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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KING COUNTY,

Plaintiff,

v.

BP P.L.C., a public limited company of England
and Wales, CHEVRON CORPORATION, a
Delaware corporation, CONOCOPHILLIPS, a
Delaware corporation; EXXON MOBIL COR-
PORATION, a New Jersey corporation,
ROYAL DUTCH SHELL PLC, a public limited
company of England and Wales, and DOES 1
through 10,

Defendants.

Case No.

NOTICE OF REMOVAL

[Removal from the Superior Court of the
State of Washington, King County,
Cause No. 18-2-11859-0]

Action Filed: May 9, 2018

1 **TO THE CLERK OF THE ABOVE-TITLED COURT AND TO PLAINTIFF KING COUNTY**
2 **AND ITS COUNSEL OF RECORD:**

3 PLEASE TAKE NOTICE THAT Defendant Chevron Corporation removes this action—with
4 reservation of all defenses and rights—from the Superior Court of the State of Washington for King
5 County, Case No. 18-2-11859-0, to the United States District Court for the Western District of Wash-
6 ington pursuant to 28 U.S.C. §§ 1331, 1332, 1334, 1441(a), 1442, 1452, and 1367(a), and 43 U.S.C.
7 § 1349(b). All Defendants that Plaintiff has served or purported to serve have consented to this No-
8 tice of Removal. Consequently, without conceding that any such Defendant has been properly joined
9 and served in this action, it is clear that any and all defendants who have been properly joined and
10 served have joined in the removal of this action.

11 This Court has original federal diversity jurisdiction under 28 U.S.C. § 1332 because no de-
12 fendant is a citizen of the same state as Plaintiff and because the amount in controversy exceeds
13 \$75,000. This Court also has original federal question jurisdiction under 28 U.S.C. § 1331 because
14 the Complaint arises under federal laws and treaties and presents substantial federal questions as well
15 as claims that are completely preempted by federal law. This Court has supplemental jurisdiction un-
16 der 28 U.S.C. § 1367(a) over any claims over which it does not have original federal question juris-
17 diction because they form part of the same case or controversy as those claims over which the Court
18 has original jurisdiction. As set forth below, removal is proper pursuant to 28 U.S.C. §§ 1441, 1442,
19 1446, and 1452, and 43 U.S.C. § 1349(b).

20 In addition, the Complaint is legally without merit and, at the appropriate time, Defendants
21 will move to dismiss Plaintiff's claims pursuant to Rule 12 of the Federal Rules of Civil Procedure.

22 Through its Complaint, King County calls into question longstanding decisions by the Federal
23 Government regarding, among other things, national security, national energy policy, environmental
24 protection, development of outer continental shelf lands, the maintenance of a national petroleum re-
25 serve, mineral extraction on federal lands (which has produced billions of dollars for the Federal
26 Government), and the negotiation of international agreements bearing on the development and use of
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1 fossil fuels. Many of the Defendants have contracts with the Federal Government to develop and ex-
2 tract minerals from federal lands and to sell fuel and associated products to the Federal Government
3 for the nation’s defense. The gravamen of the Complaint seeks either to undo all of those federal pol-
4 icies or to extract “compensation” from Defendants for having contracted with the Federal Govern-
5 ment or relied upon national policies to develop fossil fuel resources.

6 In the Complaint’s view, a state court, on petition by a county, may regulate the nationwide—
7 and indeed, worldwide—economic activity of key sectors of the American economy, those that sup-
8 ply the fuels that power production and innovation, keep the lights on, and form the basic materials
9 from which innumerable consumer, technological, and medical devices are fashioned. Though nomi-
10 nally asserted under state law, the Complaint puts at issue long-established federal statutory, regula-
11 tory, and constitutional issues and frameworks, and it seeks to hold a small number of oil and gas
12 companies—who themselves are responsible for a mere fraction of global greenhouse gas emis-
13 sions—liable for the alleged effects of *global* warming, including sea level rise, droughts, extreme
14 precipitation, and wildfires caused by greenhouse gas emissions from countless nonparties.

15 This case is about *global* emissions. Plaintiffs allege that the “Defendants have produced
16 such vast quantities of fossil fuels that they are five of the ten largest producers in all of history,” and
17 that “[t]he cumulative greenhouse gases in the atmosphere attributable to each Defendant has in-
18 creased the global temperature and contributed to sea level rise, including in King County.” Compl.
19 ¶ 97. Plaintiff’s claims are not limited to harms caused by fossil fuels extracted, sold, marketed, or
20 used in Washington. Instead, its claims depend on Defendants’ nationwide and global activities, as
21 well as the activities of billions of fossil fuel consumers, including not only entities such as the U.S.
22 government and military, but also hospitals, schools, manufacturing facilities, and individual house-
23 holds.

24 This lawsuit implicates bedrock federal-state divisions of responsibility, and appropriates to
25 itself the direction of such federal spheres as nationwide economic development, international rela-
26 tions, and America’s national security. Reflecting the substantial and uniquely federal interests posed
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1 by greenhouse gas claims like these, the Supreme Court and the Ninth Circuit have recognized that
2 causes of action of the types asserted here are governed by federal common law, *not* state law.

3 The Complaint has no basis in law and is inconsistent with serious attempts to address im-
4 portant issues of national and international policy. Accordingly, Plaintiff’s Complaint should be
5 heard in this federal forum to protect the national interest by its prompt dismissal.

6 **I. TIMELINESS OF REMOVAL**

7 1. Plaintiff King County filed a Complaint against Chevron and other named Defendants
8 in the Superior Court for King County, Washington, Case No. 18-2-11859-0, on May 9, 2018. A
9 copy of all process, pleadings, or orders in the possession of Chevron is attached as Exhibit A to the
10 Declaration of William E. Thomson, filed concurrently herewith.

11 2. This notice of removal is timely under 28 U.S.C. § 1446(b) because it is filed fewer
12 than 30 days after service. 28 U.S.C. § 1446(b). All Defendants that have been served (or purport-
13 edly served) as of this date have consented to this removal. *See* Thomson Decl. ¶ 4. In addition, con-
14 sent to this removal petition is not required as removal does not proceed “solely under 28 U.S.C.
15 § 1441.” 28 U.S.C. § 1446(b)(2)(A); *see also, e.g.*, 28 U.S.C. § 1452.¹

16 **II. SUMMARY OF ALLEGATIONS AND GROUNDS FOR REMOVAL**

17 3. Plaintiff is King County, Washington. Plaintiff brings claims against Defendants for
18 alleged injuries relating to climate change, seeking damages and equitable relief stemming from inju-
19 ries suffered as a result of “global warming” and other “[c]limate change impacts,” including sea
20 level rise, storms, heatwaves, drought, extreme precipitation, wildfires, and other natural phenomena.
21 *See* Compl. ¶¶ 136; *see also id.* ¶ 166. Plaintiff asserts causes of action for public nuisance and tres-
22 pass. In addition to compensatory damages, Plaintiff seeks an “abatement fund remedy to be paid for
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25 ¹ In filing or consenting to this Notice of Removal, Defendants do not waive, and expressly pre-
26 serve any right, defense, affirmative defense, or objection, including, without limitation, personal
27 jurisdiction, insufficient process, and/or insufficient service of process. A number of Defendants
28 contend that personal jurisdiction in Washington is lacking over them, and these Defendants will
move to dismiss for lack of personal jurisdiction at the appropriate time. *See, e.g., Carter v. Bldg.*
Material & Const. Teamsters’ Union Local 216, 928 F. Supp. 997, 1000–01 (N.D. Cal. 1996) (“A
petition for removal affects only the forum in which the action will be heard; it does not affect
personal jurisdiction.”).

1 by Defendants to provide for infrastructure, costs of studying and planning, and other costs in King
2 County necessary for King County to adapt to global warming impacts.” Compl., Relief Requested.

3 4. All or many Defendants will deny that any Washington court has personal jurisdiction
4 over them, and it is anticipated that all Defendants will deny any liability as to Plaintiff’s claims. De-
5 fendants expressly reserve all rights in this regard. For purposes of meeting the jurisdictional require-
6 ments for removal only, however, Defendants submit that removal is proper on at least nine inde-
7 pendent and alternative grounds.

8 5. **First**, removal is authorized under 28 U.S.C. § 1441(a), (b)(2), and 28 U.S.C. § 1332
9 because there is complete diversity between the parties and the amount-in-controversy requirement is
10 satisfied. Plaintiff King County is a citizen of the State of Washington, *see Moor v. Cnty. of Ala-*
11 *meda*, 411 U.S. 693, 717–718 (1973), and none of the Defendants is a citizen of the State of Wash-
12 ington, *see* Compl. ¶¶ 12, 15, 18, 21, 24. The amount-in-controversy requirement is met because the
13 Complaint alleges damages in excess of \$75,000. *See, e.g., id.* ¶ 148; *St. Paul Mercury Indem. Co. v.*
14 *Red Cab Co.*, 303 U.S. 283, 288 (1938) (“[T]he sum claimed by the plaintiff controls if the claim is
15 apparently made in good faith.”).

16 6. **Second**, the action is removable under 28 U.S.C. § 1441(a) and 28 U.S.C. § 1331 be-
17 cause Plaintiff’s claims, to the extent that such claims exist, implicate uniquely federal interests and
18 are governed by federal common law, and not state common law. *See Nat’l Farmers Union Ins. Cos.*
19 *v. Crow Tribe of Indians*, 471 U.S. 847, 850 (1985). The Ninth Circuit has held that comparable
20 claims, in which a municipality alleged that the defendants’ greenhouse gas emissions led to global
21 warming-related injuries such as coastal erosion, were governed by federal common law. *See Native*
22 *Village of Kivalina v. ExxonMobil Corp.*, 696 F.3d 849, 855 (9th Cir. 2012) (“*Kivalina*”). Federal
23 common law applies only in those few areas of the law that so implicate “uniquely federal interests”
24 that application of state law is affirmatively inappropriate. *Boyle v. United Techs. Corp.*, 487 U.S.
25 500, 504, 507 (1988); *see also Am. Elec. Power Co., Inc. v. Connecticut*, 564 U.S. 410, 424 (2011)
26 (“*AEP*”) (“borrowing the law of a particular State would be inappropriate”). As a result, the Ninth
27 Circuit’s determination in *Kivalina* that federal common law applies to comparable claims of global
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1 warming-related tort claims necessarily means that state law should not apply to those types of
2 claims. Plaintiff's claims, therefore, arise (to the extent they exist at all) under federal common law,
3 not state law, and are properly removed to this Court.

4 7. **Third**, removal is authorized under 28 U.S.C. § 1441(a) and 28 U.S.C. § 1331 because
5 the action necessarily raises disputed and substantial federal questions that a federal forum may enter-
6 tain without disturbing a congressionally approved balance of responsibilities between the federal and
7 state judiciaries. *See Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308 (2005).
8 In fact, the causes of action as alleged in the Complaint attack federal policy decisions and threaten to
9 upset longstanding federal-state relations, second-guess policy decisions made by Congress and the
10 Executive Branch, and skew divisions of responsibility set forth in federal statutes and the United
11 States Constitution.

12 8. **Fourth**, removal is authorized under 28 U.S.C. § 1441(a) and 28 U.S.C. § 1331 be-
13 cause Plaintiff's claims are completely preempted by the Clean Air Act and/or other federal statutes
14 and the United States Constitution, which provide an exclusive federal remedy for those seeking
15 stricter regulations regarding the nationwide and worldwide greenhouse gas emissions put at issue in
16 the Complaint.

17 9. **Fifth**, this Court has original jurisdiction over this lawsuit and removal is proper pur-
18 suant to the Outer Continental Shelf Lands Act ("OCSLA"), because this action "aris[es] out of, or in
19 connection with (A) any operation conducted on the outer Continental Shelf which involves explora-
20 tion, development, or production of the minerals, or the subsoil or seabed of the outer Continental
21 Shelf, or which involves rights to such minerals." 43 U.S.C. § 1349(b); *see also Tenn. Gas Pipeline*
22 *v. Houston Cas. Ins. Co.*, 87 F.3d 150, 155 (5th Cir. 1996).

23 10. **Sixth**, Defendants are authorized to remove this action under 28 U.S.C. § 1442(a)(1)
24 because, assuming the truth of Plaintiff's allegations, a causal nexus exists between their actions,
25 taken pursuant to a federal officer's directions, and Plaintiff's claims; they are "persons" within the
26 meaning of the statute; and can assert several colorable federal defenses. *See Leite v. Crane Co.*, 749
27 F.3d 1117 (9th Cir. 2014).

1 11. **Seventh**, removal is authorized under 28 U.S.C. § 1441(a) and 28 U.S.C. § 1331 be-
2 cause Plaintiff’s claims are based on alleged injuries to and/or conduct on federal enclaves. As such,
3 Plaintiff’s claims arise under federal question jurisdiction and are removable to this Court. *See* U.S.
4 Const., art. I, § 8, cl. 17; *Durham v. Lockheed Martin Corp.*, 445 F.3d 1247, 1250 (9th Cir. 2006)
5 (“Federal courts have federal question jurisdiction over tort claims that arise on ‘federal enclaves.’”).

6 12. **Eighth**, removal is authorized under 28 U.S.C. § 1452(a) and 28 U.S.C. § 1334(b) (the
7 bankruptcy removal statute) because Plaintiff’s state-law claims are related to cases under Title 11 of
8 the United States Code. Plaintiff alleges that Defendants (improperly defined by Plaintiff to include
9 the conduct of Defendants’ subsidiaries, *see, e.g.*, Compl. ¶¶ 15–17) engaged in conduct constituting
10 a public nuisance over many decades. Because Plaintiff’s claim is predicated on historical activities
11 of Defendants, including predecessor companies and companies that they may have acquired or with
12 which they may have merged, and because there are hundreds, if not thousands, of non-joined neces-
13 sary and indispensable parties, there are many other Title 11 cases that may be related. *See PDG Ar-*
14 *cos, LLC v. Adams*, 436 F. App’x 739 (9th Cir. 2011).

15 13. **Ninth and finally**, removal is authorized under 28 U.S.C. § 1441(a), 28 U.S.C.
16 § 1331, and 28 U.S.C. § 1333 because the action necessarily raises disputed and substantial federal
17 questions that implicate federal authority over the “navigable waters of the United States.” *See* 33
18 U.S.C. § 403; 33 U.S.C. § 426i; *see also Grable*, 545 U.S. at 314. Indeed, Plaintiff’s claims fall
19 within the Court’s original admiralty jurisdiction and are removable for that reason alone. *See Je-*
20 *rome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527 (1995).

21 14. For the convenience of the Court and all parties, Defendants will address each of these
22 grounds in additional detail. Should Plaintiff challenge this Court’s jurisdiction, Defendants will fur-
23 ther elaborate on these grounds and will not be limited to the specific articulations in this Notice.

1 **III. THIS COURT HAS DIVERSITY JURISDICTION BECAUSE NO DEFENDANT IS A**
2 **CITIZEN OF WASHINGTON STATE AND THE AMOUNT IN CONTROVERSY EX-**
3 **CEEDS \$75,000**

4 15. This action is removable because 28 U.S.C. § 1332’s requirements for diversity juris-
5 diction are met. Plaintiff King County is a citizen of the State of Washington, and none of the De-
6 fendants is a citizen of the State of Washington. The Complaint alleges damages in excess of
7 \$75,000, thereby satisfying the amount-in-controversy requirement.

8 16. Plaintiff King County “is a Washington county organized and existing under and by
9 virtue of the laws of the State of Washington, RCW 36.01, *et seq.*” Compl. ¶ 11. For diversity pur-
10 poses, counties are citizens of the state in which they are located. *Moor v. Cnty. of Alameda*, 411
11 U.S. 693, 717–18 (1973); *Naffe v. Frey*, 789 F.3d 1030, 1039 n.4 (9th Cir. 2015) (“[T]he County of
12 Los Angeles is a citizen of California for purposes of diversity jurisdiction.”). Accordingly, King
13 County is a citizen of the State of Washington.

14 17. None of the Defendants is a citizen of the State of Washington. As the Complaint al-
15 leges, no defendant is a Washington corporation and no defendant has its headquarters or principal
16 place of business in the State of Washington. *See* 28 U.S.C. § 1332(c)(1). Defendant BP p.l.c. “is a
17 public limited company registered in England and Wales with its headquarters in London, England.”
18 Compl. ¶ 12. Defendant Chevron Corporation “is a Delaware Corporation with its principal place of
19 business in San Ramon, California.” *Id.* ¶ 15. Defendant ConocoPhillips “is a Delaware Corporation
20 with its principal place of business located in Houston, Texas.” *Id.* ¶ 18. Defendant Exxon Mobil
21 Corporation “is a New Jersey corporation with its principal place of business located in Irving,
22 Texas.” *Id.* ¶ 21. And Defendant Royal Dutch Shell plc “is a public limited company registered in
23 England and Wales with its headquarters in The Hague, Netherlands.” *Id.* ¶ 24.

24 18. Based on these facts, there is complete diversity between the parties. 28 U.S.C.
25 § 1332(a) and (c)(1).

26 19. The amount in controversy exceeds \$75,000, exclusive of interests and costs. 28
27 U.S.C. § 1332(a). “[T]he sum claimed by the plaintiff controls if the claim is apparently made in
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1 good faith.” *St. Paul Mercury Indem. Co. v. Red Cab. Co.*, 303 U.S. 283, 288 (1938). The Com-
2 plaint alleges that the consequences of climate change will require King County to “incur a 10% [in-
3 surance] rate increase (or approximately \$450,000 in additional premium based off 2017 property
4 values) during its 2018-2019 policy term.” Compl. ¶ 148. The Complaint also asserts that King
5 County will sustain “[h]igher costs for maintenance, operations, and emergency repairs” for “King
6 County-owned assets and infrastructure,” which could cost “hundreds of millions of dollars.” *Id.*
7 ¶¶ 145, 168. According to King County, “the scope, scale, and cost of investment must increase over
8 time to address the magnitude of projected impacts.” *Id.* ¶ 153.

9 20. Based on these allegations, Plaintiff claims that Defendants are liable for damages in
10 excess of \$75,000. Although Defendants deny all of these allegations—and fully reserve their rights
11 to contest their adequacy for pleading purposes or otherwise—the value of Plaintiff’s claims meet the
12 amount-in-controversy requirement of 28 U.S.C. § 1332. Accordingly, this action is removable un-
13 der 28 U.S.C. § 1441(a) and (b)(2).

14 **IV. THIS COURT HAS FEDERAL-QUESTION JURISDICTION BECAUSE**
15 **PLAINTIFF’S CLAIMS ARISE, IF AT ALL, UNDER FEDERAL COMMON LAW**

16 21. This action is removable because Plaintiff’s claims, to the extent that such claims ex-
17 ist, are necessarily governed by federal common law, and not state common law. Title 28 U.S.C. §
18 1331 grants federal courts original jurisdiction over “‘claims founded upon federal common law as
19 well as those of a statutory origin.’” *Nat’l Farmers Union*, 471 U.S. at 850 (quoting *Illinois v. City of*
20 *Milwaukee*, 406 U.S. 91, 100 (1972) (“*Milwaukee I*”). As the Ninth Circuit explained in holding that
21 similar claims for injuries caused by global warming were governed by federal common law, even
22 “[p]ost-*Erie*, federal common law includes the general subject of environmental law and specifically
23 includes ambient or interstate air or water pollution.” *Kivalina*, 696 F.3d at 855. As Plaintiff’s
24 claims arise under federal common law, this Court has federal question jurisdiction and removal is
25 proper.

26 22. Though “[t]here is no federal *general* common law,” *Erie R. Co. v. Tompkins*, 304
27 U.S. 64, 78 (1938) (emphasis added), federal common law continues to exist, and to govern, in a few
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1 subject areas in which there are “uniquely federal interests,” *Boyle*, 487 U.S. at 504. *See generally*
2 Henry J. Friendly, *In Praise of Erie—and the New Federal Common Law*, 39 N.Y.U. L. Rev. 383
3 (1964). Such uniquely federal interests will require the application of federal common law where, for
4 example, the issue is one that by its nature is “within national legislative power” and there is “a
5 demonstrated need for a federal rule of decision” with respect to that issue. *AEP*, 564 U.S. at 421 (ci-
6 tation omitted). Federal common law therefore applies, in the post-*Erie* era, in those discrete areas in
7 which application of state law would be inappropriate and would contravene federal interests. *Boyle*,
8 487 U.S. at 504–07. The decision that federal common law applies to a particular issue thus inher-
9 ently reflects a determination that state law does *not* apply. *Nat’l Audubon Soc’y v. Dep’t of Water*,
10 869 F.2d 1196, 1204 (9th Cir. 1988); *see also City of Milwaukee v. Illinois & Michigan*, 451 U.S.
11 304, 312 n.7 (1981) (“*Milwaukee II*”) (“[I]f federal common law exists, it is because state law cannot
12 be used.”).

13 23. In *Kivalina*, the Ninth Circuit, quoting the Supreme Court’s decision in *AEP*, reiter-
14 ated that federal common law applies to “subjects within the national legislative power where Con-
15 gress has so directed or where the basic scheme of the Constitution so demands.” 696 F.3d at 855
16 (quoting *AEP*, 564 U.S. at 421) (further citation and internal quotation marks omitted). Although
17 Congress sometimes affirmatively directs the application of federal common law, the *Kivalina* court
18 noted that “[m]ore often, federal common law develops when courts must consider *federal* questions
19 that are not answered by statutes.” *Id.* (emphasis added). Given that claims asserting injuries from
20 global warming have an intrinsic interstate and transnational character, the Ninth Circuit held that
21 such claims inherently raise federal questions and fall within the settled rule that federal common law
22 governs “the general subject of environmental law and specifically includes ambient or interstate air
23 and water pollution.” *Id.* at 855; *see also id.* (“federal common law can apply to transboundary pollu-
24 tion suits”); *AEP*, 564 U.S. at 421 (“Environmental protection is undoubtedly an area within national
25 legislative power, [and] one in which federal courts may fill in statutory interstices.”). Thus, while
26 the Ninth Circuit had previously expressed skepticism that federal common law, as opposed to state
27 law, would govern a localized claim for air pollution arising from a specific source within a single
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1 state, *see Nat'l Audubon Soc'y*, 869 F.2d at 1203–04, the court in *Kivalina* found that claims arising
2 from injuries allegedly caused by *global* warming implicate interstate and, indeed, international as-
3 pects that inherently invoke uniquely federal interests and responsibilities. *See Kivalina*, 696 F.3d at
4 856–57; *see also Massachusetts v. EPA*, 549 U.S. 497, 498 (2007) (“The sovereign prerogatives to
5 force reductions in greenhouse gas emissions, to negotiate emissions treaties with developing coun-
6 tries, and (in some circumstances) to exercise the police power to reduce motor-vehicle emissions are
7 now lodged in the Federal Government.”); *United States v. Solvents Recovery Serv.*, 496 F. Supp.
8 1127, 1134 (D. Conn. 1980) (describing Supreme Court jurisprudence recognizing “the strong federal
9 interest in controlling certain types of pollution and protecting the environment”).

10 24. Although *Kivalina* did not expressly address the viability of the plaintiff’s purported
11 alternative common law claims resting on state law (which the district court dismissed without preju-
12 dice), the *Kivalina* court’s finding that federal common law applied to the municipality’s global
13 warming claims means that state law *cannot* be applied to such claims. The conclusion that federal
14 common law governs an issue rests, not on a discretionary choice between federal law and state law,
15 but on a determination that the issue is so distinctively federal in nature that application of state law
16 to the issue would risk impairing uniquely federal interests. *Boyle*, 487 U.S. at 506–07; *see also, e.g.,*
17 *Caltex Plastics, Inc. v. Lockheed Martin Corp.*, 824 F.3d 1156, 1159–60 (9th Cir. 2016) (liability of
18 defense contractor to third party under government contract for weapons systems implicated
19 “uniquely federal interests” in national security that would be impaired if disparate state-law rules
20 were applied); *Nat'l Audubon Soc'y*, 869 F.3d at 1204 (“[I]t is inconsistent to argue ‘that both federal
21 and state nuisance law apply to this case. If state law can be applied, there is no need for federal
22 common law; if federal common law exists, *it is because state law cannot be used.*’”) (emphasis
23 added).

24 25. Accordingly, the Ninth Circuit’s holding in *Kivalina* that federal common law governs
25 global warming-related tort claims such as Plaintiff’s here necessarily means that state law cannot
26 govern such claims. Although Plaintiff purports to style its nuisance and other common law claims
27 as arising under state law, the question of whether a particular common law claim is controlled by
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1 federal common law rather than state law is itself a question of law that is governed by federal law as
2 set forth in *Erie* and its progeny. While Plaintiff contends that its claims arise under Washington law,
3 the question of which state, if any, may apply its law to address global climate-change issues is a
4 question that is itself a matter of federal law, given the paramount federal interest in avoiding con-
5 flicts of law in connection with ambient air and water. Moreover, the law is well settled that, in de-
6 termining whether a case arises under federal law and is properly removable, the Plaintiff's proffered
7 position on a question of law is not entitled to any deference. *See New SD, Inc. v. Rockwell Int'l*
8 *Corp.*, 79 F.3d 953, 956 (9th Cir. 1996).

9 26. The extent to which the global warming-related tort claims in this case and in *Kivalina*
10 would impair uniquely federal interests is confirmed by comparing these inherently interstate and
11 transnational claims to the more localized pollution claims that the Ninth Circuit in *National Audu-*
12 *bon* held were governed by state law. The claims in *National Audubon* involved a challenge to the
13 Los Angeles Department of Water and Power's diversion of "four freshwater streams that would oth-
14 erwise flow into Mono Lake." 869 F.2d at 1198. This discrete conduct in California allegedly ex-
15 posed part of Mono Lake's lakebed, increased the lake's "salinity and ion concentration," and led to
16 "air pollution in the form of alkali dust storms from the newly exposed lake bed." *Id.* at 1198–99.
17 The Ninth Circuit held that the allegation that some of the dust reached Nevada was not enough to
18 show that the case involved the sort of "interstate dispute previously recognized as requiring resolu-
19 tion under federal law," such that it was "inappropriate for state law to control." *Id.* at 1204. Given
20 their essentially localized nature, the claims involved only a "domestic dispute" that did not fit within
21 the interstate paradigms that the Supreme Court had to that point recognized as properly governed by
22 federal common law. *Id.* at 1205; *cf. Int'l Paper Co. v. Ouellette*, 479 U.S. 481, 497–98 (1987)
23 (holding that New York law applied to pollution claims arising from discharges from a lakeside New
24 York business, even though those effluents flowed to Vermont side of the lake and caused injury
25 there).

26 27. In light of the federal nature of the issues raised by global warming, as described in
27 *AEP* and in *Massachusetts v. EPA*, the *Kivalina* court correctly reached a different conclusion with
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1 respect to global warming-related tort claims such as those presented here. Because global warming
2 occurs only as the result of the undifferentiated accumulated emissions of all emitters in the world
3 over an extended period of time, any judgment as to the reasonableness of particular emissions, or as
4 to their causal contribution to the overall phenomenon of global warming, inherently requires an eval-
5 uation at an interstate and, indeed, transnational level. Thus, even assuming that state tort law may
6 properly address local source emissions within that specific state, the imposition of tort liability for
7 allegedly unreasonably contributing to *global* warming would require an over-arching consideration
8 of *all* of the emissions traceable to sales of Defendants’ products in each of the states, and in fact, in
9 the more than 180 nations of the world. Given the Federal Government’s exclusive authority over
10 foreign affairs and foreign commerce, and its preeminent authority over interstate commerce, tort
11 claims concerning global warming directly implicate uniquely federal interests, and a patchwork of
12 50 state’s common law rules cannot properly be applied to such claims without impairing those inter-
13 ests. Indeed, the Supreme Court expressly held in *AEP* that in cases like this, “borrowing the law of a
14 particular State would be inappropriate.” 564 U.S. at 422. Such global warming-related tort claims,
15 to the extent they exist, are therefore governed by federal common law. *Kivalina*, 696 F.3d at 855–
16 56.

17 28. Under the principles set forth above, Plaintiff’s claims are governed by federal com-
18 mon law. The gravamen of Plaintiff’s claims is that “Defendants’ cumulative production of fossil
19 fuels . . . places each of them among the top sources of global warming pollution in the world” and
20 therefore “contributes measurably to global warming.” Compl. ¶ 9; *see also id.* ¶¶ 79, 93–95, 97, 99,
21 133–44, 161, 171. Plaintiff’s Complaint alleges that Defendants are responsible for “over 11% of all
22 the carbon and methane pollution from industrial sources that has accumulated in the atmosphere
23 since the dawn of the Industrial Revolution,” *id.* ¶ 99(c); that “GHG pollution from the burning of
24 fossil fuels is the dominant cause” of the global average temperature increase over the last century,
25 *id.* ¶¶ 94, 95; and that other natural phenomena, such as sea level rise, a longer frost-free season, de-
26 creasing snow and ice cover, extreme precipitation, heatwaves, and wildfires, are attributable to De-
27 fendants’ conduct, *id.* ¶¶ 1, 133, 135–37, 139–42, 144, 146–47, 154, 156–57, 162, 166, 176, 179. As
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1 is evident from the term “global warming” itself, both the causes and the injuries Plaintiff identifies
2 are not constrained to particular sources, cities, counties, or even states, but rather implicate inher-
3 ently national and international interests, including treaty obligations and federal and international
4 regulatory schemes. *See id.* ¶ 93 (noting the contribution of emissions from “others”); *id.* ¶ 99(c)
5 (only “11%” of CO₂ emissions allegedly caused by Defendants); *id.* ¶ 95 (global warming causes
6 “global sea level rise”) (emphasis added); *see, e.g., Massachusetts*, 549 U.S. at 509, 523–24 (describ-
7 ing Senate rejection of the Kyoto Protocol because emissions-reduction targets did not apply to
8 “heavily polluting nations such as China and India,” and EPA’s determination that predicted magni-
9 tude of future Chinese and Indian emissions “offset any marginal domestic decrease”); *AEP*, 564 U.S.
10 at 427–29 (describing regulatory scheme of the Clean Air Act and role of the EPA); *see also* The
11 White House, Statement by President Trump on the Paris Climate Accord (June 1, 2017), *available at*
12 [https://www.whitehouse.gov/the-press-office/2017/06/01/statement-president-trump-paris-climate-](https://www.whitehouse.gov/the-press-office/2017/06/01/statement-president-trump-paris-climate-accord)
13 [accord](https://www.whitehouse.gov/the-press-office/2017/06/01/statement-president-trump-paris-climate-accord) (announcing United States withdrawal from Paris Climate Accord based on financial burdens,
14 energy restrictions, and failure to impose proportionate restrictions on Chinese emissions).

15 29. Indeed, the Complaint itself demonstrates that the unbounded nature of greenhouse
16 gas emissions, diversity of sources, and magnitude of the attendant consequences have catalyzed
17 myriad federal and international efforts to understand and address such emissions. *See, e.g., Compl.*
18 ¶ 85–91. The paramount federal interest in addressing the worldwide effect of greenhouse gas emis-
19 sions is manifested in the regulatory scheme set forth in the Clean Air Act as construed in *Massachu-*
20 *setts v. EPA*. *See AEP*, 564 U.S. at 427–29. Federal legislation regarding greenhouse gas emissions
21 reflects the understanding that “[t]he appropriate amount of regulation in any particular greenhouse
22 gas-producing sector cannot be prescribed in a vacuum: as with other questions of national or inter-
23 national policy, informed assessment of competing interests is required. Along with the environmen-
24 tal benefit potentially achievable, our Nation’s energy needs and the possibility of economic disrupt-
25 tion must weigh in the balance.” *Id.* at 427. As a “question[] of national or international policy,” the
26 question of how to address greenhouse gas emissions that underlies the requested relief at the heart of
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1 Plaintiff's claims implicates inherently federal concerns and is therefore governed by federal com-
2 mon law. *Id.*; see also *Milwaukee II*, 451 U.S. at 312 n.7 (“[I]f federal common law exists, it is be-
3 cause state law cannot be used.”). Because common law claims that rest on injuries allegedly caused
4 by global warming implicate uniquely federal interests, such claims (to the extent they exist at all)
5 must necessarily be governed by federal common law. This Court therefore has original jurisdiction
6 over this action.

7 **V. THE ACTION IS REMOVABLE BECAUSE IT RAISES DISPUTED AND**
8 **SUBSTANTIAL FEDERAL ISSUES**

9 30. “Except as otherwise expressly provided by Act of Congress, any civil action brought
10 in a State court of which the district courts of the United States have original jurisdiction, may be re-
11 moved . . . to the district court of the United States for the district and division embracing the place
12 where such action is pending.” 28 U.S.C. § 1441(a). Federal district courts, in turn, “have original
13 jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”
14 28 U.S.C. § 1331. The Supreme Court has held that suits apparently alleging only state-law causes of
15 action nevertheless “arise under” federal law if the “state-law claim[s] necessarily raise a stated fed-
16 eral issue, actually disputed and substantial, which a federal forum may entertain without disturbing
17 any congressionally approved balance of federal and state judicial responsibilities.” *Grable*, 545 U.S.
18 at 314. Applying this test “calls for a common-sense accommodation of judgment to the kaleido-
19 scopic situations that present a federal issue.” *Id.* at 313.

20 31. Plaintiff's Complaint attempts to undermine and supplant federal regulation of green-
21 house gas emissions and hold a national industry responsible for the alleged consequences of rising
22 ocean levels and hydrologic cycle disruptions such as drought, extreme precipitation, heatwaves, and
23 wildfires that are allegedly caused by global climate change. There is no question that Plaintiff's
24 claims raise a “federal issue, actually disputed and substantial,” for which federal jurisdiction would
25 not upset “any congressionally approved balance of federal and state judicial responsibilities.”

26 32. The issues of greenhouse gas emissions, global warming, hydrologic cycle disruption,
27 and sea level rising are not unique to King County, the State of Washington, or even the United
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1 States. Yet what the Complaint attempts to do is to supplant decades of national energy, economic
2 development, and federal environmental protection and regulatory policies by prompting a Washing-
3 ton state court to take control over an entire industry and its interstate commercial activities, and im-
4 pose massive damages contrary to the federal regulatory scheme.

5 33. Collectively as well as individually, Plaintiff's causes of action depend on the resolu-
6 tion of disputed and substantial federal questions in light of complex national considerations. For ex-
7 ample, the Complaint's first cause of action seeks relief for an alleged nuisance. Indeed, "the scope
8 and limitations of a complex federal regulatory framework are at stake in this case. And disposition
9 of whether that framework may give rise to state law claims as an initial matter will ultimately have
10 implications for the federal docket one way or the other." *Bd. of Comm'rs of Se. La. Flood Protec-*
11 *tion Auth. v. Tenn. Gas Pipeline Co*, 850 F.3d 714, 723 (5th Cir. 2017) (cert. petition pending)
12 (*"Flood Protection Authority"*).

13 34. Under federal law, federal agencies must "assess both the costs and benefits of [an]
14 intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or
15 adopt a regulation only upon a reasoned determination that the benefits of the intended regulation jus-
16 tify its costs." Executive Order 12866, 58 Fed. Reg. 190. Under Washington law, were it to apply,
17 nuisance claims require a plaintiff to prove that the defendant's conduct is unreasonable, which is de-
18 termined "by weighing the harm to the aggrieved party against the social utility of the activity."
19 *Lakey v. Puget Sound Energy, Inc.*, 176 Wash. 2d 909, 923 (2013). Plaintiff alleges that Defendants,
20 through their national and, indeed, global activities, have "caused, created, assisted in the creation of,
21 contributed to, and/or maintained and continue[] to cause, create, assist in the creation of, contribute
22 to and/or maintain global warming-induced sea level rise and other climate change hazards, a public
23 nuisance in King County." Compl. ¶ 161; *see also id.* ¶ 162. Plaintiff alleges that "Defendants' con-
24 duct constitutes a substantial and unreasonable interference with and obstruction of public rights and
25 property, including, *inter alia*, the public rights to health, safety, and welfare of King County resi-
26 dents and other citizens whose safety and lives are at risk from increased storm surge flooding and
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1 whose public and private property is threatened with widespread damage from global warming-in-
2 duced sea level rise, greater storm surges, and flooding.” *Id.* ¶ 161.

3 35. But Congress has directed a number of federal agencies to regulate Defendants’ con-
4 duct, and in doing so to conduct the same analysis of benefits and impacts that Plaintiff would have
5 the state court undertake in analyzing Plaintiff’s claims. And federal agencies have performed these
6 cost-benefit analyses. *See, e.g.*, Final Carbon Pollution Standards for New, Modified and Recon-
7 structed Power Plants, 80 Fed. Reg. at 64683–84 (EPA considering the impacts of “wildfire” and “ex-
8 treme precipitation events,” such as “droughts, floods, hurricanes, and major storms”). The benefits
9 and harms of Defendants’ conduct are broadly distributed throughout the Nation, to all residents as
10 well as all state and government entities. Given this diffuse and broad impact, Congress has acted
11 through a variety of federal statutes—primarily but not exclusively, the Clean Air Act—to strike the
12 balance between energy extraction and production and environmental protections. *See* Clean Air Act,
13 42 U.S.C. § 7401(c) (Congressional statement that the goal of the Clean Air Act is “to encourage or
14 otherwise promote reasonable Federal, State, and local governmental actions . . . for pollution preven-
15 tion”); *see also, e.g.*, Energy Reorganization Act of 1974, 42 U.S.C. § 5801 (Congressional purpose
16 to “develop, and increase the efficiency and reliability of use of, all energy sources” while “restoring,
17 protecting, and enhancing environmental quality”); Mining and Minerals Policy Act, 30 U.S.C.
18 § 1201 (Congressional purpose to encourage “economic development of domestic mineral resources”
19 balanced with “environmental needs”); Surface Mining Control and Reclamation Act, 30 U.S.C.
20 § 1201 (Congressional findings that coal mining operations are “essential to the national interest” but
21 must be balanced by “cooperative effort[s] . . . to prevent or mitigate adverse environmental effects”).

22 36. The question of whether the federal agencies charged by Congress to balance energy
23 and environmental needs for the entire Nation have struck that balance in an appropriate way is “in-
24 herently federal in character” and gives rise to federal question jurisdiction. *Buckman Co. v. Plain-*
25 *tiffs’ Legal Comm.*, 531 U.S. 341, 347 (2001); *see also Pet Quarters, Inc. v. Depository Trust &*
26 *Clearing Corp.*, 559 F.3d 772, 779 (8th Cir. 2009) (affirming federal question jurisdiction where
27 claims implicated federal agency’s acts implementing federal law); *Bennett v. Southwest Airlines Co.*,

1 484 F.3d 907, 909 (7th Cir. 2007) (federal removal under *Grable* appropriate where claims were “a
2 collateral attack on the validity of” agency action under a highly reticulated regulatory scheme). Ad-
3 judicating these claims in federal court, including whether private rights of action are even cogniza-
4 ble, is appropriate because the relief sought by Plaintiff would necessarily alter the regulatory regime
5 designed by Congress, impacting residents of the Nation far outside the state court’s jurisdiction.
6 *See, e.g., Grable*, 545 U.S. at 312 (claims that turn on substantial federal questions “justify resort to
7 the experience, solicitude, and hope of uniformity that a federal forum offers on federal issues”);
8 *West Virginia ex rel. McGraw v. Eli Lilly & Co.*, 476 F. Supp. 2d 230, 234 (E.D.N.Y. 2007) (removal
9 under *Grable* is appropriate where state common law claims implicate “an intricate federal regulatory
10 scheme . . . requiring some degree of national uniformity in interpretation”).

11 37. The Complaint also calls into question Federal Government decisions to contract with
12 defendants for the extraction, development, and sale of fossil fuel resources on federal lands. Such
13 national policy decisions have expanded fossil fuel production and use, and produced billions of dol-
14 lars in revenue for the federal treasury. Available, affordable energy is fundamental to economic
15 growth and prosperity generally, as well as to national security and other issues that have long been
16 the domain of the Federal Government. Yet, Plaintiff’s claims require a determination that the com-
17 plained-of conduct—the lawful activity of placing fossil fuels into the stream of interstate and foreign
18 commerce—is unreasonable, and that determination raises a policy question that, under the Constitu-
19 tion and the applicable statutes, treaties, and regulations, is a federal question. *See In re Nat’l Sec.*
20 *Agency Telecomm’ns*, 483 F. Supp. 2d 934, 943 (N.D. Cal. 2007) (holding that removal jurisdiction
21 existed over case that implicated state-secrets privilege because “the privilege is ‘not only a contested
22 federal issue, but a substantial one,’ for which there is ‘a serious federal interest in claiming the ad-
23 vantages thought to be inherent in a federal forum’” (quoting *Grable*, 545 U.S. at 313)). The cost-
24 benefit analysis required by the claims asserted in the Complaint would thus necessarily entail a usur-
25 pation by the state court of the federal regulatory structure of an essential, national industry. “The
26 validity of [Plaintiff’s] claims would require that conduct subject to an extensive federal permitting
27 scheme is in fact subject to implicit restraints that are created by state law.” *Flood Control Authority*,

1 850 F.3d at 724; *see also Bader Farms, Inc. v. Monsanto Co.*, No. 16-cv-299, 2017 WL 633815, at
2 *3 (E.D. Mo. Feb. 16, 2017) (“Count VII is in a way a collateral attack on the validity of APHIS’s
3 decision to deregulate the new seeds”); *Bennett*, 484 F.3d at 909 (holding that federal removal is
4 proper under *Grable* “when the state proceeding amounted to a collateral attack on a federal agency’s
5 action”). Indeed, the “inevitable result of such suits,” if successful, is that Defendants “would have to
6 change [their] methods of doing business and controlling pollution to avoid the threat of ongoing lia-
7 bility.” *Ouellette*, 479 U.S. at 495.

8 38. Plaintiff’s Complaint, which seeks to hold Defendants liable in nuisance and trespass
9 for their business of manufacturing, producing, and/or promoting the sale of fossil fuel products—
10 despite Defendants’ uncontested compliance with state and federal law—necessarily implicates nu-
11 merous other disputed and substantial federal issues. Beyond the strictly jurisdictional character of
12 the points addressed above and herein, it is notable that this litigation places at issue multiple signifi-
13 cant federal issues, including but not limited to: (1) whether Defendants can be held liable consistent
14 with the First Amendment and the Noerr-Pennington doctrine for communications campaigns pur-
15 portedly intended “to deny and discredit the mainstream scientific consensus on global warming” (*id.*
16 ¶ 6); (2) whether a state court may hold Defendants liable for conduct that was global in scale (pro-
17 duction of fossil fuels), that allegedly produced effects that are global in scale (increased CO₂ levels
18 and rising sea levels), and on that basis, order Defendants to modify their conduct on a global scale
19 (abating rising sea levels), consistent with the constitutional principles limiting the jurisdictional and
20 geographic reach of state law and guaranteeing due process; (3) whether fossil fuel *producers* may be
21 held liable, consistent with the Due Process Clause, for climate change when it is the combustion of
22 fossil fuels—including by Plaintiff and the People of the State of Washington themselves—that leads
23 to the release of greenhouse gases into the atmosphere; (4) whether a state may impose liability under
24 state common law when the Supreme Court has held that the very same *federal* common law claims
25 are displaced by federal statute, and notwithstanding the commonsense principle that “[i]f a federal
26 common law cause of action has been extinguished by Congressional displacement, it would be in-
27 congruous to allow it to be revived *in any form*,” *Kivalina*, 696 F.3d at 857 (emphasis added);

1 (5) whether a state court may regulate and burden on a global scale the sale and use of what federal
2 policy has deemed an essential resource, consistent with the United States Constitution’s Commerce
3 Clause and foreign affairs doctrine, as well as other constitutional principles; (6) whether a state court
4 may review and assess the validity of acts of foreign states in enacting and enforcing their own regu-
5 latory frameworks; and (7) whether a state court may determine the ability to sue based on alleged
6 damages to land, such as coastal property and interstate highways (*see* Compl. ¶¶ 161–62), which
7 depends on the interpretation of federal laws relating to the ownership and control of property.

8 39. Plaintiff’s Complaint also raises substantial federal issues because the asserted claims
9 intrude upon both foreign policy and carefully balanced regulatory considerations at the national
10 level, including the foreign affairs doctrine. Plaintiff seeks to govern extraterritorial conduct and en-
11 croach on the foreign policy prerogative of the Federal Government’s executive branch as to climate
12 change treaties. “There is, of course, no question that at some point an exercise of state power that
13 touches on foreign relations must yield to the National Government’s policy, given the ‘concern for
14 uniformity in this country’s dealings with foreign nations’ that animated the Constitution’s allocation
15 of the foreign relations power to the National Government in the first place.” *Am. Ins. Assoc. v. Gar-*
16 *amendi*, 539 U.S. 396, 413 (2003). Yet, this is the precise nature of Plaintiff’s action brought in state
17 court. *See United States v. Belmont*, 301 U.S. 324, 331 (1937) (“The external powers of the United
18 States are to be exercised without regard to state laws or policies . . . [I]n respect of our foreign rela-
19 tions generally, state lines disappear.”); *Hines v. Davidowitz*, 312 U.S. 52, 63 (1941) (“Our system of
20 government . . . requires that federal power in the field affecting foreign relations be left entirely free
21 from local interference.”). Indeed, Plaintiff’s Complaint takes issue with multiple federal decisions,
22 threatening to upend the federal government’s longstanding energy and environmental policies and
23 “compromis[ing] the very capacity of the President to speak for the Nation with one voice in dealing
24 with other governments” on the issue of climate change. *Garamendi*, 539 U.S. at 424.

25 40. Through its action, Plaintiff seeks to regulate greenhouse gas emissions worldwide, far
26 beyond the borders of the United States. Plaintiff alleges that its injuries are caused by global
27 weather phenomena, such as increases in the Earth’s ambient temperatures, ocean temperature, sea
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1 level, and extreme storm events, and that Defendants are a substantial contributing factor to such cli-
2 mate change as a result of their collective operations on a worldwide basis, which Plaintiff claims ac-
3 counts for “11% of all the carbon and methane pollution from industrial sources that has accumulated
4 in the atmosphere since the dawn of the Industrial Revolution.” *Id.* ¶¶ 99(c), 162, 176. But “[n]o
5 State can rewrite our foreign policy to conform to its own domestic policies. Power over external af-
6 fairs is not shared by the States; it is vested in the national government exclusively. It need not be so
7 exercised as to conform to State laws or State policies, whether they be expressed in constitutions,
8 statutes, or judicial decrees.” *United States v. Pink*, 315 U.S. 203, 233–34 (1942). States have no au-
9 thority to impose remedial schemes or regulations to address what are matters of foreign affairs. *Gin-*
10 *ergy v. City of Glendale*, 831 F.3d 1222, 1228–29 (9th Cir. 2016) (“It is well established that the fed-
11 eral government holds the exclusive authority to administer foreign affairs.”). Yet Plaintiff’s Com-
12 plaint seeks to replace international negotiations and Congressional and Executive decisions with
13 their own preferred foreign policy, using the ill-suited tools of Washington common law and private
14 litigation. Even when *states* (as opposed to the *King County* here) have made similar efforts, enact-
15 ing laws seeking to supplant or supplement foreign policy, the Supreme Court has held that state law
16 can play no such role. *See Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363, 375–81 (2000);
17 *Garamendi*, 539 U.S. at 420–24.

18 **VI. THE ACTION IS REMOVABLE BECAUSE IT IS COMPLETELY PREEMPTED BY**
19 **FEDERAL LAW**

20 41. This Court also has original jurisdiction over this lawsuit because Plaintiff requests
21 relief that would alter or amend the rules regarding nationwide—and even worldwide—regulation of
22 greenhouse gas emissions. This action is completely preempted by federal law.

23 42. The Supreme Court has held that a federal court will have jurisdiction over an action
24 alleging only state-law claims where “the extraordinary pre-emptive power [of federal law] converts
25 an ordinary state common law complaint into one stating a federal claim for purposes of the well-
26 pleaded complaint rule.” *Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 65 (1987).

1 43. For the reasons set forth above, litigating in state court the inherently transnational ac-
2 tivity challenged by this Complaint would inevitably intrude on the foreign affairs power of the fed-
3 eral government and is completely preempted. *See Garamendi*, 539 U.S. at 418 (“[S]tate action with
4 more than incidental effect on foreign affairs is preempted, even absent any affirmative federal activ-
5 ity in the subject area of the state [action], and hence without any showing of conflict.”); *see also*
6 *California v. Gen. Motors Corp.*, No. C06-05755-MJJ, 2007 WL 2726871,*14 (N.D. Cal. Sept. 17,
7 2007) (dismissing claims against automakers because the federal government “ha[s] made foreign
8 policy determinations regarding the United States’ role in the international concern about global
9 warming,” and a “global warming nuisance tort would have an inextricable effect on . . . foreign pol-
10 icy”).

11 44. In addition, Plaintiff’s claims are preempted by the Clean Air Act. A state cause of
12 action is preempted under the “complete preemption” doctrine where a federal statutory scheme “pro-
13 vide[s] the exclusive cause of action for the claim asserted and also set[s] forth procedures and reme-
14 dies governing that cause of action.” *Beneficial Nat’l Bank v. Anderson*, 539 U.S. 1, 8 (2003). It also
15 requires a determination that the state-law cause of action falls within the scope of the federal cause
16 of action, including where it “duplicates, supplements, or supplants” that cause of action. *Aetna*
17 *Health Inc. v. Davila*, 542 U.S. 200, 209 (2004).

18 45. Both requirements for complete preemption are present here. Among other things,
19 Plaintiff’s Complaint seeks an “abatement” of a nuisance it alleges Defendants have caused—namely,
20 a rise in sea levels, an increase in the frequency and intensity of flooding, and an increase in the in-
21 tensity and frequency of storms and storm-related damages. As such, it seeks regulation of green-
22 house gas emissions far beyond the borders of Washington and even the borders of the United States.
23 This can be accomplished only by a nationwide and global reduction in the emission of greenhouse
24 gases. Even assuming that such relief can be ordered against Defendants for their production and sale
25 of fossil fuels, which are then combusted by others at a rate Plaintiff claims causes the alleged inju-
26 ries, this claim must be decided in federal court because Congress has created a cause of action by
27 which a party can seek the creation or modification of nationwide emission standards by petitioning
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1 the EPA. That federal cause of action was designed to provide the exclusive means by which a party
2 can seek nationwide emission regulations. Because Plaintiff’s state causes of action would “dupli-
3 cate[], supplement[], or supplant[]” that exclusive federal cause of action, they are completely
4 preempted. “If a federal common law cause of action has been extinguished by Congressional dis-
5 placement, it would be incongruous to allow it to be revived in any form.” *Kivalina*, 696 F.3d at 857.

6 **A. The Clean Air Act Provides the Exclusive Cause of Action for Challenging EPA**
7 **Rulemakings**

8 46. The Clean Air Act permits private parties, as well as state and municipal governments,
9 to challenge EPA rulemakings (or the absence of such) and to petition the EPA to undertake new
10 rulemakings. *See, e.g.*, 5 U.S.C. § 553(e); 42 U.S.C. §§ 7604, 7607.

11 47. The Clean Air Act provides the exclusive cause of action for regulation of nationwide
12 emissions. The Act establishes a system by which federal and state resources are deployed to “pro-
13 tect and enhance the quality of the Nation’s air resources so as to promote the public health and wel-
14 fare and the productive capacity of its population.” 42 U.S.C. § 7401(b)(1). At the heart of this sys-
15 tem are the emission standards set by EPA. Specific Clean Air Act provisions authorize or require
16 emission standards to be set if certain findings are made, and such standards must comport with the
17 statutory criteria set by Congress, consistent with the dual goals of the Act. Under the Clean Air Act,
18 “emissions have been extensively regulated nationwide.” *N.C. ex rel. Cooper v. Tenn Valley Auth.*,
19 615 F.3d 291, 298 (4th Cir. 2010). Regulation of greenhouse gas emissions, including carbon diox-
20 ide, is governed by the Clean Air Act, *see Massachusetts*, 549 U.S. at 528–29, and EPA has regulated
21 these emissions under the Act, *see, e.g.*, 40 C.F.R. §§ 51.166(b)(1)(i), 52.21(b)(1)(i) (regulation of
22 greenhouse gases through the Act’s prevention of significant deterioration of air quality permitting
23 program); 77 Fed. Reg. 62,624 (Oct. 15, 2012) (regulation of greenhouse gas emissions from light-
24 duty motor vehicles); 81 Fed. Reg. 73,478 (Oct. 25, 2016) (regulation of greenhouse gas emissions
25 from medium- and heavy-duty engines and motor vehicles).

26 48. Congress manifested a clear intent that judicial review of Clean Air Act matters must
27 take place in federal court. 42 U.S.C. § 7607(b).

1 49. This congressionally provided statutory and regulatory scheme is thus the “exclusive”
2 means for seeking the nationwide regulation of greenhouse gas emissions and “set[s] forth procedures
3 and remedies” for that relief, *Beneficial Nat’l Bank*, 539 U.S. at 8, irrespective of the savings clauses
4 applicable to some other types of claims. At least one federal court has observed that the Clean Air
5 Act preempts such state common law nuisance cases because “[i]f courts across the nation were to
6 use the vagaries of public nuisance doctrine to overturn the carefully enacted rules governing air-
7 borne emissions, it would be increasingly difficult for anyone to determine what standards gov-
8 ern. Energy policy cannot be set, and the environment cannot prosper, in this way.” *N.C. ex rel.*
9 *Cooper v. Tenn. Valley Auth.*, 615 F.3d at 298.

10 **B. Plaintiff’s Asserted State-Law Causes of Action Duplicate, Supplement, and/or**
11 **Supplant the Federal Cause of Action**

12 50. Plaintiff asks the Court to order Defendants to “abate the global warming-induced nui-
13 sance to which they have contributed.” Compl. ¶ 10; *see also id.*, Relief Requested (requesting “an
14 abatement fund remedy”).

15 51. According to Plaintiff’s own allegations, the alleged nuisances can be abated only by a
16 global—or at the very least national—reduction in greenhouse gas emissions. *See* Compl. ¶ 93 (“To-
17 day, due primarily to the combustion of fossil fuels produced by Defendants *and others*, the atmos-
18 pheric level of carbon dioxide is 410 ppm . . .”) (emphasis added); *id.* ¶ 99(a) (“100 fossil fuel pro-
19 ducers are responsible for 62% of *all greenhouse gas emissions* from industrial sources since the
20 dawn of the Industrial Revolution . . .”) (emphasis added).

21 52. Plaintiff’s state-law tort claims are effectively an end-run around a petition for a rule-
22 making regarding greenhouse gas emissions because they seek to regulate nationwide emissions that
23 Plaintiff concedes conform to EPA’s emission standards. *See, e.g., San Diego Bldg. Trades Council*
24 *v. Garmon*, 359 U.S. 236, 247 (1959); *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 539 (1992). The
25 claims would require precisely the cost-benefit analysis of emissions that the EPA is charged with
26 undertaking and would directly interfere with the EPA’s determinations. *See supra* ¶¶ 26–27. Be-
27 cause Congress has established a clear and detailed process by which a party can petition the EPA to
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1 establish stricter nationwide emissions standards, Plaintiff's claims are completely preempted by the
2 Clean Air Act.

3 53. Because Congress has provided an exclusive statutory remedy for the regulation of
4 greenhouse gas emissions which provides federal procedures and remedies for that cause of action,
5 and because Plaintiff's claims fall within the scope of the federal cause of action, Plaintiff's claims
6 are completely preempted by federal law and this Court has federal-question jurisdiction.

7 **VII. THE ACTION IS REMOVABLE UNDER THE OUTER CONTINENTAL SHELF**
8 **LANDS ACT**

9 54. This Court also has original jurisdiction pursuant to the Outer Continental Shelf Lands
10 Act ("OCSLA"). 43 U.S.C. § 1349(b); *see Tenn. Gas Pipeline*, 87 F.3d at 155. This action "aris[es]
11 out of, or in connection with (A) any operation conducted on the outer Continental Shelf which in-
12 volves exploration, development, or production of the minerals, or the subsoil or seabed of the outer
13 Continental Shelf, or which involves rights to such minerals." 43 U.S.C. § 1349(b); *In re Deepwater*
14 *Horizon*, 745 F.3d 157, 163 (5th Cir. 2014) ("th[e] language [of § 1349(b)(1)] [i]s straightforward
15 and broad"). The outer continental shelf ("OCS") includes all submerged lands that belong to the
16 United States but are not part of any State. 43 U.S.C. §§ 1301, 1331.

17 55. The breadth of federal jurisdiction granted by OCSLA reflects the Act's "expansive
18 substantive reach." *See EP Operating Ltd. P'ship v. Placid Oil Co.*, 26 F.3d 563, 569 (5th Cir. 1994).
19 "OCSLA was passed . . . to establish federal ownership and control over the mineral wealth of the
20 OCS and to provide for the development of those natural resources." *Id.* at 566. "[T]he efficient ex-
21 ploitation of the minerals of the OCS . . . was . . . a primary purpose for OCSLA." *Amoco Prod. Co.*
22 *v. Sea Robin Pipeline Co.*, 844 F.2d 1202, 1210 (5th Cir. 1988). Indeed, OCSLA declares it "to be
23 the policy of the United States that . . . the outer Continental Shelf . . . should be made available for
24 expeditious and orderly development." 43 U.S.C. § 1332(3). OCSLA's "congressional mandate es-
25 tablishes a clear program for thoughtful, graduated, and tightly controlled development of oil lands
26 on the outer continental shelf." *North Slope Borough v. Andrus*, 642 F.2d 589, 594 (D.C. Cir. 1980).
27 Any environmental concerns are "mitigated by intricate constraints imposed by Congress and the
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1 Secretary, and enforced carefully by the Secretary.” *Id.* The statute further provides that “since ex-
2 ploration, development, and production of the minerals of the outer Continental Shelf will have sig-
3 nificant impacts on coastal and non-coastal areas of the coastal States . . . such States, and through
4 such States, affected local governments, are entitled to an opportunity to participate, *to the extent*
5 *consistent with the national interest*, in the policy and planning decisions made by the Federal Gov-
6 ernment relating to exploration for, and development and production of, minerals of the outer Conti-
7 nental Shelf.” *Id.* § 1332(4) (emphasis added).

8 56. When enacting Section 1349(b)(1), “Congress intended for the judicial power of the
9 United States to be extended to the entire range of legal disputes that it knew would arise relating to
10 resource development on the [OCS].” *Laredo Offshore Constructors, Inc. v. Hunt Oil. Co.*, 754 F.2d
11 1223, 1228 (5th Cir. 1985). Consistent with Congress’ intent, courts repeatedly have found OCSLA
12 jurisdiction where resolution of the dispute foreseeably could affect the efficient exploitation of min-
13 erals from the OCS.² *See, e.g., EP Operating*, 26 F.3d at 569–70; *United Offshore v. S. Deepwater*
14 *Pipeline*, 899 F.2d 405, 407 (5th Cir. 1990).

15 57. OCSLA jurisdiction exists even if the Complaint pleads no substantive OCSLA
16 claims. *See, e.g., In re Deepwater Horizon*, 745 F.3d at 163. The Court, moreover, may look beyond
17 the facts alleged in the Complaint to determine that OCSLA jurisdiction exists. *See, e.g., Plains Gas*
18 *Solutions, LLC v. Tenn. Gas Pipeline Co., LLC*, 46 F. Supp. 3d 701, 703 (S.D. Tex. 2014); *St. Joe*
19 *Co. v. Transocean Offshore Deepwater Drilling Inc.*, 774 F. Supp. 2d 596, 608 (D. Del. 2011) (citing
20 *Amoco Prod. Co. v. Sea Robin Pipeline Co.*, 844 F.2d 1202, 1205 (5th Cir. 1998)).

21 58. Under OCSLA, the Department of Interior administers an extensive federal leasing
22 program aiming to develop and exploit the oil and gas resources of the federal Continental Shelf.
23 43 U.S.C. § 1334 *et seq.* Pursuant to this authority, the Interior Department “administers more than
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26 ² As stated in 43 U.S.C. § 1333(a)(1): “The Constitution and laws and civil and political jurisdic-
27 tion of the United States are extended to the subsoil and seabed of the outer Continental Shelf and
28 to all artificial islands, and all installations and other devices permanently or temporarily attached
to the seabed . . . for the purpose of exploring for, developing, or producing resources therefrom
. . . to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdic-
tion located within a State”

1 5,000 active oil and gas leases on nearly 27 million OCS acres. In FY 2015, production from these
2 leases generated \$4.4 billion in leasing revenue . . . [and] provided more than 550 million barrels of
3 oil and 1.35 trillion cubic feet of natural gas, accounting for about sixteen percent of the Nation’s oil
4 production and about five percent of domestic natural gas production.” Statement of Abigail Ross
5 Hopper, Director, Bureau of Ocean Energy Management, Before the House Committee on Natural
6 Resources (Mar. 2, 2016), *available at* [https://www.boem.gov/FY2017-Budget-Testimony-03-01-](https://www.boem.gov/FY2017-Budget-Testimony-03-01-2016)
7 2016. Certain Defendants and their affiliates, of course, participate very substantially in the federal
8 OCS leasing program. For example, from 1947 to 1995, Chevron U.S.A. Inc. produced 1.9 billion
9 barrels of crude oil and 11 billion barrels of natural gas from the federal outer continental shelf in the
10 Gulf of Mexico alone. U.S. Dep’t of Int., Minerals Mgmt. Serv., Gulf of Mex. Region, Prod. by Op-
11 erator Ranked by Vol. (1947–1995), *available at* [https://www.data.boem.gov/Produc-](https://www.data.boem.gov/Production/Files/Rank%20File%20Gas%201947%-20-%201995.pdf)
12 tion/Files/Rank%20File%20Gas%201947%-20-%201995.pdf. In 2016, Chevron U.S.A. produced
13 over 49 million barrels of crude oil and 50 million barrels of natural gas from the outer continental
14 shelf on the Gulf of Mexico. U.S. Dep’t of Int., Bureau of Safety & Envtl. Enf’t, Gulf of Mex. Re-
15 gion, Prod. by Operator Ranked by Vol. (2016), *available at* [https://www.data.boem.gov/Produc-](https://www.data.boem.gov/Production/Files/Rank%20File%20Gas%202016.pdf)
16 tion/Files/Rank%20File%20Gas%202016.pdf. Numerous other Defendants conduct, and have for
17 decades conducted, similar oil and gas operations on the federal OCS; indeed, Defendants and their
18 affiliated companies presently hold approximately 32.95% of all outer continental shelf leases. *See*
19 Bureau of Ocean Energy Management, Lease Owner Information, *available at*
20 <https://www.data.boem.gov/Leasing/LeaseOwner/Default.aspx>. For example, certain BP companies
21 and Exxon Mobil currently own lease interests in, and the BP companies operate, “one of the largest
22 deepwater producing fields in the Gulf of Mexico,” which is capable of producing up to 250,000 bar-
23 rels of oil per day. *See* Thunder Horse Field Fact Sheet (last visited Aug. 21, 2017), *available at*
24 http://www.bp.com/content/dam/bp-country/en_us/PDF/Thunder_Horse_Fact_Sheet_6_14_2013.pdf.
25 And as noted on the BP website, production from this and other OCS activities will continue into the
26 future. *Id.* (“BP intends to sustain its leading position as an active participant in all facets of the
27 Deepwater US Gulf of Mexico—as an explorer, developer, and operator.”). A substantial portion of
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1 the national consumption of fossil fuel products stems from production on federal lands, as approved
2 by Congress and Executive Branch decision-makers.

3 59. The Complaint itself makes clear that a substantial part of Plaintiff's claims "arise[]
4 out of, or in connection with," Defendants' "operation[s] 'conducted on the outer Continental Shelf"
5 that involve "the exploration and production of minerals." *In re Deepwater Horizon*, 745 F.3d at
6 163. Plaintiff, in fact, challenges *all of* Defendants' "production . . . of massive quantities of fossil
7 fuels and fossil fuel products," Compl. ¶¶ 2, 28, 97, 99(c), a substantial quantum of which arise from
8 outer continental shelf operations, *see* Ranking Operator by Oil, Bureau of Ocean Energy Mgmt.,
9 *available at* <https://www.data.boem.gov/Main/HtmlPage.aspx?page=rankOil> (documenting Chev-
10 ron's oil and natural gas production on the federal outer continental shelf from 1947 to 2017). Plain-
11 tiff alleges that emissions have risen due to increased outer continental shelf extraction technologies.
12 *See, e.g.*, Compl. ¶ 70 (discussing Shell subsidiary drilling ships exploring for oil off the coast of
13 Alaska, conduct which may implicate the Alaskan outer continental shelf). Many of the emissions
14 Plaintiff challenges necessarily arise from the use of fossil fuels extracted from the OCS.

15 60. The relief sought also arises out of and impacts OCS extraction and development.
16 *See, e.g.*, Compl., Relief Requested (seeking damages designed to cripple the energy industry and eq-
17 uitable relief that would no doubt rein in extraction, including that on the OCS). And "any dispute
18 that alters the progress of production activities on the OCS threatens to impair the total recovery of
19 the federally-owned minerals from the reservoir or reservoirs underlying the OCS. Congress in-
20 tended such a dispute to be within the grant of federal jurisdiction contained in § 1349." *Amoco*
21 *Prod. Co.*, 844 F.2d at 1211.

22 **VIII. THE ACTION IS REMOVABLE UNDER THE FEDERAL OFFICER REMOVAL**
23 **STATUTE**

24 61. The Federal Officer Removal statute allows removal of an action against "any officer
25 (or any person acting under that officer) of the United States or of any agency thereof . . . for or relat-
26 ing to any act under color of such office." 28 U.S.C. § 1442(a)(1). "A party seeking removal under
27 section 1442 must demonstrate that (a) it is a 'person' within the meaning of the statute; (b) there is a
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1 causal nexus between its actions, taken pursuant to a federal officer’s directions, and plaintiff’s
2 claims; and (c) it can assert a ‘colorable federal defense.’” *Durham*, 445 F.3d at 1251 (citations omit-
3 ted). All three elements are satisfied here for Chevron and many other Defendants, which have en-
4 gaged in activities pursuant to the directions of federal officers that, assuming the truth of Plaintiff’s
5 allegations, have a causal nexus to Plaintiff’s claims, and which have colorable federal defenses to
6 Plaintiff’s claims, including, for example, performing pursuant to government mandates and con-
7 tracts, performing functions for the U.S. military, and engaging in activities on federal lands pursuant
8 to federal leases.

9 62. First, Defendants are “persons” within the meaning of the statute. The Complaint al-
10 leges that Defendants are corporations (Compl. ¶ 2), which the Ninth Circuit has held qualify as “per-
11 son[s]” under the statute. *See Leite*, 749 F.3d at 1122 n.4.

12 63. Second, assuming the truth of Plaintiff’s allegations, there is a causal nexus between
13 Defendants’ alleged actions, taken pursuant to a federal officer’s direction, and Plaintiff’s claims. In
14 *Leite*, the Ninth Circuit held removal proper where a military contractor, which was sued for failing
15 to warn about asbestos in military equipment, showed extensive evidence of federal control over its
16 activities. This included “detailed specifications governing the form and content of all warnings that
17 equipment manufacturers were required to provide,” which the Navy was directly involved in prepar-
18 ing and which could not be altered. 749 F.3d at 1123. Here, Plaintiff’s causation and damages alle-
19 gations depend on the activities of Defendants over the past decades—many of which were under-
20 taken at the direction of, and under close supervision and control by, federal officials.

21 64. To take only one example, Chevron and other Defendants have long explored for and
22 produced minerals, oil and gas on federal lands pursuant to leases governed by the Outer Continental
23 Shelf Lands Act as described above. *E.g.*, Thomson Decl., Exs. B–C. In doing so, those Defendants
24 were “‘acting under’ a federal ‘official’” within the meaning of Section 1442(a)(1). *Watson v. Philip*
25 *Morris Cos., Inc.*, 551 U.S. 142, 153 (2007). Under OCSLA, the Interior Department is charged with
26 “manag[ing] access to, and . . . receiv[ing] a fair return for, the energy and mineral resources of the
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1 Outer Continental Shelf.” Statement of Walter Cruickshank, Deputy Director, Bureau of Ocean En-
2 ergy Management, Before The Committee On Natural Resources, July 6, 2016, *available at*
3 <https://www.boem.gov/Congressional-Testimony-Cruickshank-07062016/>. To fulfill this statutory
4 obligation, the Interior officials maintain and administer the OCS leasing program, under which par-
5 ties such as Defendants are required to conduct exploration, development and production activities
6 that, “in the absence of a contract with a private firm, the Government itself would have had to per-
7 form.” *Watson*, 551 U.S. at 154.

8 65. OCS leases obligate lessees like Defendants to “develop[] . . . the leased area” dili-
9 gently, including carrying out exploration, development, and production activities approved by Inte-
10 rior Department officials for the express purpose of “maximiz[ing] the ultimate recovery of hydrocar-
11 bons from the leased area.” Thomson Decl., Ex. C § 10. Indeed, for decades Defendants’ OCSLA
12 leases have instructed that “[t]he Lessee *shall comply* with all applicable regulations, orders, written
13 instructions, and the terms and conditions set forth in this lease” and that “[a]fter due notice in writ-
14 ing, the Lessee *shall conduct* such OCS mining activities at such rates as the Lessor may require in
15 order that the Leased Area or any part thereof may be properly and timely developed and produced in
16 accordance with sound operating principles.” *Id.*, Ex. B § 10 (emphasis added). All drilling takes
17 place “in accordance with an approved exploration plan (EP), development and production plan
18 (DPP) or development operations coordination document (DOCD) [as well as] approval condi-
19 tions”—all of which must undergo extensive review and approval by federal authorities, and all of
20 which further had to conform to “diligence” and “sound conservation practices.” *Id.*, Ex. C §§ 9, 10.
21 Federal officers further have reserved the rights to control the rates of mining (*id.*, Ex. B § 10) and to
22 obtain “prompt access” to facilities and records (*id.*, Ex. B § 11; *id.*, Ex. C § 12). The government
23 also maintains certain controls over how the leased oil/gas/minerals are disposed of once they are re-
24 moved from the ground, as by preconditioning the lease on a right of first refusal to purchase all ma-
25 terials “[i]n time of war or when the President of the United States shall so prescribe” (*id.*, Ex. B
26 § 14; *id.*, Ex. C § 15(d)), and mandating that 20% of all crude and natural gas produced pursuant to
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1 drilling leases be offered “to small or independent refiners” (*id.*, Ex. C § 15(c)). The Federal Treas-
2 ury has reaped enormous financial benefits from those policy decisions in the form of statutory and
3 regulatory royalty regimes that have resulted in billions of dollars of revenue to the Federal Govern-
4 ment.

5 66. Certain Defendants have also engaged in the exploration and production of fossil fuels
6 pursuant to agreements with federal agencies. For example, in June 1944, the Standard Oil Company
7 (a Chevron predecessor) and the U.S. Navy entered into a contract “to govern the joint operation and
8 production of the oil and gas deposits . . . of the Elk Hills Reserve,” a strategic petroleum reserve
9 maintained by the Navy. *Chevron U.S.A., Inc. v. United States*, 116 Fed. Cl. 202, 205 (Fed. Cl.
10 2014). “The Elk Hills Naval Petroleum Reserve (NPR-1) . . . was originally established in 1912 to
11 provide a source of liquid fuels for the armed forces during national emergencies.” GAO Fact Sheet,
12 Naval Petroleum Reserves – Oil Sales Procedures and Prices at Elk Hills, April Through December
13 1986 (Jan. 1987) (“GAO Fact Sheet”), available at <http://www.gao.gov/assets/90/87497.pdf>. In re-
14 sponse to the OPEC oil embargo in 1973–74, the Naval Petroleum Reserves Production Act of 1976
15 (Public Law 94-258, April 5, 1976) was enacted, which “authorized and directed that NPR-1 be pro-
16 duced at the maximum efficient rate for 6 years.” *Id.* In 1977, Congress “transferred the Navy’s in-
17 terests and management obligations to [the Department of Energy],” and Chevron continued its inter-
18 est in the joint operation until 1997. *Id.* That contract governing Standard’s rights shows the federal
19 government’s “full and absolute” power and “complete control” over fossil fuel exploration, produc-
20 tion, and sales at the reserve:

- 21
- 22 • The plan was designed to “[a]fford [the] Navy a means of acquiring *complete control over*
23 *the development of the entire Reserve and the production of oil therefrom.*” Thomson
24 Decl., Ex. D, Recitals § 6(d)(i) (emphases added).
 - 25 • “[The] Navy shall, subject to the provisions hereof, have the exclusive control over the
26 exploration, prospecting development and operation of the Reserve[.]” *Id.*, Ex. D § 3(a).
 - 27 • “[The] Navy shall have *full and absolute power* to determine from time to time the rate of
28 prospecting and development on, and the quantity and rate of production from, the Re-
serve, and may from time to time shut in wells on the Reserve if it so desires.” *Id.*, Ex. D
§ 4(a) (emphasis added).

- 1 • “[A]ll exploration, prospecting, development, and producing operations on the Reserve”
2 occurred “under the supervision and direction of an Operating Committee” tasked with
3 “supervis[ing]” operations and “requir[ing] the use of sound oil field engineering practices
4 designed to achieve the maximum economic recovery of oil from the reserve.” *Id.*, Ex. D
5 § 3(b). In the event of disagreement, “such matter shall be referred to the Secretary of the
6 Navy for determination; and his decision in each such instance shall be final and binding
7 upon Navy and Standard.” *Id.*, Ex. D § 9(a).
- 8 • The Navy retained ultimate and even “absolute” discretion to suspend production, de-
9 crease the minimum amount of production per day that Standard was entitled to receive,
10 or increase the rate of production. *Id.*, Ex. D §§ 4(b), 5(d)(1).

11 The contract demonstrates that Defendants’ activities under federal officers went far beyond simple
12 compliance with the law or participation in a regulated industry

13 67. As discussed above, these and other federal activities are encompassed in Plaintiff’s
14 Complaint. *See supra* ¶¶ 46–58. Plaintiff alleges that the drilling and mining operations Defendants
15 performed led to the sale of fossil fuels—including to the Federal Government—which led to the re-
16 lease of greenhouse gases by end-users—including the Federal Government. Furthermore, the oil
17 and gas Defendants extracted—which the Federal Government (i) reserved the right to buy in total in
18 the event of a time of war or whenever the President so prescribed and (ii) has purchased from De-
19 fendants to fuel its military operations—is the very same oil and gas the production and promotion of
20 which Plaintiff alleges give rise to nuisance and trespass liability. Accordingly, Plaintiff seeks to
21 hold Defendants liable for the very activities Defendants performed under the control of a federal of-
22 ficial, and thus the nexus element has been satisfied.

23 68. Third, Defendants intend to raise numerous meritorious federal defenses, including
24 preemption, *see Goncalves By & Through Goncalves v. Rady Children’s Hosp. San Diego*, 865 F.3d
25 1237, 1249–50 (9th Cir. 2017), the government contractor defense, *see Boyle v. United Techs. Corp.*,
26 487 U.S. 500 (1988); *Gertz v. Boeing*, 654 F.3d 852 (9th Cir. 2011), and others. In addition, Plain-
27 tiff’s claims are barred by the United States Constitution, including the Commerce and Due Process
28 clauses, as well as the First Amendment and the foreign affairs doctrine. These and other federal de-
fenses are more than colorable. *See Willingham v. Morgan*, 395 U.S. 402, 407 (1969) (a defendant
invoking section 1442(a)(1) “need not win his case before he can have it removed”). Accordingly,
removal under Section 1442 is proper.

1 **IX. THE ACTION IS REMOVABLE BECAUSE THIS CASE ARISES FROM ACTS**
2 **ARISING FROM MULTIPLE FEDERAL ENCLAVES**

3 69. This Court also has original jurisdiction under the federal enclave doctrine. The Con-
4 stitution authorizes Congress to “exercise exclusive legislation in all cases whatsoever” over all
5 places purchased with the consent of a state “for the erection of forts, magazines, arsenals, dock-
6 yards, and other needful buildings.” U.S. Const., art. I, § 8, cl. 17. “Federal courts have federal ques-
7 tion jurisdiction over tort claims that arise on ‘federal enclaves.’” *Durham*, 445 F.3d at 1250; *see*
8 *also Totah v. Bies*, No. C 10-05956 CW, 2011 WL 1324471, at *2 (N.D. Cal. Apr. 6, 2011) (denying
9 motion to remand where defamation claim arose in the Presidio in San Francisco, a federal enclave).
10 The “key factor” in determining whether a federal court has federal enclave jurisdiction “is the loca-
11 tion of the plaintiff’s injury or where the specific cause of action arose.” *Sparling v. Doyle*, No. 13-
12 cv-00323-DCG, 2014 WL 2448926, at *3 (W.D. Tex. May 30, 2014); *see also Fung v. Abex Corp.*,
13 816 F. Supp. 569, 571 (N.D. Cal. 1992) (“Failure to indicate the federal enclave status and location of
14 the exposure will not shield plaintiffs from the consequences of this federal enclave status.”); *Bd. of*
15 *Comm’rs of Se. La. Flood Protection Auth.-E. v. Tenn. Gas Pipeline Co., LLC*, 29 F. Supp. 3d 808,
16 831 (E.D. La. 2014) (noting that defendants’ “conduct” or “the damage complained of” must occur
17 on a federal enclave). Federal jurisdiction is available if some of the events or damages alleged in the
18 complaint occurred on a federal enclave. *See Durham*, 445 F.3d at 1250; *Bell v. Arvin Meritor, Inc.*,
19 No. 12-00131-SC, 2012 WL 1110001, at *2 (N.D. Cal. Apr. 2, 2012) (finding federal enclave juris-
20 diction where “some of the[] locations . . . are federal enclaves”); *Totah*, 2011 WL 1324471, at *2
21 (holding that court can “exercise supplemental jurisdiction over related claims” that did not arise on
22 federal enclave).

23 70. Three requirements exist for land to be a federal enclave: (1) the United States must
24 have acquired the land from a state; (2) the state legislature must have consented to the jurisdiction of
25 the Federal Government; and (3) the United States must have accepted jurisdiction. *Wood v. Am.*
26 *Crescent Elevator Corp.*, No. 11-397, 2011 WL 1870218, at *2 (E.D. La. May 16, 2011).

1 71. Upon information and belief, the federal government owns federal enclaves in the area
 2 at issue where Plaintiff’s “damage complained of” allegedly occurs. *Tenn. Gas Pipeline*, 29 F. Supp.
 3 3d at 831. Indeed, Plaintiff broadly alleges injuries to huge swaths of the County, *see* Compl.
 4 ¶¶ 133–44, and “[f]ailure to indicate the federal enclave status and location of the exposure will not
 5 shield plaintiffs from the consequences of this federal enclave status,” *Fung*, 816 F. Supp. at 571.

6 72. On information and belief, Defendants maintain or maintained oil and gas operations
 7 on military bases or other federal enclaves such that the Complaint, which bases the claims on the
 8 “production, marketing, and sale of massive quantities of fossil fuels and fossil fuel products”
 9 (Compl. ¶ 28), arises under federal law. *See, e.g., Humble Pipe Line Co. v. Waggoner*, 376 U.S. 369,
 10 372 (1964) (noting that the United States exercises exclusive jurisdiction over oil and gas rights
 11 within Barksdale Air Force Base in Louisiana); *see also Mississippi River Fuel Corp. v. Cocreham*,
 12 390 F.2d 34, 35 (5th Cir. 1968) (on Barksdale AFB, “the reduction of fugitive oil and gas to posses-
 13 sion and ownership[] takes place within the exclusive jurisdiction of the United States”). Indeed, as
 14 of 2000, approximately 14% of the National Wildlife Refuge System “had oil or gas activities on
 15 their land,” and these activities were spread across 22 different states. *See* GAO, *U.S. Fish and Wild-*
 16 *life Service: Information on Oil and Gas Activities in the National Wildlife Refuge* (Oct. 30, 2001),
 17 available at <http://www.gao.gov/new.items/d0264r.pdf>. Furthermore, Chevron and its predecessor
 18 companies for many years engaged in production activities on the Elk Hills Reserve—a strategic oil
 19 reserve maintained by the Naval Department—pursuant to a joint operating agreement with the Navy.
 20 *See Chevron U.S.A.*, 116 Fed. Cl. at 205. Pursuant to that agreement, Standard Oil “operat[ed] the
 21 lands of Navy and Standard in the Reserve.” Thomas Decl., Ex. D at 4.

22 **X. THE ACTION IS REMOVABLE UNDER THE BANKRUPTCY REMOVAL**
 23 **STATUTE**

24 73. The Bankruptcy Removal Statute allows removal of “any claim or cause of action in a
 25 civil action other than a proceeding before the United States Tax Court or a civil action by a govern-
 26 mental unit to enforce such governmental unit’s police or regulatory power, to the district court for
 27 the district where such civil action is pending, if such district court has jurisdiction of such claim or
 28

1 cause of action under section 1334 of this title.” 28 U.S.C. § 1452(a). Section 1334, in turn, provides
2 that “the district courts shall have original but not exclusive jurisdiction of all civil proceedings, aris-
3 ing under Title 11, or arising in or related to cases under title 11” of the United States Code.
4 28 U.S.C. § 1334(b). The Ninth Circuit has emphasized that “‘related to’ jurisdiction is very broad,
5 including nearly every matter directly or indirectly related to the bankruptcy.” *Sasson v. Sokoloff (In*
6 *re Sasson)*, 424 F.3d 864, 868 (9th Cir. 2005). An action is thus “related to” a bankruptcy case if it
7 “‘could conceivably have any effect on the estate being administered in bankruptcy.’” *PDG Arcos,*
8 *LLC*, 436 F. App’x at 742 (quoting *In re Feitz*, 852 F.2d 455, 457 (9th Cir. 1988)). Where a Chapter
9 11 plan has been confirmed, there must be a “close nexus” between the post-confirmation case and
10 the bankruptcy plan for related-to jurisdiction to exist. *In re Pegasus Gold Corp.*, 394 F.3d 1189,
11 1194 (9th Cir. 2005) (citing *In re Resorts Int’l, Inc.*, 372 F.3d 154, 166–67 (3d Cir. 2004)). “[A]
12 close nexus exists between a post-confirmation matter and a closed bankruptcy proceeding sufficient
13 to support jurisdiction when the matter ‘affect[s] the interpretation, implementation, consummation,
14 execution, or administration of the confirmed plan.’” *In re Wilshire Courtyard*, 729 F.3d 1279, 1289
15 (9th Cir. 2013) (quoting *Pegasus Gold*, 394 F.3d at 1194).

16 74. Plaintiff’s claims are purportedly predicated on historical activities of Defendants, in-
17 cluding predecessor companies, subsidiaries, and companies that Defendants may have acquired or
18 with which they may have merged, as well as numerous unnamed but now bankrupt entities. Indeed,
19 Plaintiff explicitly premises its theories of liability on the actions of Defendants’ subsidiaries. *See,*
20 *e.g.*, Compl. ¶¶ 29, 97.³ Because there are hundreds of non-joined necessary and indispensable par-
21 ties, there are many other Title 11 cases that may be related. Indeed, the related climate-change cases
22 that Plaintiff’s counsel recently filed on behalf of other cities and counties already generated bank-
23 ruptcy court proceedings. *See, e.g., In re Peabody Energy Corp.*, Case No. 16-42529, 2017 WL

24
25
26 ³ To the extent Plaintiff seeks to hold Defendants liable for the conduct of their subsidiaries, affili-
27 ates or other related entities, such attempts are improper. *See, e.g., Gustavson v. Wrigley Sales*
28 *Co.*, 961 F. Supp. 2d 1100, 1132 (N.D. Cal. 2013) (holding that “parent-subsidiary relation-
ship . . . is an insufficient basis, standing alone, for holding [parent] liable for [subsidiary’s] con-
duct”).

1 4843724 (Bankr. E.D. Mo. Oct. 24, 2017) (holding that the plaintiffs’ state-law claims were dis-
 2 charged when Peabody emerged from bankruptcy in March 2017); *In re Arch Coal, Inc.*, Case No.
 3 16-40120, Dkt. 1615 (Bankr. E.D. Mo. Nov. 21 2017) (stipulation providing that any action in the
 4 Peabody bankruptcy proceedings that results in dismissal of any of the plaintiffs’ claims against Pea-
 5 body will require dismissal of claims against Arch). Accordingly, Plaintiff’s broad claim has the re-
 6 quired “close nexus” with Chapter 11 plans to support federal jurisdiction. *Wilshire Courtyard*, 729
 7 F.3d at 1289; *see also In re Dow Corning Corp.*, 86 F.3d 482, 493–94 (6th Cir. 1996).

8 75. As just one example of how Plaintiff’s historical allegations have created a “close
 9 nexus” with a Chapter 11 plan, one of Chevron’s current subsidiaries, Texaco Inc., filed for bank-
 10 ruptcy in 1987. *In re Texaco Inc.*, 87 B 20142 (Bankr. S.D.N.Y. 1987). The Chapter 11 plan, which
 11 was confirmed in 1988, bars certain claims against Texaco arising prior to March 15, 1988. *Id.* Dkt.
 12 1743.⁴ Plaintiff’s Complaint alleges that Texaco, as well as unnamed Chevron “predecessors” and
 13 “subsidiaries,” engaged in culpable conduct prior to March 15, 1988, and it attributes this conduct to
 14 defendant “Chevron.” *See* Compl. ¶¶ 15–17. Plaintiff’s claim against Chevron thus is at least par-
 15 tially barred by Texaco’s confirmed Chapter 11 plan to the extent that the claims relate to Texaco’s
 16 conduct prior to 1988. Accordingly, even though Texaco’s Chapter 11 plan has been confirmed and
 17 consummated, Plaintiff’s claim has a “close nexus” to the plan to support federal jurisdiction. *See*
 18 *Wilshire Courtyard*, 729 F.3d at 1292–93 (federal court had “‘related to’ subject matter jurisdiction
 19 under the *Pegasus Gold* test despite the fact that the Plan transactions have been long since consum-
 20 mated”).

21 **XI. THE ACTION IS REMOVABLE BECAUSE PLAINTIFF’S CLAIMS IMPLICATE**
 22 **THE “NAVIGABLE WATERS OF THE UNITED STATES”**

23 76. Federal statutes give exclusive jurisdiction over construction and dredging activities in
 24 navigable waters to the Army Corps of Engineers (“the Corps”) and authorize the Corps to regulate
 25 the “navigable waters of the United States.” *See* 33 U.S.C. § 403; 33 U.S.C. § 426i. Plaintiff’s
 26 claims based on its allegations that sea level rise will harm its shoreline directly implicate the Corps’

27 _____
 28 ⁴ There are pending motions to reopen Texaco’s bankruptcy case, which motions are being actively
 litigated in the Bankruptcy Court. *See id.* Dkt. 3923.

1 exclusive jurisdiction over the “navigable waters of the United States.” *See* Compl. ¶ 142. Thus,
2 Plaintiff will have to show that the remedy it seeks is consistent with federal action and will be au-
3 thorized by the Corps. This in turn will require interpretation of an extensive web of federal regula-
4 tions. *See, e.g.*, 33 C.F.R. § 320.4(a)(1)–(2); 33 U.S.C. § 408(a). Accordingly, Plaintiff’s claims pro-
5 vide a basis for federal jurisdiction because they present federal issues that are (1) “necessarily
6 raise[d],” (2) “actually disputed,” (3) “substantial,” and (4) capable of resolution in federal court
7 “without disturbing any congressionally approved balance of federal and state judicial responsibili-
8 ties.” *Grable*, 545 U.S. at 314.

9 77. Plaintiff’s claims also require the Court to evaluate the exercise of federal authority
10 over many prior years. For example, Congress expressly authorized the Corps to “study [the] rehabil-
11 itation of the Elliott Bay Seawall” in Seattle, Washington to determine how to mitigate future dam-
12 age. Water Resource Development Act of 2007, § 4096(a), Pub. L. No. 110-114. The Corps has
13 studied the feasibility of replacing aging seawall structures to protect Seattle’s shoreline and water-
14 front. *See* Elliot Bay Seawall, *available at* [http://www.nws.usace.army.mil/Missions/Civil-](http://www.nws.usace.army.mil/Missions/Civil-Works/Programs-and-Projects/Projects/Elliott-Bay-Seawall/)
15 [Works/Programs-and-Projects/Projects/Elliott-Bay-Seawall/](http://www.nws.usace.army.mil/Missions/Civil-Works/Programs-and-Projects/Projects/Elliott-Bay-Seawall/). But Plaintiff’s nuisance claims are
16 grounded on alleged past and future “sea level rise,” which Plaintiff alleges will “require retrofitting
17 and/or replacing many King County-owned assets and infrastructure to reduce the potential for dam-
18 age.” Compl. ¶ 145. Because Plaintiff alleges that past federal activity directed at these very issues
19 failed to prevent its injuries, its Complaint challenges—and necessarily requires evaluation of—the
20 adequacy of past federal decision making. This gives rise to federal question jurisdiction. *See Bd. Of*
21 *Comm’rs of Se. La. Flood Prot. Auth.-E. v. Tenn. Gas Pipeline Co., L.L.C.*, 850 F.3d 714, 724 (5th
22 Cir. 2017) (in the context of comprehensive regulatory scheme, nuisance claims amount to “a collat-
23 eral attack . . . premised on the notion that the scheme provides inadequate protection” (brackets
24 omitted)); *Pet Quarters, Inc. v. Depository Trust and Clearing Corp.*, 559 F.3d 772, 779 (8th Cir.
25 2009) (complaint “presents a substantial federal question because it directly implicates actions taken
26 by” a federal agency); *McKay v. City and Cty. of San Francisco*, 2016 WL 7425927, at *4 (N.D. Cal.
27 Dec. 23, 2016) (denying remand and ruling that federal jurisdiction lies under *Grable* because state-
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1 law claims were “tantamount to asking the Court to second guess the validity of the FAA’s deci-
2 sion”); *Bader Farms, Inc. v. Monsanto Co.*, 2017 WL 633815, at *3 (E.D. Mo. Feb. 16, 2017).

3 78. To succeed on its public nuisance claim, Plaintiff must prove causation. *See* Wash.
4 Rev. Code § 7.48.010. But a crucial element of Plaintiff’s theory of causation is the rising sea level
5 along the Pacific coast and Puget Sound, which are navigable waters of the United States. *See*
6 Compl. ¶ 95. More specifically, the attenuated chain of causation contemplated by Plaintiff’s Com-
7 plaint is as follows: (1) Defendants extract, manufacture, deliver, market, and sell fossil fuels,
8 *id.* ¶¶ 2, 5; (2) the combustion of those fuels around the globe causes the release of greenhouse gases,
9 *id.* ¶ 79; (3) released greenhouse gases then “trap atmospheric heat and increase global temperatures,”
10 *id.*; (4) increased temperatures cause thermal expansion of “navigable waters” and the melting of
11 land-based ice therein, *id.* ¶ 139; (5) such phenomena cause the accelerated rise of “navigable wa-
12 ters,” *id.*; (6) Plaintiff’s current infrastructure is inadequate to address the rising waters, *id.* ¶ 10; and
13 (7) “navigable waters” will encroach upon Plaintiff’s land, causing damage, *id.* ¶¶ 8, 142, 162. Every
14 link in this chain is inextricably intertwined with federal issues, including, as relevant here, the move-
15 ment and impact of “navigable waters” and second-guessing of federal infrastructure. *See supra*, ¶
16 77–78.

17 79. Finally, Plaintiff’s claims are removable because they fall within the Court’s original
18 admiralty jurisdiction. The Constitution extends the federal judicial power “to all Cases of admiralty
19 and maritime Jurisdiction.” U.S. Const. Art. III, § 2. “Congress has embodied that power in a statute
20 giving federal district courts ‘original jurisdiction [over] . . . [a]ny civil case of admiralty or maritime
21 jurisdiction[.]’ *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 531
22 (1995) (alterations in original). “The admiralty and maritime jurisdiction of the United States extends
23 to and includes cases of injury or damage, to person or property, caused by a vessel on navigable wa-
24 ters, *even though the injury or damage is done or consummated on land.*” 46 U.S.C. § 30101(a) (em-
25 phasis added).

26 80. The alleged injuries have occurred on the navigable waters surrounding King County.
27 Plaintiff alleges that several Defendants’ production and sale of fossil fuels occur on and/or over the
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1 navigable waters of the United States. *See, e.g.*, Compl. ¶ 54 (“Chevron, through its subsidiaries and
2 agents, also produces oil in Alaska, and upon information and belief, some of this crude oil is sup-
3 plied to Washington.”); *id.* ¶ 60 (“ConocoPhillips is Alaska’s largest oil producer and ships Alaskan
4 crude oil to Washington” with a “fleet consist[ing] of five tankers ‘designed specifically for the
5 twice-monthly 2,500 to 5,000-mile round trip from Valdez, Alaska, to Washington, California and
6 Hawaii.”). Beyond that, Plaintiff alleges that the tort arises from production of fossil fuels, including
7 worldwide extraction, a significant portion of which takes place on “mobile offshore drilling unit[s]”
8 that operate in navigable waters. *See In re Oil Spill by the Oil Rig Deepwater Horizon in the Gulf of*
9 *Mexico, on April 20, 2010*, 808 F. Supp. 2d 943, 949 (E.D. La. 2011). “Under clearly established
10 law,” a floating drilling platform is “a vessel, not a fixed platform.” *Id.* And Defendants’ fossil fuel
11 extraction is connected to maritime activity because (1) it has the “potential to disrupt maritime com-
12 merce” by damaging ports, *see Grubart*, 513 U.S. at 538; and (2) “[o]il and gas drilling on navigable
13 waters aboard a vessel is recognized to be maritime commerce,” *Theriot v. Bay Drilling Corp.*, 783
14 F.2d 527, 538–39 (5th Cir. 1986). Because Plaintiff’s claims fall within the Court’s admiralty juris-
15 diction, they are removable under 28 U.S.C. §§ 1441 and 1333.

16 **XII. THIS COURT HAS JURISDICTION AND REMOVAL IS PROPER**

17 81. Based on the foregoing allegations from the Complaint, this Court has original juris-
18 diction over this action under 28 U.S.C. §§ 1331 and 1332. Accordingly, removal of this action is
19 proper under 28 U.S.C. §§ 1334, 1441, 1442, 1452, and 1446, as well as 43 U.S.C. § 1349(b).

20 82. The United States District Court for the Western District of Washington is the appro-
21 priate venue for removal pursuant to 28 U.S.C. § 1441(a) because it embraces the place where Plain-
22 tiff originally filed this case, in the Superior Court of Washington for King County. *See* 28 U.S.C.
23 § 84(a); 28 U.S.C. § 1441(a). Pursuant to Local Rule 3(e)(1), the action should be assigned to the Se-
24 attle Division of this Court.

25 83. All defendants that have been properly joined and served (or purported to be served)
26 have consented to the removal of the action, *see* Thomson Decl., ¶ 4, and there is no requirement that
27 any party not properly joined and served consent. *See City of Ann Arbor Employees’ Ret. Sys. v.*
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1 *Gecht*, No. C-06-7453 EMC, 2007 WL 760568, at *8 (N.D. Cal. Mar. 9, 2007); 28 U.S.C.
2 § 1446(b)(2)(A) (requiring consent only from “all defendants who have been properly joined and
3 served”).⁵ Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings, and orders from the
4 state-court action being removed to this Court that Defendant Chevron Corporation has been able to
5 obtain from the Superior Court and which are in its possession are attached as Exhibit A to the Thom-
6 son Declaration.

7 84. Upon filing this Notice of Removal, Defendant Chevron Corporation will furnish writ-
8 ten notice to Plaintiff’s counsel, and will file and serve a copy of this Notice with the Clerk of the Su-
9 perior Court of Washington for King County, pursuant to 28 U.S.C. § 1446(d).

10 Accordingly, Defendants remove to this Court the above action pending in the Superior Court
11 of Washington for King County.

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27 ⁵ In addition, bankruptcy removal under 28 U.S.C. § 1452 and federal officer removal “represent[]
28 an exception to the general rule . . . that all defendants must join in the removal petition.” *Ely*
Valley Mines, Inc. v. Hartford Accident & Indem. Co., 644 F.2d 1310, 1315 (9th Cir. 1981).

1 Dated: May 25, 2018

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