CALIFORNIA
RESOURCES CORPORATION

April 9, 2019

Board of Supervisors
County of Ventura
800 S. Victoria Avenue
Ventura, CA 93009

SUBJECT: April 9, 2019 Board Item 46

Honorable Board of Supervisors:

We appreciate the opportunity to provide comments regarding the Board's consideration of a proposed interim ordinance to temporarily ban new oil and gas wells and re-drilling of existing wells that will utilize steam injection in the vicinity of potable groundwater aquifers and to study potential amendments to the County's zoning ordinances to require discretionary approval of new development under long term oil and gas permits. These are issues that have already been addressed by the County. We urge that your Board to deny both recommendations.

There are three clear cases where the County of Ventura at both the Planning Commission level (2-19-15) and the Board of Supervisors (12-17-13 & 12-15-15) has correctly approved County Counsel's legal analysis that the vested rights doctrine applies to long term conditional use permits. In addition, CEQA Section 15261(b) provides that a private project shall be exempt from CEQA if the project received approval of a lease, license, certificate, permit, or other entitlement for use from a public agency prior to April 1973. These three examples are spelled out on the attached letters.

Recent similar attempts to ban oil and gas operations by other Counties have been unsuccessful. For example, Monterey County attempted to institute a ban on oil and gas operations with their Measure Z in 2016. In 2017 this Measure was invalidated in court as being preempted by State law and found to be an unlawful taking of the property of numerous mineral rights owners. Voters in the County of San Luis Obispo defeated Measure G in November 2018, disapproving another attempt to stop oil and gas operations.

We therefore urge you to deny the two recommended actions.

Sincerely,

BRUCE CARTER
Sr. Regulatory Advisor

Att: 1) 12-17-13 Board of Supervisors Board Letter
2) 2-18-19 & 2-19-19 Planning Commission Letters
3) 12-15-15 Board of Supervisors Board Letter

county of ventura

COUNTY EXECUTIVE OFFICE
MICHAEL POWERS
County Executive Officer

J. Matthew Carroll
Assistant County Executive Officer

Paul Derse
Assistant County Executive Officer/
Chief Financial Officer

Catherine Rodriguez
Assistant County Executive Officer/
Labor Relations & Strategic Development

Kelly Shirk
Director Human Resources

December 17, 2013

Board of Supervisors
County of Ventura
800 South Victoria Avenue
Ventura, CA 93009

SUBJECT: **Receive Presentation and Report Back in Response to May 21, 2013 Board Direction Regarding the Hydraulic Fracturing of Oil and Gas Wells in Ventura County; and Direct Revisions be Made to the Conditional Use Permit Application/Questionnaire for Oil & Gas Exploration and Production Permits**

RECOMMENDATIONS:

It is recommended the Board:

1. Receive and file a presentation by County staff responding to the direction provided by the Board at its May 21, 2013 meeting regarding hydraulic fracturing of oil and gas wells in Ventura County.

2. Direct the Resource Management Agency to revise the Conditional Use Permit Application/Questionnaire for Oil and Gas Exploration and Production to include the following questions:

   1) Will hydraulic fracturing or acidization well stimulation treatments be performed? If yes,
   2) What hazardous materials will be used?
   3) What water supply will be used?
   4) Where will the liquid wastes be disposed?

FISCAL/MANDATES IMPACT:

Mandatory: No
Source of Funding: N/A

Funding Match: None
Impact on other Departments: None

DISCUSSION:

At your May 21, 2013 meeting, the Board of Supervisors directed the County Executive Officer, County Counsel, and the Resource Management Agency return to the Board with a number of items regarding the hydraulic fracturing and acidization of oil and gas wells in unincorporated Ventura County. The specific items were recommendations for a revision to the Conditional Use Permit Application Form/Questionnaire and legal analysis of: 1) the options available to address antiquated oil & gas permits, 2) potential for restrictions on the use of fresh water in oilfield operations, and 3) the County's ability to require the use of non- or least-toxic fracking chemicals. Each of these items is addressed below. However, it is important to note that a significant amount of activity took place in Sacramento after May 21, 2013, and it profoundly altered the regulatory and legal environment surrounding hydraulic fracturing, acidization, and other well stimulation treatments. The culmination of this State activity was the passage of Senate Bill 4 (Pavley – Chapter 313 – Statutes 2013) (SB 4). A copy of SB 4 is attached as Exhibit 1.

Before responding specifically to the Board's May 21, 2013 direction, it would be valuable to provide a brief summary of SB 4. Beginning on January 1, 2015, SB 4 requires that a permit from the Division of Oil, Gas and Geothermal Resources (DOGGR) be obtained prior to conducting hydraulic fracturing or other well stimulation treatments. The DOGGR permit application is required to include a significant amount of information, including but not limited to: 1) detailed information about the well location; 2) a description of the fluids to be used; 3) a groundwater monitoring plan; and 4) a water management plan. Moreover, copies of any approved permit must be sent to neighboring property owners and tenants, and water well testing must be provided upon request. Much of this information directly addresses the concerns raised by the Board, and this will be discussed in more detail below. Also, included as Exhibit 2 and Exhibit 3 are the "Senate Bill 4 Implementation Plan" and a "Frequently Asked Questions" document prepared by the Department of Conservation.

Revisions to the CUP Application Form/Questionnaire

On May 21, 2013, the Board of Supervisors directed the Resource Management Agency return to the Board with revisions to the Conditional Use Permit (CUP) application form that would address a number of questions related to hydraulic fracturing as a well stimulation treatment conducted in newly permitted wells located in the county's unincorporated area. It is recommended in the Board letter presented at the May 21, 2013 hearing that four specific questions be included in the application form, as follows:

1) Will hydraulic fracturing be performed?

2) What hazardous materials will be used?
3) What water supply will be used?
4) Where will the liquid wastes be disposed?

At the May hearing, the Board further directed that these questions be broadened to include well stimulation by acidization.

On September 20, 2013, Governor Brown signed SB 4, which established a regulatory framework for well stimulation treatment activities, including hydraulic fracturing and acidization. The directives outlined in SB 4 in some manner address all of the issues raised by the Board in its May 21, 2013 action, and it requires DOGGR to have rules and regulations in place by January 1, 2015. In addition, DOGGR is required to work in concert with other entities to complete a scientific study of well stimulation treatments by January 1, 2015. And finally, DOGGR is required to complete an environmental impact report that assesses the environmental impacts of oil and gas well stimulation treatments in the state by July 1, 2015.

SB 4 also includes provisions which address well stimulation treatment activities which might take place between January 1, 2014, when the law goes into effect, and January 1, 2015 when the new DOGGR permitting process is required to be in place. These "interim" provisions (referred to by DOGGR as "emergency regulations") require certain information be provided and actions taken by oil and gas well operators if well stimulation treatment activities are to take place prior to January 1, 2015. The required information and actions largely address the items identified by the Board in May 2013.

DOGGR has announced it will have its emergency regulations in place by January 1, 2014, to address the requirements of SB 4 during this interim period. These emergency regulations are expected to be released after the preparation of this Board letter, on December 13, 2013. Should the emergency regulations be released on that date, a copy will be provided to the Board and posted on the County web page with this Board letter.

The Public Resources Code sections being added by SB 4 are summarized here under the four specific issue areas raised by the Board:

1. Will hydraulic fracturing or acidization be performed?

> *§3160 (d) (1) "....prior to performing a well stimulation treatment on a well, the operator shall apply for a permit to perform a well stimulation treatment with the supervisor or district deputy."*

While the formal permitting process is not required to be in place until January 1, 2015, the law requires that operators notify and provide substantial information to

DOGGR prior to engaging in well stimulation treatment activities between January 1, 2014 and December 31, 2014.

2. What hazardous materials will be used?

§3160 (b) (1) (A) "....The rules and regulations shall include.... full disclosure of the composition and disposition of well stimulation fluids, including, but not limited to, hydraulic fracturing fluids, acid well stimulation fluids, and flowback fluids."

§3160 (b) (2) "Full disclosure of the composition and disposition of well stimulation fluids, including, but not limited to, hydraulic fracturing fluids and acid stimulation treatment fluids, shall, at a minimum, include:

(B) A complete list of the names, Chemical Abstract Service (CAS) numbers, and maximum concentration, in percent by mass, of each and every chemical constituent of the well stimulation treatment fluids used. If a CAS number does not exist for a chemical constituent, the well owner or operator may provide another unique identifier, if available.

(C) The trade name, the supplier, concentration, and a brief description of the intended purpose of each additive contained in the well stimulation treatment fluid."

Beginning January 1, 2014, operators are required to provide all of the above information to DOGGR prior to engaging in well stimulation treatment activities.

3. What water supply will be used?

§3160 (b) (2) "Full disclosure of the composition and disposition of well stimulation fluids, including, but not limited to, hydraulic fracturing fluids and acid stimulation treatment fluids, shall, at a minimum, include:

(D) The total volume of base fluid used during the well stimulation treatment, and the identification of whether the base fluid is water suitable for irrigation or domestic purposes, water not suitable for irrigation or domestic purposes, or a fluid other than water.

§3160 (d) (1) (C) "....The information provided in the well stimulation treatment permit application shall include....A water management plan that shall include:

(i) An estimate of the amount of water to be used in the treatment. Estimates of water that is to be recycled or that could be recycled following the well stimulation treatment may be included.

(ii) The anticipated source of the water to be used in the treatment.

The requirement to prepare a Water Management Plan, including the identification of the source and quality of the water used in the well stimulation treatment process, goes into effect on January 1, 2014.

4. Where will liquid wastes be disposed of?

> *§3160 (d) (1) (C) "....The information provided in the well stimulation treatment permit application shall include....A water management plan that shall include:*
> *(iii) The disposal method identified for the recovered water in the flowback fluid from the treatment that is not produced water...."*
>
> *§3160 (b) (2) (E) "....The information provided in the well stimulation treatment permit application shall include....the disposition of all water, including, but not limited to, all water used as base fluid during the well stimulation treatment and recovered from the well following the well stimulation treatment that is not otherwise reported as produced water..... Any repeated reuse of treated or untreated water for well stimulation treatments and well stimulation treatment-related activities shall be identified."*
>
> *§3160 (b) (2) (F) "....The information provided in the well stimulation treatment permit application shall include.... the specific composition and disposition of all well stimulation treatment fluids, including waste fluids....."*
>
> The information requirements related to the composition and disposition of well stimulation treatment fluids also become operative on January 1, 2014.

Given the above provisions of State law, it appears that beginning January 1, 2014 all of the information the Board action sought through future CUP applications will be required by DOGGR of <u>all</u> existing and proposed oil wells in Ventura County prior to conducting hydraulic fracturing, acidization, or other well stimulation treatment activities. Since July of this year, DOGGR staff has been providing copies of each "Notice of Intent" filed by oil and gas operators for the drilling or modification of oil and gas wells located in Ventura County to the Resources Management Agency, Planning Division. These Notices have been provided to the County within a day of submittal to DOGGR. County staff has reviewed these notices to ensure that the proposed action is consistent with the conditions of approval of any applicable CUP (there is currently only one CUP which prohibits hydraulic fracturing within its 11 wells). This process provides the Planning Division a timely opportunity to notify DOGGR of activities (such as hydraulic fracturing) that are not authorized by the Conditional Use Permit (CUP) governing the well in question.

However, SB 4 does not require this information be provided to the County or DOGGR as part of an application for a CUP to install <u>new</u> oil wells. Thus, it would be reasonable and appropriate at this time for the County to include these four questions in its Oil and Gas Permit Application Form. Gathering this information as part of the application will not only provide information for public noticing purposes prior to the CUP hearing, but also provide information needed for the County to conduct the required environmental review under the California Environmental Quality Act (CEQA) utilizing the *Water Resources* and *Hazardous Materials/Waste* sections of the County's Initial Study Checklist.

Until DOGGR develops the permitting process and regulations, it is not possible to know for certain what County CUP conditions should contain or address. For example, the County is preempted from adopting its own regulations with respect to well casings and well stimulation treatment fluids, but DOGGR may delineate notice duties for the County that can be implemented through permit conditions. In addition, until DOGGR completes the associated environmental impact report required under SB 4, there will be a question regarding the appropriate environmental review of hydraulic fracturing and acidization well stimulation treatments that might need to be prepared by the County to address proposed discretionary oil and gas projects. Therefore, it may be necessary to re-evaluate the County's CUP application questions in 2015 after the implementation of the new DOGGR permitting process mandated under SB 4.

Finally, the Board may be interested in the current status of oil permitting activities in the County. Since the Board's May 21, 2013 action, three CUP applications for new oil and gas wells have been submitted. This brings to five the number of oil and gas projects, involving a total of 40 wells, currently under review by the Planning Division. Although not yet part of the formal CUP application packet, the Planning Division has asked the applicants to indicate whether or not they intend to utilize hydraulic fracturing stimulation treatments in their operations. All four of the applicants have indicated that their projects do not include hydraulic fracturing well stimulation. However, one of these applicants has indicated that hydraulic fracturing may be considered in the future once the new State regulations are in place. The Planning Division did not initially ask for information related to acidization as there was a lack of clarity at the State as to what level of acidization constituted well stimulation as defined in SB 4. DOGGR has recently released information in its draft regulations which addresses this issue and Planning staff now intends to request the information from these applicants.

Confidential Legal Analysis of Antiquated Permits, Water, and Chemical Toxicity

At the May 21, 2013 meeting, the Board also directed the County Counsel to provide the Board with a confidential legal analysis of three questions regarding the County's ability to regulate oil and gas operations including aspects of hydraulic fracturing and other well stimulation treatments. County Counsel has provided the Board with memoranda addressing these questions which are recommended to remain confidential. The Board's questions are set forth below along with the County Counsel's conclusions regarding each.

1. What options are available to the County to address antiquated oilfield CUPs that do not require discretionary review for new drilling, and/or do not incorporate current ordinance requirements, and/or do not provide time limits?

Conclusion: The County has only a limited ability to address antiquated oilfield permits due to the vested rights doctrine and constitutional takings and due process principles. The County's options to modify antiquated oilfield permits consist of imposing: 1) permit changes that are reasonably related to a permittee's request for modification of an existing permit; 2) limited permit changes based on the establishment by the County of harm, danger or nuisance caused by a permitted activity; 3) limited permit changes based on the establishment by the County of a permittee's significant violations of law or permit conditions; and 4) specific permit changes contemplated by existing conditions in the permit. In addition, a permit could be revoked if its operations constitute a nuisance and imposition of conditions to eliminate the nuisance is not feasible.

2. May the County restrict the use of fresh water or require the use of non-fresh water when discretionary permits are issued for oil and gas well drilling or operation?

Conclusion: No. Restricting the use of fresh water or requiring the use of non-fresh water, to the extent it was applied to an operator's well stimulation treatments such as hydraulic fracturing, would likely conflict with extensive State law providing DOGGR, together with other State agencies including the State Water Resources Control Board, exclusive jurisdiction over the down-hole/subsurface aspects of oil and gas operations and over the surface and subsurface aspects of the composition of well stimulation treatment fluids under SB 4.

3. May the County require the use of non-toxic or least-toxic hydraulic fracturing chemicals?

Conclusion: No. Because of State law preemption resulting from existing State law and SB 4, the County is precluded from requiring the use of non-toxic and least-toxic well stimulation treatment fluids, including hydraulic fracturing fluids, since well stimulation treatments and the fluids used for the treatments are within the exclusive jurisdiction of DOGGR and other State agencies.

Conclusion/Summary

Since the Board action on May 21, 2013, directing staff to return with the analysis and information in this Board letter, the legislature passed and Governor Brown signed SB 4, which establishes a comprehensive regulatory and permitting framework for well stimulation activities. These regulations, being developed by DOGGR, will be among the most protective in the nation. The requirements within SB 4 fundamentally address the technical issues raised by the Board in May. They also address the notification and monitoring issues previously discussed by the Board and raised by county residents.

The legal analysis provided by County Counsel indicates that the County is largely pre-empted from actively regulating well stimulation treatment activities at both new and existing wells. However, the County is required under CEQA to assess and address the potential environmental impacts from such activities requiring a discretionary County

approval at proposed new well sites. Therefore, it is recommended that the Board direct the Resource Management Agency to add the following four questions to the CUP application questionnaire for proposed new Oil and Gas Exploration and Production permits:

1) Will hydraulic fracturing or acidization well stimulation treatments be performed?
2) What hazardous materials will be used?
3) What water supply will be used?
4) Where will the liquid wastes be disposed?

This item has been reviewed by the County Executive Office, County Counsel, and the Resource Management Agency. If you have questions concerning this item, please contact Sue Hughes, Deputy Executive Officer, at (805) 654-3836 or Chris Stephens, Director, Resource Management Agency at (805) 654-2661.

Sincerely,

Sue Hughes
Deputy Executive Officer

Chris Stephens
Resource Management Agency Director

Leroy Smith
County Counsel

Exhibit 1: SB 4 (Pavley – Chapter 313 – Statutes 2013)
Exhibit 2: Senate Bill 4 Implementation Plan
Exhibit 3: Frequently Asked Questions

Memorandum

County of Ventura · Resource Management Agency · Planning Division
800 S. Victoria Avenue, Ventura, CA 93009-1740 · (805) 654-2478 · ventura.org/rma/planning

DATE: **February 18, 2015**

TO: **The Honorable Planning Commission**

FROM: **Brian R. Baca, Manager**
Commercial and Industrial Permits

SUBJECT: **DCOR Zoning Clearance Appeals, PL14-0124, PL14-0146:**
Response to Citizens for Responsible Oil and Gas appeal comments

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INTRODUCTION

At the February 19, 2015 public hearing, the Planning Commission will consider two appeals filed for the issuance of zoning clearances issued by the Planning Director to initiate the installation and operation of new oil and gas wells as authorized by conditional use permits (CUPs) previously granted by the County of Ventura. These CUPs include:

- CUP 488 (Granted on May 29, 1956)
- CUP LU09-0073 (Granted on November 16, 2010)

On February 15, 2015, the Citizens for Responsible Oil and Gas (CFROG) submitted comments for consideration by your Commission at the February 19, 2015 hearing. Provided below are staff responses to each of the submitted comments, numbered in correspondence with the attached marked copy of the CFROG comments.

RESPONSES TO COMMENTS

1. There is no limit specified in CUP 488 (including condition of approval #3) in the number of oil wells that can be installed and operated within the permit area. Condition #3 specifically states:

   *"That **other wells may be drilled** within the limits for which this permit is issued **subject to only the following conditions**." [emphasis added]*

   The clear language of Condition #3 indicates that additional wells may be drilled subject only to the following conditions. None of the following conditions limits the number of wells. As pointed out by the commenter, dozens of wells have been drilled under the authority of CUP 488 since 1956.

Zoning Clearance ZC14-0965 under consideration by your Commission at the February 19, 2015 hearing involves 5 new wells proposed to be installed at an existing drillsite located on a hilltop approximately 2,400 feet west of Lake Piru. The drilling of oil wells in the area south of the San Felicia Dam is not before your Commission in the current proceeding.

2. Condition of Approval #2 of CUP 488 allows one well to be drilled approximately 1,000 feet south of the San Felicia Dam that must be setback 200 feet from the existing channel of Piru Creek. Conditions #3 and #4 allow other wells to be drilled in the CUP 488 area provided that they are located at least 500 feet from the channel of Piru Creek. Thus, Condition #2 only limits the number of wells that are allowed to be located less than 500 feet from Piru Creek. Zoning Clearance ZC08-0958 initiated the drilling of two wells south of the San Felicia Dam that are both located more than 500 feet from Piru Creek. The location of these wells is in conformance with the conditions of approval of CUP 488.

3. The issuance of a Zoning Clearance is a ministerial action that is not subject to discretionary review. Thus, no new environmental review under CEQA can be required and no new "conditions of approval" can be imposed as part of a Zoning Clearance. Condition of Approval #7 does not require further discretionary review of the permitted oil and gas project but instead requires conformance with any changes in State or local laws applicable to ministerial permits. For example, the operation of oil wells are subject to the ministerial permits issued by the Ventura County Air Pollution Control District (i.e. Permit to Operate, Authority to Construct). The VCAPCD permits implement current State laws that pertain to emissions from oil and gas operations. Similarly, the installation of new oil wells are subject to any applicable provision of the current California Building Code. Finally, the drilling of new oil wells, and the ongoing operations of existing oil and gas facilities, are subject to recently-enacted State laws implemented by the Californinia Division of Oil and Gas and Geothermal Resources (DOGGR). These laws include AB 1960. This law was passed in 2008 and implementing regulations were adopted in 2010. AB 1960 establishes minimum standards for the maintenance and possible replacement of all above ground oil field facilities (pumping units, tanks, pipelines, etc.) and any buried pipelines at each oil and gas facility in the State. Each oil operator is required to submit an "AB 1960 Compliance Plan" to DOGGR for each oil field facility. According to DOGGR (Bruce Hesson, Pers. Comm., 2-17-15), DCOR is in compliance with AB 1960 requirements for the Temescal Oil Field.

   CUP 488 authorizes the following uses:

   > *"Drilling for and extraction of oil, gas, and other hydrocarbon substances and installing and using buildings, equipment, and other appurtenances accessory thereto, including pipelines, but* ***specifically excluding*** *processing, refining and packaging, bulk storage or* ***any other use***

specified in Division 8, Ventura County Ordinance Code, ***requiring review and Special Use Permit,*** *and subject to the following conditions:" [emphasis added]*

According to the above language, CUP 488 (formerly SUP 488) authorizes oil and gas drilling and extraction operations but does not authorize other uses "requiring review and Special Use Permit." The phrase "requiring review and Special Use Permit" refers to uses subject to discretionary review. Thus, the conditions of approval of CUP 488 (including Condition #7) do not require discretionary review for the drilling of oil wells.

The use of the terms "nuisance or annoyance" in Condition #7 allows the County to address any complaints regarding the operation of the oil production facilities as a matter of condition compliance. Should a complaint be filed regarding some perceived "nuisance" caused by the ongoing permitted operation, the County could investigate and take action within the context of current legal standards pertaining to a public nuisance. This would not include new discretionary review of the installation and operation of new oil wells.

In any case, the comment does not provide any evidence of a dust, noise, vibration, or odor issue associated with the 5 wells that are the subject of the Zoning Clearance under appeal. CUP #488 (including Condition #7) does not prohibit or limit the use of any specific well stimulation or production technique.

4. The "San Benito case" (*Center for Biological Diversity vs. County of San Benito*) referenced by the commenter involved a determination by the Court that the potential buildout of an oil field had to be analyzed in a CEQA document for a substantially smaller discretionary oil and gas project. The evaluation of the oil field buildout was found to require a EIR. The "San Benito" case is not relevant to the issuance of ministerial zoning clearances for additional wells in an already-permitted oil and gas operation in an existing oil field.

5. Any flaring done by DCOR in the operation of its facilities in the Temescal Oil Field will be done under permit from the Ventura County Air Pollution Control District (VCAPCD). Flaring is a standard technique required by the VCAPCD to reduce potential pollution from hydrocarbon emissions where there is no pipeline available. Oil and gas facilities are not required to build pipelines for each oil and gas production facility. Condition #7 requires that oil operations be conducted using "best accepted practices" that are "practicable" and "economically feasible." It has not been demonstrated by the commenter that a pipeline is "practicable" or "economically feasible." The term "best accepted practices" is addressed by conformance with VCAPCD and DOGGR regulations.

   The issuance of a Zoning Clearance is a ministerial act that is not subject to environmental review under CEQA. Thus, the issue of the environmental effects

of GHG emissions is not relevant to the issuance of a Zoning Clearance and is not before your Commission.

6. The issuance of a Zoning Clearance is a ministerial act that is not subject to environmental review under CEQA. Thus, the environmental issues listed by the commenter are not relevant to the requested zoning clearances under consideration by your Commission.

7. The comment refers to abandoned wells in the Temescal Oil Field and a 1962 document from the Regional Water Control Board pertaining to water discharge into Lime Creek. These issues do not relate to the issuance of the requested zoning clearances under consideration by your Commission.

8. The issuance of a Zoning Clearance is a ministerial act that is not subject to environmental review under CEQA. Thus, the analysis of environmental effects (project-specific and cumulative) is not required or under consideration by the County in the determination of whether to issue the requested zoning clearance.

9. The history of the drilling and abandonment of the Temescal #33 well is not relevant to the issuance of the requested zoning clearance for 5 new wells at the Temescal Oil Field. This comment provides no evidence that the proposed wells are inconsistent with the terms and conditions of CUP 488.

10. Refer to response to comment #3 above. There is nothing in CUP 488 that states or implies that "a discretionary action is required each time a new well is proposed" as asserted by the commenter. To the contrary, Condition of Approval #3 specifically allows for the drilling of "other wells."

11. Refer to responses to comment #3 and #10 above.

12. The site of the proposed 5 new wells at the Temescal Oil Field are accessed by paved roads that extend from the community of Piru to the drillsite. Thus, there are not "miles of dirt roads" that will be used to access the site of the proposed wells. In any case, the wells and operations are subject to the air quality regulations enforced by the VCAPCD. This comment does not provide any evidence that the proposed wells would be installed in a manner or at a location inconsistent with CUP 488.

13. Refer to response to comments #3 and #10 above.

14. The granting of a permit adjustment in 1996 is not relevant to the issuance of the requested zoning clearance for 5 new wells at the Temescal Oil Field. The permit adjustment in question was granted by the County with the determination that the action was exempt from CEQA pursuant to Section 15301 of the CEQA Guidelines. The decision to grant the permit adjustment and the determination

that the action was exempt from environmental review was made in 1996 and not subject to a timely challenge. It is nearly 20 years too late to challenge that permit action or CEQA determination. In any case, the 1996 permit adjustment is not relevant to the requested issuance of a zoning clearance for new wells pursuant to CUP 488. This comment does not provide any evidence that the requested zoning clearance is inconsistent with the terms and conditions of CUP 488.

15. Refer to the responses to comments #1 through #14 above. There is no basis to require a cessation of drilling or the preparation of an EIR prior to the issuance of the requested zoning clearance. Section 8111-1.1.1.b of the County NCZO states that a "Zoning Clearance shall be issued" if certain standards are met. As indicated on pages 10 and 11 of the Planning Commission staff report for the February 19, 2015 hearing, staff has found that the required standards have been met. Absent a contrary finding by your Commission, the County is obligated to issue the requested zoning clearance.

Attachment:

Citizens for Responsible Oil and Gas,
Appeal comments at the Planning Commission hearing, February 19, 2015. (Marked)

CUP 488
Citizens for Responsible Oil and Gas
Appeal Comments at Planning Commission Hearing
February 19, 2015

In 1959, the Board of Supervisors issued CUP 488. It was a very different time then. The CUP was actually first written in 1956 for a period of less than one year. It permitted Tidewater Oil Company to drill one exploratory well above Piru in a vague and overly broad description of land. As the time period was coming to an end and Tidewater had not begun drilling the well, the company went back to the Board and asked for more time and permission to drill 5 more wells if the first well were to be successful. In response to that request, the original CUP was modified to reword numbers 2 and 3.

> Condition Number 3. That other wells may be drilled within the limits for which this permit is issued subject only to the following conditions:

The term in the modified conditions, "other wells", has been used to authorize dozens of wells for the past 58 years with no restrictions or environmental review except the otherwise conditioned 200' buffer for Piru Creek. It is doubtful that was the true intent of the 1959 Board of Supervisors.

1

> Condition Number 2 states:
> "That one well may be drilled at a location approximately one thousand feet (1,000') south of Santa Felicia Dam, ..." Within the past 5 years, DCOR has been given zoning clearances to drill many wells south of Santa Felicia Dam. The closest well is Temescal 50-3 drilled in the last year approximately 1000 – 1200' feet south of Santa Felicia Dam. However, Temescal 50-3 is somehow not considered by the Planning Department to be the one well specified in Condition number 2. The history of zoning clearances issued to DCOR in the staff

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> report surprisingly does not include Temescal 50-3 (API-11121975). The well drilling records are still confidential, but DOGGR records indicate the well is new and identify its exact location.

The Planning Department has taken the position that any CUP issued prior to CEQA's implementation in 1970 cannot be modified, changed or otherwise conditioned. However, Condition #2 of the 1959 CUP can be interpreted to mean exactly what it says "one well may be drilled south of Santa Felicia Dam". It is unlikely that the Supervisors granting this CUP meant one well, but then as many more as you want. However, this is the interpretation of the current Planning Department.

2

Long Ignored Condition #7

While there were very few conditions placed upon Tidewater Oil Company in 1959, the Board of Supervisors clearly envisioned that technological advances would be found and our environment would need further protections in the future. Condition number 7 has been completely ignored by the Planning Department.

> Condition 7 reads:
> "7. That all oil drilling and production operations shall be conducted in such a manner as to eliminate, as far as practicable, dust, noise, vibration, or noxious odors, and shall be in accordance with the best accepted practices, incident to drilling for and the production of oil, gas, and other hydrocarbon substances. Where economically feasible and where generally accepted and used, proven technological improvements in drilling and production methods shall be adopted as they may become from time to time available, if capable of reducing factors of nuisance and annoyance." (CUP 488 page 3)

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Certainly the intent of this condition was to allow future lead

agencies or governmental decision making bodies the discretion to review any new drilling request and make provisions for the use of "proven technological improvements." It is clearly not within the conditions of the CUP to avoid all review of any issue and award non-conditioned zoning clearances for drilling in perpetuity. The Planning Department has issued no new conditions dealing with environmental issues such as fracking, acidizing, or any other extreme drilling techniques now in use by oil companies in Ventura County. Temescal 20 was originally drilled in 1969 and abandoned in 1994. It was converted to a cyclic steam injection well in 2014 by DCOR. As in the recent San Benito case where the judge found the potential of great environmental damage from steam injection and called for a full EIR, this practice must be fully environmentally reviewed in order to preserve and protect the natural resources of Ventura County.

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Condition #7 requires that oil drilling and production operations shall be in accordance with best practices. Best practices are now widely recognized to include utilizing pipelines to transport oil, gas and produced water from the site. Gas should not be flared; it is a precious natural resource and should be considered as such. The 2008 Greenhouse Gas Emissions law AB 32 requires Lead Agencies to quantify GHG emissions and make plans for mitigating the new sources of emissions. Flaring is a very dirty way of getting rid of an unwanted by-product of oil production. It is the law that the new GHG emissions from this project should be studied and certainly that study would be considered "best accepted practices." CUP #488 is in violation of condition #7 for this and the following other reasons.

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Among the many environmental resources in this area that have been denied protection from ongoing unregulated drilling on the Temescal Ranch over the past 58 years by ignoring Condition #7 are:

1. Endangered California Condor (no mitigation measures despite its extremely close proximity to the Condor Sanctuary and nesting and roosting sites).
2. Golden eagles nesting and feeding in the area
3. Other non-identified threatened and endangered wildlife

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threatened by additional non-permitted grading as well as increased noise, vibration, dangerous and toxic chemicals, and increased human presence.

4. Proximity to Lake Piru and Piru Creek that is home to endangered species of both plant and aquatic life, including the endangered steelhead trout.

5. Migratory nesting birds that are not protected during mating season.

6. High potential for archeological resources that have never been studied or inventoried.

7. Wildlife Movement Corridor that has not been assessed or studied as it relates to this parcel of land.

8. Greenhouse gas emissions analysis in compliance with California State law.

9. Lake Piru Recreation Area and the visual degradation, noise, dust, and air pollution

10. Several of the wells that were abandoned in the early 1990's contained comments in the well records of leaking well bores at the surface (example: Temescal #6 #11104060). While continued leaking may have been abated with abandonment, there has been no environmental assessment to see what the baseline conditions of the land, surface water run-off, or water wells in the area might be.

11. Please see attached document of 1962 from the Regional Water Water Control Board to Getty Oil Company (operator of CUP 488 at the time) written in response to a concern about 21,000 gallons of water per day that was being discharged into Lime Canyon Creek just below the Santa Felicia Dam where it joins Lower Piru Creek. Sadly, the Water Control Board allowed permeable sumps next to the creek to continue to be used to settle the produced water prior to releasing it into Lime Canyon Creek.

Most importantly, there has been no study of the cumulative effects of oil drilling and production in this location to our environment. A full and comprehensive EIR would at least give us a baseline and allow for the implementation of "best practices and new technological advances."

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Temescal #33 (API #111-01436) was drilled in 1959 virtually in Piru Creek. It was discovered that the well was leaking oil and gas to the surface in 1974. In 1975 it was leaking gas to the surface according to a written comment in the well file, "1/28/76 Still slight gas leakage." When the well was first abandoned on 1/8/74 DOGGR did not approve the action because "Cement plug at surface not approved, well leaking gas to surface". Due to continued leaking the well was reabandoned in 1976. The well record indicates that when drilling commenced there was a problem and the following comment is in the file, "can't tell, only fresh water with minor traces of oil." The record also indicates that diesel oil was used in the drilling process. This is one of many oil well records on Temescal Ranch that indicate leaks to the surface, leaks in the casings, and oil spills. The public needs answers to their concerns about the quality of their water, air and soil on Temescal Ranch before any new drilling is permitted.

9

The Planning Department's position that the Planning Commission cannot in any way condition the CUP is in error. First, the 1959 CUP envisions a time that the CUP will need to be reviewed and updated to meet current drilling standards. The wording is crystal clear, "proven technological improvements in drilling and production shall be adopted." In order to adopt a new proven technological improvement, the Lead Agency must review the proposed new development and make changes and recommendations. In order to comply with this condition of CUP 488, the action CANNOT be ministerial. Condition 7 requires a discretionary action each time a new well is proposed.

10

CEQA Guidelines define a ministerial action as follows:

> "Ministerial" describes a governmental decision involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision. A ministerial decision involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be

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> carried out. Common examples of ministerial permits include automobile registrations, dog licenses, and marriage licenses. A building permit is ministerial if the ordinance requiring the permit limits the public official to determining whether the zoning allows the structure to be built in the requested location, the structure would meet the strength requirements in the Uniform Building Code, and the applicant has paid his fee.

A ministerial decision involves only the use of fixed standards or objective measurements. The 1959 Board of Supervisors not only conditioned the CUP on moving standards, but they also expected the measurements to be subjective. The very terms "best practices" and "technological improvements" define a moving target and subjective judgment.

> **Section 15357. Discretionary Project.**
>
> "Discretionary project" means a project which requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations. (CEQA Guidelines)

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The applicant, DCOR, has submitted an application to drill new oil wells on an existing CUP with certain conditions of approval. Condition #7 requires that the lead agency exercise judgment and deliberation in order to approve or disapprove the project. It requires the lead agency to study and evaluate best practices and technological improvements and weigh those advances to determine if they are capable of reducing "nuisances and annoyance." (CUP 488 condition #7).

Nuisance and annoyance are very interesting words to find in a CUP written by a Board in 1959. Both of those words have taken on broad and significant meaning under CEQA. For example, according to the

Ventura County Air Quality Assessment Guidelines, oil and gas extraction activities can cause significant odors. Objectionable odors created by a facility or operation may cause a **nuisance or annoyance** to surrounding populations. Lake Piru and most of the Recreational Area are within CUP 488. As required by condition #7, odors should be monitored and best practices applied to the drilling and extraction operations in the area.

> According to the Ventura County Air Quality Guidelines, "Fugitive dust refers to solid particulate matter that becomes airborne because of wind action and human activities.... Unpaved roadways also are a large source of fugitive dust."
>
> "When fugitive dust particles are inhaled, they can travel easily to the deep parts of the lungs and may remain there, causing respiratory illness, lung damage, and even premature death in sensitive people. Fugitive dust may be a **nuisance** to those living and working nearby."Pg. 2-16

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The miles of dirt roads used to access oil wells surrounding Lake Piru Recreational Area create a significant dust **annoyance** and best practices or modern technological advances must be applied to any new project authorizing the drilling of additional oil wells.

12

The Piru Area Plan specifically refers to the **nuisance** of the noise and vibrations of the dozens of heavy oil trucks carrying either crude oil or produced water from oil and gas operations that pass within feet of the front doors of residences on Main Street. The Board of Supervisors of 1959 envisioned such a future issue and provided for the application of new technology to mitigate the annoyance. Produced water carried by many of the largest trucks could be recycled at the production area being built by DCOR. Portable reverse osmosis (RO) water recycling units are available and can be used to purify the produced water to such a degree that it could be sold to

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local ranchers for agricultural purposes in the immediate area, or allowed to seep back into our diminishing aquifers.

Condition #7 of CUP 488 begins,
"That all oil drilling and production shall be conducted in such a manner as to eliminate, as far as practicable, noise, vibration or noxious odors ..."

Fracking creates vibration. Condition #7 says that oil drilling and production SHALL BE CONDUCTED in such a manner as to ELIMINATE vibration. Of course it is practicable to eliminate fracking. It may not allow for as great a profit margin for DCOR, but it is perfectly practicable to eliminate fracking or any other well stimulation that would create surface vibration. 13

Condition #7 of CUP 488 requires a discretionary decision by any future reviewer of this CUP and therefore, this CUP is subject to full CEQA review prior to any future development, drilling, or well stimulation to evaluate all of the ways this unregulated CUP may have become a nuisance or annoyance.

1996 Revision of the Boundaries of CUP 488

It is the contention of CFROG that this 1996 revision of 160 total acres of land in the CUP was done in violation of CEQA as it was a major modification at the least, or required a new CUP altogether. The Planning Department erred in its conclusion that "the conditions of CUP 488 were not altered by this action and the site of the currently proposed wells was not part of this land swap." (Pg. 7 staff report). Whether or not the new wells are to be located on this land swap is irrelevant to the issue at hand. The issue is whether a land swap of 160 acres into and out of the CUP boundaries required CEQA review. Seneca Oil Company wanted to change the boundaries of the CUP in 1996 in order to drill in a new area without CEQA review on the land. CUP 488 is considered by Ventura County Planning Department to be exempt from CEQA. So, in order to avoid CEQA 14

review, a "land swap" was approved by the Planning Department and is being further sanctified by our current Planning Department.

This land swap was not a little thing. The land that was "swapped" for the new parcel had already been used for drilling oil wells as part of the existing CUP 488. The newly incorporated land was added for the express purpose of drilling new wells but it was never reviewed for any environmental purpose. New land was added to the CUP. This was not a ministerial lot line adjustment. No lot lines were changed. Rather the lines of the CUP were redrawn to add 80 new acres with no environmental review in 1996, 26 years after the enaction of CEQA. If it were possible for a entitlement holder of a CUP to simply keep moving the lines of the CUP by "swapping land", then CUP's could essentially become moving lines that would eventually incorporate thousands of acres of land some used in the past and some of it new land waiting to be used. All of this could be then permitted in the name of an "antiquated CUP" exempt from CEQA. All of the swapping in this CUP was done for one singular purpose – to avoid CEQA review. 14

The staff report says that the boundary revision did not alter the conditions of the CUP. However condition number one affirmatively states that the permit is issued **ONLY** "for that portion of land described in the application..." (CUP 488 pg. 2). Over the years the CUP lines were mapped and recorded in Ventura County Map books as well as kept in the CUP file. The conditions of approval did not allow a "land swap" or a change from that which was described in the initial application.

The rights to a CUP run with the land. Owners can change as we saw happen over the years in CUP 488, but the entitlement remains with the land. So, once a CUP is described and mapped, its limits are finite. Since this revision of boundaries was not ministerial act and thus required CEQA review, the CUP is in violation. The violation must be abated with a full EIR as part of the CEQA review prior to any ongoing or future use.

For the above reasons, CFROG requests a cessation of drilling until a full EIR is satisfactorily completed that will comprehensively study the environmental impacts of oil drilling and production on Temescal Ranch so that at a minimum best practices and technological improvements can be included in the conditions of approval.

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State of California
Resources Agency
REGIONAL WATER POLLUTION CONTROL BOARD NO. 4
Los Angeles Region

RESOLUTION NO. 63-18

PRESCRIBING REQUIREMENTS FOR DISPOSAL OF OIL FIELD WASTES
GETTY OIL COMPANY
Temescal Oil Field, Ventura County, California
(File 62-109)

WHEREAS, in compliance with Section 13054 of the Water Code of the State of California, GETTY OIL COMPANY has filed with this Regional Water Pollution Control Board a report on waste discharge (our Report No. 601) dated July 24, 1962, for the existing disposal of 500 barrels per day (21,000 gallons per day) of industrial wastes resulting from the production of oil in the Temescal Field, Ventura County, into Lime Canyon Creek in Section 4, T4N, R18W, one-half mile southwesterly from San Felicia Dam in Piru Canyon; and

WHEREAS, this Board has caused the following investigations to be made relative to this waste discharge:

1. Field investigations were conducted by the staff of this Board.

2. In accordance with administrative procedures established by this Board, copies of the report on waste discharge were forwarded to interested governmental agencies and persons for comments, suggestions, and/or recommendations.

3. Review was made of a report to the Board by the then Division of Water Resources, titled "Ventura County Oil Waste Investigation", dated June, 1954;

and

WHEREAS, based upon these investigations the Board finds that:

1. This waste disposal site is located just north of the terminus of Lime Canyon Road at Piru Canyon Road, about three miles north of State Highway 126.

2. Oil field brines are separated from oil in a concrete-lined pond prior to discharge into Lime Canyon Creek. A series of unlined sumps adjacent to the concrete-lined sump apparently serves to retain any emergency overflow.

3. This waste disposal site is situated in permeable alluvial formations which are water-bearing. Liquid wastes discharged at the site can readily percolate into the stream bed deposits in Lime Canyon and Piru Creeks. Surface and subsurface waters in these creeks recharge Piru Ground Water Basin in the Santa Clara River Valley.

4. Ground waters in the Piru Basin are beneficially used for domestic, municipal, irrigation, and stock-water purposes, and as a source of replenishment for the lower groundwater basins in the Santa Clara River Valley area. The mineral quality of the groundwaters in Piru Basin downstream from the point of disposal does not generally meet the recommended limits of the United States Public Health Service Drinking Water Standards. For irrigation purposes, these waters are considered Class 2.

5. Analyses of waste water discharged at this site yielded the following average data:

Total dissolved solids	8380 ppm
Sodium	2700 "
Chloride	92 "
Sulfate	60 "
Bicarbonate	5260 "
Boron	1.5 "
Sodium equivalent ratio	97%
pH	8.0

and

WHEREAS, on March 27, 1963, a letter transmitting a tentative draft of this resolution was forwarded to Getty Oil Company, and copies thereof sent to interested persons and governmental agencies with the advice that objections thereto would be considered by the Board if submitted in writing on or before April 16, 1963; and

WHEREAS, objections received have been reviewed and considered by the Board;

NOW THEREFORE, BE IT RESOLVED, that in order to prevent pollution of the receiving waters and to prevent creation of a nuisance, this Regional Water Pollution Control Board, in accordance with authority granted by Division 7 of the Water Code of the State of California, prescribes the following requirements with respect to this waste disposal by Getty Oil Company, subject to the provisions of Section 13054 of the Water Code, which reads in part that requirements may be revised from time to time:

Requirements
Getty Oil Co. File 62-109

1. Wastes discharged to the ground at this site shall at no time contain greater concentrations of the following mineral constituents than those listed herein:

Constituent	Maximum Limit
Total dissolved solids	2000 ppm
Chloride	250 "
Boron	1.5 "
Sodium equivalent ratio	60%

2. Wastes discharged at this site shall contain no substance in concentrations sufficient to impart tastes, odors, or other objectionable characteristics to usable receiving waters.

3. Wastes discharged shall contain no substance in concentrations toxic to human, animal or plant life.

4. The discharge of wastes at this site shall not create a condition of nuisance as defined in Section 13005 of the California Water Code.

5. Wastes which do not meet all of the foregoing requirements shall be held in impervious containers, and if transferred elsewhere, the final discharge shall be at a legal point of disposal. In this events, in accordance with the provisions of Section 13055 of the Water Code, Getty Oil Company shall submit to this Board, at quarterly intervals, a technical report containing the following requirements:

   a) The name and address of the hauler of the wastes
   b) The quantity of wastes hauled during this reporting period
   c) The quality of wastes in storage at the end of the reporting period
   d) The location of the ultimate disposal point of the wastes;

and

BE IT FURTHER RESOLVED, that in prescribing these requirements it is the intent of this Board to:

1. Preserve the quality of the receiving waters, insofar as they may be affected by the disposal of industrial wastes to the ground at this plant site, suitable for beneficial uses for which they may be utilized.

2. Prevent the creation of a nuisance as a result of this waste discharge;
and

BE IT FURTHER RESOLVED, that the attention of Getty Oil Company be hereby directed to Section 13054.1 of the Water Code of the State of California, which reads in part "Any person discharging sewage or industrial waste within any region, other than into a community sewer system, shall file with the regional board of that region a report of any material change or proposed change in the character, location or volume of the discharge"; and

BE IT FURTHER RESOLVED, that Getty Oil Company be hereby directed to inform this Board of any change in ownership of this waste disposal facility; and

BE IT FURTHER RESOLVED, that the foregoing requirements do not authorize the commission of any act resulting in injury to the property of another; and

BE IT FURTHER RESOLVED, that Getty Oil Company be further advised that these requirements do not exempt the operator of this waste disposal facility from compliance with any other law which may be applicable. The requirements are not a permit; they do not legalize this waste disposal facility, and they leave unaffected any further restraints on the disposal of wastes at this site which may be contained in other statutes; and

BE IT FURTHER RESOLVED, that the Executive Officer of this Board be authorized, and he is hereby directed, to certify and submit copies of this resolution to Getty Oil Company, and to such individuals and agencies as may have need therefor, or as may request same.

I, Linne C. Larson, Executive Officer of the Los Angeles Regional Water Pollution Control Board, State of California, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the Los Angeles Regional Water Pollution Control Board at the Board Meeting held on April 17, 1963.

ERA MEMO:
Legibility of writing, typing or printing UNSATISFACTORY in portions of the document when received.

LAM:IF
3-27-63

LINNE C. LARSON
Executive Officer

Memorandum

County of Ventura · Resource Management Agency · Planning Division
800 S. Victoria Avenue, Ventura, CA 93009-1740 • (805) 654-2478 • ventura.org/rma/planning

DATE: **February 18, 2015**

TO: **The Honorable Planning Commission**

FROM: **Brian R. Baca, Manager**
Commercial and Industrial Permits

SUBJECT: **DCOR Zoning Clearance Appeals, PL14-0124, PL14-0146:**
Response to Citizens for Responsible Oil and Gas appeal comments

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INTRODUCTION

At the February 19, 2015 public hearing, the Planning Commission will consider two appeals filed for the issuance of zoning clearances issued by the Planning Director to initiate the installation and operation of new oil and gas wells as authorized by conditional use permits (CUPs) previously granted by the County of Ventura. These CUPs include:

- CUP 488 (Granted on May 29, 1956)
- CUP LU09-0073 (Granted on November 16, 2010)

On February 15, 2015, the Citizens for Responsible Oil and Gas (CFROG) submitted comments for consideration by your Commission at the February 19, 2015 hearing. Provided below are staff responses to each of the submitted comments, numbered in correspondence with the attached marked copy of the CFROG comments.

RESPONSES TO COMMENTS

1. There is no limit specified in CUP 488 (including condition of approval #3) in the number of oil wells that can be installed and operated within the permit area. Condition #3 specifically states:

   *"That **other wells may be drilled** within the limits for which this permit is issued **subject to only the following conditions.**" [emphasis added]*

   The clear language of Condition #3 indicates that additional wells may be drilled subject only to the following conditions. None of the following conditions limits the number of wells. As pointed out by the commenter, dozens of wells have been drilled under the authority of CUP 488 since 1956.

Zoning Clearance ZC14-0965 under consideration by your Commission at the February 19, 2015 hearing involves 5 new wells proposed to be installed at an existing drillsite located on a hilltop approximately 2,400 feet west of Lake Piru. The drilling of oil wells in the area south of the San Felicia Dam is not before your Commission in the current proceeding.

2. Condition of Approval #2 of CUP 488 allows one well to be drilled approximately 1,000 feet south of the San Felicia Dam that must be setback 200 feet from the existing channel of Piru Creek. Conditions #3 and #4 allow other wells to be drilled in the CUP 488 area provided that they are located at least 500 feet from the channel of Piru Creek. Thus, Condition #2 only limits the number of wells that are allowed to be located less than 500 feet from Piru Creek. Zoning Clearance ZC08-0958 initiated the drilling of two wells south of the San Felicia Dam that are both located more than 500 feet from Piru Creek. The location of these wells is in conformance with the conditions of approval of CUP 488.

3. The issuance of a Zoning Clearance is a ministerial action that is not subject to discretionary review. Thus, no new environmental review under CEQA can be required and no new "conditions of approval" can be imposed as part of a Zoning Clearance. Condition of Approval #7 does not require further discretionary review of the permitted oil and gas project but instead requires conformance with any changes in State or local laws applicable to ministerial permits. For example, the operation of oil wells are subject to the ministerial permits issued by the Ventura County Air Pollution Control District (i.e. Permit to Operate, Authority to Construct). The VCAPCD permits implement current State laws that pertain to emissions from oil and gas operations. Similarly, the installation of new oil wells are subject to any applicable provision of the current California Building Code. Finally, the drilling of new oil wells, and the ongoing operations of existing oil and gas facilities, are subject to recently-enacted State laws implemented by the Califorinia Division of Oil and Gas and Geothermal Resources (DOGGR). These laws include AB 1960. This law was passed in 2008 and implementing regulations were adopted in 2010. AB 1960 establishes minimum standards for the maintenance and possible replacement of all above ground oil field facilities (pumping units, tanks, pipelines, etc.) and any buried pipelines at each oil and gas facility in the State. Each oil operator is required to submit an "AB 1960 Compliance Plan" to DOGGR for each oil field facility. According to DOGGR (Bruce Hesson, Pers. Comm., 2-17-15), DCOR is in compliance with AB 1960 requirements for the Temescal Oil Field.

   CUP 488 authorizes the following uses:

   > *"Drilling for and extraction of oil, gas, and other hydrocarbon substances and installing and using buildings, equipment, and other appurtenances accessory thereto, including pipelines, but* ***specifically excluding*** *processing, refining and packaging, bulk storage or* ***any other use***

specified in Division 8, Ventura County Ordinance Code, ***requiring review and Special Use Permit,*** *and subject to the following conditions:" [emphasis added]*

According to the above language, CUP 488 (formerly SUP 488) authorizes oil and gas drilling and extraction operations but does not authorize other uses "requiring review and Special Use Permit." The phrase "requiring review and Special Use Permit" refers to uses subject to discretionary review. Thus, the conditions of approval of CUP 488 (including Condition #7) do not require discretionary review for the drilling of oil wells.

The use of the terms "nuisance or annoyance" in Condition #7 allows the County to address any complaints regarding the operation of the oil production facilities as a matter of condition compliance. Should a complaint be filed regarding some perceived "nuisance" caused by the ongoing permitted operation, the County could investigate and take action within the context of current legal standards pertaining to a public nuisance. This would not include new discretionary review of the installation and operation of new oil wells.

In any case, the comment does not provide any evidence of a dust, noise, vibration, or odor issue associated with the 5 wells that are the subject of the Zoning Clearance under appeal. CUP #488 (including Condition #7) does not prohibit or limit the use of any specific well stimulation or production technique.

4. The "San Benito case" (*Center for Biological Diversity vs. County of San Benito*) referenced by the commenter involved a determination by the Court that the potential buildout of an oil field had to be analyzed in a CEQA document for a substantially smaller discretionary oil and gas project. The evaluation of the oil field buildout was found to require a EIR. The "San Benito" case is not relevant to the issuance of ministerial zoning clearances for additional wells in an already-permitted oil and gas operation in an existing oil field.

5. Any flaring done by DCOR in the operation of its facilities in the Temescal Oil Field will be done under permit from the Ventura County Air Pollution Control District (VCAPCD). Flaring is a standard technique required by the VCAPCD to reduce potential pollution from hydrocarbon emissions where there is no pipeline available. Oil and gas facilities are not required to build pipelines for each oil and gas production facility. Condition #7 requires that oil operations be conducted using "best accepted practices" that are "practicable" and "economically feasible." It has not been demonstrated by the commenter that a pipeline is "practicable" or "economically feasible." The term "best accepted practices" is addressed by conformance with VCAPCD and DOGGR regulations.

   The issuance of a Zoning Clearance is a ministerial act that is not subject to environmental review under CEQA. Thus, the issue of the environmental effects

of GHG emissions is not relevant to the issuance of a Zoning Clearance and is not before your Commission.

6. The issuance of a Zoning Clearance is a ministerial act that is not subject to environmental review under CEQA. Thus, the environmental issues listed by the commenter are not relevant to the requested zoning clearances under consideration by your Commission.

7. The comment refers to abandoned wells in the Temescal Oil Field and a 1962 document from the Regional Water Control Board pertaining to water discharge into Lime Creek. These issues do not relate to the issuance of the requested zoning clearances under consideration by your Commission.

8. The issuance of a Zoning Clearance is a ministerial act that is not subject to environmental review under CEQA. Thus, the analysis of environmental effects (project-specific and cumulative) is not required or under consideration by the County in the determination of whether to issue the requested zoning clearance.

9. The history of the drilling and abandonment of the Temescal #33 well is not relevant to the issuance of the requested zoning clearance for 5 new wells at the Temescal Oil Field. This comment provides no evidence that the proposed wells are inconsistent with the terms and conditions of CUP 488.

10. Refer to response to comment #3 above. There is nothing in CUP 488 that states or implies that "a discretionary action is required each time a new well is proposed" as asserted by the commenter. To the contrary, Condition of Approval #3 specifically allows for the drilling of "other wells."

11. Refer to responses to comment #3 and #10 above.

12. The site of the proposed 5 new wells at the Temescal Oil Field are accessed by paved roads that extend from the community of Piru to the drillsite. Thus, there are not "miles of dirt roads" that will be used to access the site of the proposed wells. In any case, the wells and operations are subject to the air quality regulations enforced by the VCAPCD. This comment does not provide any evidence that the proposed wells would be installed in a manner or at a location inconsistent with CUP 488.

13. Refer to response to comments #3 and #10 above.

14. The granting of a permit adjustment in 1996 is not relevant to the issuance of the requested zoning clearance for 5 new wells at the Temescal Oil Field. The permit adjustment in question was granted by the County with the determination that the action was exempt from CEQA pursuant to Section 15301 of the CEQA Guidelines. The decision to grant the permit adjustment and the determination

that the action was exempt from environmental review was made in 1996 and not subject to a timely challenge. It is nearly 20 years too late to challenge that permit action or CEQA determination. In any case, the 1996 permit adjustment is not relevant to the requested issuance of a zoning clearance for new wells pursuant to CUP 488. This comment does not provide any evidence that the requested zoning clearance is inconsistent with the terms and conditions of CUP 488.

15. Refer to the responses to comments #1 through #14 above. There is no basis to require a cessation of drilling or the preparation of an EIR prior to the issuance of the requested zoning clearance. Section 8111-1.1.1.b of the County NCZO states that a "Zoning Clearance shall be issued" if certain standards are met. As indicated on pages 10 and 11 of the Planning Commission staff report for the February 19, 2015 hearing, staff has found that the required standards have been met. Absent a contrary finding by your Commission, the County is obligated to issue the requested zoning clearance.

Attachment:

Citizens for Responsible Oil and Gas,
Appeal comments at the Planning Commission hearing, February 19, 2015. (Marked)

CUP 488
Citizens for Responsible Oil and Gas
Appeal Comments at Planning Commission Hearing
February 19, 2015

In 1959, the Board of Supervisors issued CUP 488. It was a very different time then. The CUP was actually first written in 1956 for a period of less than one year. It permitted Tidewater Oil Company to drill one exploratory well above Piru in a vague and overly broad description of land. As the time period was coming to an end and Tidewater had not begun drilling the well, the company went back to the Board and asked for more time and permission to drill 5 more wells if the first well were to be successful. In response to that request, the original CUP was modified to reword numbers 2 and 3.

> Condition Number 3. That other wells may be drilled within the limits for which this permit is issued subject only to the following conditions:

The term in the modified conditions, "other wells", has been used to authorize dozens of wells for the past 58 years with no restrictions or environmental review except the otherwise conditioned 200' buffer for Piru Creek. It is doubtful that was the true intent of the 1959 Board of Supervisors.

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> Condition Number 2 states:
> "That one well may be drilled at a location approximately one thousand feet (1,000') south of Santa Felicia Dam, ..." Within the past 5 years, DCOR has been given zoning clearances to drill many wells south of Santa Felicia Dam. The closest well is Temescal 50-3 drilled in the last year approximately 1000 – 1200' feet south of Santa Felicia Dam. However, Temescal 50-3 is somehow not considered by the Planning Department to be the one well specified in Condition number 2. The history of zoning clearances issued to DCOR in the staff

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report surprisingly does not include Temescal 50-3 (API-11121975). The well drilling records are still confidential, but DOGGR records indicate the well is new and identify its exact location.

The Planning Department has taken the position that any CUP issued prior to CEQA's implementation in 1970 cannot be modified, changed or otherwise conditioned. However, Condition #2 of the 1959 CUP can be interpreted to mean exactly what it says "one well may be drilled south of Santa Felicia Dam". It is unlikely that the Supervisors granting this CUP meant one well, but then as many more as you want. However, this is the interpretation of the current Planning Department.

2

Long Ignored Condition #7

While there were very few conditions placed upon Tidewater Oil Company in 1959, the Board of Supervisors clearly envisioned that technological advances would be found and our environment would need further protections in the future. Condition number 7 has been completely ignored by the Planning Department.

> Condition 7 reads:
> "7. That all oil drilling and production operations shall be conducted in such a manner as to eliminate, as far as practicable, dust, noise, vibration, or noxious odors, and shall be in accordance with the best accepted practices, incident to drilling for and the production of oil, gas, and other hydrocarbon substances. Where economically feasible and where generally accepted and used, proven technological improvements in drilling and production methods shall be adopted as they may become from time to time available, if capable of reducing factors of nuisance and annoyance." (CUP 488 page 3)

3

Certainly the intent of this condition was to allow future lead

agencies or governmental decision making bodies the discretion to review any new drilling request and make provisions for the use of "proven technological improvements." It is clearly not within the conditions of the CUP to avoid all review of any issue and award non-conditioned zoning clearances for drilling in perpetuity. The Planning Department has issued no new conditions dealing with environmental issues such as fracking, acidizing, or any other extreme drilling techniques now in use by oil companies in Ventura County. Temescal 20 was originally drilled in 1969 and abandoned in 1994. It was converted to a cyclic steam injection well in 2014 by DCOR. As in the recent San Benito case where the judge found the potential of great environmental damage from steam injection and called for a full EIR, this practice must be fully environmentally reviewed in order to preserve and protect the natural resources of Ventura County.

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Condition #7 requires that oil drilling and production operations shall be in accordance with best practices. Best practices are now widely recognized to include utilizing pipelines to transport oil, gas and produced water from the site. Gas should not be flared; it is a precious natural resource and should be considered as such. The 2008 Greenhouse Gas Emissions law AB 32 requires Lead Agencies to quantify GHG emissions and make plans for mitigating the new sources of emissions. Flaring is a very dirty way of getting rid of an unwanted by-product of oil production. It is the law that the new GHG emissions from this project should be studied and certainly that study would be considered "best accepted practices." CUP #488 is in violation of condition #7 for this and the following other reasons.

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Among the many environmental resources in this area that have been denied protection from ongoing unregulated drilling on the Temescal Ranch over the past 58 years by ignoring Condition #7 are:

1. Endangered California Condor (no mitigation measures despite its extremely close proximity to the Condor Sanctuary and nesting and roosting sites).
2. Golden eagles nesting and feeding in the area
3. Other non-identified threatened and endangered wildlife

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threatened by additional non-permitted grading as well as increased noise, vibration, dangerous and toxic chemicals, and increased human presence.

4. Proximity to Lake Piru and Piru Creek that is home to endangered species of both plant and aquatic life, including the endangered steelhead trout.

5. Migratory nesting birds that are not protected during mating season.

6. High potential for archeological resources that have never been studied or inventoried.

7. Wildlife Movement Corridor that has not been assessed or studied as it relates to this parcel of land.

8. Greenhouse gas emissions analysis in compliance with California State law.

9. Lake Piru Recreation Area and the visual degradation, noise, dust, and air pollution

10. Several of the wells that were abandoned in the early 1990's contained comments in the well records of leaking well bores at the surface (example: Temescal #6 #11104060). While continued leaking may have been abated with abandonment, there has been no environmental assessment to see what the baseline conditions of the land, surface water run-off, or water wells in the area might be.

11. Please see attached document of 1962 from the Regional Water Water Control Board to Getty Oil Company (operator of CUP 488 at the time) written in response to a concern about 21,000 gallons of water per day that was being discharged into Lime Canyon Creek just below the Santa Felicia Dam where it joins Lower Piru Creek. Sadly, the Water Control Board allowed permeable sumps next to the creek to continue to be used to settle the produced water prior to releasing it into Lime Canyon Creek.

Most importantly, there has been no study of the cumulative effects of oil drilling and production in this location to our environment. A full and comprehensive EIR would at least give us a baseline and allow for the implementation of "best practices and new technological advances."

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Temescal #33 (API #111-01436) was drilled in 1959 virtually in Piru Creek. It was discovered that the well was leaking oil and gas to the surface in 1974. In 1975 it was leaking gas to the surface according to a written comment in the well file, "1/28/76 Still slight gas leakage." When the well was first abandoned on 1/8/74 DOGGR did not approve the action because "Cement plug at surface not approved, well leaking gas to surface". Due to continued leaking the well was reabandoned in 1976. The well record indicates that when drilling commenced there was a problem and the following comment is in the file, "can't tell, only fresh water with minor traces of oil." The record also indicates that diesel oil was used in the drilling process. This is one of many oil well records on Temescal Ranch that indicate leaks to the surface, leaks in the casings, and oil spills. The public needs answers to their concerns about the quality of their water, air and soil on Temescal Ranch before any new drilling is permitted. 9

The Planning Department's position that the Planning Commission cannot in any way condition the CUP is in error. First, the 1959 CUP envisions a time that the CUP will need to be reviewed and updated to meet current drilling standards. The wording is crystal clear, "proven technological improvements in drilling and production shall be adopted." In order to adopt a new proven technological improvement, the Lead Agency must review the proposed new development and make changes and recommendations. In order to comply with this condition of CUP 488, the action CANNOT be ministerial. Condition 7 requires a discretionary action each time a new well is proposed. 10

CEQA Guidelines define a ministerial action as follows:

> "Ministerial" describes a governmental decision involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision. A ministerial decision involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be 11

> carried out. Common examples of ministerial permits include automobile registrations, dog licenses, and marriage licenses. A building permit is ministerial if the ordinance requiring the permit limits the public official to determining whether the zoning allows the structure to be built in the requested location, the structure would meet the strength requirements in the Uniform Building Code, and the applicant has paid his fee.

A ministerial decision involves only the use of fixed standards or objective measurements. The 1959 Board of Supervisors not only conditioned the CUP on moving standards, but they also expected the measurements to be subjective. The very terms "best practices" and "technological improvements" define a moving target and subjective judgment.

> **Section 15357. Discretionary Project.**
>
> "Discretionary project" means a project which requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations. (CEQA Guidelines)

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The applicant, DCOR, has submitted an application to drill new oil wells on an existing CUP with certain conditions of approval. Condition #7 requires that the lead agency exercise judgment and deliberation in order to approve or disapprove the project. It requires the lead agency to study and evaluate best practices and technological improvements and weigh those advances to determine if they are capable of reducing "nuisances and annoyance." (CUP 488 condition #7).

Nuisance and annoyance are very interesting words to find in a CUP written by a Board in 1959. Both of those words have taken on broad and significant meaning under CEQA. For example, according to the

Ventura County Air Quality Assessment Guidelines, oil and gas extraction activities can cause significant odors. Objectionable odors created by a facility or operation may cause a **nuisance or annoyance** to surrounding populations. Lake Piru and most of the Recreational Area are within CUP 488. As required by condition #7, odors should be monitored and best practices applied to the drilling and extraction operations in the area.

> According to the Ventura County Air Quality Guidelines, "Fugitive dust refers to solid particulate matter that becomes airborne because of wind action and human activities.... Unpaved roadways also are a large source of fugitive dust."
>
> "When fugitive dust particles are inhaled, they can travel easily to the deep parts of the lungs and may remain there, causing respiratory illness, lung damage, and even premature death in sensitive people. Fugitive dust may be a **nuisance** to those living and working nearby."Pg. 2-16

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The miles of dirt roads used to access oil wells surrounding Lake Piru Recreational Area create a significant dust **annoyance** and best practices or modern technological advances must be applied to any new project authorizing the drilling of additional oil wells.

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The Piru Area Plan specifically refers to the **nuisance** of the noise and vibrations of the dozens of heavy oil trucks carrying either crude oil or produced water from oil and gas operations that pass within feet of the front doors of residences on Main Street. The Board of Supervisors of 1959 envisioned such a future issue and provided for the application of new technology to mitigate the annoyance. Produced water carried by many of the largest trucks could be recycled at the production area being built by DCOR. Portable reverse osmosis (RO) water recycling units are available and can be used to purify the produced water to such a degree that it could be sold to

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local ranchers for agricultural purposes in the immediate area, or allowed to seep back into our diminishing aquifers.

Condition #7 of CUP 488 begins,
"That all oil drilling and production shall be conducted in such a manner as to eliminate, as far as practicable, noise, vibration or noxious odors ..."

Fracking creates vibration. Condition #7 says that oil drilling and production SHALL BE CONDUCTED in such a manner as to ELIMINATE vibration. Of course it is practicable to eliminate fracking. It may not allow for as great a profit margin for DCOR, but it is perfectly practicable to eliminate fracking or any other well stimulation that would create surface vibration. 13

Condition #7 of CUP 488 requires a discretionary decision by any future reviewer of this CUP and therefore, this CUP is subject to full CEQA review prior to any future development, drilling, or well stimulation to evaluate all of the ways this unregulated CUP may have become a nuisance or annoyance.

1996 Revision of the Boundaries of CUP 488

It is the contention of CFROG that this 1996 revision of 160 total acres of land in the CUP was done in violation of CEQA as it was a major modification at the least, or required a new CUP altogether. The Planning Department erred in its conclusion that "the conditions of CUP 488 were not altered by this action and the site of the currently proposed wells was not part of this land swap." (Pg. 7 staff report). Whether or not the new wells are to be located on this land swap is irrelevant to the issue at hand. The issue is whether a land swap of 160 acres into and out of the CUP boundaries required CEQA review. Seneca Oil Company wanted to change the boundaries of the CUP in 1996 in order to drill in a new area without CEQA review on the land. CUP 488 is considered by Ventura County Planning Department to be exempt from CEQA. So, in order to avoid CEQA 14

review, a "land swap" was approved by the Planning Department and is being further sanctified by our current Planning Department.

This land swap was not a little thing. The land that was "swapped" for the new parcel had already been used for drilling oil wells as part of the existing CUP 488. The newly incorporated land was added for the express purpose of drilling new wells but it was never reviewed for any environmental purpose. New land was added to the CUP. This was not a ministerial lot line adjustment. No lot lines were changed. Rather the lines of the CUP were redrawn to add 80 new acres with no environmental review in 1996, 26 years after the enaction of CEQA. If it were possible for a entitlement holder of a CUP to simply keep moving the lines of the CUP by "swapping land", then CUP's could essentially become moving lines that would eventually incorporate thousands of acres of land some used in the past and some of it new land waiting to be used. All of this could be then permitted in the name of an "antiquated CUP" exempt from CEQA. All of the swapping in this CUP was done for one singular purpose – to avoid CEQA review.

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The staff report says that the boundary revision did not alter the conditions of the CUP. However condition number one affirmatively states that the permit is issued **ONLY** "for that portion of land described in the application..." (CUP 488 pg. 2). Over the years the CUP lines were mapped and recorded in Ventura County Map books as well as kept in the CUP file. The conditions of approval did not allow a "land swap" or a change from that which was described in the initial application.

The rights to a CUP run with the land. Owners can change as we saw happen over the years in CUP 488, but the entitlement remains with the land. So, once a CUP is described and mapped, its limits are finite. Since this revision of boundaries was not ministerial act and thus required CEQA review, the CUP is in violation. The violation must be abated with a full EIR as part of the CEQA review prior to any ongoing or future use.

For the above reasons, CFROG requests a cessation of drilling until a full EIR is satisfactorily completed that will comprehensively study the environmental impacts of oil drilling and production on Temescal Ranch so that at a minimum best practices and technological improvements can be included in the conditions of approval.

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State of California
Resources Agency
REGIONAL WATER POLLUTION CONTROL BOARD NO. 4
Los Angeles Region

RESOLUTION NO. 63-18

PRESCRIBING REQUIREMENTS FOR DISPOSAL OF OIL FIELD WASTES
GETTY OIL COMPANY
Temescal Oil Field, Ventura County, California
(File 62-109)

WHEREAS, in compliance with Section 13054 of the Water Code of the State of California, GETTY OIL COMPANY has filed with this Regional Water Pollution Control Board a report on waste discharge (our Report No. 601) dated July 24, 1962, for the existing disposal of 500 barrels per day (21,000 gallons per day) of industrial wastes resulting from the production of oil in the Temescal Field, Ventura County, into Lime Canyon Creek in Section 4, T4N, R18W, one-half mile southwesterly from San Felicia Dam in Piru Canyon; and

WHEREAS, this Board has caused the following investigations to be made relative to this waste discharge:

1. Field investigations were conducted by the staff of this Board.

2. In accordance with administrative procedures established by this Board, copies of the report on waste discharge were forwarded to interested governmental agencies and persons for comments, suggestions, and/or recommendations.

3. Review was made of a report to the Board by the then Division of Water Resources, titled "Ventura County Oil Waste Investigation", dated June, 1954;

and

WHEREAS, based upon these investigations the Board finds that:

1. This waste disposal site is located just north of the terminus of Lime Canyon Road at Piru Canyon Road, about three miles north of State Highway 126.

2. Oil field brines are separated from oil in a concrete-lined pond prior to discharge into Lime Canyon Creek. A series of unlined sumps adjacent to the concrete-lined sump apparently serves to retain any emergency overflow.

3. This waste disposal site is situated in permeable alluvial formations which are water-bearing. Liquid wastes discharged at the site can readily percolate into the stream bed deposits in Lime Canyon and Piru Creeks. Surface and subsurface waters in these creeks recharge Piru Ground Water Basin in the Santa Clara River Valley.

4. Ground waters in the Piru Basin are beneficially used for domestic, municipal, irrigation, and stock-water purposes, and as a source of replenishment for the lower groundwater basins in the Santa Clara River Valley area. The mineral quality of the groundwaters in Piru Basin downstream from the point of disposal does not generally meet the recommended limits of the United States Public Health Service Drinking Water Standards. For irrigation purposes, these waters are considered Class 2.

5. Analyses of waste water discharged at this site yielded the following average data:

Total dissolved solids	8380 ppm
Sodium	2700 "
Chloride	92 "
Sulfate	60 "
Bicarbonate	5260 "
Boron	1.5 "
Sodium equivalent ratio	97%
pH	8.0

and

WHEREAS, on March 27, 1963, a letter transmitting a tentative draft of this resolution was forwarded to Getty Oil Company, and copies thereof sent to interested persons and governmental agencies with the advice that objections thereto would be considered by the Board if submitted in writing on or before April 16, 1963; and

WHEREAS, objections received have been reviewed and considered by the Board;

NOW THEREFORE, BE IT RESOLVED, that in order to prevent pollution of the receiving waters and to prevent creation of a nuisance, this Regional Water Pollution Control Board, in accordance with authority granted by Division 7 of the Water Code of the State of California, prescribes the following requirements with respect to this waste disposal by Getty Oil Company, subject to the provisions of Section 13054 of the Water Code, which reads in part that requirements may be revised from time to time:

Requirements
Getty Oil Co. File 62-109

1. Wastes discharged to the ground at this site shall at no time contain greater concentrations of the following mineral constituents than those listed herein:

Constituent	Maximum Limit
Total dissolved solids	2000 ppm
Chloride	250 "
Boron	1.5 "
Sodium equivalent ratio	60%

2. Wastes discharged at this site shall contain no substance in concentrations sufficient to impart tastes, odors, or other objectionable characteristics to usable receiving waters.

3. Wastes discharged shall contain no substance in concentrations toxic to human, animal or plant life.

4. The discharge of wastes at this site shall not create a condition of nuisance as defined in Section 13005 of the California Water Code.

5. Wastes which do not meet all of the foregoing requirements shall be held in impervious containers, and if transferred elsewhere, the final discharge shall be at a legal point of disposal. In this events, in accordance with the provisions of Section 13055 of the Water Code, Getty Oil Company shall submit to this Board, at quarterly intervals, a technical report containing the following requirements:

   a) The name and address of the hauler of the wastes
   b) The quantity of wastes hauled during this reporting period
   c) The quality of wastes in storage at the end of the reporting period
   d) The location of the ultimate disposal point of the wastes;

and

BE IT FURTHER RESOLVED, that in prescribing these requirements it is the intent of this Board to:

1. Preserve the quality of the receiving waters, insofar as they may be affected by the disposal of industrial wastes to the ground at this plant site, suitable for beneficial uses for which they may be utilized.

2. Prevent the creation of a nuisance as a result of this waste discharge;
and

BE IT FURTHER RESOLVED, that the attention of Getty Oil Company be hereby directed to Section 13054.1 of the Water Code of the State of California, which reads in part "Any person discharging sewage or industrial waste within any region, other than into a community sewer system, shall file with the regional board of that region a report of any material change or proposed change in the character, location or volume of the discharge"; and

BE IT FURTHER RESOLVED, that Getty Oil Company be hereby directed to inform this Board of any change in ownership of this waste disposal facility; and

BE IT FURTHER RESOLVED, that the foregoing requirements do not authorize the commission of any act resulting in injury to the property of another; and

BE IT FURTHER RESOLVED, that Getty Oil Company be further advised that these requirements do not exempt the operator of this waste disposal facility from compliance with any other law which may be applicable. The requirements are not a permit; they do not legalize this waste disposal facility, and they leave unaffected any further restraints on the disposal of wastes at this site which may be contained in other statutes; and

BE IT FURTHER RESOLVED, that the Executive Officer of this Board be authorized, and he is hereby directed, to certify and submit copies of this resolution to Getty Oil Company, and to such individuals and agencies as may have need therefor, or as may request same.

I, Linne C. Larson, Executive Officer of the Los Angeles Regional Water Pollution Control Board, State of California, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the Los Angeles Regional Water Pollution Control Board at the Board Meeting held on April 17, 1963.

ERA MEMO:
Legibility of writing, typing or printing UNSATISFACTORY in portions of the document when received.

LAM:IF
3-27-63

LINNE C. LARSON
Executive Officer

RESOURCE MANAGEMENT AGENCY

county of ventura

Planning Division
Kimberly L. Prillhart
Director

December 15, 2015

Board of Supervisors
County of Ventura
800 South Victoria Avenue
Ventura, CA 93009

SUBJECT: Study Session Regarding Potential Impacts of Oil and Gas Operations on the California Condor and Potential Land Use Regulations, Including Permit Conditions, to Address Such Potential Impacts

RECOMMENDATIONS:

1. **RECEIVE & FILE** agency and public presentations and testimony, and provide direction as appropriate, regarding potential impacts of oil and gas operations on the California condor and potential land use regulations, including permit conditions, to address such impacts.

FISCAL/MANDATES IMPACT:

There is no additional fiscal impact associated with this item. However, should the Board direct staff to prepare additional reports, ordinance amendments or permit actions, there may be fiscal impacts associated with that work.

DISCUSSION:

On June 2, 2015, your Board requested that staff schedule a public study session to discuss best management practices related to California condors with a specific focus on measures for the protection of the condors at oil and gas facilities located within Ventura County.

An initial meeting was held on October 15, 2015 and was facilitated by the County Executive Office and Resource Management Agency. The meeting was attended by 35 individuals from 18 organizations (Exhibit 1) and held at the Ventura County Government Center. During this meeting, U.S. Fish and Wildlife Service (USFWS) biologist Joseph Brandt provided background information on the southern California flock of California condors (Exhibit 2) including an overview of mortalities, threats, and changes in the distribution of California condors since protection efforts under the USFWS began in Ventura County. Following the introduction of wildlife information by the USFWS, Bruce Hesson of California's Division of Oil, Gas, and Geothermal Resources (DOGGR) presented the regulatory authority and framework that regulates oil and gas facilities in

Ventura County and throughout California as well as what DOGGR looks for during its oil well and facilities inspections. Jeff Kuyper of Los Padres Forest Watch and John Brooks of Citizens for Responsible Oil & Gas introduced issues of concern to each of their respective organizations as they pertained to protection measures for California condors and the responsible management of oil facilities in Ventura County. Following these presentations, participants discussed trends in condor populations, agency oversight, and responsibilities associated with California condors and oil and gas operations in Ventura County. A focus of discussion was placed on the California condor protection measures that were recommended to Ventura County by USFWS in 2013 (Exhibit 3) and to what extent those measures have been adopted and implemented by oil field operators.

To provide guidance during todays study session, County Counsel has prepared the following summary of the County's legal authority to address condor issues through the review and conditioning of County-issued conditional use permits pursuant to which oil and gas operations occur in unincorporated Ventura County:

> The County's authority to add condor-related conditions to newly-issued conditional use permits, and to permits which the permit holder seeks to modify through a discretionary permitting process, is derived from the County's general land use authority. In general, this authority is subject to a permissive legal standard requiring only that the conditions be reasonably related to the project's potential effects on the public health, safety or welfare.
>
> Many oil and gas facilities, however, operate pursuant to existing permits in which the permit holder possesses vested rights. The County's authority to modify these permits is limited by the vested rights doctrine. Rights in a permit "vest" (i.e., become protected) when the permit has been issued and the permit holder has invested substantial sums in the furtherance of the authorized uses. Once permit rights vest, the permit holder has a property right in the permit as approved that cannot be modified by the County – for instance, by adding new condor-related permit conditions – without satisfying constitutional due process requirements. Hence, vested rights in existing permits cannot be unilaterally impaired by the County under its general land use authority. Instead, vested rights can only be impaired if the impairment resulting from the new permit conditions is reasonably necessary to address a menace to the public health and safety or a public nuisance presented by the permitted use. Important factors to be considered in applying this standard are whether the nature and extent of the impairment to the vested rights is proportionate to the nature, importance, and urgency of the interest to be served by the new permit

conditions, and whether the permit conditions are appropriately tailored and limited to the situation necessitating the action.

In the event the County sought to unilaterally modify existing conditional use permits to add condor-related conditions, the County would be required to meet the above-described standard for impairing the permit holder's vested rights in the permit. The standards must be met with respect to each specific permit the County sought to modify, and with respect to each specific condition sought to be added. Such permit modifications would require the provision of notice and a public hearing to each affected permit holder.

County Counsel intends to present this issue in more detail during the Study Session. Following their presentation, Steve Kirkland, U.S. Fish and Wildlife Service's California Condor Field Coordinator, will provide background information on the southern California flock of California condors including an overview of mortalities, threats, and changes in the distribution of California condors since protection efforts under the USFWS began in Ventura County. And finally, Jeff Kuyper, Executive Director of Los Padres Forest Watch, and Luke Faith, Operations Manager for Seneca Resources, will make presentations as stakeholders invested in the welfare of the California condor.

Following the series of presentations, the remainder of the study session will provide an opportunity for your Board, other interested parties and members of the public to discuss the information provided by the presenters.

This Board item was reviewed by County Counsel, the Auditor Controller's Office, and the County Executive Office. If you have any questions regarding this matter, please contact me at (805) 654-2481.

Kim L. Prillhart, Director
Ventura County Planning Division

EXHIBITS:
Exhibit 1 - List of October 15 2015 Meeting Attendees and Stakeholder Groups
Exhibit 2 - October 15 2015 US Fish & Wildlife Presentation by Joseph Brandt
Exhibit 3 - July 18 2013 Letter from United States Department of Fish & Wildlife by Roger Root