier Reef and other major coral systems are dying. Huge glacier water supplies are disappearing. Pacific islands are inundated with salt-water and inhabitants cannot grow food as their ancestor have done from times immemorial. There was a fine balance between the plants and animals, CO_2 & O_2 exchanges. We are upsetting it in both directions.

Please support measure Z against the intimidating oil companies and support the majority who voted to protect our County. This measure in Monterey County is a small but important part in the urgent move toward sustainability. We are all on the same planet boat. Let's not sink it.

Thank you for your attention to this very important matter.

Sincerely,

Jane R. Bell

Bokanovich, Karina T. x5383

From: azoodsma@aol.com <ecklesmpg@aol.com>
Sent: Tuesday, January 30, 2018 10:12 PM
To: Holm, Carl P. x5103
Subject: Matter before the Monterey Co Planning Comission

Dear Planning Commission Members/Secretary

Regarding approval of new oil well drilling/where is it going to stop.

For sustainable agriculture, an effort to reverse extreme climate change, to prevent contamination of our water supply, to prevent air pollution, to limit harm to all life on earth: For the sake of these things common to all of us put in jeopardy by one thing-the short sighted desire for money. I urge you to vote no in regard to new oil wells.

Very truly yours,

Mark Magruder Eckles

Bokanovich, Karina T. x5383

From: Suzie Gabri <suzie_gabri@yahoo.com>
Sent: Tuesday, January 30, 2018 9:09 PM
To: Holm, Carl P. x5103
Subject: Trio oil company's request for new wells

Dear Commissioners,
My name is Suzie Gabri. I live in Pacific Grove. I encourage you to vote against Trio Oil Company's request for new wells. Do not let the oil companies tear apart our land and poison our water putting our water, air and climate in danger leaving devastation behind. Think about the environment, your children and next generation.
The Planning Commission should not approve this or any other project that would violate Measure Z. Please wait for the litigation to be resolved.
Thank you,
Suzie Gabri

McDougal, Melissa x5146

From: Holm, Carl P. x5103
Sent: Wednesday, January 31, 2018 11:50 AM
To: McDougal, Melissa x5146
Cc: Onciano, Jacqueline x5193; Dugan, John x6654; Swanson, Brandon xx5334
Subject: Fwd: Trio Permit comments

For the record

Sent from Carl Holm

Begin forwarded message:

> **From:** Mary Hsia-Coron <mary.hsiacoron@gmail.com>
> **Date:** January 31, 2018 at 11:24:15 PST
> **To:** "holmcp@co.monterey.ca.us" <holmcp@co.monterey.ca.us>
> **Subject: Fwd: Trio Permit comments**
>
> Hi Mr. Holm,
>
> Sorry I didn't cc: you on the following.
>
> Mary Hsia-Coron
>
> Begin forwarded message:
>
> > **From:** Mary Hsia-Coron <mary.hsiacoron@gmail.com>
> > **Date:** January 31, 2018 at 10:44:37 AM PST
> > **To:** "MendezJ@co.monterey.ca.us" <MendezJ@co.monterey.ca.us>, "PadillaC1@co.monterey.ca.us" <PadillaC1@co.monterey.ca.us>, "GetzelmanPC@co.monterey.ca.us" <GetzelmanPC@co.monterey.ca.us>, "amydroberts@ymail.com" <amydroberts@ymail.com>, "VandevereK@co.monterey.ca.us" <VandevereK@co.monterey.ca.us>, "ambrizana1@gmail.com" <ambrizana1@gmail.com>, "RochesterD@co.monterey.ca.us" <RochesterD@co.monterey.ca.us>, "mduflock@gmail.com" <mduflock@gmail.com>, "mvdiehl@mindspring.com" <mvdiehl@mindspring.com>, "WizardJ@co.monterey.ca.us" <WizardJ@co.monterey.ca.us>
> > **Cc:** Mary Hsia-Coron <mary.hsiacoron@gmail.com>
> > **Subject: Trio Permit comments**
> >
> > Dear Planning Commissioners,
> >
> > Trio Petroleum is a small oil company. This fact puts Monterey County residents at risk, especially those who live downstream in the Salinas River Groundwater Basin.
> >
> > For example, a smaller oil company, Veneco, fracked and acidized 2 wells in Hames Valley in 2008. They went bankrupt after they were sued for their oil spill in Santa Barbara. They abandoned and did not clean up their 2 wells in Hames Valley. This fact is documented in the following Monterey County Planning report. **Please see** page 4 (Exhibit B, Discussion) of this Use Permit:

http://www.co.monterey.ca.us/planning/cca/pc/2015/04-29-15/SRPC_PLN140395_043015.pdf .

Thank You,
Mary Hsia-Coron
Aromas

McDougal, Melissa x5146

From: Holm, Carl P. x5103
Sent: Wednesday, January 31, 2018 11:57 AM
To: McDougal, Melissa x5146
Cc: Onciano, Jacqueline x5193; Dugan, John x6654; Swanson, Brandon xx5334
Subject: Fwd: Planning Commission Agenda for January 31, 2018

For the record.

Sent from Carl Holm

Begin forwarded message:

> **From:** Helga Fellay <puma2012@comcast.net>
> **Date:** January 31, 2018 at 08:53:41 PST
> **To:** holmcp@co.monterey.ca.us
> **Subject: Planning Commission Agenda for January 31, 2018**
> **Reply-To:** Helga Fellay <puma2012@comcast.net>
>
> Dear Commissioners:
>
> I oppose any new well permits that violate the Intent of Measure Z.
>
> The purpose of Measure Z is to protect, not find waivers, or angles that allow more exploitation.
>
> The threat to long term potential damage it to be avoided. The potential harm from more wells is real.
>
> Please honor nature. Please help prevent environmental damage. Please defend our natural resources.
>
> I ask that the Commission deny more well permits that undermine our water future.
>
> Helga and James Fellay
>
> 15 Paso Hondo
>
> Carmel Valley, CA 93924
>
> (831) 659-5116

McDougal, Melissa x5146

From: Troy Ishikawa <ishikawatroy@yahoo.com>
Sent: Tuesday, January 30, 2018 9:33 PM
To: Holm, Carl P. x5103
Subject: Jan. 31 Planning Commission Mtg (8:45 am)

Dear Mr. Holm,

To: Monterey County Planning Commission
Your agenda for January 31, 2018

I oppose any new well permits that violate the intent of Measure Z.
The purpose of Measure Z is to protect, not find waivers, or angles that allow more exploitation.
The threat to long term potential damage is to be avoided.
The potential harm from more wells is real.
Please honor nature. Please help prevent environmental damage.
Please defend our natural resources.
I ask that the Commission deny more well permits that undermine our water future.

Sincerely,
Troy Ishikawa
26505 Mission Fields Rd.
Carmel, CA 93923

Schubert, Bob J. x5183

From: Steve Craig <stevecraig.turtlecreek@gmail.com>
Sent: Tuesday, January 30, 2018 11:07 AM
To: Schubert, Bob J. x5183
Cc: Mary Hsia-Coron
Subject: Fwd: Comments on the Trio Petroleum Application Hearing, January 31, 2018

Bob: I am still recovering from this stinking flu, two rounds so far, and so an early drive up to Salinas is beyond me at this point.

However, please include the following inputs in the record so any appeal, if necessary, to the Board, has the broadest chance of succeeding should the Commission approve the new Trio wells.

Thanks,

Steve Craig
Sapaque Valley Ranch,
Bryson, California

Begin forwarded message:

From: Steve Craig <stevecraig.turtlecreek@gmail.com>
Subject: Comments on the Trio Petroleum Application Hearing, January 31, 2018
Date: January 30, 2018 at 11:03:46 AM PST
To: MendezJ@co.monterey.ca.us, PadillaC1@co.monterey.ca.us, GetzelmanPC@co.monterey.ca.us, amydroberts@ymail.com, VandevereK@co.monterey.ca.us, ambrizana1@gmail.com, RochesterD@co.monterey.ca.us, mduflock@gmail.com, mvdiehl@mindspring.com, WizardJ@co.monterey.ca.us
Cc: "100-District 3 (831) 385-8333" <district3@co.monterey.ca.us>, "Onciano, Jacqueline x5193" <oncianoj@co.monterey.ca.us>, spencerc@monterey.co.us, charles rowley <charlesrowley.turtlecreek@yahoo.com>, Fred Kenyon <fred.tintent@gmail.com>

General Comments on Feasibility of Recovery of Commercial Quantities of Oil and the Public Interest.

1. DOGGER has described the heavy oil yields from Trio and Venoco wells in Hames, whether fracked, acidified, or steam injected, as marginal, and not of high quality or quantity. These wells have been drilled over the past decade and in decades prior with more primitive technologies than those now available. The BLM itself categorizes the shales in the Hames Valley as being of low value in terms of productivity with recovery by steam injection being the only economic means to withdraw heavy crude from the San Ardo formation. In general, this is not a critical oil reserve and contains more asphaltum like crude than fuel grade oil. With this knowledge, it is irresponsible to continue what has now been a 10 year cycle of testing outside the margins of the San Ardo field as defined on County Land Use Maps. The proposed extraction is not so much a "testing" operation as a collection of low yield marketable returns on the periphery of a proven formation for shallow steam injection (Chevron San Ardo). Therefore, the definition of these wells as test wells is improper and not accurate.

2. Resource extraction is not compatible with the General Plan definitions and land use plans and policies which, in the corridor including the Hames Valley, is a primary wine growing corridor. Expansion of an oilfield or individual oil wells periodically placed in the corridor debases the intent of the policies in the General Plan. Recreational tourism is not consistent with oil production and extraction; who visits Kettleman City or the oil fields of the central valley for tourism purposes. The uses conflict. Primary allocation of water in a drought should be for the most visionary and important land uses, which in this case are agricultural.

3. The risk of damaging deep aquifers, which may in the future may need to be tapped for potable water, is too great to continue further exploration of landforms around the San Ardo field. Note the Capetown South Africa example, where current water supplies in a similar mediterranean climate are failing, with Capetown idue to run out of potable water in April 2018. One of their two solutions is to recover water from very deep aquifers, more than 2,000 feet below the surface, in zones identical to the recovery area for shallow formation oil in the San Ardo field and its surrounding areas.

4. Climate change (increasing temperatures, increase of capture of moisture from crops, fields and forests, increasing sea temperature, increasing speed of ice attrition at the poles, changes to the North and South Atlantic oscillations, increased incidence of violent cyclones and hurricanes, increased drought in all mediterranean climate zones) is driven by three things: the pivot of the earth on its axis relative to the sun, the motion of cooler waters circulating in the various Oscillations at sea, and the increasing presence of carbon, methane and other "greenhouse" gases due to the consumption, recovery, processing and burning of all carbon fuels. While it may seem a reach to say that four more wells might move the needle on this issue, it is a cumulative problem, and every inch further we move to heat up the atmosphere will have adverse effects on people the world over and their societies. Hence, fossil fuel recovery is not serving any population's interest except the business interest of companies doing such recovery and sale.

Regarding Water:

1. There are a series of Federally Qualifying wetland courses in Hames Valley, including the Hames the main drainage down the Valley. These are not disucssed, nor are jurisdictional boundaries for the Corps and Fish and Wildlife mapped relative to the well sites. The jurisdictional waters were established by the Ventura Corps office and the result of this investigation was submitted to the County, and has been used in federal lawsuits. This study is not mentioned in the Initial Study, expanded information.

2. The baseline water quality in the wells in Hames Valley should be established, relative to chemical content, using the thorough (125 chemicals and components approximately) state well baseline contamination system. At least four wells up and down gradient should be tested prior to any further approvals of wells peripheral to the San Ardo field. At least one or two of these wells should include the Schied Vineyard holdings, as these grapes are sold wholesale and distributed to numerous wineries, and contamination from injection, runoff, or fluid injection for oil recovery could be widely spread through such wholesale marketing if the underlying aquifers are impacted. Also, with four measurements, the general groundwater level and gradient could be established under drought conditions. This information should be mandated by condition.

3. Agriculture and low density residential uses are the predominant land uses in the Lockwood and Hames Valleys and therefore water for these uses must be of highest and first priority. Also, agricultural uses are precedent in time and therefore have a higher legal justification for water uses being reserved for this activity rather than oil recovery. Under water law effective in California, the first user and associate type of use are most entitled to water within a watershed.

Federal Pre-emption is not Governing Law

1. The power of any argument regarding Federal Pre-emption is moot except for issues concerning a well from the well head down into the earth. All aspects of well operations are managed, monitored and regulated by the state and local approvals and federal law and policy do not apply to above ground users. Therefore, any argument that Federal Rules pre-empt local regulation are unenforceable since the federal jurisdiction is limited to the well head surface down into the subsoil and stratigraphic formations below the well.

The Initiative was a final public decision on extraction of oil and gas in this region

1. No further action to approve wells by the County should occur until the trial court decision is issued and then appealed to the Appeals Court by the losing party. The primary legal issue at stake is that the people, in lieu of the County establishing proper oil recovery operations and putting human economy and welfare first and above the oil recovery business, led an initiative process with clear direction to County staff and decision makers which passed, setting forth the will of the people in unquestionable form. The initiative is the highest and most reliable and unreversible form of law under the State Constitution. Therefore, any decision to permit more drilling at this point is contrary to the will of the majority of the people in this County. Overriding this will is politically unwise and legally subject to contestation.

CEQA

This project is not in conformance with CEQA as it segments a larger undertaking into smaller units of activity. The individual wells being drilled are not "test" wells, they are extraction and sale wells. The applicant has engaged in the commercial sale of the product of prior wells according to DOGGR information. Trio Petroleum is known to be a small wildcatter, which specializes in extraction on the periphery of major known oil fields. The proposed "test wells" in this case are designed to locate sufficiently thick layers of heavy crude that infill wells can be drilled to extend the San Ardo field south of the Salinas River. There is no County plan to permit such an extension. Steam injection fields to be high yield and fund themselves require, as in San Ardo, and extensive grid of wells, placed relatively close together.

If this purpose as articulated above is denied by the applicant, there is then only one other potential motive: peripheral extraction outside the bounds of the San Ardo field in marginal pockets of recoverable oil. This is not a test process, it is a commercial recovery process, but in low density, and speculative relative to whether it may be possible to link up with the formations in the Chevron San Ardo field.

CEQA requires that the larger intents of the applicant, who has been "testing" on Porter Ranch and some adjacent areas for over a decade, must be stated in their most complete form, not in a trivialized form, under the guise of "testing".

It is clear that the public is not interested in seeing any expansion of the San Ardo field, nor peripheral spoils pick up of portions of the San Ardo formation that extend subsurface under the Salinas River south-westerly into Hames Valley. This issue has been decided, and its legal firmness is not established until all trial and appeals court appeals have been heard and decided.

For this reason, we urge the Planning Commission to deny this application with prejudice.

All of the foregoing information may be used in any appeal to the Board of a decision by the Planning Commission.

Regards,

Steve Craig and Charles Rowley
Sapaque Valley Ranch, Bryson
representing the South County Citizen Planning Alliance

TRIO PETROLEUM LLC
5401 Business Park South, Suite 115 Bakersfield, California 93309-0713
TEL: (661) 324-3911 FAX: (661) 324-1122

January 5, 2018

Bob Schubert, AICP
Senior Planner
Monterey County
RMA-Planning Department
1441 Schilling Place
Salinas CA 93901

RE: PLN160146
Response to Citizen Planning Alliance Letter

Dear Mr. Schubert:

Trio Petroleum LLC is in receipt of the January 2, 2017 email letter addressed to you from Mr. Steve Craig, representing Citizen Planning Alliance (for reference, an exact copy of Mr. Craig's email is posted below in *italics*) expressing his views regarding Trio's PLN160146 Monterey County CUP application to drill and production test four new exploratory wells, the December 13, 2017 Monterey Planning Commission hearing for which was continued to January 31, 2017.

We believe it is important to immediately respond to you regarding Mr. Craig's letter because we find it extremely inaccurate and filled with alarming misinformation. Our response will attempt to highlight the misstatements and factually correct the inaccurate information contained in this remarkably erroneous correspondence. This task will be accomplished, paragraph by paragraph, beginning with his first paragraph.

First paragraph response:

- Trio's four discreet anticlinal prospects in Hames Valley are not in geologic contact in any way whatsoever with the San Ardo anticlinal oil field, and are separated from that known oil field by approximately five miles.
- The water associated with oil produced at San Ardo is saline and not potable. The producing oil sands are part of the Monterey formation and while these sands lose definition down dip and to the south of the field (moving southerly

towards Hames Valley the subsurface stratigraphic section deepens which is referred to as 'down dip' or deepening to the south), the entire Monterey shale interval thickens dramatically from a few hundred feet thick to several thousand feet in thickness in only a few miles. There is no evidence of oil moving southerly from San Ardo oil field, in fact doing so the oil would essentially have to migrate downhill, which it cannot do under natural circumstances. On the contrary, oil now being produced at San Ardo originated from within the thick, highly organic, Monterey formation located southwesterly of the Field, and therefore, over time, had to have migrated northeasterly into the sands that produce oil at San Ardo.

- Neither Chevron, nor anyone else "*put the boundary of its field*" where it is today. The areal limit of the San Ardo oil field is naturally determined by the oil/salt water contact point at the outer boundary or edge of the field.
- Our exploratory wells are anticipated to find commercially producible high gravity oil (i.e. high meaning 26 to 38 gravity, San Ardo oil is 10 to 12 gravity) commencing at about 4,000 feet from a combination of sand, dolomite, silt and chert lithology's.
- Fracing is not contemplated, in fact our permit application specifically states there will be no fracing.
- There is not production in Pleistocene alluvium at San Ardo, it is confined to the Miocene Lombardi and Aurignac sand intervals within the Monterey shale formation. The methane (natural gas) utilized by Chevron to create steam is supplied by a PGE pipeline. The sentence asserting "*They use steam only, generated from pockets of natural gas encountered while removing oil*" exemplifies a common misconception. There are no "pockets" of gas; it is either entrained in the oil with which it is produced or is located in the pores between the sand grains of certain subsurface stratigraphy found in gas rich provinces like Northern California. Shallow, bio-degraded, heavy crude oil accumulations like San Ardo oilfield commonly have very little if any natural gas associated with the oil.

Second paragraph response:

- The oil-productive Lombardi and Aurignac sands at San Ardo were deposited as high energy beach sands along the eastern margin of the Salinas Valley in Miocene time. Both formations quickly lost reservoir quality and definition in deeper and quieter water to the southwest at the time of deposition.
- The wells drilled to date in the Hames Valley evidently were not commercial. None were drilled on anticlines, stratigraphic traps, or any closure, the principal subsurface configurations from which oil fields are produced. While these wells

had excellent oil shows, in some cases for thousands of feet, those that were tested produced various combinations of high gravity oil and abundant saline water.

- As to worth or value, Monterey County has stated that Chevron pays the highest annual tax that the County receives from anyone. It is Trio's goal, as a success minded small business, to find major new commercial oil reserves to make a profit while collaterally contributing a significant annual tax from these new operations.
- Trio's proposed operations are not located near any housing development, are surrounded by farm and grazing lands, and have the support of the resident farmer, rancher, landlord and property owners. Such oil and gas operations are tightly monitored and conducted under the jurisdiction and supervision of the State of California Division of Oil and Gas and Geothermal Resources.
- In compliance with the Monterey County CUP permitting process, Trio fully funded and completed (using approved County third party contractors) expensive and comprehensive environmental and engineering studies that considered every possible facet and impact of the project and County Planning staff spent 4 to 6 months reviewing the data before drafting their staff report for the Commission. At the presentation of the resulting RMA Planning staff report for PLN160146 at the December 13, 2017 hearing before the Planning Commission, Planning staff recommended adoption of a mitigated negative declaration for Trio's project. Inexplicably, the Planning Commission voted 4 to 3 against Trio's project, in spite of staff's recommendation, and proceeded to direct the same staff personnel (that evaluated the application data for the mitigated negative declaration), utilizing the same data (i.e. the Initial Study, etc.) to go back to the drawing board, create alternate Findings and Evidence that could support the Commissioner's negative vote and present same at the January 31, 2018 continuance.

Third paragraph response:

- We have no knowledge of the "federal court victories" that are being referred to, nor do we understand how that bears on our CUP application to Monterey County for permission to drill four exploratory wells. However, just within the past month, the Monterey County Superior court found for the Plaintiff (Chevron, et al) that the Measure Z Initiative was preempted and, except for the fracing component, invalidated the initiative. Since fracing has never been contemplated in Trio's CUP application (in fact we specifically stated that we were not planning to hydraulically frac or applying for permission to do so), this paragraph has no bearing on our application.

Fourth paragraph response:

- The reference to "Trump Era changes" is clearly just a political statement and should not be considered an appropriate parameter for CUP application review. Our application has been drafted and accepted as complete under current legal County laws and guidelines and should be considered and evaluated in accordance therewith.
- To our knowledge there has not been any exploratory drilling in Hames Valley, including the Bradley Minerals land holdings, since 2011. Our application contemplates four drillsites on four discreet, separate geologic prospects, one prospect for each of the four separate and discreet anticlines that have been confirmed via 3-D geophysical mapping performed in 2012 (after all prior exploratory drilling had taken place). RMA Planning, after their review of our geophysical data, recommended that we fashion our permit application to apply for all four wellsites at the same time (rather than individually) so that our Initial Study might consider not only each individual wellsite, but, since all four sites were in fairly close proximity, also evaluate the impact of the exploration drilling to the entire surrounding area.

Regarding responses to questions numbered 1 through 5 in Mr. Craig's letter:

1. Neither Trio, nor any other party to our knowledge, has redrilled any of the Venoco wells. We did place one such well on a production pump (after completion of the appropriate County permit process, which took nearly one year to complete) to test it for commerciality, but ceased production testing operations because the cost of shipping and disposing of produced water (i.e. oily salt water recovered with the oil) exceeded the income from the sale of oil produced. The oil recovered during our testing period was high gravity (approximately 36 gravity) and was produced from a depth of approximately 9,000 to 10,000 feet.

2. Trio is permitting four wells, each on its own drillsite pad, because each well is intended to test and evaluate the four separate anticlinal features.

3. The premise stated is wholly fallacious and remarkably uninformed, as is Mr. Craig's misplaced and inflammatory insinuation, *"At what point does testing for oil, or mop up operations on the periphery of working fields (that is Trio Petroleum's métier), constitute the approval de facto of a new field? Trio is not testing actually, they are extracting on the periphery of the boundary of a known field."*. Trio Petroleum has been in the business of oil and gas exploration and production since 1983, mostly in California, but also in several other states. Our activities have included a balance of

exploration well drilling, new field development and mature field exploitation. Our proposed exploration wells at Hames Valley are each designed to test a discreet anticlinal feature (prospect), each of which was recently defined as a result of the 2012 geophysical program. These separate prospect ideas are not only unassociated with San Ardo oilfield, they are located at least five miles distant from the "*periphery of the boundary of a known field.*", being San Ardo.

4. This question has no bearing on the operations proposed in our CUP application. Trio is applying to drill and production test four exploratory wells, each drilled on four separate, distinct anticlinal features. As we have expressly stated and agreed to in our current application, any oil field development beyond the exploration wells will require a subsequent development permit from County.

5. We do not understand the meaning or recognize the use of the term "*marginal field extraction*". Nevertheless, even without knowing the precise meaning of the term "marginal field extraction" the declaration that 'marginal field extraction' is what Trio's efforts have been in the past is blatantly false on its face. Trio's exploration and development operations have been broadly defined in #3. above, and it is defamatory for someone to carelessly state otherwise.

The paragraph that begins with "CEQA" raises a topic that Trio has addressed and clarified numerous times, in this written response as well as in face to face meetings with RMA Planning staff. During certain meetings with County at the very beginning of the CUP permit process, we displayed to multiple planning staff personnel, from management on down, copies of the processed 2012 geophysical data (referred to hereinabove) that revealed (even to the untrained eye) separate, specific, discreet, subsurface anticlinal features that were the impetus for our exploration drilling plans at four different locations. If the statement about breaking a long term plan into smaller pieces to avoid certain CEQA protocols is meant to implicate Trio, it is grossly misapplied since it was Trio that proactively brought the matter to the attention of Planning at the outset of the permit application process to allay any misperceptions.

Very truly yours,

Trio Petroleum LLC

Steven A. Rowlee
Vice President

(FOLLOWING IS AN EXACT COPY OF MR. CRAIG'S EMAIL LETTER)

From: Steve Craig [mailto:stevecraig.turtlecreek@gmail.com]
Sent: Thursday, December 21, 2017 3:26 PM
To: Schubert, Bob J. x5183 <SchubertBJ@co.monterey.ca.us>
Cc: 100-District 3 (831) 385-8333 <district3@co.monterey.ca.us>; Mary Hsia-Coron <mary.hsiacoron@gmail.com>
Subject: Trio Petroleum Wells in Hames, Staff Repot

Mr. Shubert:

I would appreciate receiving notice of the next Planning Commission hearing on the proposed additional Trio wells in Hames Valley. They are drilling on the margins of Chevron's San Ardo field as the shallow heavy grade asphaltum-like deposits in San Ardo are also present in Hames (which on stratigraphy is in contact with a deep potable aquifer). Because Hames is basically a Monterey Formation, the oil is deeper than in San Ardo at Chevron, so extra methods are needed, according to DOGGR, including acid injection, to get the oil from this field as it moves southerly. There is a reason Chevron put the boundary of its field where they did; this is where the oil is close to the surface, in sandstone and Pleistocene alluvium, and is relatively easy to recover without fracking or surfactants or acid. They use steam only, generated from pockets of natural gas encountered while removing oil.

The San Ardo shallow sandstone proceeds south into Hames and dives deeper from the alluvium and sandstone transitions into the Monterey Shale in the vicinity of the alignment of Highway 101, on Porter Ranch. Several drillers, including Venoco, have tested its productivity and walked away and DOGGR is of the opinion that the deeper formation in Hames is not productive enough to warrant fracking or other types of removal. However, as oil moves forward toward $60 a barrel, all the costs do a bit better than break even, so periodically wildcatters put in wells on the San Ardo periphery although the wells are not very productive. Question is: are such wells worth all the potential and actual impacts to visual resources, wildlife, air quality, greenhouse gas emissions, and potential contamination with potable aquifers used to support the Hames Valley Sheid growing operation, which is nearly a 1000 acre planting.

We appealed both Venoco and Trio wells in the past with Center for Biological Diversity and Los Padres Forest Watch, as well as a group of locals who came together as "Halt Oil Lease Drilling" (HOLD). This group is not currently active as we had significant federal court victories and thought the issue had gone away.

However, we think it reasonable, given the Trump Era changes, since there now have been 9 new wells placed on Porter Ranch in the past few years, and three additional pads are now proposed, I understand, though I have not yet seen the staff report recommending approval (another nine possible wells are possible).

Our questions are for the upcoming document are as follows:

1. Did the re-drilling of Venoco's wells produce commercial quantities of some grade of oil? (Dogger says the production reports were low). If so, what grade of oil was extracted from Hames, and at what depth interval?

2. Are the proposed three wells all to be placed on one pad, or are they on three separate pads?

3. At what point does testing for oil, or mop up operations on the periphery of working fields (that is Trio Petroleum's metier), constitute the approval de facto of a new field? Trio is not testing actually, they are extracting on the periphery of the boundary of a known field. There is a difference of purpose and intent between true exploration, and spot extraction. This Porter Ranch area has been tested with nine separate wells, including at least four fracked wells, in past years, before the Initiative was passed.

4. What do the County oil regs say about the threshold number of wells claimed to be test wells aggregate into a formal "field"?

5. Do the regulations discriminate between testing and marginal field extraction, which is what the Trio efforts in the past have been.

CEQA directs that a developer cannot break a long term plan into smaller pieces to avoid consideration of cumulative impacts or to disguise legal intents; therefore, the questions about when the County regs state regarding when test wells become a working field, or an adjunct extraction area for an existing field, is important and relevant. You may want to speak with the seniors in the planning division about this issue; it has come up before.

I look forward to meeting you at the next hearing.

I tried to call but got a fast busy repeatedly so perhaps the lines are congested or the phones are down on your side.

Steve Craig
Sapaque Valley Ranch
Citizen Planning Alliance, Bryson, California

Schubert, Bob J. x5183

From: Steve Craig <stevecraig.turtlecreek@gmail.com>
Sent: Thursday, December 21, 2017 3:26 PM
To: Schubert, Bob J. x5183
Cc: 100-District 3 (831) 385-8333; Mary Hsia-Coron
Subject: Trio Petroleum Wells in Hames, Staff Repot

Mr. Shubert:

I would appreciate receiving notice of the next Planning Commission hearing on the proposed additional Trio wells in Hames Valley. They are drilling on the margins of Chevron's San Ardo field as the shallow heavy grade asphaltum-like deposits in San Ardo are also present in Hames (which on stratigraphy is in contact with a deep potable aquifer). Because Hames is basically a Monterey Formation, the oil is deeper than in San Ardo at Chevron, so extra methods are needed, according to DOGGR, including acid injection, to get the oil from this field as it moves southerly. There is a reason Chevron put the boundary of its field where they did; this is where the oil is close to the surface, in sandstone and Pleistocene alluvium, and is relatively easy to recover without fracking or surfactants or acid. They use steam only, generated from pockets of natural gas encountered while removing oil.

The San Ardo shallow sandstone proceeds south into Hames and dives deeper from the alluvium and sandstone transitions into the Monterey Shale in the vicinity of the alignment of Highway 101, on Porter Ranch. Several drillers, including Venoco, have tested its productivity and walked away and DOGGR is of the opinion that the deeper formation in Hames is not productive enough to warrant fracking or other types of removal. However, as oil moves forward toward $60 a barrel, all the costs do a bit better than break even, so periodically wildcatters put in wells on the San Ardo periphery although the wells are not very productive. Question is: are such wells worth all the potential and actual impacts to visual resources, wildlife, air quality, greenhouse gas emissions, and potential contamination with potable aquifers used to support the Hames Valley Sheid growing operation, which is nearly a 1000 acre planting.

We appealed both Venoco and Trio wells in the past with Center for Biological Diversity and Los Padres Forest Watch, as well as a group of locals who came together as "Halt Oil Lease Drilling" (HOLD). This group is not currently active as we had significant federal court victories and thought the issue had gone away.

However, we think it reasonable, given the Trump Era changes, since there now have been 9 new wells placed on Porter Ranch in the past few years, and three additional pads are now proposed, I understand, though I have not yet seen the staff report recommending approval (another nine possible wells are possible).

Our questions are for the upcoming document are as follows:

1. Did the re-drilling of Venoco's wells produce commercial quanities of some grade of oil? (Dogger says the production reports were low). If so, what grade of oil was extracted from Hames, and at what depth interval?

2. Are the proposed three wells all to be placed on one pad, or are they on three separate pads?

3. At what point does testing for oil, or mop up operations on the periphery of working fields (that is Trio Petroleum's metier), constitute the approval de facto of a new field? Trio is not testing actually, they are extracting on the periphery of the boundary of a known field. There is a difference of purpose and intent between true exploration, and spot extraction. This Porter Ranch area has been tested with nine separate wells, including at least four fracked wells, in past years, before the initiative was passed.

4. What do the County oil regs say about the threshold number of wells claimed to be test wells aggregate into a formal "field"?

5. Do the regulations discriminate between testing and marginal field extraction, which is what the Trio efforts in the past have been.

CEQA directs that a developer cannot break a long term plan into smaller pieces to avoid consideration of cumulative impacts or to disguise legal intents; therefore, the questions about when the County regs state regarding when test wells become a working field, or an adjunct extraction area for an existing field, is important and relevant. You may want to speak with the seniors in the planning division about this issue; it has come up before.

I look forward to meeting you at the next hearing.

I tried to call but got a fast busy repeatedly so perhaps the lines are congested or the phones are down on your side.

Steve Craig
Sapaque Valley Ranch
Citizen Planning Alliance, Bryson, California

MONTEREY COUNTY PLANNING COMMISSION
JANUARY 31, 2018
AGENDA ITEM NO. 1

Additional Correspondence

Porter Estates Company Bradley Ranch LLC (Trio Petroleum) - PLN160146

FOR ADDITIONAL INFORMATION CONTACT:
Bob Schubert, Senior Planner
Monterey County Resource Management Agency
1441 Schilling Place, 2nd Floor South, Salinas CA, 93901
(831) 755-5183 schubertbj@co.monterey.ca.us

McDougal, Melissa x5146

From: Schubert, Bob J. x5183
Sent: Tuesday, January 30, 2018 11:16 AM
To: McDougal, Melissa x5146
Subject: FW: Comments on the Trio Petroleum Application Hearing, January 31, 2018

Melissa,

Please provide these comments to the PC.

HEARING SUBMITTAL
PROJECT NO./AGENDA NO.: PLN170444 #1
DATE RECEIVED: 1/30/18
SUBMITTED BY/VIA: Public email
DISTRIBUTION TO/DATE: PC, 1/30/18
DATE OF HEARING: 1/31/18

Bob Schubert, AICP
Senior Planner

Monterey County
RMA-Planning Department
(831) 755-5183

From: Steve Craig [mailto:stevecraig.turtlecreek@gmail.com]
Sent: Tuesday, January 30, 2018 11:07 AM
To: Schubert, Bob J. x5183 <SchubertBJ@co.monterey.ca.us>
Cc: Mary Hsia-Coron <mary.hsiacoron@gmail.com>
Subject: Fwd: Comments on the Trio Petroleum Application Hearing, January 31, 2018

Bob: I am still recovering from this stinking flu, two rounds so far, and so an early drive up to Salinas is beyond me at this point.

However, please include the following inputs in the record so any appeal, if necessary, to the Board, has the broadest chance of succeeding should the Commission approve the new Trio wells.

Thanks,

Steve Craig
Sapaque Valley Ranch,
Bryson, California

Begin forwarded message:

From: Steve Craig <stevecraig.turtlecreek@gmail.com>
Subject: Comments on the Trio Petroleum Application Hearing, January 31, 2018
Date: January 30, 2018 at 11:03:46 AM PST
To: MendezJ@co.monterey.ca.us, PadillaC1@co.monterey.ca.us, GetzelmanPC@co.monterey.ca.us, amydroberts@ymail.com, VandevereK@co.monterey.ca.us, ambrizana1@gmail.com, RochesterD@co.monterey.ca.us, mduflock@gmail.com, mvdiehl@mindspring.com, WizardJ@co.monterey.ca.us
Cc: "100-District 3 (831) 385-8333" <district3@co.monterey.ca.us>, "Onciano, Jacqueline x5193" <oncianoj@co.monterey.ca.us>, spencerc@monterey.co.us, charles rowley <charlesrowley.turtlecreek@yahoo.com>, Fred Kenyon <fred.tintent@gmail.com>

General Comments on Feasibility of Recovery of Commercial Quantities of Oil and the Public Interest.

1. DOGGER has described the heavy oil yields from Trio and Venoco wells in Hames, whether fracked, acidified, or steam injected, as marginal, and not of high quality or quantity. These wells have been drilled over the past decade and in decades prior with more primitive technologies than those now available. The BLM itself categorizes the shales in the Hames Valley as being of low value in terms of productivity with recovery by steam injection being the only economic means to withdraw heavy crude from the San Ardo formation. In general, this is not a critical oil reserve and contains more asphaltum like crude than fuel grade oil. With this knowledge, it is irresponsible to continue what has now been a 10 year cycle of testing outside the margins of the San Ardo field as defined on County Land Use Maps. The proposed extraction is not so much a "testing" operation as a collection of low yield marketable returns on the periphery of a proven formation for shallow steam injection (Chevron San Ardo). Therefore, the definition of these wells as test wells is improper and not accurate.

2. Resource extraction is not compatible with the General Plan definitions and land use plans and policies which, in the corridor including the Hames Valley, is a primary wine growing corridor. Expansion of an oilfield or individual oil wells periodically placed in the corridor debases the intent of the policies in the General Plan. Recreational tourism is not consistent with oil production and extraction; who visits Kettleman City or the oil fields of the central valley for tourism purposes. The uses conflict. Primary allocation of water in a drought should be for the most visionary and important land uses, which in this case are agricultural.

3. The risk of damaging deep aquifers, which may in the future may need to be tapped for potable water, is too great to continue further exploration of landforms around the San Ardo field. Note the Capetown South Africa example, where current water supplies in a similar mediterranean climate are failing, with Capetown idue to run out of potable water in April 2018. One of their two solutions is to recover water from very deep aquifers, more than 2,000 feet below the surface, in zones identical to the recovery area for shallow formation oil in the San Ardo field and its surrounding areas.

4. Climate change (increasing temperatures, increase of capture of moisture from crops, fields and forests, increasing sea temperature, increasing speed of ice attrition at the poles, changes to the North and South Atlantic oscillations, increased incidence of violent cyclones and hurricanes, increased drought in all mediterranean climate zones) is driven by three things: the pivot of the earth on its axis relative to the sun, the motion of cooler waters circulating in the various Oscillations at sea, and the increasing presence of carbon, methane and other "greenhouse" gases due to the consumption, recovery, processing and burning of all carbon fuels. While it may seem a reach to say that four more wells might move the needle on this issue, it is a cumulative problem, and every inch further we move to heat up the atmosphere will have adverse effects on people the world over and their societies. Hence, fossil fuel recovery is not serving any population's interest except the business interest of companies doing such recovery and sale.

Regarding Water:

1. There are a series of Federally Qualifying wetland courses in Hames Valley, including the Hames the main drainage down the Valley. These are not disucssed, nor are jurisdictional boundaries for the Corps and Fish and Wildlife mapped relative to the well sites. The jurisdictional waters were established by the Ventura Corps office and the result of this investigation was submitted to the County, and has been used in federal lawsuits. This study is not mentioned in the initial Study, expanded information.

2. The baseline water quality in the wells in Hames Valley should be established, relative to chemical content, using the thorough (125 chemicals and components approximately) state well baseline contamination system. At least four wells up and down gradient should be tested prior to any further approvals of wells peripheral to the San Ardo field. At least one or two of these wells should include the Schied Vineyard holdings, as these grapes are sold wholesale and distributed to numerous wineries, and contamination from injection, runoff, or fluid injection for oil recovery could be widely spread through such wholesale marketing if the underlying aquifers are impacted. Also, with four measurements, the general groundwater level and gradient could be established under drought conditions. This information should be mandated by condition.

3. Agriculture and low density residential uses are the predominant land uses in the Lockwood and Hames Valleys and therefore water for these uses must be of highest and first priority. Also, agricultural uses are precedent in time and therefore have a higher legal justification for water uses being reserved for this activity rather than oil recovery. Under water law effective in California, the first user and associate type of use are most entitled to water within a watershed.

Federal Pre-emption is not Governing Law

1. The power of any argument regarding Federal Pre-emption is moot except for issues concerning a well from the well head down into the earth. All aspects of well operations are managed, monitored and regulated by the state and local approvals and federal law and policy do not apply to above ground users. Therefore, any argument that Federal Rules pre-empt local regulation are unenforceable since the federal jurisdiction is limited to the well head surface down into the subsoil and stratigraphic formations below the well.

The Initiative was a final public decision on extraction of oil and gas in this region

1. No further action to approve wells by the County should occur until the trial court decision is issued and then appealed to the Appeals Court by the losing party. The primary legal issue at stake is that the people, in lieu of the County establishing proper oil recovery operations and putting human economy and welfare first and above the oil recovery business, led an initiative process with clear direction to County staff and decision makers which passed, setting forth the will of the people in unquestionable form. The initiative is the highest and most reliable and unreversible form of law under the State Constitution. Therefore, any decision to permit more drilling at this point is contrary to the will of the majority of the people in this County. Overriding this will is politically unwise and legally subject to contestation.

CEQA

This project is not in conformance with CEQA as it segments a larger undertaking into smaller units of activity. The individual wells being drilled are not "test" wells, they are extraction and sale wells. The applicant has engaged in the commercial sale of the product of prior wells according to DOGGR information. Trio Petroleum is known to be a small wildcatter, which specializes in extraction on the periphery of major known oil fields. The proposed "test wells" in this case are designed to locate sufficiently thick layers of heavy crude that infill wells can be drilled to extend the San Ardo field south of the Salinas River. There is no County plan to permit such an extension. Steam injection fields to be high yield and fund themselves require, as in San Ardo, and extensive grid of wells, placed relatively close together.

If this purpose as articulated above is denied by the applicant, there is then only one other potential motive: peripheral extraction outside the bounds of the San Ardo field in marginal pockets of recoverable oil. This is not a test process, it is a commercial recovery process, but in low density, and

speculative relative to whether it may be possible to link up with the formations in the Chevron San Ardo field.

CEQA requires that the larger intents of the applicant, who has been "testing" on Porter Ranch and some adjacent areas for over a decade, must be stated in their most complete form, not in a trivialized form, under the guise of "testing".

It is clear that the public is not interested in seeing any expansion of the San Ardo field, nor peripheral spoils pick up of portions of the San Ardo formation that extend subsurface under the Salinas River south-westerly into Hames Valley. This issue has been decided, and its legal firmness is not established until all trial and appeals court appeals have been heard and decided.

For this reason, we urge the Planning Commission to deny this application with prejudice.

All of the foregoing information may be used in any appeal to the Board of a decision by the Planning Commission.

Regards,

Steve Craig and Charles Rowley
Sapaque Valley Ranch, Bryson
representing the South County Citizen Planning Alliance

JRG

HEARING SUBMITTAL
PROJECT NO./AGENDA #: PLN160146 #1
DATE RECEIVED: 1/30/18
SUBMITTED BY/VIA: Public / email
DISTRIBUTION TO/DATE: PC / 1/30
DATE OF HEARING: 1/31/18

Jeffery R. Gilles, Founding Partner
Aaron Johnson, Partner
Paul A. Rovella, Partner
Jason Retterer, Partner
Robert E. Rosenthal, Partner
David W. Balch
Peter D. Brazil
Patrick S. M. Casey
Kendra L. Clark
Jeffrey S. Lind
Nevin P. Miller
Sergio H. Parra
Ronald A. Parravano
Matthew R. Rankin
E. Soren Diaz, Of Counsel
Doug K. Dusenbury, Of Counsel

January 31, 2018

Via U.S. Mail

Monterey County Planning Commission
Monterey County Government Center - Board of Supervisors Chambers
168 W. Alisal St.
Salinas, CA 93901

RE: Trio Petroleum Use Permit Application (PLN160146) for Drilling Exploration Wells and Temporary Oil & Gas Production Testing
File No.:5877.001

Dear Chair Vandevere and Members of the Planning Commission:

Our office represents Trio Petroleum, Inc. ("Trio") on the above referenced application. On January 31, 2018, the Planning Commission is scheduled to consider adopting a resolution that denies Trio's Use Permit for drilling and production testing four (4) exploration oil and gas wells based on the Planning Commission's direction to staff at its December 13, 2017 hearing. We have carefully reviewed the proposed findings for denial of Trio's Use Permit and urge the Planning Commission to reconsider its decision because the findings that the Planning Commission is being asked to adopt are not supported by substantial evidence. On the contrary, all of the evidence before the Planning Commission, including the expert findings and conclusions of the Mitigated Negative Declaration and supporting Initial Study (a copy of which is incorporated within the December 13, 2017 staff report) and your Planning staff's analysis in their December 13, 2017 staff report, supports approval Trio's application.

Finding No. 2 of the proposed resolution purports to identify evidence to support a findings that Trio's proposed Use Permit is somehow detrimental to the health and safety of persons residing or working in the vicinity of the proposed use. However, this evidence consists entirely of unsubstantiated opinions and speculation that is contradicted by the conclusions of the Initial Study and Mitigated Negative Declaration. Noticeably missing from the "evidence" to support Findings No. 2 are references to any technical reports, studies, data, or other expert opinion that are typically identified and, in fact, legally required to support findings. For example, the "evidence" in subsection "a)" is simply a political statement that

broadly slanders oil and gas exploration in general and suggests that Trio's exploratory wells will be injurious to County residents because it results in carbon emissions and groundwater contamination. However, there is no such evidence in the record, quite to the contrary, in fact, as reflected in the findings (see Section 4.1) of draft Resolution of approval that Staff presented to the Planning Commission at your December 13, 2017 hearing, which was based in great part on the Initial Study conducted by RMA Planning's environmental contractor, Rincon Consultants Inc.

As it relates to carbon emissions and the suggestion that the use permit will have adverse air quality impacts, the Initial Study undertook a comprehensive analysis of potential air quality impacts (See Section 3, pps. 33-41 and Section 7, pp.s 61-65, relating to Greenhouse Gas Emissions) and concluded that all impacts were either less than significant or could be mitigated to a less than significant level. Moreover, the Monterey Bay Air Pollution Control District wrote a letter regarding the project (attached as Exhibit G to your Dec. 13, 2017 Staff Report) and did not identify any potentially significant air quality impacts that would be injurious to Monterey County residents. Therefore, the "evidence" of potential air quality and climate change impacts which is described in subsections "a)," "b)," and "c" that purportedly supports denial of Trio's use permit does not exist and is contradicted by the Initial Study.

Similarly, the Initial Study concluded that the project would not contaminate or otherwise impact hydrology or surface or groundwater quality (See Section 9, pp.s 69 – 74). As it relates specifically to potential impacts to groundwater, the Initial Study explains:

> "The proposed project would drill and test wells at a depth of 4,000 to 6,500 feet. Public-supply wells are typically drilled to depths of 200 to 650 feet, which is intended to approach the bottom of the groundwater basin (Source: IX.57). All four wells would be at depths lower than the groundwater table, which would protect the groundwater table from potential water quality degradation. Furthermore, as discussed above, the wells would be required to be sealed from the groundwater table. Casing lines the inside of the borehole to ensure that materials within the borehole would not contact groundwater and water quality would not be affected. In addition, the applicant must comply with State standards for casing. Therefore, based on the applicant's compliance with all federal, State, and local regulations regarding oil well construction, the oil wells would be sealed from the groundwater table and water that may be pumped to the surface during exploration and production activities would not be drawn from the public supply sources (as noted above, groundwater wells are located at far shallower depths than the proposed exploratory wells). **Therefore, the pumping of oil during exploration and production would not affect the availability or quality of groundwater drawn from the public supply wells."** (Emphasis added)

Therefore, the "evidence" in subsection "d)" that states "Oils coming up from the wells from the productive underground geologic zone could escape the zone and migrate into other geologic zones that might contain fresh or usable water" is not true and is again contradicted by expert opinion and analysis in the Initial Study. Moreover, if there was any potential for this project to impact the Salinas Valley Groundwater Basin then surely the Central Coast Regional Water Quality Control Board and the County's Health Department would have expressed concerns about this project, but no such concerns were raised or expressed to the County.

Finally, the draft resolution cites Measure Z as "evidence" to support denial in section "e)" based on comments made to the Planning Commission at its December 13, 2017 hearing. At the time of the Planning Commission hearing, the superior court had not made a decision on Measure Z. However, on December 28, 2017, the superior court invalidated several policies in Measure Z, including Policy LU-1.23, which prohibited the drilling of new wells such as the exploratory wells that are the subject of Trio's use permit application. (See "Intended Decision," attached as **Exhibit A**). The superior court ruled that this provision was preempted by state and federal law, including the federal Safe Drinking Water Act ("SDWA"). As part of its ruling, Judge Wills disagreed with the proponents of Measure Z that Measure Z is "essential" to protect drinking water from endangerment based on a finding they cited in Measure Z. The Judge concluded that the County is not authorized to make such a finding because "when as here, the EPA has conferred primacy of a state, the SDWA expressly charges the state with determining whether a regulation is essential to protect drinking water."

Moreover, the declaration of Steven Bohlen that was submitted in the Measure Z litigation provides expert opinion that refutes all of the Measure Z findings that the Planning Commission is being asked to rely upon as evidence to support a denial of Trio's Use Permit (attached as **Exhibit B**). Accordingly, the Measure Z findings are not "evidence" to support a denial of Trio's Use Permit.

In addition to the Bohlen declaration, numerous expert declarations were submitted to the court regarding the extensive regulation of oil well construction and production. Burton R. Ellison, who is a registered professional geologist in the State of California and former District Deputy for the State of California, Division of Oil, Gas, and Geothermal Resources ("DOGGR") provided declaration regarding the extensive regulations that apply to well drilling and construction, including applicable regulatory requirements that ensure that water quality is protected (attached as **Exhibit C**). Accordingly, there is no legal basis for denying the use permits on the grounds that the project will adversely affect groundwater quality.

Finally, the proposed denial of Trio's temporary use permit, which effectively prevents Trio from exercising its lease right to extract and produce oil and gas resources on the property that is the subject of the temporary use permit, is an unconstitutional taking of Trio's property rights. Because "[t]he right to remove oil and gas from the ground is a property right," *Maples v. Kern Cty. Assessment Appeals Bd*, 103 Cal. App. 4th 172, 186 (2002), the holder of such interest is entitled to the same constitutional protections against takings as any other property owner. See *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415-416 (1922) (recognizing a landowner's right to extract oil from a property); see also *Model v. Virginia Surface Min. and Reclamation Ass 'n, Inc.*, 452 U.S. 264, 296-297 (1981). Accordingly, the proposed denial of Trio's application renders worthless Trio's significant investment in securing the oil and gas rights on this property, including, for example, the millions of dollars spent conducting sophisticated 3D modeling of the underlying geology of the property in order to identify potential oil bearing zones for possible exploration.

We would respectfully request that the Planning Commission adopt the resolution conditionally approving the use permit that was presented to the Planning Commission on December 13, 2017 (attached as **Exhibit D**). While members of the Planning Commission may be philosophically opposed to oil exploration and production in Monterey County, that is not a legal basis for denying Trio's Use Permit. There must be specific concrete evidence in the record that demonstrates that Trio's use permit is somehow detrimental to the public health and safety. No such evidence exists or has been presented to the County. On the other hand and as documented in the staff report on December 13, 2017, Trio's proposed application is consistent with the general plan and zoning requirements and there is an overwhelming amount of evidence in the record before the Planning Commission that Trio's proposed temporary test wells will not have an impact on water quality, air quality, or any other environmental resources.

Sincerely,

Jason S. Retterer

cc: Supervisor Simon Salinas
Carl Holm
Jacqueline Onciano, Secretary to the Planning Commission
Bob Schubert

Attachments

EXHIBIT A

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MONTEREY

CHEVRON U.S.A., INC, et al. **Plaintiffs/Petitioners** **vs.** **COUNTY OF MONTEREY** **Defendant/Respondent**	**Case No.: 16CV003978** **INTENDED DECISION**
Protect Monterey County; Dr. Laura Solorio, M.D., **Intervenors**	

This matter came on for court trial on November 13, 14, and 15, 2017. All sides were represented through their respective attorneys. The matter was argued and taken under submission.

This intended decision resolves factual and legal disputes, and shall suffice as a statement of decision as to all matters contained herein. (Cal. Rules of Court, rule 3.1590(c)(1).)

Factual Background

This action involves challenges to a Monterey County ordinance, known as "Measure Z," a County initiative approved by the electorate in the November 2016 election. The measure, which relates to oil and gas operations exclusively, prohibits on all lands within the County's

unincorporated area 1) well stimulation treatments — measures by which oil-producing companies render underground formations more permeable to facilitate the extraction of oil (including but not limited to hydraulic fracturing, aka "fracking"), effective immediately; 2) underground wastewater injection and impoundment of wastewater, with a five-year phase out period; and 3) drilling any new wells for the recovery of, or to aid in the recovery of, oil or gas, effective immediately. It also provides for two possible extensions of the five-year underground injection and impoundment phase-out period, for a total possible extension of 15 years.

To understand the meaning and effect of Measure Z, as well as its potential interplay with existing state and federal regulations, evidence on the background and nature of oil operations in Monterey County was not only appropriate but also necessary.

There is no fracking currently taking place in Monterey County. Because of the sandy nature of oil bearing strata in Monterey County oil fields, fracking is not necessary to extract oil. There are only two or three reported instances of fracking ever occurring in Monterey County, all of which occurred approximately a decade ago.

The oil producing fields in Monterey County are principally located in the southern Monterey County areas of San Ardo and Lynch Canyon,[1] arid, sparsely populated regions well inland from the coastline. Oil drilling and production has been carried on in San Ardo for nearly 70 years and in Lynch Canyon for nearly 55 years. The oil deposits are highly viscous (i.e., thick), and exist at levels in the range of 1,800-2,200 feet or more underground. There are two oil-bearing formations in San Ardo: the Lombardi Sands Formation which currently produces oil, and the Aurignac Sands Formation, which lies at a level below the Lombardi and is sufficiently depleted of its oil reserves that it is now used to dispose of water extracted from the Lombardi. The oil-producing formation in Lynch Canyon is the Lanigan sand, a porous, highly permeable sand that occurs at approximately 1,700 feet underground.

There exists naturally in these formations, accompanying the oil deposits, a huge volume of water laden with salt and hydrocarbons (95% water volume for every 5% of oil, by

[1] Petitioner Trio Petroleum LLC operates primarily at the Hangman Hollow Oil Field, just west of Lynch Canyon. Other Petitioners own mineral rights in oil and gas leases in areas such as the Monroe Swell Oil Field, which is northwest of the San Ardo Field and produces from similar formations (Sunset Exploration, Inc.); Hames Valley (Bradley Minerals, Inc.); and the Paris Valley and McCool Ranch oil fields (California Resources Corporation).

one expert's estimation). Because of the highly viscous nature of the oil deposits, the oil must be heated by injecting steam underground in order to make it more fluid so that it can be pumped out. In San Ardo, as oily water is pumped out of the ground, it is placed into storage tanks where the oil and water settle out and separate. The extracted water is then dealt with in one of three different ways. It is either 1) purified, in part (and the purified water placed back into the ground to recharge the water table and maintain wetlands); 2) treated and injected into the ground as steam at the Lombardi formation level to heat the viscous oil deposits; or 3) reinjected — with the oil removed but otherwise untreated and in its natural state — along with the saline brine extracted in the reverse osmosis purification process, into the Aurignac Formation. As the pumped out water is subjected to these processes, it must be stored temporarily.[2]

All of the water used for steam injection comes from the underground, pumped-out water (after some treatment). The process of removing oil and naturally occurring water necessarily results in less volume to occupy the space previously occupied by the extracted oil/water and, consequently in colder, naturally occurring water encroaching into that space. This in turn requires extraction of the encroaching cold oil/water and further steam injection to maintain the temperature (and lower viscosity) of the oil so that it can be removed. As the oil/water is extracted, the perimeter of the area that needs to be heated expands — necessitating further steam injection and new wells at the increasing periphery of the area from where the recoverable oil lies.

Oil cannot be extracted without the continuous drilling of new steam injection wells. Unless steam is continuously added, the underground steamed area (known as a "steam chest") cools and the oil is no longer extractable. Oil production would then decline relatively quickly and come to a complete halt in five years or less.

[2] Oil producers such as Eagle Petroleum, LLC (Eagle), which operates out of the Lynch Canyon, also inject steam and produced water into underground formations. Eagle injects steam into the Lanigan Formation and produced water into either the Lanigan Formation or the Santa Margarita Formation.

Procedural Background

Measure Z's effective date was initially set to be December 16, 2016. However, on December 14, 2016, Petitioners Chevron, U.S.A., et al., and other associated Petitioners[3] (Chevron), and Aera Energy LLC (Aera), filed petitions for writ of mandate alleging that Measure Z 1) was preempted by state and federal law; 2) effected a facial taking of their property; and 3) violated their due process rights. On that same date, the court approved separate stipulations between Chevron and the County and Aera and the County to stay implementation of Measure Z indefinitely. Separate suits by 1) the California Resources Corporation (CRC); 2) National Association of Royalty Owners-California, Inc., plus 61 individual and corporate entities (NARO); 3) Trio Petroleum LLC, Bradley Minerals, Inc., Monroe Swell Prospect, J.V., and Sunset Exploration, Inc. (Trio); and 4) Eagle Petroleum, LLC (Eagle) followed.[4] Those parties made similar arguments, but also advanced claims that Measure Z created inconsistencies within the County General Plan, and that Measure Z violated the "single-subject" rule.

On March 17, 2017, the court granted a petition for intervention from Protect Monterey County (PMC), the advocacy group responsible for drafting Measure Z and the bulk of the campaign in its favor, and from Dr. Laura Solorio, a founding member of the group and signatory of the Measure (collectively, Intervenors). On April 18, 2017, the court ordered that the case be split into several phases. "Phase I" was "limited to challenges to the validity of the ordinance on its face. And that includes interpretation." (RT 3:14-17.) On June 7, 2017, the court consolidated all six cases for purposes of "Phase I" trial only. On June 14, 2017, the court designated the Chevron case (case number 16CV003978) as the lead case, and ordered that all pleadings related to the trial and briefing of "Phase I" be filed in that case.[5]

---

[3] Besides Chevron, other Petitioners in 16CV003978 include Key Energy Services, LLC, Ensign United States Drilling (California) Inc., Maureen Wruck, Gazelle Transportation, LLC, Peter Orradre, Martin Orradre, James Orradre, Thomas Orradre, John Orradre, Stephen Maurice Boyum, and the San Ardo Union Elementary School District.

[4] Unless otherwise noted, the Plaintiffs and Petitioners in all six cases are referred to collectively herein as "Petitioners."

[5] The other case numbers consolidated include 16CV003980 (Aera); 17CV000790 (CRC); 17CV000871 (NARO); 17CV001012 (Trio); and 17CV000935 (Eagle).

Standing

Intervenors' positions regarding standing — which bear directly upon the relevance of certain evidence submitted by Petitioners (and to which Intervenors object) — have ranged from non-opposition to vacillation to equivocation to opposition.

At the case management conference held on June 7, 2017, the County stated, "as [standing] relates to the mineral rights owners . . ., we would need to see documents" (RT 29:17-19), and added that it "would prefer to defer any fight, if it's necessary, over standing, to a later phase (RT 29:21-25) . . . . [F]or purposes of Phase I . . ., without prejudicing our rights to later argue standing, we will not raise it" (RT 30:20-22). The court next inquired of Intervenors as to their position, and Intervenors' counsel stated, "[s]o I just want to be clear about the standing issue. Clearly, if they show us documents that we have mineral rights and therefore we have some kind of financial interest to come into court, we're not going to have an objection to that. But we should distinguish the standing issue from the broader issue of pursuit of exclusive remedies; therefore, standing to sue at this point. So we're happy to defer that issue as well because there are exclusive remedy provisions in the measure we have talked about, the vested rights procedure before the County." (RT 31:4-16.)

In support of their opening briefs, Petitioners submitted declarations reciting the nature of their respective ownership interests and attaching a large number of exhibits such as deeds and conveyances of mineral rights. Intervenors, after having stated at the case management conference that they demanded proof of the Petitioners' interests and arguing that Petitioners lacked standing, then objected repeatedly to Petitioners' proofs of ownership and lease interests on the ground that they were "irrelevant to this stage of the proceedings." Additionally, in their merits brief, Intervenors argued, ". . . Petitioners have no standing to obtain relief from the Court on this issue [of the preemption of the Measure's provisions regarding well stimulation treatments and fracking]." (Intervenors' Opposition Brief (Phase I Facial Claims) at p. 34:18-19 and fn. 27.)

Next, at a trial management conference held on November 6, 2017, one week before the Phase I trial commenced, the Court asked Intervenors to clarify their position regarding standing — pointing out that if there was a challenge to one or more Petitioners' standing to raise the

Phase I claims, it should be resolved at this stage of the proceedings, not left for debate later on. (RT 5:21-6:21.) The morning of trial, Petitioners and the County filed a joint statement in which they concurred that Petitioners had standing to pursue the claims briefed in the Phase I trial. That same morning, Intervenors filed a supplemental trial management conference statement in which they announced that they "do not concede that [Petitioners] has [*sic*] submitted evidence sufficient to establish their standing either during Phase 1 proceedings or in any subsequent phases."

Intervenors then submitted a brief mid-trial which stated that not only did they challenge Petitioners' standing to challenge the well stimulation treatment portion of the Measure, but also objected to their standing to contest *any* portion of Measure Z: "As to Petitioners' challenges to LU-1.22 [the underground injection and impoundment prohibitions] and LU-1.23 [the no new wells prohibitions], Petitioners have not submitted supporting evidence to demonstrate standing as to each and every one of the named parties, and thus Intervenors do not concede their standing for any purpose." (Intervenors' Brief Re Plaintiffs' Standing to Challenge Measure Z LU-1.21, at p. 3:9-11.) Intervenors thus further placed in issue each Petitioner's practice of, and need to utilize, 1) underground injection and storage; and 2) new well drilling to aid in the recovery of oil and gas.

Whether this is deliberate obfuscation or genuine confusion on the part of Intervenors, it renders highly relevant numerous declarations and exhibits submitted by Petitioners that go to the issue of standing.

Administrative Record

The court admitted the administrative record into evidence.

Additional Evidence Presented

In addition to the administrative record, the parties offered evidence in support of their briefing, requests for judicial notice, and stipulated facts. The parties raised myriad objections.

Before addressing the parties' objections, particularly those on relevance grounds, the court notes that the scope of the Phase I facial challenges trial was not limited to the issue of

facial takings challenges.[6] It also included standing (as discussed *ante*, Intervenors raised this issue), preemption, due process procedural and vagueness challenges, a single-subject rule challenge, and general plan consistency challenges.

The court rules on the parties' objections as follows:

1.0 Intervenors' objections to evidence submitted by Chevron

1.1 Declaration of Burton Ellison (Ellison Dec.)

The following objections are overruled: 1, 3, 5 (as to the first sentence), 6 (as to lack of foundation), 7, 8 (an agency's interpretation of its own regulations is accorded deference), 9-10, 11 (as to the first sentence only), 12-24, and 25 (overruled as to the first sentence).

The following objections are sustained: 2, 4, 5 (as to the second sentence only as argumentative), 6 (as a legal opinion), 11 (as to the last sentence on the grounds that the declarant's opinion of the true purpose of Measure Z is irrelevant), 25 (as to the last sentence), 26-27, and 28 (as to the words "to the detriment of the citizens of California").

1.2 Declaration of Dallas Tubbs (Tubbs Dec.)

The following objections are overruled: 1-21, 22 (except as to the words "this prohibition would also prevent Chevron from engaging . . .," since it would interpret the ordinance); 23-27, and 29-33.

The following objections are sustained: 22 (only as to the words "this prohibition would also prevent Chevron from engaging . . .," which amounts to an interpretation of the ordinance), 28 (as to the words "Measure Z would have substantial impacts on the ability to continue capital investment within the current field . . ." as irrelevant to this stage of the proceeding), 34 (as to the words "the impending shutdown of the field precludes the necessary capital investment needed to operate an oil field of this size" as irrelevant to this stage of the proceeding).

---

[6] Contrary to Intervenors' claims, facial regulatory takings claims *do* permit the presentation of some evidence. (See *Keystone Bituminous Coal Assn. v. DeBenedictis* (1987) 480 U.S. 470, 495-496; *NJD, Ltd. v. City of San Dimas* (2003) 110 Cal.App.4th 1428, 1448 ["we are not holding that no evidence may be received in a facial regulatory takings case"].) Evidence is necessary to determine whether a statute "deprive[s] an owner of '*all* economically beneficial use' of her property. [Citation.]" (*Lingle v. Chevron U.S.A. Inc.* (2005) 544 U.S. 528, 538, italics in original.)

1.3 Declaration of James Latham (Latham Dec.)

The following objections are overruled: 1-2, 3 (except as to the words " . . . thus condemning all such resources," an improper legal opinion), 4-8, 10 (except as to the second sentence concerning the purported economic damage Measure Z's implementation could cause, irrelevant to this stage of the proceedings), 11, 12 (on the ground stated), 13, 16-17, 18 (as to the words "[g]iven the large volume of produced water that is extracted as part of Chevron's operations, any disposal method other than reinjection would be completely unworkable"; sustained as to the balance), and 19.

The following objections are sustained: 2, 3 (as to the words "thus condemning all such resources" as an improper legal opinion), 9 (improper legal opinion), 10 (irrelevant to the extent it references damage to the local and regional economies; otherwise relevant), 14 (improper legal argument and opinion), 15 (same), 18 (except for the words "[g]iven the large volume of produced water that is extracted as part of Chevron's operations, any disposal method other than reinjection would be completely unworkable"; the balance is a legal opinion), 20 (not relevant for purposes of this stage of the proceedings), 21 (same), 22 (same), 23 (same), and 26 (same).

There are no objections numbered 24 or 25 to this declaration.

1.4 Declaration of John Orradre

All three objections are overruled.

1.5 Declaration of Catherine Reimer

The following objections are overruled: 1-8, and 14.

Objection number 9 is sustained.

There are no objections numbered 10-13 to this declaration.

1.6 Declaration of Nathaniel Johnson

The only objection is overruled.

1.7 Declaration of Myron Backhaus

This declaration essentially was offered to authenticate six different bottled samples of water collected from different phases of the oil recovery, injection, storage, and disposal process at the San Ardo field. These bottles were used as demonstrative evidence during Chevron's presentation of the case, but were of limited probative value. Intervenors' objections on the

grounds that evidence is beyond the scope of what is allowed at the Phase I proceeding is overruled. The evidence was submitted late, however, and its only probative value is to underscore what is already in the evidence presented by Petitioners. Sustained on these grounds.

2.0 Objections to Petitioner CRC's evidence submitted in its opening brief

2.1 Declaration of Kimberly Bridges (Bridges Dec.)

The following objections by Intervenors are overruled: 1, 2 (to the extent the words "[t]oday, CRC is California's largest oil and natural gas producer on a gross-operated basis" are subject to the objection), 3, 4, 5, and 8-30.

The following objections are sustained for purposes of Phase I of these proceedings: 2 (except for the words "[t]oday, CRC is California's largest oil and natural gas producer on a gross-operated basis"), and 6-7.

2.2 Declaration of Justin McMahon (McMahon Dec.)

The following objections of Intervenors are overruled: 1, 2 (except as to the sentence "[t]his would give CRC a peak oil rate of ~2,800 barrels per day"), and 3-6.

The following objection is sustained: 2 (only as to the words "[t]his would give CRC a peak oil rate of ~2,800 barrels per day").

2.3 Declaration of Richard Miller (Miller Dec.)

All objections are overruled.

2.4 Declaration of Adam Smith

The following objections are overruled: 1, 2, and 4-10.

The following objection is sustained: 3.

2.5 Declaration of Heather Welles (Welles Dec.)

All objections are overruled.

2.6 Supplemental Declaration of Heather Welles

The objections on the grounds stated are sustained; this proceeding occurred after the filing deadline for Petitioners' reply briefs.

3.0 Intervenors' objections to the evidence submitted by Petitioner Aera

All objections are overruled.

4.0 Intervenors' objections to Evidence submitted by Petitioner Eagle

4.1 Declaration of Mary Jane Wilson. (Wilson Dec.)

The following objections are overruled: 1, 6 (although it is cumulative and of little additional probative value in light of other evidence presented by the parties), 7, 23-24, 25 (relevant to lack of standing), 26, 28-30, 32-34, 35 (as to the paragraph beginning "nor does it let the reader know . . ."), 38 (the secondary evidence rule is the only ground stated for objection), and 39.

The remaining objections are sustained; much of the material is objectionable because it is argumentative, not relevant, cumulative, or not the proper subject of expert opinion.

4.2 Declaration of Samuel Allen Monroe.

Intervenors' objection to paragraph 23 is sustained. All other objections are overruled.

5.0 Intervenors' objections to evidence submitted by Petitioner NARO

5.1 Declaration of Wayman T. Gore, Jr. (Gore Dec.)

Objection 8 is sustained. All other objections are overruled.

5.2 Declaration of Steven Bohlen

The following objections are overruled: 1, 2, 4, 9-13, and 20 (only as to the words "Oil and Gas operators are required by law to report spills, even small spills of a gallon or two of hazardous substances. Once reported, the operator is required to remediate the spill immediately and to demonstrate remediation to an inspector"), 22, 32, 33, 40, and 42. The remaining objections are sustained.

5.3 Supplemental Declaration of Wayman T. Gore, Jr.

All objections are overruled.

6.0 Objections to the Petitioners' Joint Request for Judicial Notice (JRJN)

Intervenors' objections are largely blanket; Intervenors fail to pinpoint specific objections to particular items in an orderly fashion. While Intervenors voice many generalizations regarding what is and is not properly the subject of judicial notice, these generalizations are not helpful. Moreover, many of the documents proffered are the official acts of governmental agencies, while some are statements made on behalf of the County and thus qualify as admissions of a party

opponent, both of which overcome Intervenors' hearsay objections. Yet others are in themselves documents constituting acts having legal significance without regard to their truth.

With the foregoing in mind, the court sustains objections to the following items for which Petitioners request judicial notice: 1, 2 (only to the extent of emails contained therein; the report by Supervising Appraiser McFarlane of the Monterey County Assessor's Office and the Fiscal Impact statement of the County Assessor are allowed), 3 (not relevant), 6, 16, 21-22, 36 (not relevant), 37-55, 66 (no date; relevance not shown), and 67-68.

The remaining objections are overruled.

7.0 **Petitioners' objections to the County's and Intervenors' Requests for Judicial Notice**

Both objections are sustained.

8.0 **The County's objections to Petitioners' use of the deposition of the County's expert declarant Alan Burzlaff**

The court was clear that no discovery was to take place, yet Petitioners ignored this direction and took Mr. Burzlaff's deposition. For both this reason, and because Mr. Burzlaff's interpretation of Measure Z is not relevant, all objections are sustained.

Discussion

Petitioners challenge Measure Z on several grounds. Petitioners argue that 1) Measure Z violates the California Constitution's single-subject rule; 2) Measure Z is preempted, in whole or in part, by state and/or federal law; 3) Measure Z effects a facial regulatory taking of Petitioners' property; 4) Measure Z creates internal inconsistencies in Monterey County's General Plan; and 5) Measure Z violates Petitioners' substantive and procedural due process rights.

1. The Single-Subject Rule

Petitioner CRC argues that Measure Z violates the California Constitution's single-subject rule. CRC contends that Measure Z's main purpose was to ban fracking and that Policies LU-1.22 and LU-1.23, the Measure's additional two prohibitions on 1) wastewater injection and impoundment; and 2) new wells, respectively, are not "reasonably germane" to that purpose. CRC further contends that Intervenors purposely used fracking — a technique not currently employed in Monterey County — as a political hook to deceive voters into approving the remainder of Measure Z, which it asserts would end oil and gas production in the County.

1.1 Legal Background

The California Constitution provides, "[a]n initiative measure embracing more than one subject may not be submitted to the electors or have any effect." (Cal. Const. art. II, § 8(d).) This "single-subject rule" — itself, adopted by initiative — "is a constitutional safeguard adopted to protect against multifaceted measures of undue scope." (*Brosnahan v. Brown* (1982) 32 Cal.3d 236, 253.) The rule was intended "to attempt to avoid confusion of either voters or petition signers and to prevent the subversion of the electorate's will. [Citation.]" (*Senate of State of Cal. v. Jones* (1999) 21 Cal.4th 1142, 1156 ["*Jones*"].)

The single-subject rule is liberally construed to sustain initiatives that "fairly disclose a reasonable and common sense relationship among their various components in furtherance of a common purpose." (*Brosnahan, supra*, 32 Cal.3d at p. 253.) "An initiative measure does not violate the single-subject requirement if, despite its varied collateral effects, *all of its parts are reasonably germane* to each other, and to the general purpose or object of the initiative." (*Legislature v. Eu* (1991) 54 Cal.3d 492, 512, italics in original, internal citations omitted.) Notwithstanding this language, it is not *necessary* that a measure's several provisions be "reasonably germane" *to each other*. (*Californians For An Open Primary v. McPherson* (2006) 38 Cal.4th 735, 764, fn. 29.) In fact, the test requires only that the separate provisions of an initiative "be reasonably germane *to a common theme, purpose, or subject*." (*Ibid.*, italics added.) Nor is it necessary for an initiative proponent to show "that each one of a measure's several provisions was capable of gaining voter approval independently of the other provisions." (*Brosnahan, supra,* 32 Cal.3d at p. 253.) Nevertheless, the single-subject rule "obviously forbids joining disparate provisions which appear germane only to topics of excessive generality such as 'government' or 'public welfare.'" (*Ibid.*)

Measure Z passes the reasonably germane test. The three provisions prohibit land uses in support of well stimulation treatments (such as fracking) and wastewater injection and impoundment, together with barring the drilling of new oil and gas wells. All three prohibitions pertain to specific production techniques the oil and gas industry uses in production operations. The common theme among these measures is stated by the official title of the initiative, the "Protect Our Water: Ban Fracking and Limit Risky Oil Operations Initiative." (AR 152.)

Measure Z's 15 findings detail the significant environmental, "health, safety, welfare, and quality of life" impacts these practices assertedly have in the County. (AR 152-154.) Measure Z's provisions are reasonably germane to a common theme then, because they address potential environmental, safety, and social impacts of oil and gas production.

By contrast, the cases CRC cite involve provisions linked only by "excessive generality." (*Brosnahan, supra,* 32 Cal.3d at p. 253.) For example, in *California Trial Lawyers Assn. v. Eu* (1988) 200 Cal.App.3d 351, 355, 358, the proposed 120-page, 67-section ballot initiative stated it was intended to control insurance costs, and in particular, "the constantly increasing premiums charged to California purchasers of liability insurance." Section 8, "located inconspicuously" in the middle of the measure, provided insurance companies with protection from future campaign contribution regulations that could be aimed at insurers. (*Id.* at p. 356.) In defending the challenge, the insurers claimed that, because the initiative at issue "deals generally with the regulation of insurance industry practices and [the campaign contribution provision] relates to a specific aspect of those practices, the latter section ipso facto satisfies the 'reasonably germane' test." (*Id.* at pp. 359-360.) The court rejected this defense on two grounds:

"First, the express purpose of the initiative is to control the cost of insurance, not generally to regulate the practices of the insurance industry. Second, we cannot accept the implied premise of Association's analysis, i.e., that any two provisions, no matter how functionally unrelated, nevertheless comply with the constitution's single-subject requirement so long as they have in common an effect on any aspect of the business of insurance. Contemporary society is structured in such a way that the need for and provision of insurance against hazards and losses pervades virtually every aspect of life. [The insurers'] approach would permit the joining of enactments so disparate as to render the constitutional single-subject limitation nugatory." (*Id.* at p. 360.)

Similarly, in *Chemical Specialties Manufacturers Assn., Inc. v. Deukmejian* (1991) 227 Cal.App.3d 663, 670-671, the Court of Appeal sustained a single-subject challenge to an initiative entitled the "Public's Right to Know Act" because the Act covered an overly broad subject. Specifically, the measure contained sections requiring public disclosure of information in a number of unrelated areas such as nursing homes, seniors' health insurance, household toxic

products, and statewide initiative or referendum campaigns. (*Id.* at p. 666.) The measure's supporters claimed that its provisions were all reasonably germane to the subject of "public disclosure i.e. truth-in-advertising." (*Id.* at p. 670.) The Court found this to be a "subject of excessive generality," explaining, "the object of providing the public with accurate information in advertising is so broad that a virtually unlimited array of provisions could be considered germane thereto and joined in this proposition, essentially obliterating the constitutional requirement." (*Id.* at p. 671.)

Measure Z raises none of these concerns. All three policies in effect prohibit specific production techniques in a single industry. Additionally, all three policies further the common goal of protecting the public from the purportedly harmful effects of these practices on the environment, public safety, and quality of life. Hence, Measure Z does not violate the single-subject rule. (See *Brosnahan, supra*, 32 Cal.3d at p. 253.)

1.2 Voter Deception

Alternatively, CRC argues that even if the reasonably germane test is satisfied, Measure Z violates the single-subject rule because voters were misled by its proponents' campaign as to the true purpose of the initiative. CRC maintains that these proponents used the controversial topic of fracking, a practice the parties concede is not currently used in Monterey County (see Stipulated Facts, ¶ 29), as a "political hook" for their real agenda: destroying the oil and gas industry by effectively banning certain production techniques. CRC insists that highly technical knowledge — which the average voter lacks — is required to understand the true impact of Measure Z upon the oil and gas industry. (See, e.g., Tubbs Dec., ¶¶ 32-60.)

CRC is correct that the single-subject rule was enacted, in part, to prevent voter deception. (*Jones, supra*, 21 Cal.4th at p. 1156.) And it is true that Measure Z goes much further than the simplistic "anti-fracking" campaign label suggests. But however distasteful oversimplification and political puffery may be, CRC has failed to identify authority for its contention that a proponent's use of misleading campaign material and/or proponent-submitted ballot materials stands as an independent ground for invalidating an initiative under the single-subject rule. Instead, CRC justifies its argument with isolated excerpts from the California

Supreme Court's decision in *Jones*, and by reference to a concurring opinion in *Manduley v. Superior Court* (2002) 27 Cal.4th 537.

1.2.1 *Jones*

Jones involved a challenge to Proposition 24, the "Let the Voters Decide Act of 2000." (*Jones, supra*, 21 Cal.4th at p. 1147.) Proposition 24 revised provisions of the law related to state legislator compensation. (*Id.* at pp. 1147-1148.) The Proposition also transferred the power to reapportion state legislative, congressional, and Board of Equalization districts from the Legislature to the California Supreme Court. (*Id.* at pp. 1148-1149.) The Court held that addressing these two issues in concert violated the single-subject rule. The Court reasoned that the reapportionment proposal involved "a most fundamental and far-reaching change in the law" that "clearly represent[ed] a separate 'subject' within the meaning of the single-subject rule upon which a clear expression of the voters' intent is essential." (*Id.* at pp. 1167-1168.) It therefore concluded that authorizing this provision together with the provisions regarding state officer compensation "would inevitably create voter confusion and obscure the electorate's intent with regard to each of the separate subjects included within the initiative, undermining the basic objectives sought to be achieved by the single-subject rule." (*Id.* at p. 1168.)

CRC claims that *Jones* also stands for the proposition that the Court "can even hypothesize a further claim that there will be instances where [the Court] might just strike the statute down just on the fact that it was brought in such a misleading and deceptive way." In support of this claim, CRC cites to footnote 12 of *Jones*. (*Id.* at p. 1163, fn. 12.) In fact, the *Jones* Court never reached this issue. Footnote 12 provides:

"As noted, in a separate argument petitioners assert that the misleading nature of the initiative petition with regard to this significant point is itself a sufficient basis upon which to disqualify the measure from the ballot. In light of our conclusion that the measure violates the single-subject rule, *we need not determine whether the misleading nature of the initiative petition in itself would support an order restraining election officials from placing the measure on the ballot.*" (*Id.* at p. 1163, fn. 12, italics added; see also *id.* at pp. 1152-1153 [because the court held that the initiative violated the single-subject rule, the court "need not reach the question[]

whether . . . its allegedly misleading aspects are sufficient, in themselves, to warrant an order withholding the measure from the ballot"].)

Although it did not reach the voter deception argument, the Court nevertheless summarized the petitioner's arguments in its introduction. (*Id.* at pp. 1150-1153); CRC cites to this *summary* to support its claim. For example, CRC quotes *Jones* at page 1151 for the proposition that, in applying the single-subject test, the court must take "special care to ensure that voters are not manipulated by one part of the new law 'that the proponent views as politically popular . . . .'" This language is convenient for CRC, since it insists that Intervenors used fracking as a "hook for other, unrelated provisions." But the language CRC quotes simply describes one of the *Jones petitioner's contentions*.

Further, in arguing that campaign behavior may be a factor in the single-subject inquiry, CRC places great emphasis on the Court's citation to a newspaper article, describing it as "one of the key pieces of evidence" upon which the Court relies. (*Id.* at p. 1151, fn. 5.) However, the Court's sole reference to the article is in a footnote in the section of the Court's opinion summarizing the petitioner's contentions, in which the court notes merely that the article in question was an attachment to the underlying petition. (*Ibid.*) Nothing in *Jones* supports CRC's claim that the Court relied on the newspaper article in reaching its decision.

CRC also notes *Jones*' "holding" that "a provision governing legislative salaries was unrelated to the purported purpose of addressing 'legislative self-interest,'" because, as the Court stated, "[a]lthough the text of Proposition 24 obscures this point, in reality . . . members of the Legislature do *not* control their own salaries (and thus cannot 'raise their own pay,' as the initiative implies)." (*Id.* at p. 1163, italics in original.) CRC relies on this statement in analogizing Measure Z to *Jones*, claiming that just as Proposition 24 falsely represented the Legislature's power to control their own salaries, a politically controversial issue, Intervenors misled voters by focusing their campaign nearly entirely on fracking, an equally politically charged issue, even though fracking is not presently employed in Monterey County. (Stipulated Facts, ¶ 29.)

CRC's carve-out of a single sentence of the Supreme Court's opinion is misleading; *Jones* did not hold as CRC contends. Rather, in the relevant passage, the Court primarily

addressed an alternative argument advanced by proponent's counsel as to the *subject* of Proposition 24, not a false premise *within* Proposition 24.

Proposition 24's proponent initially asserted that "voter approval" was the "single subject" to which the initiative pertained. (*Id.* at pp. 1161-1162.) The Court rejected this subject as far too broad to satisfy the rule. (*Id.* at p. 1162.) In the alternative, the proponent suggested the initiative's provisions were reasonably germane to "the objective of dealing with the problem of 'legislative self-interest.'" (*Id.* at p. 1163.) The proponent pointed out that one purpose of the measure was to "'combat the self-interest of individual legislators,'" and hence, the measure declared, "'Legislators should not be entitled to raise their own pay or draw their own districts without obtaining approval of the voters.'" (*Ibid.*) The Court rejected this argument, explaining,

"We need not determine in this case whether an initiative matter that includes provisions dealing with a number of subject matter areas as diverse as legislator salaries and reapportionment would satisfy the single-subject requirement if each of the separate areas addressed by the provision poses a potential conflict of interest between the personal interests of legislators and the public interest. Even if we were to assume that the theme or objective of remedying 'legislative self-interest' is not excessively broad and would permit the combination of such otherwise unrelated proposals, the initiative before us cannot properly be defended on this basis. Although the text of Proposition 24 obscures this point, in reality, under existing law, members of the Legislature do *not* control their own salaries (and thus cannot "raise their own pay," as the initiative implies)." (*Id.* at p. 1163, italics in original.)

The Court consequently *deemed it unnecessary* to consider this *alternative* theory argued by counsel because it was predicated on a falsehood. The Court did *not*, as CRC states, hold that the single-subject rule was violated *because* of the falsehood.

In sum, *Jones* does not support CRC's voter deception argument.

1.2.2 *Manduley*

The closest CRC gets to providing support for its deception argument is in its citation to *Manduley v. Superior Court* (2002) 27 Cal.4th 537. There, in a concurring opinion, Justice Moreno addressed the deception issue, stating, "at the very least, an initiative should not pass muster under the single-subject rule unless its provisions are reasonably encompassed within the

title and summary of the initiative." (*Id.* at p. 587.) Justice Moreno likened to this to the inquiry "whether a party was unfairly surprised by a provision in a contract of adhesion, rendering that provision unconscionable. [Citation.]" (*Ibid.*) Justice Moreno also noted that "the subject encompassed by the title and summary should be reasonably specific, not a broad, generic subject such as crime or public disclosure. [Citation.]" (*Id.* at p. 588.)

However persuasive the opinion of a California Supreme Court Justice may be, it is not, on its own, controlling precedent. (See *People v. Stewart* (1985) 171 Cal.App.3d 59, 65 [to qualify as precedent, a "majority of the court" must agree on a point of law].) Nevertheless, even if this court were to apply Justice Moreno's test, Measure Z would still "pass muster." (*Manduley, supra*, 27 Cal.4th at p. 587.) Measure Z's official title is the "Protect Our Water: Ban Fracking and Limit Risky Oil Operations Initiative." (AR 152.) The title provides notice that the initiative will, at minimum, address fracking and the effect of oil operations on the County's water. Additionally, Measure Z expressly explains that its purpose is to protect the County's "water, agricultural lands, air quality, scenic vistas, and quality of life by prohibiting the use of any land within the County's unincorporated area for well stimulation treatments, including, for example, hydraulic fracturing treatments (also known as 'fracking') and acid well stimulation treatments. The Initiative also prohibits and phases out land uses in support of oil and gas wastewater (which the Initiative defines) disposal using injection wells or disposal ponds in the County's unincorporated area. The Initiative also prohibits drilling new oil and gas wells in the County's unincorporated area." (*Ibid.*)

Accordingly, the title and summary of Measure Z "reasonably encompass" its provisions. (*Manduley, supra*, 27 Cal.4th at p. 587.) Moreover, the title and summary are "reasonably specific" as to the subject of the initiative: limiting the risk of harm to the public interest purportedly posed by certain of the oil and gas industry's production techniques. (*Id.* at p. 588.)

In sum, Measure Z does not violate the single-subject rule.

2. Preemption

Petitioners argue that state and federal law preempt Measure Z.

2.1 State Oil and Gas Law

Oil and gas operations in California are governed by Division 3 of the Public Resources Code (Pub. Resources Code, § 3000, et seq.) and its implementing regulations (Cal. Code Regs., tit. 14, § 1712, et seq.). Division 3 addresses oil and gas exploration and extraction in detail, including notices of intent to drill and abandon (§§ 3203, 3229); bonding (§§ 3204-3207); abandonment of wells (§ 3208); recordkeeping (§§ 3210-3216); blowout prevention (§ 3219); use of well casing to prevent water pollution (§ 3220); protection of water supplies (§§ 3222, 3228); repairs (§ 3225); regulation of production facilities (§ 3270); waste of gas (§§ 3300-3314); subsidence (§ 3315-3347); well spacing (§§ 3600-3609); unit operations (§§ 3635-3690); and regulation of oil sumps (§§ 3780-3787).

The State of California Department of Conservation's Division of Oil, Gas, and Geothermal Resources (DOGGR) is the state agency appointed to administer oil and gas activities. (See Pub. Resources Code, § 3100, et seq.) DOGGR has a dual mandate to promote the development of the state's oil and gas resources, and to supervise such operations "to prevent, as far as possible, damage to life, health, property, and natural resources," including the water supply. (Pub. Resources Code, § 3106.) DOGGR regulations are extensive. (See, e.g. Cal. Code Regs., tit. 14, §§ 1722-1722.9, 1723, 1723.7, 1724, 1724.1, 1775.) These regulations are intended to be "statewide in application for onshore drilling, production and injection operations." (*Id.*, § 1712.)

Effective January 1, 2014, DOGGR's obligation to regulate the oil and gas industry's use of well stimulation treatments (WSTs), including hydraulic fracturing, was codified by SB 4. (Pub. Resources Code, § 3150, et seq.) SB 4 charged DOGGR with creating permanent regulations specific to WSTs. (Pub. Resources Code, § 3160, subd. (b)(1)(A).) DOGGR's regulations, which created a state permitting system for WSTs, went into effect in July 2015. (Cal. Code Regs., tit. 14, §§ 1761, 1780-1789.)

Further, in California, the U.S. EPA has delegated to DOGGR the authority to permit and regulate "Class II" injection wells under the Underground Injection Control (UIC) program. (40 C.F.R. § 147.250.) The UIC program falls under the federal Safe Drinking Water Act (42 U.S.C. § 300f, et seq.), the purpose of which is to protect "underground sources of drinking water" (40

C.F.R. § 144.1). The Class II injection category includes wells used to enhance oil recovery through the injection of fluids, including steam and water. (*Id.*, § 144.6(B).) All UIC projects are subject to DOGGR approval. (Cal. Code Regs., tit. 14, § 1724.10.) DOGGR strictly regulates UIC projects, enforces testing and equipment requirements, and requires both monthly reporting of injection activity and chemical analysis of injection fluids. (*Id*, §§ 1724.9, 1724.10.)

2.2 Preemption Law

Under state law, Petitioners bear the burden of proving preemption. (*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1149.) Voter-approved initiatives, such as Measure Z, are "subject to the same constitutional limitations and rules of construction as are other statutes." (*Legislature v. Deukmejian* (1983) 34 Cal.3d 658, 675.)

"Under article XI, section 7 of the California Constitution, '[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.'" (*Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897-898.) However, "[l]ocal legislation in conflict with general law is void. Conflicts exist if the ordinance duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication." (*Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 747, internal citations omitted.)

"Local legislation is duplicative of general law when it is coextensive therewith. [¶] Similarly, local legislation is contradictory to general law when it is inimical thereto. [¶] Finally, local legislation enters an area that is fully occupied by general law when the Legislature has expressly manifested its intent to fully occupy the area, or when it has impliedly done so in light of one of the following indicia of intent: (1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the locality." (*Sherwin-Williams*, *supra*, 4 Cal.4th at p. 898, internal citations omitted.)

Likewise, the federal Supremacy Clause empowers Congress to preempt state and local law. (*California Grocers Assn. v. City of Los Angeles* (2011) 52 Cal.4th 177, 193, citing U.S. Const., art. VI, cl. 2.) "There are four species of federal preemption: express, conflict, obstacle, and field." (*Viva! Internat. Voice for Animals v. Adidas Promotional Retail Operations, Inc.* (2007) 41 Cal.4th 929, 935.) Express preemption occurs when Congress "define[s] explicitly the extent to which its enactments pre-empt state law." (*English v. General Electric Co.* (1990) 496 U.S. 72, 78.) "[C]onflict preemption will be found when simultaneous compliance with both state and federal directives is impossible." (*Viva!, supra*, 41 Cal.4th at p. 936.) Preemption also occurs when state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." (*Crosby v. Nat. Foreign Trade Council* (2000) 530 U.S. 363, 373, citation omitted.) Courts will infer field preemption "when it is clear . . . that Congress intended, by legislating comprehensively, to occupy an entire field of regulation." (*Capital Cities Cable, Inc. v. Crisp* (1984) 467 U.S. 691, 699.) "[F]or the purposes of the Supremacy Clause, the constitutionality of local ordinances is analyzed in the same way as that of statewide laws. [Citation.]" (*Hillsborough County, Fla. v. Automated Medical Laboratories, Inc.* (1985) 471 U.S. 707, 713.)

Courts are "reluctant to infer legislative intent to preempt a field covered by municipal regulation when there is a significant local interest to be served that may differ from one locality to another." (*Fisher v. City of Berkeley* (1984) 37 Cal.3d 644, 707.) "The inherent local police power includes broad authority to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within a local jurisdiction's borders, and preemption by state law is not lightly presumed." (*City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, 738.) Thus, "when local government regulates in an area over which it traditionally has exercised control, such as the location of particular land uses, California courts will presume, absent a clear indication of preemptive intent from the Legislature, that such regulation is not preempted by state statute." (*Big Creek, supra*, 38 Cal.4th at 1149.)

2.3 Well Stimulation Treatments

Measure Z's Policy LU-1.21 prohibits "[t]he development, construction, installation, or use of any facility, appurtenance, or above-ground equipment, whether temporary or permanent, mobile or fixed, accessory or principal, in support of well stimulation treatments . . . within the County's unincorporated area." (AR 155.)

"Well stimulation treatments" are defined as "any treatment of a well designed to enhance oil and gas production or recovery by increasing the permeability of the formation. Well stimulation treatments include, but are not limited to, hydraulic fracturing treatments and acid well stimulation treatments. Well stimulation treatments do not include steam flooding, water flooding, or cyclic steaming and do not include routine well cleanout work, routine well maintenance, routine removal of formation damage due to drilling, bottom hole pressure surveys, or routine activities that do not affect the integrity of the well or the formation." (AR 155.)

Policy LU-1.21 defines the term "hydraulic fracturing treatment" as a WST "that, in whole or in part, includes the pressurized injection of hydraulic fracturing fluid or fluids into an underground geologic formation in order to fracture or with the intent to fracture the formation, thereby causing or enhancing the production of oil or gas from a well." (AR 155.) Further, Policy LU-1.21 defines "acid well stimulation treatment" as a WST "that uses, in whole or in part, the application of one or more acids to the well or underground geologic formation." (*Ibid.*)

Petitioners argue that state law preempts Policy LU-1.21.

2.3.1 Standing

Intervenors contend that Petitioners lack standing to challenge the WST prohibition because they have conceded they neither use WSTs nor are likely to do so in the future. Petitioners respond that the parties stipulated not to raise standing at this phase of the proceedings. Petitioners further respond that they have standing because they are concerned that Measure Z's definition of "acid well simulation treatment" may include certain well maintenance performed with hydrochloric acid.

Only parties with a real interest in a dispute have standing. (Code Civ. Proc., § 367.) A real party in interest is defined as "the person possessing the right sued upon by reason of the substantive law." (*Powers v. Ashton* (1975) 45 Cal.App.3d 783, 787.) Challenges to standing are

jurisdictional; they "may be raised at any time in the proceeding. [Citations.]" (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 438; *Payne v. United California Bank* (1972) 23 Cal.App.3d 850, 859 ["The question of standing to sue is one of the right to relief and goes to the existence of a cause of action against the defendant"].) Accordingly, the fact that the parties have stipulated not to raise standing in this phase of the proceedings is immaterial.

A party has standing to bring a petition for writ of mandate where "there is not a plain, speedy, and adequate remedy, in the ordinary course of law. It must be issued upon the verified petition of the party beneficially interested." (Code Civ. Proc., § 1086.) The "beneficially interested" requirement "has been generally interpreted to mean one may obtain the writ only if the person has some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large. [Citations.]" (*Carsten v. Psychology Examining Com.* (1980) 27 Cal.3d 793, 796.) "The petitioner's interest in the outcome of the proceedings must be substantial, i.e., a writ will not issue to enforce a technical, abstract or moot right. The petitioner also must show his legal rights are injuriously affected by the action being challenged." (*Braude v. City of Los Angeles* (1990) 226 Cal.App.3d 83, 87, internal citations omitted; see also *Lujan v. Defenders of Wildlife* (1992) 504 U.S. 555, 560 [to have standing, a party "must have suffered an 'injury in fact' — an invasion of a legally protected interest which is (a) concrete and particularized . . . ; and (b) "actual or imminent, not 'conjectural' or 'hypothetical'"].)

Petitioners concede they do not presently use WSTs and are unlikely to do so in the future. (See, e.g, Stipulated Facts, ¶ 29; Wilson Dec., ¶¶ 30, 32 [Eagle]; Miller Dec., ¶ 17 [CRC]; Declaration of Charles G. Kemp (Kemp Dec.), ¶ 3, Ex. A, p. 51 [Aera]; Tubbs Dec., ¶ 42 [Chevron]; Gore Dec., ¶ 10 [NARO].) Petitioners nevertheless argue they have standing to challenge the WST prohibition on several grounds.

First, Petitioners are disquieted that a perceived ambiguity in the definition of "acid well stimulation treatment" could potentially subject them to adverse action under Measure Z. A Chevron declarant explains, "Well cleanout and maintenance operations may involve the use of hydrochloric acid. This type of cleanout is not considered well stimulation so long as the maintenance operations comply with the acid volume thresholds set pursuant to DOGGR's

regulations. However, because Measure Z does not incorporate DOGGR's regulations into its provisions," it is "unclear" how the County will determine whether these cleanouts are permissible or prohibited. (Tubbs Dec., ¶ 53.)

To determine whether the use of acid in oil operations constitutes a WST under SB 4, the Legislature directed DOGGR to "establish special values for acid volume applied protruded foot of any individual stage of the well or for total acid volume of the treatment, or both, based upon a quantitative assessment of the risks posed by acid matrix stimulation treatments that exceed the specified threshold value or values in order to prevent, as far as possible, damage to life, health, property, and natural resources pursuant to Section 3106." (Pub. Resources Code, § 3160, subd. (B)(1)(C).) DOGGR did so. (Cal. Code Regs., tit. 14, § 1761, subd. (a)(1)(A)(ii)-(iii), (a)(3).)

Measure Z declares that its definition of "acid well stimulation treatment" "tracks the state law." (AR 152.) Indeed, Measure Z's definition is *identical* to the definition of that term under state law. (Pub. Resources Code, § 3158.) Moreover, Measure Z exempts "routine well cleanout work" and "routine well maintenance" from its definition of WST. (AR 152.) Consequently, to the extent Petitioners' well cleanout and maintenance operations do not exceed DOGGR thresholds, the court construes Measure Z to except those operations from its definition of WST.

The court's construction is supported by the canon of constitutional doubt. That canon requires that this court "adhere to the precept that a court, when faced with an ambiguous statute that raises serious constitutional questions, should endeavor to construe the statute in a manner which *avoids* any doubt concerning its validity." (*People v. Leiva* (2013) 56 Cal.4th 498, 506-507, italics in original, internal citations omitted.) The canon reflects the judgment that "courts should minimize the occasions on which they confront and perhaps contradict the legislative branch.' [Citation.]" (*People v. Gutierrez* (2014) 58 Cal.4th 1354, 1373.)

Petitioners contend that this interpretation of the WST prohibition would not bind other parties and hence, that the purported ambiguity would expose them to the risk of enforcement. However, should the WST prohibition ultimately be enforced against Petitioners, they would then have standing to object to such enforcement in this court.

Petitioners claim Intervenors would then argue such a challenge was time-barred. (See Gov. Code, § 65009, subd. (c)(1) [90-day bar on facial challenges to general plan amendments].) This is possible, but any such claim would be defeated by the doctrine of equitable tolling. That doctrine is "designed to prevent unjust and technical forfeitures of the right to a trial on the merits when the purpose of the statute of limitations—timely notice to the defendant of the plaintiff's claims—has been satisfied." (*Appalachian Ins. Co. v. McDonnell Douglas Corp.* (1989) 214 Cal.App.3d 1, 38.) "Where applicable, the doctrine will suspend or extend a statute of limitations as necessary to ensure fundamental practicality and fairness. Broadly speaking, the doctrine applies when an injured person has several legal remedies and, reasonably and in good faith, pursues one. Thus, it may apply . . . where a first action, embarked upon in good faith, is found to be defective for some reason." (*McDonald v. Antelope Valley Community College Dist.* (2008) 45 Cal.4th 88, 99-100, internal citations omitted.) It would be inequitable to bar Petitioners from prosecuting a facial challenge to Policy LU-1.21 when they lacked standing to bring such a challenge within the statutory period.

Petitioners also argue that even if they lack beneficial interest standing they nevertheless have standing under the "public interest exception." That exception provides, "where the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty, the [petitioner] need not show that he has any legal or special interest in the result, since it is sufficient that he is interested as a citizen in having the laws executed and the duty in question enforced.' [Citation.]" (*Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 166.) "When the duty is sharp and the public need weighty, the courts will grant a mandamus at the behest of an applicant who shows no greater personal interest than that of a citizen who wants the law enforced. [Citations.] When the public need is less pointed, the courts hold the petitioner to a sharper showing of personal need." (*McDonald v. Stockton Met. Transit Dist.* (1973) 36 Cal.App.3d 436, 440.) Here, Petitioners do not seek to enforce a public right, but rather, seek to preserve a private right to benefit economically from WSTs. (See *Weiss v. City of L.A* (2016) 2 Cal.App.5th 194, 205-206.) And, even if Petitioners otherwise qualified for public interest standing, the application of the doctrine is within the court's discretion. (*Save the Plastic Bag Coalition, supra,* 52 Cal.4th at p. 170, fn. 3 ["we do not

suggest that public interest standing is freely available to business interests lacking a beneficial interest in the litigation. No party, individual or corporate, may proceed with a mandamus petition as a matter of right under the public interest exception"].)

Relatedly, Petitioners contend that the WST prohibition is "of great public interest" and that this fact alone suffices to confer standing. Indeed, courts have occasionally relied on this rationale to find standing. (See, e.g., *California Water & Tel. Co. v. Los Angeles County* (1967) 253 Cal.App.2d 16, 26.) However, this has generally occurred when other factors favoring standing are present. (*Ibid.*) "The fact that an issue raised in an action for declaratory relief is of broad general interest is not grounds for the courts to grant such relief in the absence of a true justiciable controversy. [Citations.]" (*Zetterberg v. State Dept. of Public Health* (1974) 43 Cal.App.3d 657, 662.) Finally, Petitioners imply that they may qualify for taxpayer standing. (See, e.g., *Harman v. San Francisco* (1972) 7 Cal.3d 150, 159.) Petitioners do not explain how this doctrine applies here.

In sum, unless and until Petitioners or another party actually propose or engage in WSTs, the question whether LU-1.21 is preempted is not ripe for adjudication and is therefore best left for another day. (See *Braude*, *supra*, 226 Cal.App.3d at p. 87; *California School Emp. Assn v. Sequoia Union High School Dist.* (1969) 272 Cal.App.2d 98, 104 [a "court will not undertake to decide abstract questions of law at the request of a party who shows no substantial right that can be affected by a decision either way"].)

2.4 Wastewater Injection and Impoundment

Policy LU-1.22 provides, "The development, construction, installation, or use of any facility, appurtenance, or above-ground equipment, whether temporary or permanent, mobile or fixed, accessory or principal, in support of oil and gas wastewater injection or oil and gas wastewater impoundment is prohibited on all lands within the County's unincorporated area." (AR 155.)

Policy LU-1.22 defines "oil and gas wastewater injection" as "the injection of oil and gas wastewater into a well for underground storage or disposal." Policy LU-1.22 defines "oil and gas wastewater impoundment" as "the storage or disposal of oil and gas wastewater in depressions or basins in the ground, whether manmade or natural, lined or unlined, including percolation ponds

and evaporation ponds." Finally, Policy LU-1.22 defines "oil and gas wastewater" as "wastewater brought to the surface in connection with oil or natural gas production, including flowback fluid and produced water." (AR 155.)

Petitioners argue that state and federal law (and state law enacted in furtherance of federal law) preempt Policy LU-1.22. Specifically, Petitioners assert that 1) Policy LU-1.22 conflicts with state law, and is thus preempted; the SDWA's express language forbids local governments from impairing or impeding state underground injection programs; 2) the EPA has approved DOGGR's regulatory scheme, which conflicts with Measure Z; 3) Policy LU-1.22 stands as an obstacle to the SDWA's purposes; and 4) the SDWA occupies the field of oil and gas wastewater injection.

The County and Intervenors contend that 1) Policy LU-1.22 is a valid exercise of the County's police power; 2) the SDWA authorizes Measure Z's ban on underground injection because it is "essential" to protect County drinking water; 3) the SDWA contains a "savings clause," which refutes Petitioners' suggested inference of field preemption; and 4) Measure Z aligns with, rather than frustrates, the SDWA's policy goals.

2.4.1 State Preemption

2.4.1.1 Field Preemption

Petitioners argue that the extensive legal and regulatory scheme described above fully occupies the field of oil and gas regulation in California. Petitioners also argue that the historical trend of increased state regulation of the oil and gas industry evinces the Legislature's intent to occupy the field. (See, e.g., Pub. Resources Code, §§ 3130-3132, 3150-3161; Cal. Code Regs., tit. 14, §§ 1761, 1780-1789.) Petitioners cite a 1976 California Attorney General opinion in support of these claims.[7] In that opinion, the Attorney General stated that State oil and gas law preempts "nearly all local regulations of oil and gas production" because local regulation of such resources "would subject development of the state's fuel resources to [a] checkerboard of regulations' . . . . Such local regulation could obviously interfere with and frustrate the state's conservation and protection regulatory scheme." (59 Ops.Cal.Atty.Gen 461, 469, 477 (1976)

[7] "Opinions of the Attorney General, while not binding, are entitled to great weight." (*California Assn. of Psychology Providers v. Rank* (1990) 51 Cal.3d 1, 17, internal citations omitted.)

[JRJN, Ex. 32], internal citation omitted.) The Attorney General explained, "[w]here the statutory scheme or Supervisor specifies a particular method, material or procedure by a general rule or regulation or gives approval to a plan of action with respect to a particular well or field or approves a transaction at a specified well or field, it is difficult to see how there can be any room for local regulation . . . . [¶] We observe that these statutory and administrative provisions appear to occupy fully the underground phases of oil and gas activities." (*Id.* at p. 478.)

The County and Intervenors essentially concede in briefing that state oil and gas law preempts local law as to "technical, downhole activities." However, they characterize Measure Z as a land use regulation addressing surface, as opposed to subsurface activities. They observe that the Attorney General wrote that, as to regulation concerning "land use, environmental protection, aesthetics, public safety, and fire and noise prevention, local governments may impose regulations more stringent than those imposed by the state so long as they do not conflict with, frustrate the purposes of, or destroy the uniformity of the Supervisor's statewide regulatory conservation and protection program. As we have stated, these latter activities appear to be, for the most part, surface activities." (*Id.* at p. 478.) The County and Intervenors reason that Measure Z does not prohibit wastewater injection and impoundment, but rather, prohibits *surface* equipment and activities "*in support of*" these techniques and hence, that Policy LU-1.22 is a valid exercise of the County's police power. There are several problems with this claim.

First, Measure Z's purported prohibition on certain "land uses" is clearly a pretextual attempt to do indirectly what it cannot do directly. (See 59 Ops.Cal.Atty.Gen at p. 478 ["there will . . . be a conflict with state regulation when a local entity, attempting to regulate for a local purpose, *directly or indirectly* attempts to exercise control over subsurface activities"].) Nothing in Measure Z or in Intervenors' brief provides a meaningful distinction between wastewater injection and impoundment on the one hand, and surface equipment and activities in support of wastewater injection and impoundment on the other. And tellingly, Intervenors conceded at argument that Measure Z does not merely regulate surface land uses but instead, "specifically prohibit[s] wastewater injection for storage and disposal."

Second, the County and Intervenors' focus on the distinction between surface and subsurface activities is an oversimplification.[8] At bottom, the relevant issue is not whether the activity regulated takes place on the surface or below the surface, but rather whether Measure Z regulates the *conduct* of oil and gas operations or their permitted *location*. (59 Ops.Cal.Atty.Gen at p. 478; see *Big Creek Lumber*, *supra*, 38 Cal.4th at pp. 1152, 1157.) The County and Intervenors are correct that, in general, the County may exercise its broad police power to regulate land use, even to the extent of prohibiting oil and gas production in specific zones or in the County as a whole. (*Pacific Palisades Assn v. City of Huntington Beach* (1925) 196 Cal. 211, 217; *Beverly Oil Co. v. City of Los Angeles* (1953) 40 Cal.2d 552, 555; *Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach* (2001) 86 Cal.App.4th 534.) However, this does not answer the question whether state law preempts the use of that police power, an issue that none of the cases the County and Intervenors cite addressed. (59 Ops.Cal.Atty.Gen at p. 467 ["[a]s has been said, these cases without exception fail to consider any conflict between local and state authority"].)

Moreover, even if the County and Intervenors' argument were accepted, it would change nothing. Measure Z's prohibition of WSTs is not a ban on the *location* of oil and gas drilling or restrictions on the use to which operators may put land. Rather, Policy LU-1.21 regulates a specific *production technique* used by operators on lands upon which oil and gas development is permitted. Such regulation directly conflicts with DOGGR's mandate.[9] (Pub. Resources Code, § 3106, subd. (b) ["The Supervisor shall . . . supervise the drilling, operation, maintenance, and abandonment of wells so as to permit the owners or operators of the wells to utilize all methods and practices known to the oil industry for the purpose of increasing the ultimate recovery of

[8] At argument, Intervenors, who were represented on this point by a certified law student, appeared to abandon this distinction entirely, contending it to be "artificial" because, inter alia, subsurface activity "is accompanied inherently by surface activities" and by accompanying surface land uses. This claim both directly contradicts Intervenors' briefing and cannot be reconciled with Measure Z's focus on surface uses in support of subsurface activities.

The court further notes that Intervenors' counsel failed to present or file a copy of a signed consent form from their clients authorizing a certified law student to appear on their behalf. (Cal. Rules of Court, Rule 9.42(d)(3)(D).) The court reminds Intervenors' counsel of its obligation to observe this rule in the future.

[9] For this reason, Intervenors' claims that state oil and gas regulation do not preempt "zoning restrictions" or "local land use law" are accurate, but beside the point.

underground hydrocarbons . . ."]; 59 Ops.Cal.Atty.Gen at p. 478 [The state's "statutory and administrative regulatory scheme . . . exclude[s] local regulation in each instance where the Supervisor or his regulatory program approves or specifies plans of operation, methods, materials, procedures or equipment to be used by the operator . . ."].)

Intervenors respond that the statutory and regulatory scheme with respect to state oil and gas operations is relevant only to the "technical requirements" of operations, not to the question whether those operations may be permitted in the first place. Intervenors contend that local governments retain the police power to proscribe such operations, and that Measure Z is merely an exercise of that power. But Measure Z is a ban on specific production techniques *not* a total ban on oil operations.

In short, California's state oil and gas legal and regulatory scheme fully occupies the area of the manner of oil and gas production. Because Policy LU-1.22 seeks to regulate the manner of oil and gas production by restricting particular production techniques, namely wastewater injection and impoundment, it is "in conflict with general law," and is therefore preempted. (*Morehart, supra*, 7 Cal.4th at p. 747.)

2.4.1.2 Policy LU-1.22 is "contradictory" to general law.

Policy LU-1.22 is also preempted because it is "contradictory" of general law. (*Sherwin-Williams, supra*, 4 Cal.4th at p. 898.) Public Resources Code, section 3106, subdivision (b), provides, "[t]he supervisor *shall* also supervise the drilling, operation, maintenance, and abandonment of wells *so as to permit the owners or operators of the wells to utilize all methods and practices known to the oil industry for the purpose of increasing the ultimate recovery of underground hydrocarbons* and which, in the opinion of the supervisor, are suitable for this purpose in each proposed case. To further the elimination of waste by increasing the recovery of underground hydrocarbons, it is hereby declared as a policy of this state that the grant in an oil and gas lease or contract to a lessee or operator of the right or power, in substance, to explore for and remove all hydrocarbons from any lands in the state [and] . . . to do what a prudent operator using reasonable diligence would do . . . including, but not limited to, *the injection of air, gas, water, or other fluids into the productive strata* . . . when these methods or processes employed have been approved by the supervisor . . . ." (Italics added.)

By enacting this statute, the Legislature expressly declared the state's policy regarding, inter alia, wastewater injection. Policy LU-1.22, then, is irreconcilable with state policy. (See *Fiscal v. City & County of S.F.* (2008) 158 Cal.App.4th 895, 914-915 [local law was "irreconcilable, clearly repugnant, and so inconsistent" with state law that "the two cannot have concurrent operation"].)

2.4.1.3 The effect of "savings clauses"

The County and Intervenors argue that three statutes indicate the Legislature did not intend to preempt the field of oil and gas regulation.

2.4.1.3.1 Public Resources Code, section 3690

Both the County and Intervenors contend Public Resources Code, section 3690 undermines Petitioners' preemption argument. Section 3690 is expressly limited to a single chapter of Division 3 dealing with unitized operations.[10] The County and Intervenors acknowledge this, but insist the statute demonstrates the Legislature "expressly intended not to preempt the field." Intervenors argues that this section applies here because it "directly covers operations on unitized fields like those at issue."

These claims are not persuasive. As the Attorney General noted in its opinion on which both the County and Intervenors heavily rely, "[t]his declaration in Public Resources Code section 3690 applies only to 'any existing rights' and only to the provisions of 'this chapter,' *i.e.*, chapter 3.5." (59 Ops.Cal.Atty.Gen at p. 473.) Petitioners' preemption arguments do not rely upon Chapter 3.5. Moreover, the fact that no other chapter of Division 3 contains such a provision indicates that the statute was intentionally limited to Chapter 3.5. (*Gikas v. Zolin* (1993) 6 Cal.4th 841, 852 ["The expression of some things in a statute necessarily means the exclusion of other things not expressed"].)

[10] Section 3690 provides, "*[t]his chapter* shall not be deemed a preemption by the state of any existing right of cities and counties to enact and enforce laws and regulations regulating the conduct and location of oil production activities, including, but not limited to, zoning, fire prevention, public safety, nuisance, appearance, noise, fencing, hours of operation, abandonment, and inspection." (Italics added.)

2.4.1.3.2 Public Resources Code, sections 3206.5 and 3320.1, subdivision (c)

Finally, the County argues that Public Resources Code, sections 3206.5 and 3320.1, subdivision (c), blunt Petitioners' preemption argument. Section 3206.5 authorizes cities and counties to request that DOGGR 1) provide information concerning non-producing oil wells; and 2) determine "whether the wells should be plugged and abandoned." Section 3206.5 also authorizes DOGGR to compel operators to provide reasons why non-producing wells should not be plugged and abandoned. Section 3320.1, subdivision (c), preserves local governments' right of eminent domain in order to address land subsistence problems related to oil or gas pools. The County maintains that these provisions evince the Legislature's intent to "include and work with local agencies." But these statutes neither confer authority on local governments to regulate the manner of oil production nor suggest DOGGR's authority to do so is non-exclusive. At best, they recognize only that oil and gas production operations are subject to both state and local oversight, a premise implicit in the discussion *ante*, concerning the distinction between regulating the manner of oil production and the location of that production.

2.4.1.4 Federal Preemption

Petitioners also contend that Policy LU-1.22 directly conflicts with the Safe Water Drinking Act (SWDA)'s express terms.

The SDWA directed the EPA to oversee underground injection throughout the United States. (42 U.S.C. § 300h, et seq.) Nevertheless, the SDWA provides that states may obtain "primary enforcement responsibility" to enforce the SDWA's UIC program if they have adopted and implemented adequate standards and enforcement measures. (42 U.S.C. § 300h-1.) In 1982, the EPA granted DOGGR this primary enforcement responsibility for the State of California. (40 C.F.R. § 147.250.)

The SDWA establishes certain minimum requirements and restrictions for state UIC programs. (42 U.S.C. § 300h(b).) As relevant here, a state program "may not prescribe requirements which interfere with or impede" underground injection "unless such requirements are essential to assure that underground sources of drinking water will not be endangered by such injection." (42 U.S.C. § 300h(b)(2).) Petitioners maintain that Measure Z is in direct conflict

with this provision. The County and Intervenors respond that Congress structured the SDWA to establish minimum standards that leave room for more stringent local regulation, such as Measure Z. They further respond that Policy LU-1.22 is a land use policy decision the County made because it determined that the Policy was "essential" to protect County drinking water.

It is true that the SDWA generally does not bar states from enacting supplemental or more stringent restrictions on UIC programs. (See 42 U.S.C. § 300h-1(b)(1)(B)(3); 40 C.F.R. § 145.1(g).) The SDWA expressly provides that it does not "diminish any authority of a State or political subdivision to adopt or enforce any law or regulation respecting underground injection but no such law or regulation shall relieve any person of any requirement otherwise applicable under this subchapter." (42 U.S.C. § 300h-2(d).) "Congress intended that states retain authority respecting underground injection so long as it does not impinge on the UIC program administered by the EPA." (*Bath Petroleum Storage, Inc. v. Sovas* (N.D.N.Y. 2004) 309 F.Supp.2d 357, 367-368.)

As an initial matter, there is a significant difference between stringent regulation and outright proscription; "surely the prohibition above prevents such local law from altogether preventing UIC activity." (*EQT Production Company, supra*, 191 F.Supp.3d at p. 601, affd. on other grounds (4th Cir. 2017) 870 F.3d 322.)[11] Measure Z prohibits underwater injection notwithstanding that DOGGR, in implementing its UIC program, has established regulations requiring DOGGR approval for any injection or disposal project, together with extensive filing, notification, operating, and testing requirements for such projects. (Cal. Code Regs., tit. 14, §§ 1724.06, 1724.10.) Where "the state has undertaken to allow UIC wells, [that] action operates to diminish the counties' powers to prohibit them." (*EQT Production Company, supra*, 191 F.Supp.3d at p. 601.)[12]

---

[11] On appeal, the Fourth Circuit resolved the dispute on state preemption grounds and thus, found it unnecessary to reach the federal preemption issue. (*Id.* at p. 332.) Nevertheless, the trial court's opinion on that point was not superseded; it remains persuasive authority. (*Credit Managers Assn of California v. Countrywide Home Loans, Inc.* (2006) 144 Cal.App.4th 590, 598.)

[12] In addition, although the SDWA's "savings clause" explicitly preserves some local authority *under state law*, the County lacks the authority under state law to regulate the manner of oil and gas production. (Pub. Resources Code, § 3106, subd. (b); 59 Ops.Cal.Atty.Gen at p. 478; see *Big Creek Lumber, supra*, 38 Cal.4th at pp. 1152, 1157.)

Intervenors contend that the SDWA's prohibition on regulations "which interfere with or impede" underground injection (42 U.S.C. § 300h(b)(2)) is limited to federally mandated UIC programs. Intervenors maintain that the SDWA's "savings clause" (42 U.S.C. § 300h-2(d)) applies to the entire Act, effectively trumping Title 42 United States Code section 300h(b)(2), as applied to local governments. Consequently, Intervenors assert that the obligation not to "interfere with or impede" underground injection applies to the state but not its subdivisions. This claim suffers from at least two defects.

First, the text of the "savings clause" does not support this reading. Although the statute preserves local authority "respecting underground injection," that authority is qualified by the subsequent phrase providing that a law enacted under that authority "shall [not] relieve any person of any requirement otherwise applicable under this subchapter." (42 U.S.C. § 300h-2(d).) A local law like Measure Z, then, cannot relieve the County[13] of its obligation not to "prescribe requirements which interfere with or impede" underground injection programs. (42 U.S.C. § 300h(b)(2).) Second, Intervenors' argument would lead to states possessing less authority than their own political subdivisions, an absurd result. "[T]he superior, overriding power of the state must enable the state to occupy the field to the exclusion of its own subdivisions, lest its superiority be circumscribed." (*EQT Production Company, supra*, 191 F.Supp.3d 583 at p. 601.)

The County and Intervenors further argue that Measure Z is not preempted because it is "essential" to protect drinking water from endangerment, an express exception to the SDWA's prohibition on regulations that prescribe requirements "which interfere with or impede" underground injection. In support of this argument, the County and Intervenors cite Measure Z's Finding 5, which states that wastewater injection and disposal present "a risk of water pollution and soil contamination." (AR 153.) There are three problems with this claim.

First, the County and Intervenors incorrectly assume that the County is authorized to make this finding. In truth, when as here, the EPA has conferred primacy on a state, the SDWA expressly charges that state with determining whether a regulation is essential to protect drinking water. (42 U.S.C. § 300h(b)(2) [regulations for "*State* underground injection control programs

[13] Although the statute refers to a "person," the subchapter's definition of the term expressly includes a "State [or] municipality . . . ." (42 U.S.C. § 300f(12).)

may not prescribe requirements which interfere with or impede" underwater injection "unless such requirements are essential to assure that underground sources of drinking water will not be endangered by such injection"], italics added.) Had Congress intended political subdivisions to make such determinations, it could have so stated. After all, it expressly referenced political subdivisions in the "savings clause" upon which the County and Intervenors rely. (42 U.S.C. § 300h-2(d); see *EQT Production Company, supra*, 191 F.Supp.3d at p. 602 ["wastewater properly injected into UIC wells pursuant to state and federal law does not become pollution simply because the [County] says so"].)

Second, the State has recently indicated that such a finding is the province of DOGGR and the State and Regional Water Boards. In 2015, the Legislature amended the Public Resources Code to add Article 2.5, "Underground Injection Control" (§§ 3130-3132), to its oil and gas conservation chapter. That Article requires DOGGR, prior to proposing an aquifer exemption to the EPA, to "consult with the appropriate regional water quality control board and the state board," provide a public comment period, hold a joint public hearing, and if both DOGGR and the State Water Board "concur that the exemption proposal merits consideration for exemption," submit the proposal to the EPA. (Pub. Resources Code, § 3131.)

Third, the State, through DOGGR and the State Water Board, has already followed this process — at least as to San Ardo — and determined that underground water injection will not endanger the relevant water sources. (JRJN, Exs. 27-29; Petitioners' Supplemental JRJN, Exs. 3-4.) That determination trumps Measure Z's findings. Policy LU-1.22 would directly undermine the authority and contradict the expert opinion of two state agencies charged by the EPA to make the requisite determinations. (40 C.F.R. § 147.250; JRJN, Ex. 73; see also Pub. Resources Code, §§ 3106, 3131.) Therefore, Policy LU-1.22 "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." (*Crosby, supra*, 530 U.S. at p. 377.)

The County and Intervenors contend that this conclusion "stands the SDWA on its head." They note that Congress' "overriding concern" in enacting the law was to assure "the safety of present and potential sources of drinking water" not to encourage underwater injection. (*Phillips Petroleum Co. v. U.S. E.P.A.* (10th Cir. 1986) 803 F.2d 545, 560.) They maintain that Measure Z promotes this purpose.

It is true that the SDWA is primarily concerned with protecting drinking water. However, "[t]he principal legislative history explains that . . . [Congress] contemplated regulation, not prohibition, because of the importance of avoiding needless interference with energy production and other commercial uses." (*W. Neb. Resources Council v. U.S. EPA* (8th Cir. 1991) 943 F.2d 867, 870.) Thus, Congress intended the SDWA's prohibition on interfering with or impeding underground injection "to assure that constraints on energy production activities would be kept as limited in scope as possible while still assuring the safety of present and potential sources of drinking water." (H.R. Rep. No. 93-1185, 93rd Cong., 2d Sess., reprinted in 4 1974 U.S. Code, Cong. & Admin. News 6454, 6480-6484.) As discussed *ante*, the EPA delegated the role of insuring the safety of drinking water to the State not the County. (42 U.S.C. § 300h(b)(2); 40 C.F.R. § 147.250; JRJN, Ex. 73.)

Hence, the SDWA preempts Policy LU-1.22.[14]

2.5 New Wells

Policy LU-1.23 provides, "The drilling of new oil and gas wells is prohibited on all lands within the County's unincorporated area. This Policy LU-1.23 does not affect oil and gas wells drilled prior to the Effective Date and which have not been abandoned." Policy LU-1.23 defines "oil and gas wells" as "wells drilled for the purpose of exploring for, recovering, or aiding in the recovery of, oil and gas." (AR 156.)

Petitioners argue that state law preempts Policy LU-1.23 because the Policy is a ban on a production technique rather than a true land use regulation. The County and Intervenors respond that ample decisional authority supports the County's right to ban the drilling of new wells.

Preliminarily, the Court observes that, as with Policy LU-1.22, Policy LU-1.23 directly conflicts with the SDWA. Policy LU-1.23's prohibition on new wells extends to wells drilled "for the purpose of . . . aiding in the recovery of [] oil and gas." By its plain language then, Policy LU-1.23 prohibits the drilling of injection wells necessary for oil operators to inject wastewater, effectively banning wastewater injection. (Tubbs Dec., ¶¶ 38-41.) Consequently, Policy LU-1.23 "interfere[s] with or impede[s]" California's UIC program, and as such, is preempted. (42 U.S.C. § 300h(b)(2).)

[14] In light of this conclusion, the court need not reach Petitioners' federal field preemption argument.

Moreover, Policy LU-1.23 impermissibly prohibits certain production techniques. For example, Petitioners have shown that their operations require them to drill new wells for purposes of injecting steam to maintain the "steam chest," an enhanced oil recovery technique necessary to their profitable operation. (Tubbs Dec., ¶¶ 42-47.) Petitioners also drill new wells to dispose of excess produced water and concentrated brine (a byproduct of Petitioner Chevron's reverse osmosis water treatment plant). (*Id.*, ¶¶ 38-41.) Accordingly, Policy LU-1.23 directly conflicts with DOGGR's mandate. (Pub. Resources Code, § 3106, subd. (b) ["it is hereby declared as a policy of this state that the grant in an oil and gas lease or contract to a lessee or operator of the right or power, in substance, to explore for and remove all hydrocarbons from any lands in the state [and] . . . to do what a prudent operator using reasonable diligence would do . . . including, but not limited to, the injection of air, gas, water, or other fluids into the productive strata . . . when these methods or processes employed have been approved by the supervisor . . . "]; 59 Ops.Cal.Atty.Gen at p. 478 [California's "statutory and administrative regulatory scheme . . . exclude[s] local regulation in each instance where the Supervisor or his regulatory program approves or specifies plans of operation, methods, materials, procedures or equipment to be used by the operator . . ."].)

Finally, the County and Intervenors' authorities authorizing prohibitions on the locations upon which new oil wells may be drilled are inapposite. (See, e.g. *Pacific Palisades, supra*, 196 Cal. at p. 217; *Beverly Oil Co., supra*, 40 Cal.2d at p. 555; *Hermosa Beach, supra*, 86 Cal.App.4th at p. 534.) As discussed *ante*, at best these cases stand for the proposition that the County has the authority under the police power to prohibit new wells. They do not, however, address preemption. (See 59 Ops.Cal.Atty.Gen at p. 467; *Hermosa Beach, supra*, 86 Cal.App.4th at pp. 545-546.) The mere fact that the County may legislate in an area under the police power does not divest the State of the superior right to occupy the relevant field and/or adopt contradictory law. (See *EQT Production Company, supra*, 191 F.Supp.3d at p. 601 [where "the state has undertaken to allow UIC wells, [that] action operates to diminish the counties' powers to prohibit them"].)

2.6 Severability

The foregoing thus raises the question whether the invalidity of parts of Measure Z causes the entire Measure to fail. Measure Z's Section 9 contains a severability clause.[15] "Although not conclusive, a severability clause normally calls for sustaining the valid part of the enactment, especially when the invalid part is mechanically severable . . . . Such a clause plus the ability to mechanically sever the invalid part while normally allowing severability, does not conclusively dictate it. The final determination depends on whether the remainder . . . is complete in itself and would have been adopted by the legislative body had the latter foreseen the partial invalidity of the statute . . . or constitutes a completely operative expression of the legislative intent . . . [and is not] so connected with the rest of the statute as to be inseparable." (*Santa Barbara Sch. Dist. v. Superior Court* (1975) 13 Cal.3d 315, 331.)

Three criteria must be satisfied to show the valid portions of the law are severable from the invalid portion(s): "the invalid provision must be grammatically, functionally, and volitionally separable." (*Gerken v. Fair Political Practices Com.* (1993) 6 Cal.4th 707, 714.) To be grammatically severable, the "valid and invalid parts" of the initiative must be able to "be separated by paragraph, sentence, clause, phrase, or even single words." (*People's Advocate, Inc. v. Superior Court* (1986) 181 Cal.App.3d 316, 331.) To be functionally severable, "the sections to be severed, though grammatically distinct, must be capable of independent application" and of separate enforcement. (*Id.* at pp. 331-332.)

Finally, to be volitionally severable, "[t]he remaining portions must constitute an independent operative expression of legislative intent, unaided by the invalidated provisions . . . [and cannot] be inextricably connected to them by policy considerations." (*Barlow v. Davis* (1999) 72 Cal.App.4th 1258, 1263.) In the context of an initiative, "[t]he test is whether it can be said with confidence that the electorate's attention was sufficiently focused upon the parts to be severed so that it would have separately considered and adopted them in the absence of the

[15] "If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, part, or portion of this Initiative is held to be invalid or unconstitutional by a final judgment of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Initiative. The voters hereby declare that this Initiative, and each section, subsection, paragraph, subparagraph, sentence, clause, phrase, part, or portion thereof would have been adopted or passed even if one or more sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, parts, or portions were declared invalid or unconstitutional."

invalid portions." (*Gerken, supra*, 6 Cal.4th at pp. 714-715.) "[I]f a part to be severed reflects a 'substantial' portion of the electorate's purpose, that part can and should be severed and given operative effect." (*Id.* at p. 715, citing *Santa Barbara Sch. Dist., supra*, 13 Cal.3d at pp. 331-332.) When applying this test, courts "look to the initiative measure's text and the ballot materials for guidance . . . ." (*Id.* at p. 717.)

Because this court has found that Policies LU-1.22 and LU-1.23 are preempted, the court must determine whether Policy LU-1.21 survives in their absence. Policy LU-1.21 passes all three severability tests.

Policy LU-1.21 is grammatically separable from the remainder of Measure Z. It is entirely contained in its own section of the initiative. Policy LU-1.21 is functionally severable for much the same reason. The ban on WST is capable of application irrespective of whether the other prohibitions stand.

As to volitional severability, the court can "say with confidence" that the electorate would have separately considered the ban on WST and adopted it "in the absence of the invalid provisions." (*Gerken, supra*, 6 Cal.4th at pp. 714-715.) Measure Z's official title is "Protect Our Water: Ban Fracking and Limit Risky Oil Operations Initiative." (AR 152.) Measure Z declares that its purpose "is to protect Monterey County's water, agricultural lands, air quality, scenic vistas, and quality of life by prohibiting the use of any land within the County's unincorporated area for well stimulation treatments, including, for example, hydraulic fracturing treatments (also known as 'fracking') and acid well stimulation treatments." (*Ibid.*) The measure notes that its proponents drafted the initiative in direct response to the Board of Supervisors' decision not to adopt a WST moratorium. (*Ibid.* [Finding 2].) In fact, 11 of Measure Z's 15 findings refer directly to WSTs. (AR 152-154 [Findings 1-9, 11, and 13].) Additionally, the official materials provided to voters placed great emphasis on WSTs. (AR 364, 387.)

It is true, as Petitioners point out, that proponents often promoted the WST and wastewater provisions injection prohibitions as complementary. (AR 364, 387.) Nevertheless, there can be no doubt that the WST prohibition was a "substantial portion" of Measure Z's purpose. (*Gerken, supra*, 6 Cal.4th at p. 715.) And, given the campaign's focus on the fracking ban, the court believes the electorate would prefer "to achieve at least some substantial portion of

their purpose" rather than see the whole initiative be invalidated. (*Santa Barbara Sch. Dist.*, *supra*, 13 Cal.3d at p. 332.)

Accordingly, Policy LU-1.21 is severable from the remainder of Measure Z.

3. Takings

Petitioners also contend that Measure Z will end all oil and gas operations in Monterey County, effecting a facial regulatory taking of their property, and entitling them to just compensation under the United States and California Constitutions. The County and Intervenors disagree. They also argue that Petitioners have failed to exhaust their administrative remedies, namely the procedure prescribed by Section 6(C) of Measure Z.

Because exhaustion of administrative remedies is "a jurisdictional prerequisite to resort to the courts," the court will take up this issue first. (*Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 293.)

3.1 Administrative Remedies

Measure Z's Section 6(C) allows a landowner to apply for an exception to its provisions if he or she "contends that application of this Initiative effects an unconstitutional taking of property . . . ." If a landowner so contends, the County Board of Supervisors "may grant . . . an exception to application of any provision . . . if [it] finds, based on substantial evidence that both (1) the application of that provision of this Initiative would constitute an unconstitutional taking of property, and (2) the exception will allow additional or continued land uses only to the minimum extent necessary to avoid such a taking." (AR 160.)

The County and Intervenors argue that Petitioners have failed to exhaust this procedure, and hence that their facial takings claims must be denied. The County and Intervenors are incorrect. Petitioners' challenge is facial and thus, a legal issue for which "case-specific factual inquiry is not required." (*Del Oro Hills v. City of Oceanside* (1995) 31 Cal.App.4th 1060, 1076.) Facial challenges are not subject to the exhaustion requirement. (*Ibid.*; *State of California v. Superior Court (Veta Co.)* (1974) 12 Cal.3d 237, 251; see also *City of Santa Barbara v. Adamson* (1980) 27 Cal.3d 123, 135.)

Further, even if this were not the case, the County and Intervenors' argument would still fail. The exhaustion doctrine "has not hardened into inflexible dogma. [Citation.]" (*Ogo*

Associates v. City of Torrance (1974) 37 Cal.App.3d 830, 834.) For example, the exhaustion rule does not apply "where an administrative remedy is . . . inadequate . . . ." (*Tiernan v. Trustees of Cal. State University & Colleges* (1982) 33 Cal.3d 211, 217; *Action Apartment Assn v. Santa Monica Rent Control Bd.* (2001) 94 Cal.App.4th 587, 611.) Section 6(C) is inadequate in several respects.

Action Apartment is instructive. There, Santa Monica landlords were required to place tenant security deposits in an interest-bearing account, but were not initially required to pay the interest accrued from those accounts to their tenants. (*Action Apartment, supra*, 94 Cal.App.4th at p. 595.) However, a 1999 ordinance required landlords to pay tenants three-percent interest on security deposits held for at least one year. (*Ibid.*) A group of landlords sued, complaining that the ordinance worked a regulatory taking. The Rent Control Board successfully demurred, but the Court of Appeal reversed, finding that the landlords had stated a takings claim. (*Id.* at p. 621.)

On appeal, the Board claimed that the landlords had failed to exhaust their administrative remedies, i.e. the general and/or individual rent adjustment process. (*Id.* at p. 611.) The Court disagreed because, inter alia, it found that these procedures "d[id] not offer an . . . adequate remedy." (*Id.* at pp. 612-615.) Specifically, the Court noted, 1) the challenge to the regulations "present[ed] a dispositive question within judicial, not administrative, competence"; 2) the administrative process was "not likely to resolve the dispute in a manner that makes judicial review unnecessary" because the City's 3,200 landlords would be required to file individual petitions, notwithstanding that the key issue was facial, and therefore identical as to each affected landlord; 3) "[t]he dispute [could] efficiently and inexpensively be resolved in a judicial forum"; and 4) the processing of each individual rent petition imposed "a severe time and financial burden on a landlord [and] require[d] a long administrative process . . . ." (*Id.* at p. 615, internal citations omitted.)

Section 6(C) suffers from many of the same defects. First, although the Board undoubtedly possesses substantial expertise in some areas, the decision whether a taking has occurred is a legal one; "an administrative agency is not competent to decide whether its own action constitutes a taking . . . ." (*Hensler v. City of Glendale* (1994) 8 Cal.4th 1, 16.) Thus,

"[t]he Board's expertise is of no assistance here." (*Action Apartment, supra*, 94 Cal.App.4th at p. 615.)

Second, the County would require potentially hundreds of mineral rights owners[16] and oil and gas operators to file individual petitions for exceptions. To the extent the issues raised are facial, such individual processes would be highly inefficient; such disputes could more "efficiently and inexpensively be resolved in a judicial forum." (*Action Apartment, supra*, 94 Cal.App.4th at p. 615.) Indeed, this court is engaged in just such an undertaking. Additionally, to the extent as-applied takings claims are at issue, the Board would be required to engage in complex, lengthy factual determinations as to each of the potentially hundreds of affected parties. (See JRJN, Ex. 35; Supplemental JRJN, Ex. 5; AR 373.) Such a procedure would impose "a severe time and financial burden on each rights holder." (*Action Apartment, supra*, 94 Cal.App.4th at p. 615.) And, because so many parties would be affected, Section 6(C) "inherently and unnecessarily precludes reasonably prompt action except perhaps for a lucky few." (*Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129, 172.)

Third, the procedure would almost certainly require judicial review. An applicant would likely appeal both a Board decision to reject an exception in its entirety and one to grant an exception only in part. Similarly, any member of the public might claim public interest standing to challenge a decision to fully or partially grant an exception. (See *Save the Plastic Bag, supra*, 52 Cal.4th at p. 166; *Waste Management of Alameda County, Inc. v. County of Alameda* (2000) 79 Cal.App.4th 1223, 1236-1237.) Such challenges appear highly likely in light of Measure Z supporters' public statements respecting the exception process. (See, e.g., JRJN Ex. 36, at pp. 36:5-8, 39:17-18 (July 25, 2017 Board meeting transcript) ["We should have an absolute minimum of exemptions if at all . . . . We did not vote to allow the oil companies to have exemptions to work around the vote"].) Thus, the administrative procedure would do little but impose "a severe time and financial burden on each rights holder." (*Action Apartment, supra*, 94 Cal.App.4th at p. 615.) In fact, the burden here would be significantly greater than the one imposed upon the landlords in *Action Apartment* because the lengthy delay in resolving

[16] In 2016 alone, the County issued 281 mineral rights property tax assessments. (Welles Dec., ¶ 2.)

exception applications would likely cause grievous, fatal damage to Petitioners' operations. (Tubbs Dec., ¶¶ 52, 57-60; Kemp Dec., Ex. A, pp. 52-55.)

Further, Section 6(C) violates due process because it runs a serious risk of "arbitrary and discriminatory application." (*Grayned v. City of Rockford* (1972) 408 U.S. 104, 109.) Section 6(C) provides that the Board "may" grant an exception if a taking occurs, and even then, shall do so "only to the minimum extent necessary to avoid such a taking." (AR 160.) The Board thus has discretion to grant or deny exceptions to similarly or identically situated parties. For example, the Board could find that Measure Z effects a taking as to Chevron and Aera, but choose only to except Chevron. The Board also has authority to grant exceptions with different parameters to similarly or identically situated parties. Thus, the Board could choose to except Trio from Measure Z's wastewater impoundment and disposal prohibitions but not as to the new wells prohibition, while granting the opposite exception to Eagle. Finally, the Board could choose to grant exceptions only to larger producers, such as Chevron, or only to smaller mineral rights holders, such as those represented by NARO. And, because the Board is an elected body, it would likely be subjected to significant political pressure in making each of these decisions.

Section 6(C) also violates due process because it fails to provide the Board with an adequate standard to determine both whether a taking has occurred and the scope of any potential exception. (See *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 231 [laws "must provide a standard or guide against which conduct can be uniformly judged by courts and administrative agencies"].) Section 6(C) states that these decisions shall be made "based on substantial evidence" (AR 160), but "substantial evidence" is a standard of review, not a burden of proof (see, e.g. Code Civ. Proc., § 1094.5, subd. (c); *JKH Enterprises, Inc. v. Department of Industrial Relations* (2006) 142 Cal.App.4th 1046, 1062).

Nevertheless, Intervenors claim the application of Section 6(B) in concert with Section 6(C) would "always avoid an impermissible taking." Section 6(B) provides, "[t]he provisions of this Initiative shall not apply to the extent, but only to the extent, that they would violate the constitution or laws of the United States or the State of California." (AR 160.) Intervenors cite *San Mateo County Coastal Landowners' Assn. v. County of San Mateo* (1995) 38 Cal.App.4th

523, as a case in which they claim that a court "recognized the validity" of a provision nearly identical to Section 6(B).

San Mateo involved a facial challenge to a land use ordinance authorizing the County to impose open space or other easements as a condition of subdivision map and plan approvals. (38 Cal.App.4th at p. 545.) The ordinance contained language virtually identical to Section 6(B). The court reasoned that a facial challenge was untenable because, inter alia, that language gave the county "the flexibility to avoid potentially unconstitutional application of easement requirements," by declining to impose conditions before a taking could occur. (*Id.* at p. 547.) *San Mateo* is distinguishable. There, a taking would only occur if and when the County imposed one or more easements as a condition of project approval. At that stage, the County could avoid any such taking as to specific property by appropriate design of the easement(s). Here, any taking would occur *upon Measure Z's taking effect.* Section 6(C) could theoretically reduce or eliminate that taking, but only after the fact, and, as discussed *ante*, its procedure is sufficiently convoluted that it risks arbitrary and discriminatory application. Additionally, it is so lengthy that it would impose a significant financial burden on property owners in the interim, possibly up to and including a total loss of all economic value of the relevant property before the administrative process — and the nearly certain ensuing litigation — is complete. (Tubbs Dec., ¶¶ 52, 57-60; Kemp Dec., Ex. A, pp. 52-55.) Section 6(B) does not ameliorate these issues.[17]

In short, Petitioners were not required to exhaust their administrative remedies, both because their claims are facial in nature (*Del Oro Hills*, *supra*, 31 Cal.App.4th at p. 1076), and because Section 6 constitutes a wholly "inadequate" administrative remedy (*Tiernan*, *supra*, 33 Cal.3d at p. 217).

3.2 Whether Measure Z effects a taking

Petitioners assert that Measure Z's dramatic effect on the economic value of their mineral rights amounts to a taking under the state and federal Constitutions, entitling them to just compensation.

[17] Moreover, Section 6(B) does little more than state the obvious. *No law* applies to the extent it violates the United States Constitution.

3.2.1 Takings Law

The takings clause of the Fifth Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment, requires a governmental entity to pay just compensation when it "takes" private property for public use. California Constitution, article I, section 19 contains a comparable provision.[18]

A taking may be either physical or regulatory. A physical taking occurs when the government physically occupies, takes possession of, or destroys property. (See, e.g., *United States v. Pewee Coal Co.* (1941) 341 U.S. 114, 115.) A regulatory taking occurs when a "regulation goes too far," such that it is effectively the equivalent of a physical taking. (*Pennsylvania Coal Co. v. Mahon* (1922) 260 U.S. 393, 415; *Hensler, supra*, 8 Cal.4th at p. 13 ["[A] 'regulatory taking' . . . results from the application of zoning laws or regulations which limit development of real property"].) Petitioners contend Measure Z effects a regulatory taking. Regulatory takings are divided into facial and as-applied challenges. "In facial takings claims, "[the court] look[s] only to the regulation's general scope and dominant features, rather than to the effect of the application of the regulation in specific circumstances." (*Hodel v. Virginia Surface Min. and Reclamation Assn, Inc.* (1981) 452 U.S. 264, 295.) By contrast, an as-applied challenge requires the court to engage in "essentially ad hoc, factual inquiries" exploring the economic impact of the specific application of a regulation to a particular property. (*Kaiser Aetna v. U. S.* (1979) 444 U.S. 164, 175.) Petitioners argue that Measure Z is an invalid regulatory taking on its face.

In a facial challenge, the court must determine whether "the mere enactment" of a law effects a taking. (*Suitum v. Tahoe Regional Planning Agency* (1997) 520 U.S. 725, 736, fn. 10.) "The test to be applied in considering this facial challenge is fairly straightforward. A statute regulating the uses that can be made of property effects a taking if it "denies an owner economically viable use of his land' . . . . [Citation]." (*Hodel, supra*, 452 U.S. at pp. 295-296.) Such challenges face an "uphill battle" (*Keystone, supra*, 480 U.S. at p. 495) because a

[18] Article I, section 19 also requires compensation for damage to property, and hence "protects a somewhat broader range of property values . . . . [Citations.]" (*Varjabedian v. City of Madera* (1977) 20 Cal.3d 285, 298.) Nevertheless, that distinction is irrelevant to the issues in this case, and in any event, "the takings clause in the California Constitution is "construed congruently with the federal clause.' [Citation.]" (*Lockaway Storage v. County of Alameda* (2013) 216 Cal.App.4th 161, 183.)

challenger must show that the law requires an owner of real property to "sacrifice *all* economically beneficial uses" of his property (*Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 1019, italics in original).

Before addressing the merits of the takings challenges, the court notes that, unlike in the preemption context, Petitioners are not all similarly situated. Broadly speaking, Petitioners may be broken into two groups: 1) Petitioners that have exercised their oil rights and have active wells (i.e., Chevron, Aera, Eagle, Trio, and some members of NARO); 2) and those that have not (CRC and the remaining members of NARO). The court will address each situation separately.

3.2.2 CRC and some members of NARO

A group of Petitioners, including CRC and some members of NARO, are mineral rights and oil and gas lease owners. A mineral owner has "the exclusive right to drill for and produce oil, gas and other hydrocarbons." (*Cassinos v. Union Oil Co.* (1993) 14 Cal.App.4th 1770, 1782.) Oil and gas lessees possess similar rights. "All other rights" are retained by the surface owner. (*Phillips Petroleum Co. v. County of Lake* (1993) 15 Cal.App.4th 180, 185.) The Takings Clause applies to mineral rights estates. (*Pennsylvania Coal Co., supra,* 260 U.S. at p. 414; *Braly v. Board of Fire Commissioners* (1958) 157 Cal.App.2d 608, 610 [a party's mineral rights are "as much entitled to protection as the property itself"; restrictions on that right may constitute a regulatory taking].)

CRC leases mineral rights in over 44 parcels of land in Monterey County; 40 contain no oil and gas wells. (Bridges Dec., ¶ 9; McMahan Dec., ¶¶ 2-9.) The four remaining parcels contain infrastructure, but each requires new wells to be drilled for production to occur. (McMahan Dec., ¶¶ 2-8.) CRC also owns mineral rights in 23 separate parcels, none of which contain wells. (Bridges Dec., ¶¶ 30-31; McMahan Dec., ¶ 9.) Many members of NARO also own or lease parcels with heretofore unexercised mineral rights.

Accordingly, CRC must drill new wells to extract any economic value from either their mineral rights or their oil and gas leases. (McMahan Dec., ¶¶ 2-8.) Policy LU-1.23 prohibits the drilling of any new wells countywide. Consequently, should it take effect, Measure Z would effect a facial regulatory taking of CRC's and some members of NARO's property. (*Lucas,*

supra, 505 U.S. at p. 1019; Miller Dec., ¶¶ 28-29.)[19] However, because the court has found that Policies LU-1.22 and LU-1.23 are preempted,[20] the court need not determine an appropriate remedy for the taking.

3.2.3 The remaining Petitioners

The remaining Petitioners are in a different position. All either own active oil and gas operations or receive royalties from those operations. These Petitioners (the remaining Petitioners) claim that the prohibitions on new wells and on wastewater injection and impoundment will ultimately result in a complete elimination of their economic value.

The remaining Petitioners contend that the prohibition on drilling new wells will severely impact operations in at least two ways. First, they maintain that new wells must be drilled to maximize oil recovery through "side-tracking." (Tubbs Dec., ¶ 51.) Side-tracking is the practice of "mill[ing] a hole through the existing well casing and drill[ing] a new bottom hole that is adjacent to the current well. Side-track operations are done specifically to re-establish production from the same portion of the reservoir as the original well. The use of sidetracks is often essential to repair damaged wells and to access additional areas of hydrocarbons that are in close proximity to the current bottom hole of the well." (*Ibid.*)

Second, the remaining Petitioners explain that new wells are essential to "steam flooding" an enhanced oil recovery technique in which producers inject steam into underground formations to heat oil, thereby decreasing its viscosity and facilitating its recovery. (Tubbs Dec., ¶¶ 43-45.) Over time, the remaining Petitioners have used steam flooding to create a "steam chest," a large collection of steam which fills a significant, subsurface portion of the production area. (Tubbs Dec., ¶ 44.) The remaining Petitioners assert that the maintenance of this steam chest is critical to the economically feasible production of oil in the County. (Tubbs Dec., ¶¶ 57-59; Latham Dec., ¶¶ 14-15.) But "the constant encroachment of water from the edges of the steam chest can quickly quench the steam and cause the collapse of the steam chest." (Tubbs Dec., ¶ 47.) The remaining Petitioners explain that, to avoid this result, they "must continuously

---

[19] For the same reasons (discussed *ante*), that the proposed exemption process is an inadequate administrative remedy, it also fails to vitiate the taking.

[20] Neither CRC nor NARO assert that the WST prohibition would affect their business.

replace or side-track non-productive wells, add infill horizontal wells, and drill new wells at the perimeter of the steam chest . . . ." (Tubbs Dec., ¶ 47; Latham Dec., ¶¶ 14, 22.) Thus, the remaining Petitioners predict Measure Z's immediate ban on new wells would cause production to "exponentially decline" by 20-25% per year. (*Id.*, ¶¶ 52, 60; Kemp Dec., Ex. A, p. 53.)

The remaining Petitioners also insist that the prohibitions on wastewater injection and impoundment will effectively end their operations after Measure Z's phase-out period is complete. They note that, absent the ability to inject wastewater, there is no viable method to dispose of the over 100 million barrels of water produced yearly. (Kemp Dec., Ex. A, pp. 39, 48, 54; Tubbs Dec., ¶ 48.) Moreover, Petitioner Chevron argues that Policy LU-1.22 would force it to halt the operation of its reverse-osmosis water treatment facility, a critical means for disposing of wastewater. (Tubbs Dec., ¶¶ 35-41.) The facility would be unable to continue because 1) it must impound wastewater prior to treatment; and 2) the reverse-osmosis process generates a concentrated brine stream, which must be injected underground to continue operations. (Tubbs Dec., ¶ 41, 55.) Finally, the remaining Petitioners opine that the wastewater injection prohibition will effectively end steam flooding, which relies on injecting steam produced by wastewater through injection wells. (Kemp Dec., Ex. A, p. 52; Tubbs Dec., ¶ 54.) This too, they assert, would lead to "the complete shutdown of operations." (Tubbs Dec., ¶ 54.)

The court has little doubt that Measure Z would cripple oil production in Monterey County. However, the remaining Petitioners have not met their burden to show "the mere enactment" of Measure Z effects a facial taking of their property. (*Suitum, supra*, 520 U.S. at p. 736, fn. 10.) To prove a facial taking has occurred, a property owner must show that the law will result in the "sacrifice [of] *all* economically beneficial uses" of her property. (*Lucas, supra*, 505 U.S. at p. 1019, italics in original.) The United States Supreme Court has explained that, under this rule, "a statute that 'wholly eliminated the value' of Lucas' fee simple title clearly qualified as a taking. But our holding was limited to 'the extraordinary circumstance when *no* productive or economically beneficial land use is permitted.' The emphasis on the word 'no' in the text of the opinion was, in effect, reiterated in a footnote explaining that the categorical rule would not apply if the diminution in value were 95% instead of 100%. Anything less than a 'complete elimination of value,' or a 'total loss,' the Court acknowledged, would require the kind of

analysis applied in *Penn Central.*" (*Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency* (2002) 535 U.S. 302, 330, internal citations and footnotes omitted.)

Although the implementation of Measure Z might *ultimately* result in the end of oil and gas operations in Monterey County, the Measure's "mere enactment" plainly would not. Policy LU-1.22 provides for a minimum of a five-year phase-out period before its prohibitions are effective. And, although the new well prohibition is immediate, as the remaining Petitioners concede, it would only cause production to "exponentially decline" by 20-25% *per year*. (*Id.*, ¶¶ 52, 60; Kemp Dec., Ex. A, p. 53.) Until oil operations were terminated then, the remaining Petitioners would still be able to derive value from their existing oil wells and ongoing operations.[21]

Nevertheless, this does not mean the remaining Petitioners would be without a remedy. But for this court's finding that Policies LU-1.22 and LU-1.23 are preempted,[22] the remaining Petitioners would have the option of proceeding with an as-applied takings claim "governed by the standards set forth in *Penn Central Transp. Co. v. New York City*, 438 U.S. 104 . . . (1978)." (*Lingle, supra*, 544 U.S. at p. 538.)

4. General Plan Consistency

Petitioner NARO argues that Measure Z creates internal inconsistencies in the County's General Plan.

"The general plan is atop the hierarchy of local government law regulating land use. It has been aptly analogized to 'a constitution for all future developments.' [Citation.]" (*Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176, 1183.) "[T]he general plan and elements and parts thereof comprise an integrated, internally consistent and compatible statement of policies for the adopting agency." (Gov. Code, § 65300.5.) This principle "has been uniformly construed as promulgating a judicially reviewable requirement 'that the elements of the general plan comprise an integrated internally consistent and compatible

[21] At argument, Chevron suggested that the costs of winding down operations and shutting-in idle wells would more than make up for any economic value derived from operations in the interim. However, Chevron has not presented sufficient evidence to support this claim.

[22] Petitioners do not assert that the WST prohibition would effect a taking, so the court need not address that issue.

statement of policies.' [Citations.]" (*Concerned Citizens of Calaveras County v. Board of Supervisors* (1985) 166 Cal.App.3d 90, 96–97.)

NARO claims Measure Z creates several inconsistencies within the General Plan. NARO contends that 1) Policies LU-1.21 and LU-1.23 are inconsistent with LU-1.22; 2) LU-1.21 and LU-1.22 are inconsistent; and 3) LU-1.22 is inconsistent with certain Policies under the Public Services Element of the General Plan. All of these contentions are mooted by this court's finding that Measure Z's Policies LU-1.22 and LU-1.23 are preempted.

NARO further contends that an internal inconsistency exists between Measure Z and General Plan Policies ED-1.2, ED-2.1, and ED-4.4. NARO explains that these Policies "mandate promoting sustainable economic growth, enhancing the competitiveness of Monterey County's key industrial clusters and working with stakeholders of key industry clusters to support those clusters." NARO asserts that Measure Z will seriously damage the County's economy, in violation of various aspects of these Policies.

Absent Policies LU-1.22 and LU-1.23, this argument must also fail. NARO's own expert has stated both that WSTs are not currently in use and that "it is highly unlikely" they will be employed in the future. (Gore Dec., ¶10.) Any damage to the economy stemming from Measure Z, then, must be the result of Policies LU-1.22 and LU-1.23. Because these policies are preempted, NARO's claim is meritless.

Moreover, Measure Z includes provisions to ensure its consistency with the General Plan. Section 7(F) directs the County "to amend the Monterey County General Plan . . . and other ordinances and policies affected by this Initiative as soon as possible . . . to ensure consistency between the provisions adopted in this initiative and other sections of the General Plan . . . ." (AR 160.) NARO does not explain why this provision is insufficient to remediate any purported inconsistency. (See *Citizens for Planning Responsibly v. County of San Luis Obispo* (2009) 176 Cal.App.4th 357, 378.)

In short, the court finds that Policy LU-1.21 is consistent with the General Plan.

5. Petitioners' remaining arguments

The court's conclusions above render it unnecessary either to reach Petitioners' remaining arguments or to proceed to any subsequent stage of these proceedings

Disposition

Measure Z's Policies LU-1.22 and LU-1.23 are preempted in their entirety by superior law. Further, Section 6(C) is an inadequate, unconstitutional administrative remedy.

The court directs Petitioners' counsel to prepare appropriate judgments and writs consistent with this decision, present them to opposing counsel for the County and Intervenors for approval as to form, and return them to this court for signature.

The court's orders and stays in case numbers 16CV003978 and 16CV003980 remain in effect as to all portions of Measure Z with the exception of Policy LU-1.21 as interpreted by the court.

Trial materials are returned to parties submitting the same.

Date: 4/28/17

Thomas W. Wills
Judge of the Superior Court

//

//

//

//

//

//

//

//

//

//

//

CERTIFICATE OF MAILING
(Code of Civil Procedure Section 1013a)

I do hereby certify that I am employed in the County of Monterey. I am over the age of eighteen years and not a party to the within stated cause. I placed true and correct copies of the **INTENDED DECISION** for collection and mailing this date following our ordinary business practices. I am readily familiar with the Court's practices for collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Services in Salinas, California, in a sealed envelope with postage fully prepaid. The names and addresses of each person to whom notice was mailed is as follows:

Theodore J. Boustous, Jr.
Jeffrey D. Dintzer
Matthew C. Wickersham
333 S Grand Ave 54th Floor
Los Angeles CA 90071

Andrew A. Bassak
1 Embarcadero Center 30FL
San Francisco CA 94111

Donald C. Oldaker
1430 Truxtun Avenue Suite 900
Bakersfield CA 93301

Edward S. Renwick
444 S Flower Street Suite 2530
Los Angeles CA 90071

Matthew T. Kline
Barton H. Thompson
Heather Welles
1999 Avenue of the Stars Ste 700
Los Angeles CA 90067

Hollin N. Kretzman
1212 Broadway Suite 800
Oakland CA 94612

Todd W. Smith
1101 Fifth Street Suite 100
San Rafael CA 94901

David W. Balch
318 Cayuga St
Salinas CA 93901

Jacqueline M., Zischke
PO Box 1115
Salinas CA 93902

Dimitri Daniel Portnoi
400 S Hope St #1435
Los Angeles CA 90071

Lucas A. Messenger
Bernice Conn
Michael A. Giebelson
2049 Century Park East Suite 3400
Los Angeles CA 90067-3208

Deborah A. Sivas
Peter Broderick
559 Nathan Abbott Way
Stanford CA 94305-8610

Charles J. McKee
Robert Shaw
168 W Alisal St 3FL
Salinas CA 93901-2680

Gene Tanaka
Shawn Hagerty
500 Capitol Mall Suite 1700
Sacramento CA 95814

Date: December 28, 2017

Clerk of the Court,

By: _____
Diana Valenzuela, Deputy Clerk

EXHIBIT B

DECLARATION OF STEVEN BOHLEN. IN SUPPORT OF PETITIONERS' AND PLAINTIFFS' OPENING BRIEF FOR THE PHASE 1 PROCEEDINGS

I, Steven Bohlen, hereby declare:

1. I received my M. S. and Ph.D. degrees from the University of Michigan in the fields geology and geochemistry. The topic of my Ph.D. research concerned the evolution of the Earth's crust, particularly with respect to the flow of geologic fluids – water, chloride brines, oil and gas – through the continental crust and the impact of fluids on Earth evolution.

2. For twenty years I have conducted research on the nature and flow of geologic fluids through the crust as a tenured professor at Stony Brook University (State University of New York) and a consulting professor at Stanford University. This research work has been published in various leading international journals and includes over 80 research papers and more than 100 other forms of publications – conference abstracts, book chapters, National Academy studies, US government reports.

3. I have served for 6 years as the Associate Chief Geologist for Science and Chief Scientist at the US Geological Survey. The research programs (line items in the Federal budget for the US Geological Survey) for which I have directed and prioritized include the National Earthquake Hazards Reduction Program, the Energy Resources Program, the Surficial Processes Program and the Climate Change Program. Together these programs represented over $100M of annual investment in Federal funded research and development to, for example, understand seismic source mechanisms and reduce the risk of earthquakes, understand the environmental impacts of oil and gas development, understand surface and near surface impacts of the built environment on surface geologic processes (erosion, ground water contamination, etc.), and understand the consequences of the use of fossil fuels.

4. I served as the Executive Director of the Ocean Drilling Program and the Integrated Ocean Drilling Programs for over 8 years, as the President and CEO of Joint Oceanographic Institutions, a systems integration and naval architecture firm providing facilities and services to the international oceans community. These programs have provided most of the

documented evidence for the environmental changes the Earth has undergone over the past 70 million years. This information has been gleaned from cores of sediments and rocks obtained by an ocean-going drilling vessel from the world's ocean basins and continental shelves. This state of the art research drilling vessel has obtained permission to drill in some of the most fragile ecosystems on the planet, such as the Great Barrier Reef, for example, because of its exceptional safety and environmental record, even when drilling to depths of over a mile into ocean sediments that lay several thousand meters below the surface of the ocean.

5. In 2014, I was appointed by Governor Edmund G. Brown Jr. as a senior advisor for oil and gas issues and to lead the California Division of Oil, Gas, and Geothermal Resources (DOGGR). During my tenure as the State Oil and Gas Supervisor and the State's head regulator for all oil and gas activities in the State, regulations for well stimulation and well treatments (commonly referred to as hydraulic fracturing or fracking, shorthand for a suite of well-completion techniques) were developed and enacted as directed by California Senate Bill 4 (Pavley, 2014). These regulations are without peer in their breadth, comprehensiveness, transparency, required record-keeping and environmental stewardship. In addition, the State began the process to update its exemptions for specified geologic formations containing oil-laden water from the Safe Drinking Water Act in accord with the State's agreement with the US Environmental Protection Agency.

6. From 2014 through 2016, I also served on the science advisory board for the US EPA national scientific study on the hazards of hydraulic fracturing and other well stimulation and completion practices entitled, "*Assessment of the Potential Impacts of Hydraulic Fracturing for Oil and Gas on Drinking Water Resources*". This study was initiated and completed under the Obama Administration.

7. I currently lead the advanced energy technologies and energy security programs at the Lawrence Livermore National Laboratory.

8. I have been asked to review the "Measure Z Findings of Fact", and to express my opinions regarding the factual, technical and regulatory issues raised by Measure Z. My opinions are as follows:

9. Finding No. 1 Is That Monterey County Does Not Have a Permitting Process and Regulations Specifically for Oil and Gas Production Operations

In my opinion, Monterey County does not have a permitting process and regulations specifically for oil and gas production for a very good reason. None is needed as the oversight and regulation of oil and gas activities has been assigned by the state legislature to the Division of Oil, Gas and Geothermal Resources (DOGGR) and managed effectively by DOGGR for over 100 years. It is also my opinion, based on discussions when I was the Division Supervisor that the County did not have the expertise to regulate down-hole oil and gas activities and that a hodge podge of local down-hole rules would interfere with DOGGR's regulatory role. I also learned that before I became Supervisor the California Attorney General's office had given an opinion that local government did not have the power to regulate down-hole activities because those activities had been preempted by the State of California.

Most counties in the State of California do not have permitting processes and regulations specifically for oil and gas production operations. In general, counties have issued general use permits following the review and evaluation process by the CA Division of Oil, Gas, and Geothermal Resources leading to a State permit for the drilling of an oil, gas or geothermal well. Upon receiving authority delegated in the early 1980s by the US EPA for regulation of EPA Class II wells (those for the development of oil and gas and the reinjection of water produced with the oil and gas) in accordance with the Safe Drinking Water Act, the State identified DOGGR as the State agency responsible for the implementation of the delegated requirements. Counties throughout the State have recognized that the entity responsible for permitting oil and gas activities is DOGGR. For each permit issued, DOGGR reviews and evaluates all aspects of every drilling operation, including, but not limited to, the magnitude of well-drilling operations, roads to be built (if any), land area disturbed, well construction and completion plans, geological formations and units within the formations to be drilled, proximity to residential areas and environmentally sensitive areas, and produced water management. The Division also works in close coordination with the State Water Resources Control Board to ensure that drilling permits are awarded in full compliance not only with the Federal Safe Drinking Water Act, but also in

accord with State water protection requirements. Furthermore, the Division is responsible for conducting an environmental review to ensure that the requirements of CEQA have been met including the mitigation of any identified environmental impacts. Even Kern County, the locus of over 80% of the State's oil and gas production, did not, until recently, have any county mandated processes or regulations associated with oil and gas development. The fundamental foundation on which the Kern county process is based is the permitting requirements, process and procedures of the DOGGR and the issuance of a drilling permit by the State.

10. Finding No. 2 Is That Monterey County Supervisors Have Failed to Enact Needed Protections.

In my opinion, the County Supervisors, instead of failing in their duties, chose not to pursue the enactment of protections beyond those being implemented by the state after learning from the state all that was being done to regulate well stimulation activities in the state and realizing the County did not have the expertise to regulate those activities.

In the summer of 2014, the Monterey County Board of Supervisors requested that a representative of the CA Division of Oil, Gas and Geothermal Resources provide the Board with information on the current status of well stimulation and hydraulic fracturing in the State, the emergency regulations for hydraulic fracturing put in place by the State as required by Senate Bill 4 (2014, Pavley), and progress toward the establishment of permanent regulations, required to be submitted to the Legislative Law Office for review and acceptance by December 31, 2014, and enacted no later than July 1, 2015.

Jason Marshall, the Deputy Director of the Department of Conservation, the department within which the DOGGR sits, spoke to the Board, and provided a comprehensive review of hydraulic fracturing within the State, the actions the DOGGR was taking with respect to regulation of these practices and the status of rulemaking in accord with SB 4. The Deputy Director also engaged the board in an extensive question and answer session. The Department and the Division provided additional information and answered additional questions by the Board subsequent to Mr. Marshall's testimony.

11. Finding No 3 Is That Fracking Could Become Widespread in Monterey County.

In my opinion, this finding is not supported by geologic data, previous widespread oil exploration in the county, and the results of the USGS undiscovered oil and gas potential assessment for the Monterey Formation in California.

This finding raises the specter of oil wells being drilled all over Monterey County and that each well will require the use of hazardous chemicals in the well completion process that necessarily leads to the degradation of ground water resources. These combined assertions address complex issues in simplistic and misleading terms leading to an incorrect finding.

It is true that the Monterey Formation underlies a portion of Monterey County. However, the geologic setting and the fact that the Monterey Formation, the putative target of oil and gas production in the county, has numerous surficial expressions (geologic outcrops), whatever oil existed in the formation has long ago leaked away. California is well known for its natural oil seeps, the result of oil-bearing formations outcropping on land or at the ocean margin nearly ubiquitously south of the Golden Gate Bridge.

Though it is true that chemicals are used in the completion of most wells in California, the blanket characterization of these chemicals as highly hazardous can overstate their exotic chemistry and level of hazard. In some cases hazardous chemicals are not even used. This is known in detail in California because the details of the chemicals used in each well stimulation treatment in the State must be reported to the State as part of the well stimulation regulatory requirements enacted in 2015. The name, chemical formula, volume, and handling of chemicals must be reported. Many of these chemicals are well known, sometimes have uses in the home, and are closely akin to such substances as bleach (biocide), lemon juice (acid), food additives (guar gum). Given the volumes of chemical used and chemical combinations, the State tracks and regulates the use of chemicals used in well completions, and provides this information to the public on DOGGR webpages.

In addition, in certain types of rocks, those rich in clay minerals such as the Monterey Shale, the chemicals, water and sand used to create fractures and permeability within the rock are

often absorbed by the rock and sequestered – bonded to the interlayers of the clay minerals that make up the rock. Furthermore, as required by regulation and the primacy agreement the State has with the US EPA for the management of the Underground Injection Control program (the program that regulates the injection of fluids into EPA Class II wells as part of oil and gas operations), the geologic formations into which fluids are injected must show geologic containment. That is, the oil and gas operator must demonstrate to the DOGGR and the State Water Resources Control Board that the geologic conditions are such that the injected fluids will not migrate beyond the specified geologic layer or zone into which they are injected.

Geologists have long known that geologic strata can contain fluids and gases, sometimes very high-pressure fluids and gases, for geologically long periods of time, millions of years. Were rocks not able to contain fluids for long periods, oil and gas deposits would never accumulate. Hence the case for (or against) containment can be made with careful geologic analysis. Geologic containment, therefore, provides a robust barrier against the contamination of other water bearing strata by fluids injected as part of oil and gas development.

The specific strata within a geologic formation into which hydraulic fracturing fluids are injected contain hydrocarbons, and the operator hopes that those hydrocarbon accumulations are sufficiently plentiful so that the value of the oil and gas produced exceeds the costs of extraction. Any water held within the formation at the time of hydraulic fracturing will be in equilibrium with the oil and gas and will therefore have benzene and other volatile, cancer-causing hydrocarbon components, rendering the water unfit for consumption by humans, animals or for use in agriculture. Such water is expensive to clean to standards required for human consumption.

An important distinction of oil and gas-bearing strata globally, including within Monterey County and across the state, is the fact that water contained therein will be unfit for use without treatment. It will contain hydrocarbon components that are toxic in quantities exceeding standards for use, and difficult for current technology to economically clean for human use.

As for the specter of Monterey County having oil and gas wells throughout the County, in 2015, the US Geological Survey released its evaluation of the potential for undiscovered oil and

gas resources within the Monterey Formation in California.

(https://pubs.usgs.gov/fs/2015/3058/fs20153058.pdf).

The study was comprehensive in that it considered the geologic information, well logs, and other information obtained by looking at hundreds of well records of wells that penetrated the Monterey Shale. The most important finding of this investigation is that the potential for as yet undiscovered oil and gas resources in the Monterey Formation in CA is exceedingly low, and near zero in areas other than those west of Bakersfield and in the Los Angeles Basin. The USGS concluded that the Monterey Formation was likely the source rock for much of the oil found in higher-level geologic strata in the State, and it had long ago lost its oil through migration to higher levels in most places..

Aside from the fact that over half of the County is underlain by crystalline rocks with no hydrocarbon potential whatsoever, the US Geologic Survey analysis casts grave doubts on the assertion that oil and gas production will ever expand beyond the South County area plan for oil and gas extraction in Monterey County.

12. Finding N0. 4 Is That Oil and Gas Production Operations, Including Those Enabled by Fracking, Use Limited Water Supplies That Should Be Preserved for Agricultural and Municipal Uses.

In my opinion, this finding makes the a priori assumption that any water used for hydraulic fracturing is too much and ignores the water use data for oil and gas operations versus agriculture, municipal and other uses. The finding is undermined by the fact that the oil industry operating in Monterey County has produced far more water for beneficial use than has been consumed for well completion practices.

Water consumption by the oil and gas industry for use in hydraulic fracturing and other well completion techniques represents a tiny fraction of the water use anywhere in the State. The well stimulation regulations that went into effect in 2015 require operators to report the source or sources of water used for well stimulation, the volume, and the water management plan for so-called flow back water (water that returns to the surface immediately after well stimulation (fracturing) and water produced as a part of oil extraction (so-called produced water). Because of