

# SHER EDLING LLP

PROTECTING PEOPLE AND THE PLANET

February 16, 2022

**Via ECF**

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

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

Dear Ms. Dwyer,

Pursuant to Fed. R. App. P. 28(j), Plaintiffs-Appellees submit as supplemental authority the decision in *Board of County Commissioners of Boulder County et al. v. Suncor Energy (U.S.A.) Inc. et al.*, Case No. 19-1330 (10<sup>th</sup> Cir. Feb. 8, 2022) (**Ex. A**) ("*Boulder*"). In *Boulder*, the Tenth Circuit affirmed remand to state court after rejecting each argument Defendants-Appellants assert here:

- *Outer Continental Shelf Lands Act (OCSLA)*. The court held that "the [Outer Continental Shelf] activities are not the 'but-for' cause of the Municipalities' injuries." *Id.* At 58.
- *Federal enclave*. There was no federal enclave jurisdiction because the plaintiffs disclaimed recovery for injuries on federal land, *id.* At 53, and additionally because all injuries arose exclusively on non-federal land, *id.* At 51–52.
- *Federal common law, Grable, and complete preemption*. The court concurred with the holding of this Court in *City of Oakland v. BP PLC*, 969 F.3d 895 (9th Cir. 2020), that the plaintiffs' claims arose under state law, explaining that the defendants' argument that the claims "'arise under' federal common law fails because the reliance on only state-law claims leaves complete preemption as the sole path for federal removal jurisdiction." Ex. A at 32. The court further held that neither federal common law nor the Clean Air Act completely preempts the state-law claims. *Id.* at 40. Finally, the court affirmed there was no jurisdiction under *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308 (2005), because no federal question was a necessary element of the plaintiffs' claims, and no federal issues potentially implicated by the complaint were "substantial" under *Grable*. *See id.* at 40–51.

The court relied upon and cited with approval the decision subject to this appeal, *see, e.g., id.* at 31 & 40 n.8, and thoroughly analyzed orders granting remand in similar cases brought by other municipalities. The Tenth Circuit's analysis underscores that federal jurisdiction is likewise improper here.

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Respectfully submitted,

*/s/ Victor M. Sher* \_\_\_\_\_

Victor M. Sher

**Sher Edling LLP**

*Counsel for Plaintiffs-Appellees*

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

cc: All Counsel of Record (via ECF)