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VIA ECF

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

Re: *County of San Mateo v. Chevron Corp. et al.*, No. 18-15499, consolidated with *City of Imperial Beach v. Chevron Corp. et al.*, No. 18-15502; *County of Marin v. Chevron Corp. et al.*, No. 18-15503; *County of Santa Cruz, et al. v. Chevron Corp. et al.*, No. 18-16376 – Defendant-Appellant Chevron's Response to Rule 28(j) Letter

Dear Ms. Dwyer:

I write in response to Plaintiffs-Appellees' June 21, 2019, letter regarding the Supreme Court's decision in *Virginia Uranium, Inc. v. Warren*, 139 S. Ct. 1894 (2019). *Virginia Uranium* has no bearing on Defendants-Appellants' argument that the Clean Air Act ("CAA") completely preempts Plaintiffs-Appellees' global warming claims.

The doctrine of complete preemption—which authorizes removal of claims pleaded under state law when Congress has provided the exclusive cause of action—was not at issue in *Virginia Uranium*. Instead, the question was whether the federal Atomic Energy Act ("AEA") preempted a *state law* banning uranium mining. Unlike here, the plaintiff did not assert any state-law *causes of action*. Nor did the plaintiff file suit in state court. Rather, it filed its action for declaratory and injunctive relief in federal court.

Moreover, in rejecting the plaintiff's preemption argument, the Court concluded that the AEA did not strip states of "their *traditional function* of regulating mining activities on private lands *within their boundaries*." Ex. A at 16 (emphases added). Regulating interstate air pollution, by contrast, is not a "traditional" exercise of state power. *See* Defendants-Appellants' Opening Br. ("AOB") at 32-33. Rather, "control of interstate pollution is primarily a matter of federal law." *Int'l Paper Co. v. Ouellette*, 479 U.S. 481, 492 (1987).

Here, Plaintiffs-Appellees seek to deem nationwide (and worldwide) greenhouse gas emissions resulting from the combustion of Defendants' fossil fuels a public nuisance. Unlike the AEA, which did *not* grant any federal agency authority to regulate mining, Ex. A

at 4, the CAA grants the EPA authority to "protect and enhance the quality of the Nation's air resources," 42 U.S.C. § 7401(b)(1). The CAA also "channels review of final EPA action exclusively to the courts of appeals, regardless of how the grounds for review are framed." *Cal. Dump Truck Owners Ass'n v. Nichols*, 784 F.3d 500, 506 (9th Cir. 2015); 42 U.S.C. § 7607(e). Defendants-Appellants have thus invoked far more than a "brooding federal interest," Ex. A at 1—they have identified a specific statutory scheme and cause of action that completely preempts Plaintiffs-Appellees' state-law global warming claims.

Sincerely,

/s/ Theodore J. Boutrous, Jr.

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cc: All counsel of record (via ECF)