

September 9, 2019

VIA E-MAIL: [Clerkoftheboard@ventura.org](mailto:Clerkoftheboard@ventura.org)

Ventura County Board of Supervisors  
County of Ventura  
800 S. Victoria Ave.  
Ventura, CA 93009-1940  
Attn: Clerk of the Board

Re: Board of Supervisors September 10, 2019 Meeting, Agenda Item No. 35

Dear Chairman Bennett and Honorable Supervisors:

We write on behalf of our client, ABA Energy Corporation (“ABA”), regarding the September 10, 2019 letter from County Counsel Leroy Smith bearing the subject line, “Report Back and Seek Board Direction Regarding Potential Amendments to the County’s Zoning Ordinance Regarding Oil and Gas Development; All Supervisorial Districts” (the “2019 Letter”) and the proposed amendments to Ventura County Non-Coastal Zoning Ordinance Section 8107-5.2 (the “Proposed Amendments”) discussed therein and attached thereto. ABA has significant concerns about the position taken in the 2019 Letter and the Proposed Amendments.

By way of background, nearly a decade ago ABA took over as the operator of a farming family’s ongoing mineral development in Ventura County. Since that time more than \$60 million has been invested in wells and infrastructure and ABA has plans to continue that development on behalf of itself and the mineral owners. It has worked cooperatively with County staff to conduct its operations in an exemplar fashion.

ABA conducts all of its operations under Special Use Permit 672 (the “Permit”), which allows ABA the right to, among other things, drill for and extract oil, gas and other hydrocarbon substances from a particular parcel of land. In reliance on the Permit, ABA has consistently applied for and been granted ministerial zoning clearances for each of the wells it has drilled and based on this past practice, has expended substantial sums of money and incurred substantial liabilities relating to future drilling operations under the Permit. These expenses and liabilities include the installation of facilities to accommodate future operations and development and investment expenses.

Members of the Board have indicated on the record that they have a desire to terminate or limit oil and gas development in Ventura County and have asked County Counsel to investigate how to stop future drilling under special use permits like that held by ABA. Please understand that if the County stops drilling operations under ABA's Permit, the County would strip ABA, and the mineral rights owners it serves, of the ability to benefit from their investments and deprive them of the value of the minerals in the ground.

Despite the claims by County Counsel in the 2019 Letter to the contrary, the Proposed Amendments also would deprive ABA of its vested rights under the Permit to engage in these future operations, including the drilling of new wells and redrilling and deepening of existing wells. For over 60 years, the County has never required a discretionary approval under the Permit for these operations and it would be unlawful for the County to do so now. *See Avco Community Dev., Inc. v. South Coast Reg'l Comm'n* (1976) 17 Cal.3d 785, 791 (“[I]f a property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government, he acquires a vested right to complete construction in accordance with the terms of the permit.”) [citations omitted].

The County itself has previously concluded that permittees like ABA have vested rights in their special use permits and that the County cannot impose new discretionary requirements on those permits. In a Memorandum from the County Counsel's Office in 2014 bearing the title, “LEGAL ANALYSIS OF ANTIQUATED OILFILED CONDITIONAL USE PERMITS” (the “2014 Memorandum”), County Counsel explained:

When a conditional use permit has been issued and then relied upon by the permittee, giving rise to a vested right, the permit becomes immunized from impairment or revocation by subsequent government action [absent menace to public health and safety or a public nuisance]. (2014 Memorandum, p. 3.)

After decades of treating special use permits for oil and gas operations as granting vested rights—a determination supported most recently in the 2014 Memorandum—County Counsel reverses course in the 2019 Letter and effectively concludes the opposite. County Counsel attempts to draw a distinction between existing and future operations under special use permits, but the law does not make this distinction. Entities with vested rights are allowed to “complete” their projects—here, full development of the oil, gas and hydrocarbon resources from the applicable property. Given the decades-long policy of treating special use permits as vested, and the investments made by operators based on those prior determinations, the County is estopped from now reaching a different conclusion. ABA reasonably relied on the County's historical practices and the 2014 Memorandum. Any change in political will from then until now to eliminate locally produced oil in favor of imported oil cannot lawfully form the basis for stripping ABA of its vested rights without due process and just compensation.

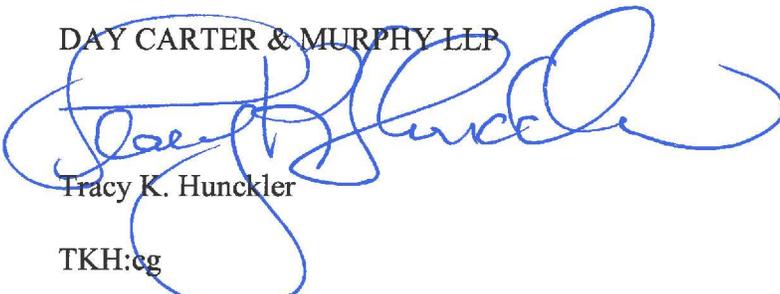
Please understand that ABA will not sit idly by if the County proceeds to adopt the Proposed Amendments as the adoption will constitute an unlawful taking of private property under both the

United States and California Constitutions. In calendar year 2018, ABA produced 277,238 barrels of oil from this Ventura County property with a gross value of \$18,330,092. If ABA's rights to develop this oilfield were affected and/or taken, damages would be many multiples of the aforementioned \$18,330,092, plus additional damages for loss of reserves and development fees caused by the loss of drilling rights. ABA will take all actions necessary to protect its rights, including seeking recovery from the County of its damages, along with recovery of ABA's legal expenses under Code of Civil Procedure section 1036. The County will be forced to incur substantial legal fees for its counsel and ultimately ABA's counsel too, all the while losing significant revenue from property taxes on future oil and gas operations.

On behalf of ABA, we request the County do everything within its power to avoid what will prove to be an expensive mistake. We urge you to decline County Counsel's invitation to proceed with the Proposed Amendments.

Sincerely,

DAY CARTER & MURPHY LLP



Tracy K. Hunckler

TKH:eg

cc: Michael Powers, CEO  
Leroy Smith, County Counsel