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PROTECTING PEOPLE AND THE PLANET

September 3, 2019

Via ECF

Molly C. Dwyer
Clerk of Court
U.S. Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103-1526

Re: *County of San Mateo v. Chevron Corp.*, No. 18-15499, consolidated with *City of Imperial Beach v. Chevron Corp.*, No. 18-15502; *County of Marin v. Chevron Corp.*, No. 18-15503; *County of Santa Cruz v. Chevron Corp.*, No. 18-16376

Dear Ms. Dwyer,

Appellees County of San Mateo, et al., write pursuant to Fed. R. App. P. 28(j) to notify the Court of *Mayor & City Council of Baltimore v. BP P.L.C.*, No. CV ELH-18-2357, 2019 WL 3464667 (D. Md. July 31, 2019) (Ex. A, attached).

The attached opinion denied the fossil-fuel company defendants' motion to stay, pending appeal, the district court's order remanding the City of Baltimore's claims to Maryland state court. *Id.* at *1. Relevant here, the court ruled that the defendants had not shown a likelihood of success on appeal because appellate review would be limited to their invocation of federal officer jurisdiction under 28 U.S.C. § 1442. *Id.* at *3–4. The court noted that in the Fourth Circuit and the majority of other courts of appeal including the Ninth Circuit, “when a case that was removed on several grounds is remanded, appellate jurisdiction of the remand extends only to those bases for removal that are reviewable.” *Id.* at *4. Because 28 U.S.C. § 1447(d) “generally prohibits appellate review of remand orders based on a district court’s lack of subject matter jurisdiction,” except as to removal under § 1442 and § 1443, “only the issue of federal officer removal would be subject to review on defendants’ appeal of the remand.” *Id.* at *3, *4.

The court then held that the defendants had “not demonstrated a substantial likelihood of success on the merits of this issue [federal officer removal], or even that removal of this case under the federal officer removal statute raises a complex, serious legal question.” *Id.* at *4. The court had already “considered defendants’ arguments at length and rejected them” in its order granting remand, and “courts that have addressed the removal of similar cases under the federal officer removal statute have reached the same conclusion.” *Id.* at *5.

The attached opinion is relevant to the scope of the Defendants appeal—i.e. whether this court may consider grounds for removal other than federal officer jurisdiction—and whether the district court here was correct in rejecting federal officer removal and granting remand.

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Respectfully submitted,

/s/ Victor M. Sher

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in Nos. 18-15499, 18-15502, 18-15503,
and 18-16376

cc: All Counsel of Record (via ECF)