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March 5, 2020

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., et al*., No. 18-15499; *City of Imperial Beach v. Chevron Corp., et al*., No. 18-15502; *County of Marin v. Chevron Corp., et al.*, No. 18-15503; *County of Santa Cruz, et al. v. Chevron Corp., et al.*, No. 18-16376
Oral Argument held Feb. 5, 2020 (Ikuta, Christen, Lee, J.J.)

Dear Ms. Dwyer,

We respond to Defendant-Appellant's letter, which asks the panel to follow *Latiolais v. Huntington Ingalls, Inc.*, 2020 WL 878930 (5th Cir. Feb. 24, 2020) (en banc), and abandon the Ninth Circuit's longstanding requirement that a defendant removing under 28 U.S.C. § 1442 show a "causal nexus between the plaintiffs claims and a federal officer's direction." *Cabalce v. Thomas E. Blanchard & Assocs., Inc.*, 797 F.3d 720, 728 (9th Cir. 2015). The Court should decline the invitation.

Defendants have waived any challenge to the "causal nexus" test by affirmatively relying on that test in their briefs, despite arguing that the Removal Clarification Act of 2011 abrogated *other* circuit precedent. *See, e.g.*, Appellants' Opening Brief at 64 (there must be "a causal nexus between [a defendant's] actions, taken pursuant to a federal officer's directions, and plaintiff's claims"); *id.* at 14 (urging abrogation of *Patel v. Del Taco, Inc.*, 446 F.3d 998 (9th Cir. 2006)). Moreover, the panel is bound by the Ninth Circuit's consistent precedent, both before and after the Removal Clarification Act, that requires application of the "causal nexus" test. *See, e.g., Riggs v. Airbus Helicopters Inc.*, 939 F.3d 981, 986–87 (9th Cir. 2019); *Fidelitad, Inc. v. Insitu, Inc.*, 904 F.3d 1095, 1099 (9th Cir. 2018); *In re Goncalves v. Rady Children's Hosp. San Diego*, 865 F.3d 1237, 1244 (9th Cir. 2017); *Cabalce*, 797 F.3d at 727; *Leite v. Crane Co.*, 749 F.3d 1117, 1120, 1122, 1124 (9th Cir. 2014); *Durham v. Lockheed Martin Corp.*, 445 F.3d 1247, 1251 (9th Cir. 2006).

Adopting the Fifth Circuit's approach (which was prospective only, *Latiolais* at *7), would not change the result here in any event because defendants were not "acting under" any federal official when they engaged in their challenged conduct. No federal officer directed them to deceive the public about the causes and impacts of global warming. In addition, none of the federal contracts at issue required (rather than allowed) extraction of any amount of fossil fuels. *See id.* (defendant must have "acted pursuant to a federal officer's directions"). The absence of either is fatal to Defendants' arguments. Removal remains improper.

Respectfully submitted,

/s/ Victor M. Sher
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cc: All Counsel of Record (via ECF)