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

IN THE

United States Court of Appeals for the Ninth Circuit

COUNTY OF SAN MATEO, Plaintiff-Appellee, v. CHEVRON CORPORATION, *et al.*, Defendants-Appellants.	No. 18-15499 No. 17-cv-4929-VC N.D. Cal., San Francisco Hon. Vince Chhabria presiding
CITY OF IMPERIAL BEACH, Plaintiff-Appellee, v. CHEVRON CORPORATION, *et al.*, Defendants-Appellants.	No. 18-15502 No. 17-cv-4934-VC N.D. Cal., San Francisco Hon. Vince Chhabria presiding
COUNTY OF MARIN, Plaintiff-Appellee, v. CHEVRON CORPORATION, *et al.*, Defendants-Appellants.	No. 18-15503 No. 17-cv-4935-VC N.D. Cal., San Francisco Hon. Vince Chhabria presiding
COUNTY OF SANTA CRUZ, *et al*, Plaintiff-Appellee, v. CHEVRON CORPORATION, *et al*. Defendants-Appellants	No. 18-16376 No. 18-cv-00450-VC No.18-cv-00458-VC No. 18-cv-00732-VC N.D. Cal., San Francisco Hon. Vince Chhabria presiding

JOINT MOTION TO CONSOLIDATE APPEALS

Joshua S. Lipshutz
GIBSON, DUNN & CRUTCHER LLP
555 Mission Street, Suite 3000
San Francisco, CA 94105-0921
(415) 393-8200

Theodore J. Boutrous, Jr.
William E. Thomson
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, California 90071-3197
(213) 229-7000
tboutrous@gibsondunn.com

Counsel for Defendants-Appellants Chevron Corporation and Chevron U.S.A. Inc.
[*Additional counsel listed on signature page*]

JOINT MOTION TO CONSOLIDATE APPEALS

Pursuant to Federal Rule of Appellate Procedure 3(b)(2), the parties to the above-captioned appeals hereby jointly move for an order consolidating the pending appeals in Nos. 18-15499, 18-15502, and 18-15503 with the pending appeal in No. 18-16376.[1] As set forth in more detail below, these appeals involve many of the same parties and arise from orders decided by the same district judge addressing the same arguments. In fact, the district court expressly cross-referenced and incorporated its order in the first set of cases when it granted the motion to remand in the second set of cases. Because the issues presented in these appeals are nearly identical, the parties believe that consolidation would promote judicial economy.

The three appeals in Nos. 18-15499, 18-15502, and 18-15503 (the "San Mateo Cases") arise from an order issued by Judge Chhabria on March 16, 2018, granting Plaintiffs' motion to remand the three consolidated cases to California state court. *See*, *e.g.*, *County of San Mateo v. Chevron Corp.*, No. 17-cv-04929, ECF No. 223, attached as Exhibit A. Those three cases—filed in state court by the County of San Mateo, the City of Imperial Beach, and the County of Marin—

[1] Many of the appellants intend to challenge personal jurisdiction in California, and this motion is submitted subject to and without waiver of any defense, affirmative defense, or objection, including personal jurisdiction, insufficient process, or insufficient service of process.

involve the same claims alleging global-warming related harms against the same energy companies based on the same alleged course of conduct. Defendants removed the cases on multiple grounds, including under the federal officer removal statute, 28 U.S.C. § 1442(a). After the three cases were consolidated before Judge Chhabria, Plaintiffs moved to remand. Judge Chhabria granted Plaintiffs' motion. Ex. A.

Defendants filed their notices of appeal on March 26, 2018. On June 6, 2018, Plaintiffs filed a motion for partial dismissal, arguing that this Court has jurisdiction to review only that part of the remand order addressing removal under the federal officer removal statute. *See*, *e.g.*, *County of San Mateo v. Chevron Corp.*, No. 18-15499, ECF No. 41. That motion, which is still pending, automatically stayed the briefing schedule. Briefing will commence once the Court has resolved Plaintiffs' motion.

Meanwhile, the County of Santa Cruz, the City of Santa Cruz, and the City of Richmond, represented by the same private attorneys that represented Plaintiffs in the San Mateo Cases, had also sued many of the same defendants in state court, alleging the same causes of action (the "Santa Cruz Cases"). Defendants removed those three actions to the Northern District of California, arguing that removal was proper for the same reasons advanced by Defendants in the San Mateo Cases. Defendants subsequently filed an administrative motion to relate the cases to the

San Mateo Cases. On February 9, 2018, Judge Chhabria found that the Santa Cruz Cases were related to the San Mateo Cases, and the Santa Cruz cases were thus reassigned to Judge Chhabria. *See*, *e.g.*, No. 18-cv-00450, ECF No. 24, attached as Exhibit B.

The plaintiffs in the Santa Cruz Cases moved to remand the cases to California state court on February 16, 2018. *Id.* ECF. No. 68, attached as Exhibit C. The plaintiffs "refer[red] to and incorporate[d] fully by reference the arguments plaintiffs asserted in the briefing" in the San Mateo Cases, "as well as argument of counsel presented during the Court's February 15, 2018, hearing on the motions to remand" in the San Mateo Cases. *Id.* at 4. Defendants opposed the motions to remand, "likewise incorporat[ing] their briefing opposing remand in those three related cases." *Id.* ECF No. 91 at 1, attached as Exhibit D. Defendants also submitted a "supplemental brief to address specific issues raised during the February 15, 2018, hearing before this Court on the remand motions in *San Mateo, Imperial Beach*, and *Marin*." *Id.* Defendants' supplemental brief argued that the claims depend on the resolution of substantial disputed federal questions relating to rising levels of "navigable waters of the United States." *Id.* Defendants also argued that the claims were "removable insofar as they fall within the Court's original admiralty jurisdiction." *Id.* at 19.

On July 10, 2018, Judge Chhabria granted Plaintiffs' motion to remand the Santa Cruz Cases "[f]or the reasons stated in th[e] Court's prior order" in the San Mateo Cases, "as well as for the reasons stated in *Coronel v. AK Victory*, 1 F. Supp. 3d 1175, 1178–89 (W.D. Wash. 2014)," a case rejecting removal based on admiralty jurisdiction. *Id.*, ECF No. 142 at 1, attached as Exhibit E. Judge Chhabria also stayed the remand order "pending the outcome of the appeals in the County of San Mateo, City of Imperial Beach, and County of Marin cases." *Id.* at 1–2. Defendants in the Santa Cruz Cases filed a notice of appeal on July 18, 2018.

As the foregoing facts demonstrate, the San Mateo Cases and the Santa Cruz Cases involve the same claims, defendants, and issues on appeal. The parties agree that consolidating the appeals will promote judicial efficiency and streamline the briefing process. Accordingly, the parties hereby ask the Court to consolidate the pending appeals in Nos. 18-15499, 18-15502, and 18-15503, with the appeal in No. 18-16376.

Dated: August 10, 2018

Respectfully submitted,

By: *John C. Beiers*

John C. Beiers, County Counsel
Paul A. Okada, Chief Deputy
David A. Silberman, Chief Deputy
Margaret V. Tides, Deputy
OFFICE OF THE COUNTY COUNSEL
COUNTY OF SAN MATEO
400 County Center, 6th Floor
Redwood City, CA 94063
Telephone: (650) 363-4250
E-mail: jbeiers@smcgov.org
E-mail: pokada@smcgov.org
E-mail: dsilberman@smcgov.org
E-mail: mtides@smcgov.org

Attorneys for Plaintiff-Appellee County of San Mateo and the People of the State of California

By: *Brian E. Washington*

Brian E. Washington, County Counsel
Brian C. Case, Deputy County Counsel
OFFICE OF THE COUNTY COUNSEL
COUNTY OF MARIN
3501 Civic Center Drive, Ste. 275
San Rafael, CA 94903
Telephone: (415) 473-6117
E-mail: bwashington@marincounty.org
E-mail: bcase@marincounty.org

Attorneys for Plaintiff-Appellee County of Marin and the People of the State of California

By: ***/s/ Theodore J. Boutrous, Jr.*

Theodore J. Boutrous, Jr.
Andrea E. Neuman
William E. Thomson
Ethan D. Dettmer
Joshua S. Lipshutz
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
Telephone: (213) 229-7000
Facsimile: (213) 229-7520
E-mail: tboutrous@gibsondunn.com
E-mail: aneuman@gibsondunn.com
E-mail: wthomson@gibsondunn.com
E-mail: edettmer@gibsondunn.com
E-mail: jlipshutz@gibsondunn.com

Herbert J. Stern
Joel M. Silverstein
STERN & KILCULLEN, LLC
325 Columbia Turnpike, Suite 110
Florham Park, NJ 07932-0992
Telephone: (973) 535-1900
Facsimile: (973) 535-9664
E-mail: hstern@sgklaw.com
E-mail: jsilverstein@sgklaw.com

Neal S. Manne
Johnny W. Carter
Erica Harris
Steven Shepard
SUSMAN GODFREY LLP
1000 Louisiana, Suite 5100
Houston, TX 77002
Telephone: (713) 651-9366
Facsimile: (713) 654-6666
E-mail: nmanne@susmangodfrey.com
E-mail: jcarter@susmangodfrey.com

By: *Jennifer Lyon*

Jennifer Lyon, City Attorney
Steven E. Boehmer, Assistant City Attorney
McDOUGAL, LOVE, BOEHMER, FOLEY, LYON & CANLAS
8100 La Mesa Blvd., Ste. 200
La Mesa, CA 91942
Tel: (619) 440-4444
E-mail: jlyon@mcdougallove.com
E-mail: sboehmer@mcdougallove.com

Attorneys for Plaintiff-Appellee City of Imperial Beach and the People of the State of California

By: *Dana McRae*

Dana McRae, County Counsel
Jordan Sheinbaum, Deputy County Counsel
SANTA CRUZ OFFICE OF THE COUNTY COUNSEL
701 Ocean Street, Room 505
Santa Cruz, CA 95060
Telephone: (831) 454-2040
Facsimile: (831) 454-2115
E-mail: dana.mcrae@santacruzcounty.us
E-mail: Jordan.sheinbaum@santacruzcounty.us

Attorneys for Plaintiff-Appellee The County of Santa Cruz and the People of the State of California

E-mail: eharris@susmangodfrey.com
E-mail: shepard@susmangodfrey.com

Attorneys for Defendants CHEVRON CORP. and CHEVRON U.S.A., INC.

** Pursuant to Ninth Circuit L.R. 25-5(e), counsel attests that all other parties on whose behalf the filing is submitted concur in the filing's contents

By: *Anthony C. Condotti*

Anthony P. Condotti, City Attorney
ATCHISON, BARISONE &
CONDOTTI, APC
333 Church St.
Santa Cruz, CA 95060
Telephone: (831) 423-8383
E-mail: tcondotti@abc-law.com

Attorneys for Plaintiff-Appellee
The City of Santa Cruz and the People
of the State of California

By: *Bruce Reed Goodmiller*

Bruce Reed Goodmiller, City Attorney
Rachel H. Sommovilla, Assistant City
Attorney
CITY ATTORNEY'S OFFICE FOR
CITY OF RICHMOND
450 Civic Center Plaza
Richmond, CA 94804
Telephone: (510) 620-6509
Facsimile: (510) 620-6518
E-mail:
Bruce_goodmiller@ci.richmond.ca.us
E-mail:
Rachel_sommovilla@ci.richmond.ca.us

Attorneys for Plaintiff-Appellee
The City of Richmond and the People
of the State of California

By: *Victor M. Sher*

Victor M. Sher
Matthew K. Edling
Katie H. Jones
Martin D. Quiñones
SHER EDLING LLP
100 Montgomery St., Suite 1410
San Francisco, CA 94104
Telephone: (628) 231-2500
Email: vic@sheredling.com
Email: matt@sheredling.com
Email: katie @sheredling.com
Email: marty@sheredling.com

Attorneys for Plaintiff-Appellee

By: */s/ Jonathan W. Hughes*

Jonathan W. Hughes
ARNOLD & PORTER KAYE
SCHOLER LLP
Three Embarcadero Center, 10th Floor
San Francisco, California 94111-4024
Telephone: (415) 471-3100
Facsimile: (415) 471-3400
E-mail: jonathan.hughes@apks.com

Matthew T. Heartney
John D. Lombardo
ARNOLD & PORTER KAYE
SCHOLER LLP
777 South Figueroa Street, 44th Floor
Los Angeles, California 90017-5844
Telephone: (213) 243-4000
Facsimile: (213) 243-4199
E-mail: matthew.heartney@apks.com
E-mail: john.lombardo@apks.com

Philip H. Curtis
Nancy Milburn
ARNOLD & PORTER KAYE
SCHOLER LLP
250 West 55th Street
New York, NY 10019-9710
Telephone: (212) 836-8383
Facsimile: (212) 715-1399
E-mail: philip.curtis@apks.com
E-mail: nancy.milburn@apks.com

Attorneys for Defendants BP P.L.C.
and BP AMERICA, INC.

By: */s/ Carol M. Wood*

Megan R. Nishikawa
Nicholas A. Miller-Stratton
KING & SPALDING LLP
101 Second Street, Suite 2300
San Francisco, California 94105
Telephone: (415) 318-1200
Facsimile: (415) 318-1300
Email: mnishikawa@kslaw.com
Email: nstratton@kslaw.com

Tracie J. Renfroe
Carol M. Wood
KING & SPALDING LLP
1100 Louisiana Street, Suite 4000
Houston, Texas 77002
Telephone: (713) 751-3200
Facsimile: (713) 751-3290
Email: trenfroe@kslaw.com
Email: cwood@kslaw.com

Justin A. Torres
KING & SPALDING LLP
1700 Pennsylvania Avenue, NW
Suite 200
Washington, DC 20006-4707
Telephone: (202) 737 0500
Facsimile: (202) 626 3737
Email: jtorres@kslaw.com

Attorneys for Defendants
CONOCOPHILLIPS and
CONOCOPHILLIPS COMPANY

By: */s/ Dawn Sestito*

M. Randall Oppenheimer
Dawn Sestito
O'MELVENY & MYERS LLP
400 South Hope Street
Los Angeles, California 90071-2899
Telephone: (213) 430-6000
Facsimile: (213) 430-6407
E-Mail: roppenheimer@omm.com
E-Mail: dsestito@omm.com

Theodore V. Wells, Jr.
Daniel J. Toal
Jaren E. Janghorbani
PAUL, WEISS, RIFKIND,
WHARTON &
GARRISON LLP
1285 Avenue of the Americas
New York, New York 10019-6064
Telephone: (212) 373-3000
Facsimile: (212) 757-3990
E-Mail: twells@paulweiss.com
E-Mail: dtoal@paulweiss.com
E-Mail: jjanghorbani@paulweiss.com

Attorneys for Defendant
EXXON MOBIL CORPORATION

By: */s/ Daniel P. Collins*

Daniel P. Collins
MUNGER, TOLLES & OLSON LLP
350 South Grand Avenue
Fiftieth Floor
Los Angeles, California 90071-3426
Telephone: (213) 683-9100
Facsimile: (213) 687-3702
E-mail: daniel.collins@mto.com

Jerome C. Roth
Elizabeth A. Kim
MUNGER, TOLLES & OLSON LLP
560 Mission Street
Twenty-Seventh Floor
San Francisco, California 94105-2907
Telephone: (415) 512-4000
Facsimile: (415) 512-4077
E-mail: jerome.roth@mto.com
E-mail: elizabeth.kim@mto.com

David C. Frederick
Brendan J. Crimmins
KELLOGG, HANSEN, TODD, FIGEL & FREDERICK, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
Telephone: (202) 326-7900
Facsimile: (202) 326-7999
E-mail: frederick@kellogghansen.com
E-mail: crimmins@kellogghansen.com

Attorneys for Defendants ROYAL DUTCH SHELL PLC and SHELL OIL PRODUCTS COMPANY LLC

By: */s/ Bryan M. Killian*

Bryan M. Killian
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Ave NW
Washington, DC 20004
Telephone: (202) 373-6191
E-mail:
bryan.killian@morganlewis.com

James J. Dragna
Yardena R. Zwang-Weissman
MORGAN, LEWIS & BOCKIUS LLP
300 South Grand Ave., 22nd Floor
Los Angeles, CA 90071-3132
Telephone: (213) 680-6436
E-Mail:
jim.dragna@morganlewis.com
E-mail: yardena.zwang-weissman@morganlewis.com

Attorneys for Defendant ANADARKO PETROLEUM CORPORATION

By: */s/ Thomas F. Koegel*

Thomas F. Koegel
CROWELL & MORING LLP
Three Embarcadero Center, 26th Floor
San Francisco, CA 94111
Telephone: (415) 986-2800
Facsimile: (415) 986-2827
E-mail: tkoegel@crowell.com

Kathleen Taylor Sooy
Tracy A. Roman
CROWELL & MORING LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004
Telephone: (202) 624-2500
Facsimile: (202) 628-5116
E-mail: ksooy@crowell.com
E-mail: troman@crowell.com

Attorneys for Defendant
ARCH COAL, INC.

By: */s/ Patrick W. Mizell*

Mortimer Hartwell
VINSON & ELKINS LLP
555 Mission Street Suite 2000
San Francisco, CA 94105
Telephone: (415) 979-6930
E-mail: mhartwell@velaw.com

Patrick W. Mizell
Deborah C. Milner
VINSON & ELKINS LLP
1001 Fannin Suite 2300
Houston, TX 77002
Telephone: (713) 758-2932
E-mail: pmizell@velaw.com
E-mail: cmilner@velaw.com

Attorneys for Defendant
APACHE CORPORATION

By: */s/ William M. Sloan*

William M. Sloan
Jessica L. Grant
VENABLE LLP
505 Montgomery St, Suite 1400
San Francisco, CA 94111
Telephone: (415) 653-3750
Facsimile: (415) 653-3755
E-mail: WMSloan@venable.com
Email: JGrant@venable.com

Attorneys for Defendant
PEABODY ENERGY CORPORATION

By: */s/ Andrew A. Kassof*

Mark McKane, P.C.
KIRKLAND & ELLIS LLP
555 California Street
San Francisco, California 94104
Telephone: (415) 439-1400
Facsimile: (415) 439-1500
E-mail: mark.mckane@kirkland.com

Andrew A. Kassof, P.C.
Brenton Rogers
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
E-mail: andrew.kassof@kirkland.com
E-mail: brenton.rogers@kirkland.com

Attorneys for Defendants
RIO TINTO ENERGY AMERICA INC.,
RIO TINTO MINERALS, INC., and
RIO TINTO SERVICES INC.

By: */s/ Gregory Evans*

Gregory Evans
MCGUIREWOODS LLP
Wells Fargo Center
South Tower
355 S. Grand Avenue, Suite 4200
Los Angeles, CA 90071-3103
Telephone: (213) 457-9844
Facsimile: (213) 457-9888
E-mail: gevans@mcguirewoods.com

Steven R. Williams
Joy C. Fuhr
Brian D. Schmalzbach
MCGUIREWOODS LLP
800 East Canal Street
Richmond, VA 23219-3916
Telephone: (804) 775-1141
Facsimile: (804) 698-2208
E-mail: srwilliams@mcguirewoods.com
E-mail: jfuhr@mcguirewoods.com
E-mail: bschmalzbach@mcguirewoods.com

Attorneys for Defendants DEVON ENERGY CORPORATION and DEVON ENERGY PRODUCTION COMPANY, L.P.

By: */s/ Andrew McGaan*

Christopher W. Keegan
KIRKLAND & ELLIS LLP
555 California Street
San Francisco, California 94104
Telephone: (415) 439-1400
Facsimile: (415) 439-1500
E-mail: chris.keegan@kirkland.com

Andrew R. McGaan, P.C.
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
E-mail: andrew.mcgaan@kirkland.com

Anna G. Rotman, P.C.
KIRKLAND & ELLIS LLP
609 Main Street
Houston, Texas 77002
Telephone: (713) 836-3600
Facsimile: (713) 836-3601
E-mail: anna.rotman@kirkland.com

Bryan D. Rohm
TOTAL E&P USA, INC.
1201 Louisiana Street, Suite 1800
Houston, TX 77002
Telephone: (713) 647-3420
E-mail: bryan.rohm@total.com

Attorneys for Defendants TOTAL E&P USA INC. and TOTAL SPECIALTIES USA INC.

By: */s/ Michael F. Healy*

Michael F. Healy
SHOOK HARDY & BACON LLP
One Montgomery St., Suite 2700
San Francisco, CA 94104
Telephone: (415) 544-1942
E-mail: mfhealy@shb.com

Michael L. Fox
DUANE MORRIS LLP
Spear Tower
One Market Plaza, Suite 2200
San Francisco, CA 94105-1127
Telephone: (415) 957-3092
E-mail: MLFox@duanemorris.com

Attorneys for Defendant
ENCANA CORPORATION

By: */s/ Peter Duchesneau*

Craig A. Moyer
Peter Duchesneau
MANATT, PHELPS & PHILLIPS, LLP
11355 West Olympic Boulevard
Los Angeles, CA 90064-1614
Telephone: (310) 312-4000
Facsimile: (310) 312-4224
E-mail: cmoyer@manatt.com
E-mail: pduchesneau@manatt.com

Stephanie A. Roeser
MANATT, PHELPS & PHILLIPS, LLP
One Embarcadero Center, 30th Floor
San Francisco, CA 94111
Telephone: (415) 291-7400
Facsimile: (415) 291-7474
E-mail: sroeser@manatt.com

Nathan P. Eimer
Lisa S. Meyer
Pamela R. Hanebutt
EIMER STAHL LLP
224 South Michigan Avenue, Suite 1100
Chicago, IL 60604
Telephone: (312) 660-7605
Facsimile: (312) 961-3204
Email: neimer@EimerStahl.com
Email: lmeyer@EimerStahl.com
Email: Phanebutt@EimerStahl.com

Attorneys for Defendant
CITGO PETROLEUM CORPORATION

By: */s/ J. Scott Janoe*

Christopher J. Carr
Jonathan A. Shapiro
BAKER BOTTS L.L.P.
101 California Street
36th Floor, Suite 3600
San Francisco, California 94111
Telephone: (415) 291-6200
Facsimile: (415) 291-6300
Email: chris.carr@bakerbotts.com
Email:
jonathan.shapiro@bakerbotts.com

Scott Janoe
BAKER BOTTS L.L.P.
910 Louisiana Street
Houston, Texas 77002
Telephone: (713) 229-1553
Facsimile: (713) 229 7953
Email: scott.janoe@bakerbotts.com

Evan Young
BAKER BOTTS L.L.P.
98 San Jacinto Boulevard
Austin, Texas 78701
Telephone: (512) 322-2506
Facsimile: (512) 322-8306
Email: evan.young@bakerbotts.com

Megan Berge
BAKER BOTTS L.L.P.
1299 Pennsylvania Ave, NW
Washington, D.C. 20004
Telephone: (202) 639-7700
Facsimile: (202) 639-1171
Email: megan.berge@bakerbotts.com

Attorneys for Defendants

By: */s/ Steven M. Bauer*

Steven M. Bauer
Margaret A. Tough
LATHAM & WATKINS LLP
505 Montgomery Street, Suite 2000
San Francisco, California 94111-6538
Telephone: (415) 391-0600
Facsimile: (415) 395-8095
E-mail: steven.bauer@lw.com
E-mail: margaret.tough@lw.com

Attorneys for Defendant
PHILLIPS 66

HESS CORPORATION, MARATHON OIL COMPANY, MARATHON OIL CORPORATION, REPSOL ENERGY NORTH AMERICA CORP., and REPSOL TRADING USA CORP.

By: */s/ Marc A. Fuller*

Marc A. Fuller
Matthew R. Stammel
VINSON & ELKINS L.L.P.
2001 Ross Avenue, Suite 3700
Dallas, TX 75201-2975
Telephone: (214) 220-7881
Facsimile: (214) 999-7881
E-mail: mfuller@velaw.com
E-mail: mstammel@velaw.com

Stephen C. Lewis
R. Morgan Gilhuly
BARG COFFIN LEWIS & TRAPP, LLP
350 California Street, 22nd Floor
San Francisco, California 94104-1435
Telephone: (415) 228-5400
Facsimile: (415) 228-5450
E-mail: slewis@bargcoffin.com
E-mail: mgilhuly@bargcoffin.com

Attorneys for Defendants OCCIDENTAL PETROLEUM CORP. and OCCIDENTAL CHEMICAL CORP.

By: */s/ David E. Cranston*

David E. Cranston
GREENBERG GLUSKER FIELDS CLAMAN & MACHTINGER LLP
1900 Avenue of the Stars, 21st Floor,
Los Angeles, CA 90067
Telephone: (310) 785-6897
Facsimile: (310) 201-2361
E-mail:
DCranston@greenbergglusker.com

Attorneys for Defendant ENI OIL & GAS INC.

By: */s/ Shannon S. Broome*

Shannon S. Broome
Ann Marie Mortimer
HUNTON ANDREWS KURTH LLP
50 California Street, Suite 1700
San Francisco, CA 94111
Telephone: (415) 975-3700
Facsimile: (415) 975-3701
E-mail: Sbroome@HuntonAK.com
E-mail: Amortimer@HuntonAK.com

Shawn Patrick Regan
HUNTON ANDREWS KURTH LLP
200 Park Avenue
New York, NY 10166-0136
Telephone: (212) 309-1000
Facsimile: (212) 309-1100
E-mail: Sregan@HuntonAK.com

Attorneys for Defendant
MARATHON PETROLEUM CORPORATION

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C), I certify that:

This brief complies with the type-volume limitation of Circuit Rules 27-1(d) and 32-3(2) because the brief contains 878 words, excluding the parts of the brief exempted by Fed. R. App. P. 27(a)(2)(B) and 32(f).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionately spaced typeface using Microsoft Word 2016, Times New Roman 14-point font.

/s/ *Theodore J. Boutrous, Jr.*
Theodore J. Boutrous, Jr.

CERTIFICATE OF SERVICE

I hereby certify that on August 10, 2018, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Dated: August 10, 2018

/s/ *Theodore J. Boutrous, Jr.*
Theodore J. Boutrous, Jr.

GIBSON, DUNN & CRUTCHER LLP

Attorneys for Defendants-Defendants Chevron Corp. and Chevron U.S.A. Inc.

EXHIBIT A

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

COUNTY OF SAN MATEO, Plaintiff, v. CHEVRON CORP., et al., Defendants.	Case No. 17-cv-04929-VC Re: Dkt. No. 144
CITY OF IMPERIAL BEACH, Plaintiff, v. CHEVRON CORP., et al., Defendants.	Case No. 17-cv-04934-VC Re: Dkt. No. 140
COUNTY OF MARIN, Plaintiff, v. CHEVRON CORP., et al., Defendants.	Case No. 17-cv-04935-VC **ORDER GRANTING MOTIONS TO REMAND** Re: Dkt. No. 140

The plaintiffs' motions to remand are granted.

1. Removal based on federal common law was not warranted. In *American Electric Power Co., Inc. v. Connecticut*, the Supreme Court held that the Clean Air Act displaces federal common law claims that seek the abatement of greenhouse gas emissions. 564 U.S. 410, 424 (2011). Far from holding (as the defendants bravely assert) that state law claims relating to

global warming are superseded by federal common law, the Supreme Court noted that the question of whether such state law claims survived would depend on whether they are preempted by the federal statute that had displaced federal common law (a question the Court did not resolve). *Id.* at 429. This seems to reflect the Court's view that once federal common law is displaced by a federal statute, there is no longer a possibility that state law claims could be superseded by the previously-operative federal common law.

Applying *American Electric Power*, the Ninth Circuit concluded in *Native Village of Kivalina v. ExxonMobil Corp.* that federal common law is displaced by the Clean Air Act not only when plaintiffs seek injunctive relief to curb emissions but also when they seek damages for a defendant's contribution to global warming. 696 F.3d 849, 857-58 (9th Cir. 2012). The plaintiffs in the current cases are seeking similar relief based on similar conduct, which means that federal common law does not govern their claims. In this respect, the Court disagrees with *People of the State of California v. BP P.L.C.*, Nos. C 17-06011 WHA, C 17-06012 WHA (N.D. Cal. Feb. 27, 2018), which concluded that San Francisco and Oakland's current lawsuits are materially different from *Kivalina* such that federal common law could play a role in the current lawsuits brought by the localities even while it could not in *Kivalina*. Like the localities in the current cases, the *Kivalina* plaintiffs sought damages resulting from rising sea levels and land erosion. Not coincidentally, there is significant overlap between the defendants in *Kivalina* and the defendants in the current cases. 696 F.3d at 853-54 & n.1. The description of the claims asserted was also nearly identical in *Kivalina* and the current cases: that the defendants' contributions to greenhouse gas emissions constituted "a substantial and unreasonable interference with public rights." *Id.* at 854. Given these facts, *Kivalina* stands for the proposition that federal common law is not just displaced when it comes to claims against domestic sources of emissions but also when it comes to claims against energy producers' contributions to global warming and rising sea levels. *Id.* at 854-58. Put another way, *American Electric Power* did not confine its holding about the displacement of federal common law to particular sources of emissions, and *Kivalina* did not apply *American Electric Power* in such a

limited way.

Because federal common law does not govern the plaintiffs' claims, it also does not preclude them from asserting the state law claims in these lawsuits. Simply put, these cases should not have been removed to federal court on the basis of federal common law that no longer exists.

2. Nor was removal warranted under the doctrine of complete preemption. State law claims are often preempted by federal law, but preemption alone seldom justifies removing a case from state court to federal court. Usually, state courts are left to decide whether state law claims are preempted by federal law under principles of "express preemption," "conflict preemption" or "field preemption." And state courts are entirely capable of adjudicating that sort of question. *See, e.g., Smith v. Wells Fargo Bank, N.A.*, 38 Cal. Rptr. 3d 653, 665-73 (Cal. Ct. App. 2005), *as modified on denial of reh'g* (Jan. 26, 2006); *Carpenters Health & Welfare Trust Fund for California v. McCracken*, 100 Cal. Rptr. 2d 473, 474-77 (Cal. Ct. App. 2000). A defendant may only remove a case to federal court in the rare circumstance where a state law claim is "completely preempted" by a specific federal statute – for example, section 301 of the Labor Management Relations Act, section 502 of the Employment Retirement Income Security Act, or sections 85 and 86 of the National Bank Act. *See Sullivan v. American Airlines, Inc.*, 424 F.3d 267, 271-73 (2d Cir. 2005). The defendants do not point to any applicable statutory provision that involves complete preemption. To the contrary, the Clean Air Act and the Clean Water Act both contain savings clauses that preserve state causes of action and suggest that Congress did not intend the federal causes of action under those statutes "to be exclusive." 42 U.S.C. §§ 7604(e), 7416; 33 U.S.C. §§ 1365(e), 1370; *Beneficial National Bank v. Anderson*, 539 U.S. 1, 9 n.5 (2003); *Bell v. Cheswick Generating Station*, 734 F.3d 188, 194-97 (3d Cir. 2013). There may be important questions of ordinary preemption, but those are for the state courts to decide upon remand.

3. Nor was removal warranted on the basis of *Grable* jurisdiction. The defendants have not pointed to a specific issue of federal law that must necessarily be resolved to adjudicate the

state law claims. *Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, 545 U.S. 308, 314 (2005); *see also Empire Healthchoice Assurance, Inc. v. McVeigh*, 547 U.S. 677, 700 (2006). Instead, the defendants mostly gesture to federal law and federal concerns in a generalized way. The mere potential for foreign policy implications (resulting from the plaintiffs succeeding on their claims at an unknown future date) does not raise the kind of actually disputed, substantial federal issue necessary for *Grable* jurisdiction. Nor does the mere existence of a federal regulatory regime mean that these cases fall under *Grable*. *See Empire Healthchoice*, 547 U.S. at 701 ("[I]t takes more than a federal element 'to open the "arising under" door.'" (quoting *Grable*, 545 U.S. at 313)). Moreover, even if deciding the nuisance claims were to involve a weighing of costs and benefits, and even if the weighing were to implicate the defendants' dual obligations under federal and state law, that would not be enough to invoke *Grable* jurisdiction. On the defendants' theory, many (if not all) state tort claims that involve the balancing of interests and are brought against federally regulated entities would be removable. *Grable* does not sweep so broadly. *See Empire Healthchoice*, 547 U.S. at 701 (describing *Grable* as identifying no more than a "slim category" of removable cases); *Grable*, 545 U.S. at 313-14, 319.

4. These cases were not removable under any of the specialized statutory removal provisions cited by the defendants. Removal under the Outer Continental Shelf Lands Act was not warranted because even if some of the activities that caused the alleged injuries stemmed from operations on the Outer Continental Shelf, the defendants have not shown that the plaintiffs' causes of action would not have accrued *but for* the defendants' activities on the shelf. *See In re Deepwater Horizon*, 745 F.3d 157, 163 (5th Cir. 2014). Nor was federal enclave jurisdiction appropriate, since federal land was not the "locus in which the claim arose." *In re High-Tech Employee Antitrust Litigation*, 856 F. Supp. 2d 1103, 1125 (N.D. Cal. 2012) (quoting *Alvares v. Erickson*, 514 F.2d 156, 160 (9th Cir. 1975)); *see also Ballard v. Ameron International Corp.*, No. 16-CV-06074-JSC, 2016 WL 6216194, at *3 (N.D. Cal. Oct. 25, 2016); *Klausner v. Lucas Film Entertainment Co, Ltd.*, No. 09-03502 CW, 2010 WL 1038228, at *4 (N.D. Cal. Mar. 19,

2010); *Rosseter v. Industrial Light & Magic*, No. C 08-04545 WHA, 2009 WL 210452, at *2 (N.D. Cal. Jan. 27, 2009). Nor was there a reasonable basis for federal officer removal, because the defendants have not shown a "causal nexus" between the work performed under federal direction and the plaintiffs' claims, which are based on a wider range of conduct. *See Cabalce v. Thomas E. Blanchard & Associates, Inc.*, 797 F.3d 720, 727 (9th Cir. 2015); *see also Watson v. Philip Morris Companies, Inc.*, 551 U.S. 142, 157 (2007). And bankruptcy removal did not apply because these suits are aimed at protecting the public safety and welfare and brought on behalf of the public. *See City & Cty. of San Francisco v. PG & E Corp.*, 433 F.3d 1115, 1123-24 (9th Cir. 2006); *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1108-09 (9th Cir. 2005). To the extent two defendants' bankruptcy plans are relevant, there is no sufficiently close nexus between the plaintiffs' lawsuits and these defendants' plans. *See In re Wilshire Courtyard*, 729 F.3d 1279, 1287 (9th Cir. 2013).

* * *

As the defendants note, these state law claims raise national and perhaps global questions. It may even be that these local actions are federally preempted. But to justify removal from state court to federal court, a defendant must be able to show that the case being removed fits within one of a small handful of small boxes. Because these lawsuits do not fit within any of those boxes, they were properly filed in state court and improperly removed to federal court. Therefore, the motions to remand are granted. The Court will issue a separate order in each case to remand it to the state court that it came from.

At the hearing, the defendants requested a short stay of the remand orders to sort out whether a longer stay pending appeal is warranted. A short stay is appropriate to consider whether the matter should be certified for interlocutory appeal, whether the defendants have the right to appeal based on their dubious assertion of federal officer removal, or whether the remand orders should be stayed pending the appeal of Judge Alsup's ruling. Therefore, the remand orders are stayed until 42 days of this ruling. Within 7 days of this ruling, the parties must submit a stipulated briefing schedule for addressing the propriety of a stay pending appeal. The

parties should assume that any further stay request will be decided on the papers; the Court will schedule a hearing if necessary.

IT IS SO ORDERED.

Dated: March 16, 2018

VINCE CHHABRIA
United States District Judge

EXHIBIT B

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

RELATED CASE ORDER

A Motion for Administrative Relief to Consider Whether Cases Should be Related or a *Sua Sponte* Judicial Referral for Purpose of Determining Relationship (Civil L.R. 3-12) has been filed. The time for filing an opposition or statement of support has passed. As the judge assigned to case

17-cv-04929-VC County of San Mateo v. Chevron Corp.

I find that the more recently filed case(s) that I have initialed below are related to the case assigned to me, and such case(s) shall be reassigned to me. Any cases listed below that are not related to the case assigned to me are referred to the judge assigned to the next-earliest filed case for a related case determination.

Case	Title	Related	Not Related
18-cv-00450-NC	County of Santa Cruz v. Chevron Corp.	VC	
18-cv-00458-NC	City of Santa Cruz v. Chevron Corp.	VC	
17-cv-04934-VC	City of Imperial Beach v. Chevron Corp.	VC	
17-cv-04935-VC	County of Marin v. Chevron Corp.	VC	

ORDER

The parties are instructed that all future filings in any reassigned case are to bear the initials of the newly assigned judge immediately after the case number. Any case management conference in any reassigned case will be rescheduled by the Court. The parties shall adjust the dates for the conference, disclosures and report required by FRCivP 16 and 26 accordingly. Unless otherwise ordered, any dates for hearing noticed motions are vacated and must be re- noticed by the moving party before the newly assigned judge; any deadlines set by the ADR Local Rules remain in effect; and any deadlines established in a case management order continue to govern, except dates for appearance in court, which will be rescheduled by the newly assigned judge.

Dated: February 9, 2018

By: _____

Vince Chhabria

United States District Judge

EXHIBIT C

DANA McRAE (SBN 142231)
dana.mcrae@santacruzcounty.us
JORDAN SHEINBAUM (SBN 190598)
Jordan.sheinbaum@santacruzcounty.us
SANTA CRUZ OFFICE OF THE COUNTY COUNSEL
701 Ocean Street, Room 505
Santa Cruz, CA 95060
Tel: (831) 454-2040
Fax: (831) 454-2115

Attorneys for The County of Santa Cruz, Individually and on behalf of the People of the State of California

ANTHONY P. CONDOTTI (SBN 149886)
tcondotti@abc-law.com
ATCHISON, BARISONE & CONDOTTI, APC
City Attorney for City of Santa Cruz
333 Church St.
Santa Cruz, CA 95060
Tel: (831) 423-8383

Attorneys for The City of Santa Cruz, a municipal corporation, and on behalf of the People of the State of California

BRUCE REED GOODMILLER (SBN 121491)
Bruce_goodmiller@ci.richmond.ca.us
RACHEL H. SOMMOVILLA (SBN 231529)
Rachel_sommovilla@ci.richmond.ca.us
CITY ATTORNEY'S OFFICE FOR CITY OF RICHMOND
450 Civic Center Plaza
Richmond, CA 94804
Tel: (510) 620-6509
Fax: (510) 620-6518

Attorneys for The City of Richmond, a municipal corporation, and on behalf of the People of the State of California

[*Additional Counsel Listed on Signature Page*]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THE COUNTY OF SANTA CRUZ, individually and on behalf of THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. CHEVRON CORP., et al., Defendants.	Case No. 3:18-cv-00450-VC **PLAINTIFFS' NOTICE OF MOTION AND MOTION TO REMAND TO STATE COURT** Date: March 29, 2018 Time: 10:00 a.m. Courtroom: 4, 17th Floor Judge: Hon. Vince Chhabria
THE CITY OF SANTA CRUZ, a municipal corporation, individually and on behalf of THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,	Case No. 3:18-cv-00458-VC

vs. CHEVRON CORP., et al. Defendants.	
THE CITY OF RICHMOND, a municipal corporation, individually and on behalf of THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. CHEVRON CORP., et al., Defendants.	Case No. 3:18-cv-00732-VC

NOTICE OF MOTION AND MOTION TO REMAND TO STATE COURT

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD, PLEASE TAKE NOTICE that Plaintiffs County of Santa Cruz, City of Santa Cruz, and the City of Richmond, individually and on behalf of the People of the State of California, hereby move the Court for an Order pursuant to 28 U.S.C. § 1447(c) to remand these matters to state court.

The plaintiffs in the related cases *County of San Mateo v. Chevron Corp.*, et al. (3:17-cv-04929-VC), *City of Imperial Beach v. Chevron Corp.*, et al. (3:17-cv-04934-VC), and *County of Marin v. Chevron Corp.*, et al. (3:17-cv-04935-VC), have already briefed and argued remand, as reflected in the following:

***County of San Mateo* (3:17-cv-04929-VC)**

- Plaintiff's Notice of Motion and Motion to Remand to State Court (Dkt. 144)
- Memorandum of Points and Authorities in Support of Motion to Remand (attaching [Proposed] Order Granting Plaintiffs' Motion to Remand) (Dkt. 157)
- Reply to Defendants' Joint Opposition to Plaintiffs' Motion for Remand (Dkt. 203)
- Reply to Supplemental Opposition to Plaintiffs' Motion for Remand (Dkt. 204)

***City of Imperial Beach* (3:17-cv-04934-VC)**

- Plaintiff's Notice of Motion and Motion to Remand to State Court (Dkt. 140)
- Memorandum of Points and Authorities in Support of Motion to Remand (attaching [Proposed] Order Granting Plaintiffs' Motion to Remand) (Dkt. 154)
- Reply to Defendants' Joint Opposition to Plaintiffs' Motion for Remand (Dkt. 194)
- Reply to Supplemental Opposition to Plaintiffs' Motion for Remand (Dkt. 195)

***County of Marin* (3:17-cv-04935-VC)**

- Plaintiff's Notice of Motion and Motion to Remand to State Court (Dkt. 140)
- Memorandum of Points and Authorities in Support of Motion to Remand (attaching [Proposed] Order Granting Plaintiffs' Motion to Remand) (Dkt. 154)
- Reply to Defendants' Joint Opposition to Plaintiffs' Motion for Remand (Dkt. 190)
- Reply to Supplemental Opposition to Plaintiffs' Motion for Remand (Dkt. 191)

Plaintiffs refer to and incorporate fully by reference the arguments plaintiffs asserted in the briefing listing above as well as argument of counsel presented during the Court's February 15, 2018, hearing on the motions to remand in *County of San Mateo v. Chevron Corp.*, et al. (3:17-cv-04929-VC), *City of Imperial Beach v. Chevron Corp.*, et al. (3:17-cv-04934-VC), and *County of Marin v. Chevron Corp.*, et al. (3:17-cv-04935-VC). Should Defendants raise no additional arguments but, instead refer to and incorporate by reference the arguments Defendants asserted in their previous briefing, Plaintiffs do not intend to file a reply brief. If Defendants raise additional arguments, Plaintiffs intend to reply. Lastly, to the extent that Defendants intend to expand on the articulations set forth in their Notices of Removal, Plaintiffs contend and move that Defendants are limited to those bases articulated in the Notices. *See, e.g.*, *In re Methyl Tertiary Butyl Ether ("MTBE") Products Liability Litigation*, 488 F.3d 112, 124 ("In determining whether jurisdiction is proper, we look only to the jurisdictional facts alleged in the Notices of Removal"); *accord, e.g., Colorado v. Symes*, 286 U.S. 510, 518–19 (1932) ("The burden is upon him who claims the removal plainly to set forth by petition made, signed, and unequivocally verified by himself all the facts relating to the occurrence, as he claims them to be, on which the accusation is based").

///

Respectfully submitted,

Dated: February 16, 2018

OFFICE OF THE COUNTY COUNSEL
COUNTY OF SANTA CRUZ

By: */s/ Dana M. McRae*
DANA M. McRAE, County Counsel
JORDAN SHEINBAUM, Deputy County Counsel

Dated: February 16, 2018

CITY ATTORNEY FOR CITY
OF SANTA CRUZ

By: */s/ Anthony P. Condotti*
ANTHONY P. CONDOTTI, City Attorney

Dated: February 16, 2018

CITY ATTORNEY FOR CITY OF RICHMOND

By: */s/ Bruce Reed Goodmiller*
BRUCE REED GOODMILLER, City Attorney
RACHEL H. SOMMOVILLA, Assistant City Attorney

Dated: February 16, 2018

SHER EDLING LLP

By: */s/ Victor M. Sher*
VICTOR M. SHER (SBN 96197)
vic@sheredling.com
MATTHEW K. EDLING (SBN 250940)
matt@sheredling.com
TIMOTHY R. SLOANE (SBN 292864)
tim@sheredling.com
MARTIN D. QUIÑONES (SBN 293318)
marty@sheredling.com
MEREDITH S. WILENSKY (SBN 309268)
meredith@sheredling.com
KATIE H. JONES (SBN 300913)
katie@sheredling.com
SHER EDLING LLP
100 Montgomery Street, Ste. 1410
San Francisco, CA 94104
Tel: (628) 231-2500
Fax: (628) 231-2929

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on February 16, 2018, the foregoing document(s) was filed with the Clerk of the Court via CM/ECF. Notice of this filing will be sent by email to all registered parties by operation of the Court's electronic filing systems.

February 16, 2018

/s/ Victor M. Sher
Victor M. Sher

EXHIBIT D

Theodore J. Boutrous, Jr., SBN 132099
tboutrous@gibsondunn.com
Andrea E. Neuman, SBN 149733
aneuman@gibsondunn.com
William E. Thomson, SBN 187912
wthomson@gibsondunn.com
Ethan D. Dettmer, SBN 196046
edettmer@gibsondunn.com
Joshua S. Lipshutz, SBN 242557
jlipshutz@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
Telephone: 213.229.7804
Facsimile: 213.229.6804

Herbert J. Stern (*pro hac vice*)
hstern@sgklaw.com
Joel M. Silverstein (*pro hac vice*)
jsilverstein@sgklaw.com
STERN & KILCULLEN, LLC
325 Columbia Turnpike, Suite 110
P.O. Box 992
Florham Park, NJ 07932-0992
Telephone: 973.535.1900
Facsimile: 973.535.9664

Attorneys for Defendants CHEVRON CORPORATION and CHEVRON U.S.A., INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

THE COUNTY OF SANTA CRUZ, individually and on behalf of THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

CHEVRON CORP., et al,

Defendants.

First Filed Case: No. 3:18-cv-00450-VC
Related Case: No. 3:18-cv-00458-VC
Related Case: No. 3:18-cv-00732-VC

DEFENDANTS' JOINT OPPOSITION TO MOTION TO REMAND

CASE NO. 18-CV-00450-VC

HEARING

DATE: MARCH 29, 2018
TIME: 10:00 AM
LOCATION: COURTROOM 4, 17TH FLOOR
THE HONORABLE VINCE CHHABRIA

THE CITY OF SANTA CRUZ, a municipal corporation, individually and on behalf of THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. CHEVRON CORP., et al., Defendants.	CASE NO. 18-CV-00458-VC
THE CITY OF RICHMOND, a municipal corporation, individually and on behalf of THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. CHEVRON CORP., et al., Defendants.	CASE NO. 18-CV-00732-VC

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES

I. INTRODUCTION

Plaintiffs have moved to remand these three cases to state court and have incorporated by reference the plaintiffs' briefing in *County of San Mateo v. Chevron Corp., et al.* (3:17-cv-04929-VC) ("*San Mateo*"), *City of Imperial Beach v. Chevron Corp., et al.* (3:17-cv-04934-VC) ("*Imperial Beach*"), and *County of Marin v. Chevron Corp., et al.* (3:17-cv-04935-VC) ("*Marin*"). *See County of Santa Cruz v. Chevron Corp., et al.* (3:18-cv-00450) ("*County of Santa Cruz*"), ECF No. 68 at 1. Defendants likewise incorporate their briefing opposing remand in those three related cases. *See San Mateo*, ECF. Nos. 194, 195; *Imperial Beach*, ECF Nos. 185, 186; *Marin*, ECF Nos. 176, 177.

In addition, Defendants submit this supplemental brief to address specific issues raised during the February 15, 2018, hearing before this Court on the remand motions in *San Mateo*, *Imperial Beach*, and *Marin*. *See* Joint Stipulation and [Proposed] Order Regarding Briefing Schedule, *County of Santa Cruz*, ECF 81 at 4.

II. ARGUMENT

First, Plaintiffs' nuisance claims are "necessarily federal in character" because Supreme Court and Ninth Circuit precedent make plain that they are governed by federal common law, which by necessity means that they are not "appropriate" subjects for state law. As Judge Alsup ruled this week in two nearly identical cases, "nuisance claims—which address the national and international geophysical phenomenon of global warming—are necessarily governed by federal common law." *California v. BP P.L.C., et al.*, No. 17-cv-6011, ECF No. 134 at 3 (N.D. Cal. Feb. 27, 2018) ("*BP*"). Judge Alsup explained: "If ever a problem cried out for a uniform and comprehensive solution, it is the geophysical problem described by the complaints, a problem centuries in the making (and studying) with causes ranging from volcanoes, to wildfires, to deforestation[,] to stimulation of other greenhouse gases—and, most pertinent here, to the combustion of fossil fuels." *Id.* at 4–5. He further noted: "Taking the complaints at face value, the scope of the worldwide predicament demands the most comprehensive view available, which in our American court system means our federal courts and our federal common law. A patchwork of fifty different answers to the same fundamental global issue would be unworkable." *Id.* at 5. And even if Congress has displaced the federal common law governing these claims, that does not somehow "revive"—or more accurately, create—a

state common law that never applied in the first place, or otherwise deprive Defendants of federal jurisdiction.[1]

Second, Plaintiffs' claims depend on the resolution of substantial federal issues under *Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, 545 U.S. 308 (2005), because their national and indeed global scope require analysis of nationwide costs and benefits that federal statutes and regulations delegate to expert federal agencies. Plaintiffs' claims all require a determination whether Defendants' nationwide (and worldwide) conduct was "reasonable"—an unanswerable question absent reference to numerous federal laws, policies, and regulations that address the costs and benefits of that conduct. In addition, Plaintiffs' claims depend on the resolution of substantial, disputed federal questions related to rising levels of "navigable waters of the United States." As Judge Alsup noted, federally regulated navigable waters are "the very instrumentality of plaintiffs' alleged injury." *BP*, ECF No. 134 at 8. For these reasons alone, this Court should deny Plaintiffs' remand motion.[2]

Finally, several federal statutes independently grant jurisdiction over Plaintiffs' tort claims. Although theses statutes were not discussed in detail at the February 15 hearing, each presents an independent and sufficient ground justifying removal of the three cases at issue. In particular, the Outer Continental Shelf Lands Act ("OCSLA"), federal officer removal statute, and bankruptcy removal statute—as more fully discussed below—each independently confer jurisdiction upon this Court. To properly remove a case to federal court, there need be only a single valid ground for removal of a single asserted claim. *See Ange v. Templer*, 418 F. Supp. 2d 1169, 1172 (N.D. Cal. 2006);

---

[1] For the purposes of his order, Judge Alsup "*presume[d]* that when congressional action displaces federal common law, state law becomes available to the extent it is not preempted by statute." *BP*, ECF No. 134 at 6 (emphasis added).

[2] At the February 15 hearing, some of the Court's comments appeared to indicate that it might be analyzing Defendants' federal common law and *Grable* arguments as species of "complete preemption." *See*, *e.g.*, Hr'g Tr. 4:11-5:5. But these arguments are separate and independent grounds for removal. As the Ninth Circuit has noted, there are at least three, disjunctive grounds for federal jurisdiction: "(1) where federal law completely preempts state law; (2) where the claim is necessarily federal in character; ***or*** (3) where the right to relief depends on the resolution of a substantial, disputed federal question." *ARCO Envtl. Remediation, L.L.C. v. Dep't of Health & Envtl. Quality of Mont.*, 213 F.3d 1108, 1114 (9th Cir. 2000) (citations omitted) (emphasis added). Accordingly, even if this Court were to conclude that federal law did not "completely preempt" Plaintiffs' claims, federal jurisdiction nonetheless exists.

Cnty. of Santa Clara v. Astra USA, Inc., 401 F. Supp. 2d 1022, 1025 (N.D. Cal. 2005). Thus, *any one* of the bases for federal jurisdiction will suffice to defeat Plaintiffs' motion.

A. Plaintiffs' Nuisance Claims Arise Under Federal Common Law Even If Congress Has "Displaced" Federal Common Law for Global Warming Claims

At the February 15 hearing, this Court asked how Plaintiffs' claims could arise under federal law even if federal common law "has been displaced out of existence" by the Clean Air Act. Hr'g Tr. 4:23–24; *see also id.* at 9:5–6 ("[T]he Court[] actually used the word 'existence,' right?"). As an initial matter, in *American Electric Power Co. v. Connecticut*, 564 U.S. 410 (2011) ("*AEP*"), the Supreme Court did not state that federal common law had been displaced out of "existence." Rather, the Court held that "the Clean Air Act and the EPA actions it authorizes displace any federal common law *right to seek abatement*" of greenhouse gas emissions that allegedly cause global warming. *Id.* at 424 (emphasis added). As the Court explained, because Congress removed any federal common law right to abate global climate change, "federal judges may [not] set limits on greenhouse gas emissions in the face of a law empowering EPA to set the same limits." *Id.* at 429.[3] That holding is consistent with the axiom that "[j]udicial power can afford no remedy unless a right that is subject to that power is present." *Native Vill. of Kivalina v. ExxonMobil Corp*, 696 F.3d 849, 857 (9th Cir. 2012). In short, to say that federal common law has been "displaced" is simply to say that there is no longer any right to a judicial *remedy* under federal common law. *See id.* at 856 ("[W]hen federal statutes directly answer the federal question, federal common law does not provide a remedy because legislative action

[3] The Court held that the federal common law remedy had been displaced because the Clean Air "Act itself . . . provides a means to seek limits on emissions of carbon dioxide from domestic power plants—the same relief the plaintiffs seek by invoking federal common law." *AEP*, 564 U.S. at 425. The Court also stated that it was "altogether fitting that Congress designated an expert agency, here EPA, as best suited to serve as primary regulator of greenhouse gas emissions," and that EPA "is surely better equipped to do the job than individual district judges issuing ad hoc, case-by-case injunctions." *Id.* at 428. The same rationale applies equally to state courts. Indeed, the "judgments the plaintiffs would commit to federal judges [or here, state judges,] in suits that could be filed in any federal district court [or here, any state court], cannot be reconciled with the decisionmaking scheme Congress enacted." *Id.* at 429. These same considerations confirm the inescapably federal nature of *any* claim that would purport to rely on such judgments, and the displacement of federal common law thus cannot transform uniquely federal interests into state-law claims to be adjudicated in state courts. *City of Milwaukee v. Illinois*, 451 U.S. 304, 313 n.7 (1981) ("[I]f federal common law exists, it is because state law cannot be used").

has displaced the common law."); *id.* at 857 ("[D]isplacement of a federal common law right of action means displacement of remedies.").

But the absence of a valid cause of action under federal common law neither affects subject-matter jurisdiction nor alters the federal character of the Plaintiffs' claims. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 89 (1998) ("It is firmly established in our cases that the absence of a valid (as opposed to arguable) cause of action does not implicate subject-matter jurisdiction . . . ."). Neither *AEP* nor *Kivalina* suggested that the Clean Air Act converted plaintiffs' federal common law claims into state law claims. On the contrary, the effect of Congress enacting the Clean Air Act was to refine and focus the available remedies for interstate and global environmental problems. Thus, the Court in *AEP* still took it as given that, because of the unavoidably national and transnational nature of the phenomena at issue, the subject of global warming was "meet for federal law governance," and that "borrowing the law of a particular State" to address alleged harms from global warming "would be inappropriate." 564 U.S. at 422. Similarly, the Ninth Circuit held in *Kivalina* that the plaintiff's global warming-based tort claims were the sort of "transboundary pollution suit[]" traditionally governed by federal common law. 696 F.3d at 855. Far from holding that the Clean Air Act obliterated federal common law so as to deprive them of jurisdiction, both the Supreme Court in *AEP* and the Ninth Circuit in *Kivalina* held only that the plaintiffs' necessarily federal claims were invalid.

AEP and *Kivalina* thus direct a two-step analysis to determine *first* whether, given the nature of the acts alleged, federal law governs the claims, and *second* whether Plaintiffs have stated claims upon which relief may be granted. *See AEP*, 564 U.S. at 422; *Kivalina*, 696 F.3d at 855. This is precisely the approach the Ninth Circuit followed in *Kivalina*. In Section II.A of the opinion, it addressed the "threshold question[] of whether [the plaintiffs' nuisance theory was] viable under federal common law in the first instance." *Id.* After answering that question in the affirmative, it determined in Sections II.B and II.C that dismissal was required because a federal statute had displaced the remedy Plaintiffs sought. *Id.* at 856–58; *see also California v. Gen. Motors Corp.*, 2007 WL 2726871, at *16 (N.D. Cal. Sept. 17, 2007) (explaining that if the case were justiciable the first inquiry would be "whether there exists a federal common law claim for nuisance that would authorize Plaintiff's action for damages against the Defendant automakers for creating and contributing to global warming," and

that if "such a common law claim exists, the next step in the inquiry would be to determine whether the available statutory guidelines speak sufficiently to the issue so as to displace the common law claim").

Plaintiffs' motion to remand implicates the first (jurisdictional) step of the analysis, not the second. And, as Defendants have explained, Plaintiffs' claims arise under federal common law because disputes about global climate change are inherently federal in nature, and Plaintiffs ask the Court to assess the reasonableness of Defendants' worldwide fossil fuel production insofar as those activities have led to greenhouse gas emissions by billions of third parties around the world, which, in turn, have allegedly increased global temperatures and contributed to rising seas that have purportedly harmed Plaintiffs. *See San Mateo*, ECF No. 195 at 7–14; *see also Kivalina*, 696 F.3d at 855 ("[F]ederal common law includes the general subject of environmental law and specifically includes ambient or interstate air and water pollution.").

The "step two" question—whether Plaintiffs' federal common law claims are valid or have been displaced—should be reserved until consideration of the Defendants' motion to dismiss. Although the Court stated at the February 15 hearing that "there's not a federal common law claim," Hr'g Tr. 6:19–20, Plaintiffs have not expressly conceded that their claims are displaced. Rather, Plaintiffs have conceded only that the Clean Air Act displaces "federal common law claims *regarding greenhouse emissions*." *San Mateo*, ECF No. 203 at 2–3, 6. At the same time, Plaintiffs assert that this case is not about emissions but about fossil fuel production and promotion, which they argue takes it outside of *AEP* and *Kivalina*. *See* Hr'g Tr. 24:23–24 ("These are not cases that seek to regulate emissions, as did *Kivalina* and *AEP*."); *id.* 6:22–24 ("I think the plaintiffs will probably argue that their claim is somehow different than an *AEP* and *Kivalina* because they're making a product liability claim.").[4] To the extent Plaintiffs are correct that production and promotion are somehow dif-

[4] Defendants intend to argue, in their motions to dismiss in this case and in *BP*, that Plaintiffs' claims necessarily implicate greenhouse gas emissions and thus have been displaced by the Clean Air Act. At the *BP* remand hearing, it was the *plaintiffs* arguing that any federal common-law claims were displaced and that state law therefore governed. *See BP,* Hr'g Tr. 16:24-17:2. Judge

ferent than direct emissions for purposes of *AEP* and *Kivalina*'s displacement analysis, then the argument for application of federal common law to this interstate and transnational pollution case becomes even clearer. *See BP*, ECF No. 134 at 6–7 (denying remand in global warming case without determining whether the complaint stated viable claim under federal common law). Plaintiffs cannot have it both ways. But this issue has not yet been briefed and need not be decided on a motion to remand.[5]

Moreover, as pleaded, Plaintiffs' claims cannot arise under state law because, within the congressional scheme to address sources of interstate pollution, state common law can be applied, if at all, to limit a defendant's emissions *only within that source state*. As the Supreme Court explained in the Clean Water Act context, Congress's "pervasive regulation," combined with "the fact that the control of interstate pollution is primarily a matter of federal law," make "clear that the only state suits that remain available are those specifically preserved by the Act." *Int'l Paper Co. v. Ouellette*, 479 U.S. 481, 492 (1987). "After examining the CWA as a whole, its purposes and its history," the Court was "convinced that if affected States were allowed to impose separate discharge standards on a single point source, the inevitable result would be a serious interference with the achievement of the 'full purposes and objectives of Congress.'" *Id.* at 493. The Court thus concluded that the CWA "precludes a court from applying the law of an affected State against an out-of-state source." *Id.* at 494; *see also id.* at 496 (rejecting application of state law to out-of-state sources because it would result in "a variety of" "'vague' and 'indeterminate'" state common law "nuisance standards" and "[t]he application of numerous States' laws would only exacerbate the vagueness and resulting uncertainty"). The Clean Air Act, which likewise "dominate[s] the field of pollution regulation," *id.*

Alsup rejected the plaintiffs' argument, concluding that the Clean Air Act did not displace nuisance claims against producers who "put fossil fuels into the flow of international commerce." *BP*, ECF No. 134 at 7. He reasoned that some of the "fuel produced by defendants" is consumed overseas, and that "these foreign emissions are out of the EPA and Clean Air Act's reach." *Id.* The displacement issue has not been briefed yet in this case, and the Court need not decide on the motion to remand whether federal common law has been displaced by the Clean Air Act or any other federal statute. But if this Court believes that federal jurisdiction turns on the displacement question, it should follow Judge Alsup's ruling and retain jurisdiction.

[5] In any event, the question whether Plaintiffs' federal common law claims have been displaced is a substantial, disputed issue of federal law that gives rise to federal jurisdiction under *Grable*.

at 492, similarly preserves a narrow role for state common law remedies. Significantly, the Clean Air Act does *not* allow state courts to balance the costs and benefits of *global* emissions produced by out-of-state sources. Rather, the Act "entrusts such complex balancing to EPA in the first instance, in combination with state regulators." *AEP*, 564 U.S. at 427. Accordingly, it would be "inappropriate" to apply California law to Defendants' out-of-state conduct, as Plaintiffs seek to do. *Id.* at 422. To the extent that any global warming-based tort remedy exists, it must be grounded in *federal* law.[6]

For this reason, Defendants respectfully disagree with the Court's statement that this case presents a "straight preemption question." Hr'g Tr. 9:16. Because state law does not, of its own force, apply to global problems, the issue of preemption of state laws need not be reached now. Nor are the circumstances here comparable to the hypothetical situation, raised by the Court, where federal legislation displacing federal common law expressly creates "a role for state law in the . . . administration of this complex regulatory scheme." *Id.* at 14:25–15:1. To be sure, states can participate in regulating of greenhouse gas emissions through the Clean Air Act, which grants power to adopt State Plans in accordance with federally-issued guidelines. 42 U.S.C. § 7411(d). And Section 116's savings clause preserves *otherwise existing* state authority. 42 U.S.C. § 7416. But the Clean Air Act does not create or authorize state common law claims addressing alleged effects of global climate change.

In short, regardless of whether Plaintiffs have pleaded all of the elements of a viable claim—*i.e.*, a claim for which they have a right to a judicial remedy—their claims are nonetheless "founded upon federal common law," and thus give rise to federal question jurisdiction under 28 U.S.C. § 1331. *Nat'l Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 850 (1985); *see Illinois v. City of Milwaukee*, 406 U.S. 91, 99 (1972) (federal common law claims "aris[e] under the 'laws' of the United States within the meaning of § 1331(a)"); *New SD, Inc. v. Rockwell Int'l Corp.*,

[6] At the February 15 hearing, Plaintiffs argued that global warming is not "uniquely federal." Hr'g Tr. 26:19–27:2 (citing *Rocky Mountain Farmers Union v. Corey*, 730 F.3d 1070 (9th Cir. 2013)). But the relevant question is not whether California has an interest in preventing harm from global warming—it plainly does—but whether a lawsuit targeting interstate pollution implicates "uniquely federal issues." The Ninth Circuit did not address that question in *Rocky Mountain Farmers* because that case did not involve interstate pollution. Rather, the issue in that case was whether California's Low Carbon Fuel Standard—which applies to "transportation fuels that are *burned in California*"—ran afoul of the Commerce Clause or the Clean Air Act. 730 F.3d at 1077, 1080 (emphasis added).

79 F.3d 953, 954–55 (9th Cir. 1996) ("When federal law applies, . . . it follows that the question arises under federal law, and federal question jurisdiction exists.").

B. By Seeking to Second-Guess and Undo Federal Regulations and Cost-Benefit Analyses, Plaintiffs' Claims Raise Disputed, Substantial Federal Interests Under *Grable*

In *Grable*, the Supreme Court called for a "'common-sense accommodation of judgment to the kaleidoscopic situations' that present a federal issue" and thus "justify resort to the experience, solicitude, and hope of uniformity that a federal forum offers on federal issues." 545 U.S. at 312–13 (brackets omitted) (quoting *Gully v. First Nat'l Bank in Meridian*, 299 U.S. 109, 117 (1936)). If there ever were a set of cases where a federal court should exercise its broad discretion under *Grable* "to tailor jurisdiction to the practical needs of the particular situation," these international global warming cases are it. *See* R.H. Fallon, Jr. et al., *Hart & Wechsler's The Federal Courts & the Federal System* 832 (7th ed. 2015). As this Court stated at the February 15 hearing, "This certainly feels like a national issue" and it is not "a great idea or the right approach for all these different localities to be filing state law actions in various places against the same defendants for basically the same thing." Hr'g Tr. 4:6–10.

The issues raised in these cases *are* national, and they should be heard in a federal forum because Plaintiffs' claims necessarily raise multiple, disputed federal law issues including the impact of these claims on foreign affairs, the balancing of costs and benefits on a national and international scale in assessing the reasonableness of Defendants' conduct, and validity of numerous federal foreign relations and regulatory decisions, among others. *See San Mateo*, ECF No. 195 at 14–28; *see also San Mateo*, ECF No. 194 (supplemental brief offering additional *Grable* arguments). Indeed, Plaintiffs' public nuisance and product liability claims will require cost-benefit analyses.

1. California nuisance law would require a *national* cost-benefit analysis of Defendants' nationwide conduct

Plaintiffs do not (and cannot) dispute that the federal government has analyzed, and continues to analyze, the relative costs and benefits of the production and use of fossil fuels. A host of federal statutes and regulations direct federal agencies to maximize production of fossil fuels while balancing that production against environmental protection, including protection from greenhouse gas impacts.

See San Mateo, ECF No. 195 at 17–18 & n.8; Hr'g Tr. 26:4–5 ("The regulatory cost benefits analysis takes on society as a whole."). This Court questioned at the February 15 hearing whether such cost-benefit analysis is required under California law. *Id.* at 19:4–7. The answer is clearly yes: balancing is absolutely required as a matter of California law, as Plaintiffs conceded. *See id.* at 26:1–5 ("The balancing test that is applied in a tort case focuses on the costs and benefits of the product . . . ."). Indeed, the California Supreme Court has expressly held that, for nuisance actions, "[t]he primary test for determining whether the invasion is unreasonable is whether the gravity of the harm outweighs the social utility of the defendant's conduct." *San Diego Gas & Elec. Co. v. Super. Ct.*, 13 Cal. 4th 893, 938 (1996). The inquiry is broad, "looking at the *whole* situation" "in light of *all* the circumstances." *Id.* at 938–39 (emphases added). No California court has ever applied an "alternate" test, nor has any court found any alleged harm to be so severe that it did not need to be weighed against the utility of a defendant's conduct in making a determination of reasonableness. Moreover, as Defendants explained at the February 15 hearing, *Wilson v. Southern California Edison Co.*, 234 Cal. App. 4th 123 (2015)—a case cited by another group of California plaintiffs raising similar global warming-based claims in the Northern District of California—is a private nuisance case in which the Court of Appeal required the trial court to adopt jury instructions that balanced the gravity of the harm *against the utility of the defendant's conduct*. Hr'g Tr. 28:4–13; *see* 234 Cal. App. 4th at 163–64. California's standard Civil Jury Instructions expressly cite *Wilson* as *requiring* courts to give a balancing instruction to juries in nuisance cases. *See* CACI 2022 Private Nuisance—Balancing-Test Factors—Seriousness of Harm and Public Benefit.[7]

[7] Likewise, under the Restatement, some form of balancing is *always* required in nuisance cases. The Restatement asserts that, in some cases involving intentional conduct causing severe harms, the balancing inquiry includes "determining whether the conduct of causing the harm without paying for it is unreasonable." Restatement (Second) of Torts § 826, cmt. *f*; *see also id*. § 829A (inquiry in some cases considers whether the "harm resulting from the invasion is severe and greater than the other *should* be required to bear without compensation" (emphasis added)). The Restatement's approach to such cases merely refocuses the balancing inquiry, and it does not eliminate the requirement *always* to consider competing considerations before determining whether compensation should be made. *See id*. § 829A, cmt. a ("*[I]n determining whether the gravity of the interference with the public right outweighs the utility of the actor's conduct* (see § 826, Comment *a*), the fact that the harm resulting from the interference is severe and greater than the other *should* be required to bear without compensation will normally be sufficient to make the interference *unreasonable*." (emphasis added)); *see generally id*. § 826, cmt. *c* (in all

The broad scope of Plaintiffs' nuisance claims—which are expressly based on Defendants' alleged national and worldwide activities—would require the court to balance *nationwide* costs against *nationwide* benefits.[8] Plaintiffs allege, for example, that "[t]he seriousness of anthropogenic global warming impacts including *inter alia* rising sea levels, more frequent and extreme droughts, more frequent and extreme precipitation events, more frequent and extreme heat waves, and more frequent and extreme wildfires, and the associated consequences of those physical and environmental changes, is extremely grave, and outweighs the social utility of Defendants' conduct." *County of Santa Cruz*, Compl. ¶ 260. They further allege that "the social benefit of the purpose of placing fossil fuels into the stream of commerce, if any, is outweighed by the availability of other sources of energy that could have been placed into the stream of commerce that would not have caused sea level rise, more frequent and extreme droughts, more frequent and extreme precipitation events, more frequent and extreme heat waves, and more frequent and extreme wildfires, and the associated consequences of those physical and environmental changes." *Id.* ¶ 260(f). There is no support in the case law for Plaintiffs' contention that a court adjudicating an interstate pollution case targeting out-of-state conduct may focus narrowly on harms and benefits "in a site specific manner." Hr'g Tr. 26:1–3. The single—non-California—case that Plaintiffs mentioned at the hearing, *Freeman v. Grain Processing Corp.*, 848 N.W.2d 58 (Iowa 2014), held only that the Clean Air Act did not preempt a state common law nuisance claim against a local corn wet milling facility that was emitting noxious odors that invaded the plaintiffs' land and diminished their enjoyment of their property. *Id.* at 63, 69. In contrasting the Clean Air Act with state nuisance law, the court noted that "the common law focuses on special harms to property owners *caused by pollution at a specific location*." *Id.* at 69 (emphasis added). But Plaintiffs here have not alleged pollution arising from any "specific location." Rather,

nuisance cases, "[c]onsideration must be given not only to the interests of the person harmed but also for the interests of the actor and to the interests of the community as a whole").

[8] Although the cost-benefit analysis required for Plaintiffs' nuisance claims is sufficient to show the substantial federal interests raised in this action, Plaintiffs' products liability claims also appear to require cost-benefit analysis. In such actions, California law "will not recognize a duty of care even as to foreseeable injuries where the social utility of the activity concerned is so great, and avoidance of the injuries so burdensome to society, as to outweigh the compensatory and cost-internalization values of negligence liability." *T.H. v. Novartis Pharm. Corp.*, 4 Cal. 5th 145, 168 (2017).

they allege that Defendants' worldwide conduct has contributed to changes in the global atmosphere, which has resulted in global warming, which has caused sea levels to rise. There is thus no way for a court to decide that Defendants' conduct is unreasonable without balancing the nationwide costs imposed by fossil fuel production with the nationwide benefits of such production.

For a state court to undertake such a nationwide balancing would necessarily require resolution of federal issues because the court must consider the numerous federal statutes and regulations promoting and otherwise addressing fossil fuel production and usage and balancing alleged costs.[9] Indeed, the balancing of costs and benefits Plaintiffs ask the court to undertake is indistinguishable from the balancing conducted by the Secretary of Energy, who is directed to "assess[] . . . alternative policy mechanisms for reducing the generation of greenhouse gases. Such assessment shall include a short-run and long-run analysis of the social, economic, energy, environmental, competitive, and agricultural costs and benefits, including costs and benefits for jobs and competition, and the practicality" of various "mechanisms" for reducing greenhouse gases. 42 U.S.C. § 13384. Thus, to find Defendants liable, the court would necessarily have to determine that every federal agency that has concluded that benefits of fossil fuel production outweigh the harms was wrong. These and other federal issues are necessarily embedded within the global warming-based tort claims Plaintiffs allege here.

2. The close nexus to navigable waters further supports federal jurisdiction

As Judge Alsup recently observed, "the proprietary [sic] of federal common law jurisdiction" is "also demonstrate[d]" by the fact that "the very instrumentality of plaintiffs' alleged injury — the flooding of coastal lands — is, by definition, the navigable waters of the United States." *See BP*,

[9] *See, e.g.*, 43 U.S.C. § 1802(1) (promoting the "expedited exploration and development of the Outer Continental Shelf in order to achieve national economic and energy policy goals [and] assure national security"); 10 U.S.C. § 7422(c)(1)(B); 30 U.S.C. § 201(a)(3)(C). Consistent with these statutory objectives, the Bureau of Land Management requires federal oil and gas lessees to drill "in a manner which . . . results in maximum ultimate economic recovery of oil and gas." 43 C.F.R. § 3162.1(a); *see also* 30 C.F.R. § 550.120 (similar for offshore oil and gas leases). Congress has repeatedly explained that its laws are informed by this balance. *E.g.*, 42 U.S.C. § 5801 (Congressional purpose to "develop, and increase the efficiency and reliability of use of, all energy sources" while protecting "environmental quality"); 30 U.S.C. § 21a (Congressional purpose to encourage "economic development of domestic mineral resources" balanced with "environmental needs"); 30 U.S.C. § 1201 (coal mining operations are "essential to the national interest" but must be balanced by "cooperative effort[s] . . . to prevent or mitigate adverse environmental effects").

ECF No. 134 at 8. Plaintiffs' claims "necessarily implicate an area quintessentially within the province of the federal courts . . . ", *id.*, and raise substantial, federal questions under *Grable* because they are closely connected to the navigable waters of the United States. And they amount, moreover, to a "collateral attack" on the comprehensive regulatory scheme Congress established for the protection and preservation of the navigable waters. *See Bd. of Comm'rs of the Se. La. Flood Prot. Auth.-E v. Tenn. Gas Pipeline Co.*, 850 F.3d 714, 724 (5th Cir. 2017).[10]

Congress has given the Army Corps of Engineers exclusive jurisdiction over construction and dredging activities in navigable waters, 33 U.S.C. § 403, and numerous federal statutes authorize the Corps to regulate navigable waters. Notably, the Rivers and Harbors Act ("RHA") authorizes the Corps to (among other things) preserve navigation by regulating construction, dredge, and fill activities in the navigable waters, *id.* §§ 401–413, and "to investigate, study, plan, and implement structural and nonstructural measures for the prevention or mitigation of shore damages." 33 U.S.C. § 426i.

Congress, through the RHA and other statutes and appropriations, has charged the Corps with authority and responsibility to undertake civil works activities to protect the navigable waters, including flood risk management, navigation, recreation, infrastructure, environmental stewardship, and emergency response. Congress has also expressly authorized the Corps to address climate change effects in California, instructing it to "conduct a study of the feasibility of carrying out a project for," among other things, "flood damage reduction along the South San Francisco Bay shoreline, California." Water Resource Development Act of 2007, § 4027(a)(1), Pub. L. 110-114. Indeed, many of the coastal armoring, levee, erosion control, and other projects to protect against sea level rise in Plaintiffs' locales were undertaken under Corps oversight, including authorizations issued by the Corps

---

[10] As Judge Alsup found, "[t]his issue was not waived, as defendants timely invoked federal common law as a grounds for removal." *BP*, ECF No. 134 at 8. Moreover, here Defendant Marathon Petroleum Corporation ("MPC"), a signatory to this brief, timely filed, within 30 days of being served, an Additional Notice of Removal (*County of Santa Cruz*, ECF No. 90) that expressly elaborated on the navigable waters ground, as well as the admiralty jurisdiction ground discussed in greater detail *infra*. To the extent necessary, Defendants consent to MPC's additional Notice of Removal on all grounds asserted therein (and again preserving all defenses).

under the RHA during the very decades when Defendants' allegedly injurious conduct took place.[11] Plaintiffs' claims require the Court to evaluate the exercise of federal authority over many decades as the claimed injuries attributable to rising seas occurred despite the existence of a comprehensive federal regulatory scheme covering the very waters at issue.

Moreover, the Corps' active federal involvement in the precise issues on which Plaintiffs purport to base their claims underscores the federal regulations and policies the Court will need to evaluate in considering Plaintiffs' assertions regarding present and future injury, including causation and whether Plaintiffs' requested remedies conflict with federal action or are necessary in light of such action.[12] To succeed on their public nuisance claim, Plaintiffs will be required to prove causation. *See Martinez v. Pac. Bell*, 225 Cal. App. 3d 1557, 1565 (1990). A necessary and critical element of Plaintiffs' theory of causation is the rising sea levels in the areas alleged to be impacted.[13] The attenuated chain of causation contemplated by Plaintiffs' Complaints is as follows: (1) Defendants extract, manufacture, deliver, market, and sell fossil fuels (*e.g.*, Compl. ¶ 2); (2) combustion of those fuels around the globe causes emissions of greenhouse gases (*e.g.*, *id.* ¶ 53); (3) accumulated greenhouse gases trap atmospheric heat and increase global temperatures (*e.g.*, ¶¶ 52, 54); (4) increased temperatures cause thermal expansion of "navigable waters" and the melting of land-based ice therein (*e.g.*, *id.* ¶ 58); (5) such phenomena cause accelerated rise of "navigable waters" (*e.g.*, *id.*); (6) current

---

[11] The Corps has considered sea-level change in its planning activities since 1986. *See*, *e.g.*, Engineering Circular 1105-2-186: Planning Guidance on the Incorporation of Sea Level Rise Possibilities in Feasibility Studies (Apr. 21, 1989); Engineer Technical Letter 1100-2-1, Procedures to Evaluate Sea Level Change: Impacts, Responses and Adaptation (June 30, 2014).

[12] For example, the South San Francisco Bay Shoreline Project employed "hydrologic modeling provid[ing] information on the forecasted tidal exchange in the South Bay, with allowances for climate change," U.S. Army Corps of Engineers, *South San Francisco Bay Shoreline Phase I Study: Final Integrated Document* 1-41 (Sept. 2015), leading the Corps to predict that the Project "would manage flood risk for a population at risk of approximately 6,000 residents and people working in the area," with only "1,140 structures . . . in the 0.2-percent Annual Chance of Exceedance (ACE) floodplain under the USACE High sea level change (SLC) scenario," *id.* at 9-7. And the South San Francisco Bay Shoreline Proposal "recommended that the USACE project . . . be authorized for implementation, as a Federal project, with such modifications thereof as at the discretion of the Commander, U.S. Army Corps of Engineers, San Francisco District, may be advisable." *Id.* at 10-2.

[13] In Judge Alsup's order requesting supplemental briefing on removal based upon the concept of "navigable waters of the United States," he noted that "a necessary and critical element" of Plaintiffs' theory of causation "is the rising sea level along the Pacific coast and in the San Francisco Bay, both of which are navigable waters of the United States." *BP*, ECF No. 128 (Feb. 12, 2018).

federal projects and Plaintiffs' current infrastructure are inadequate to address the rising waters (*e.g.*, *id.* ¶¶ 8, 12); and (7) "navigable waters" will encroach upon on Plaintiffs' land, causing damage (*e.g.*, *id.* ¶¶ 8–9). Every link in this chain is inextricably intertwined with federal issues, including the movement and impact of "navigable waters" and second-guessing of federal projects.

Determining whether (and to what extent) Plaintiffs will suffer injury—and evaluating the remedies they seek in light of this direct federal intervention—will also require interpretation of federal law. Plaintiffs ask this Court for "[e]quitable relief, including abatement of the nuisances." *See, e.g.*, *County of Santa Cruz*, Compl., Prayer for Relief. The City of Santa Cruz claims that it is "planning adaptation strategies to address sea level rise and related impacts, including coastal armoring . . . ." *City of Santa Cruz v. Chevron Corp., et al.*, (3:18-cv-00458), Compl. ¶ 213. But the RHA states that "it shall not be lawful to build or commence the building of any wharf pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures in any . . . water of the United States . . . except on plans recommended by the Chief of Engineers and authorized by the Secretary of the Army." 33 U.S.C. § 403. Thus, Plaintiffs will have to show that the remedy they seek is consistent with federal action and will be authorized by the Corps. This will require interpretation of an extensive web of federal regulations. For example, before approving a project "[t]he benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments." 33 C.F.R. § 320.4(a)(1). And "in the evaluation of every application" to undertake a project in navigable waters, the Corps must also assess "the practicability of using reasonable alternative locations and methods to accomplish the objective of the proposed structure or work." *Id.* § 320.4(a)(2). Even attempts by Plaintiffs to modify or alter existing flood-mitigation structures require approval of the Corps, and the Corps *cannot* grant such approval if the project will be "injurious to the public interest." 33 U.S.C. § 408(a).

In short, because Plaintiffs' claims hinge on alleged effects in the navigable waters of the United States, over which the Corps has exclusive jurisdiction, this case presents numerous substantial and disputed federal issues that provide a basis for federal jurisdiction.

C. Removal Is Warranted Under Multiple Jurisdiction-Granting Statutes and Doctrines

Defendants' Removal Notices and past remand briefing demonstrate that five additional statutory provisions and legal doctrines each provide an independent and fully sufficient basis for removal, including (i) OCSLA, *see* 43 U.S.C. § 1349(b); (ii) the federal officer removal statute, *see* 28 U.S.C. § 1442(a)(1); (iii) the federal enclaves doctrine; (iv) the bankruptcy statutes, *see* 28 U.S.C. § 1452(a) and 28 U.S.C. § 1334(b); and (v) federal admiralty and maritime jurisdiction. *See San Mateo*, ECF No. 1 ¶¶ 49–74; *County of Santa Cruz*, ECF No. 90. These statutes reflect Congress's determination that certain cases and controversies—including those at issue here—implicate vital federal interests that warrant federal jurisdiction and a uniform application of law.

First, this Court has jurisdiction under OCSLA because Plaintiffs' lawsuits mount a direct challenge to Defendants' oil and gas production operations conducted on the federal Outer Continental Shelf ("OCS"). (For purposes of this brief, Defendants assume *arguendo* that Plaintiffs are correct in contending that Defendants' activities include those of their subsidiaries.) These operations are responsible for billions of barrels of oil, and trillions of MCF of natural gas, produced from federal offshore lands on the OCS. *See San Mateo*, ECF No. 195 at 34–35. Indeed, federal data suggests that in some years *a third* of domestic production originates from the OCS. *Id.* at 35. In all, Defendants and their affiliates hold approximately 32.95% of the more than 5,000 federal leases on the OCS, with certain of these properties able to generate hundreds of thousands of barrels of oil per day. *See County of Santa Cruz*, ECF No. 1, ¶ 53. Plaintiffs' wide-reaching allegations sweep in *all* of Defendants' production activities, including Defendants' extensive activities on the OCS. *See San Mateo*, ECF No. 195 at 35–36. Particularly if the cases are viewed—as Plaintiffs insist—as production rather than emissions cases (*cf. BP*, ECF No. 134 at 5), the connection to production activities on the OCS is inherent and determinative of federal jurisdiction.

The scope of OCSLA removal jurisdiction reflects the overriding federal interest in oil and gas production operations on the OCS. *See EP Operating Ltd. P'ship v. Placid Oil Co.*, 26 F.3d 563, 569 (5th Cir. 1994). "OCSLA was passed . . . to establish *federal ownership and control over the mineral wealth of the OCS* and to provide for *development of those natural resources*," *id.* at 566, and "the efficient exploitation of the minerals of the OCS . . . was . . . a primary reason for OCSLA."

Amoco Prod. Co. v. Sea Robin Pipeline Co., 844 F.2d 1202, 1210 (5th Cir. 1988). When enacting 43 U.S. § 1349(b)(1), the OCSLA jurisdictional provision, "Congress intended for the judicial power of the United States to be extended to the entire range of legal disputes that it knew would arise relating to resource development on the [OCS]." *Laredo Offshore Constructors, Inc. v. Hunt Oil Co.*, 754 F.2d 1223, 1228 (5th Cir. 1985). Courts, therefore, repeatedly have found OCSLA jurisdiction where resolution of the dispute foreseeably could affect the efficient exploitation of minerals from the OCS. *See, e.g.*, *EP Operating*, 26 F.3d at 569–70; *United Offshore Co. v. S. Deepwater Pipeline Co.*, 899 F.2d 405, 406–07 (5th Cir. 1990).

Plaintiffs' argument that OCSLA cannot extend federal jurisdiction here because OCS production, by itself, was not the sole cause of their alleged injuries ignores key federal government interests underlying OCSLA's jurisdictional grant. Plaintiffs' allegations challenge not only Defendants' production of offshore oil and gas that represent a material part of the federal "mineral wealth [on] the OCS" but also the federal treasury's multibillion dollar revenues that result from Defendants' OCS operations. In terms of protecting the crucial federal interests that OCSLA was enacted to protect, there likely has never been a more important case in which to exercise the OCSLA jurisdictional grant than the present one.

In arguing against OCSLA jurisdiction, Plaintiffs cite *Par. of Plaquemines v. Total Petrochemical & Ref. USA, Inc.*, 64 F. Supp. 3d 872 (E.D. La. 2014), but there the complained-of activities "*all* occurred in state waters" and "*[n]one* of the activities . . . took place on the OCS." *Id*. at 894–95 (emphasis added). Yet here, as Plaintiffs' counsel admitted, the Complaints "allege injuries stemming from the nature of Defendants' fossil fuel products *no matter where and in what form they are extracted*." *See San Mateo*, ECF No. 203 at 30 (emphasis added). Accordingly, the complained-of activity necessarily incorporates operations on the OCS.

Plaintiffs also rely on *Plains Gas Solutions, LLC v. Tennessee Gas Pipeline Co., LLC*, 46 F. Supp. 3d 701 (S.D. Tex. 2014), and *Hammond v. Phillips 66 Co.*, 2015 WL 630918 (S.D. Miss. Feb. 12, 2015), to argue that their injuries do not arise out of Defendants' OCS operations, *see San Mateo*, ECF No. 203 at 31–32. Neither case is on point. In *Plains Gas*, the court held that the activities that allegedly caused the injury did not constitute "operations, or physical acts, conducted on the OCS."

See 46 F. Supp. 3d at 705–06 ("With the exception of Kinetica's closure of the onshore valve, none of the alleged activities are physical acts, and thus cannot constitute an operation."). But Plaintiffs do not dispute that a substantial portion of the alleged misconduct here—production of fossil fuels—occurred on the OCS. *Hammond* is likewise inapposite because there the court was "unable to conclude that 'a "but-for" connection' exist[ed] between Hammond's claimed injury, asbestosis, and his nine-month period of offshore employment," because Hammond worked for nearly ten years on "land-based rigs" where he was exposed to asbestos. *See* 2015 WL 630918, at *4. Here, however, Plaintiffs allege that *all* greenhouse gas emissions—even those occurring decades ago—contribute to global warming. *See County of Santa Cruz*, Compl. ¶¶ 56–58. Thus, to the extent Plaintiffs' theory of causation is viable at all (a merits issue that Defendants dispute), Plaintiffs' injuries "arise out of" Defendants' conduct on the OCS. Therefore, OCSLA supports removal.

Second, federal officer removal is proper because Defendants extracted, produced, and sold fossil fuels at the direction of the federal government. Federal courts have jurisdiction under Section 1442 whenever a defendant's challenged conduct "occurred *because of* what they were asked to do by the Government." *Goncalves By & Through Goncalves v. Rady Children's Hosp. San Diego*, 865 F.3d 1237, 1244–45 (9th Cir. 2017) (emphasis in original) (citations omitted). Because there is a "clear command from both Congress and the Supreme Court . . . to interpret section 1442 broadly in favor of removal," *see Durham v. Lockheed Martin Corp.*, 445 F.3d 1247, 1252 (9th Cir. 2006), the various extraction, production, and sales activities that Defendants perform at the federal government's command are sufficient to confer subject-matter jurisdiction over these actions. *See San Mateo*, ECF No. 195 at 41–47.

Plaintiffs do not dispute that Defendants produce and sell a substantial quantity of oil and gas pursuant to carefully tailored government contracts. Instead, Plaintiffs argue that these contracts did not require Defendants to "produce and sell massive amounts of fossil fuel products knowing those products were dangerous, fail to warn of the known risks, mislead the public regarding those risks, and promote their dangerous use." *San Mateo*, ECF No. 203 at 39. But the Complaints allege the fossil fuel production itself is tortious conduct. *See County of Santa Cruz*, Compl. ¶ 282 (Fourth Cause of Action for strict liability design defect: "Defendants . . . extracted, refined, . . . advertised,

promoted, and/or sold fossil fuel products"). These broadly alleged activities are precisely the activities required by the contracts Defendants have entered into with the government. Plaintiffs' principal case, *Parlin v. DynCorp Intern., Inc.*, 579 F. Supp. 2d 629, 636 (D. Del. 2008); *see San Mateo*, ECF No. 203 at 39–40, is inapposite because the defendants in that case could not show that the allegedly tortious conduct was "taken pursuant to a federal officer's direct orders or to comprehensive and detailed regulations." *Id*. at 636. "At most, Defendants have shown that they were acting under the general auspices of the Department of State, which is insufficient to satisfy the 'acting under' component of § 1442(a)(1)." *Id.* Here, by contrast, Defendants are extracting and selling oil under detailed government contracts. *See Savoie v. Huntington Ingalls, Inc.*, 817 F.3d 457, 465–66 (5th Cir. 2016), *cert. denied*, 137 S. Ct. 339 (2016). ("[I]t is the government's detailed specifications, to which the shipyard was contractually obligated to follow, that required the use of asbestos . . . [that] is enough to show a causal nexus between the Savoies' strict liability claims and the shipyard's actions under the color of federal authority."). Especially in view of the broad and generic activities for which Plaintiffs seek to hold Defendants liable—which they claim is production and sale, not emissions, *cf. BP*, ECF No. 134 at 5—Federal officer removal is thus appropriate.[14]

Third, Plaintiffs' sweeping allegations encompass Defendants' production activities on federal military bases and reserves, as well as their lobbying activities in Washington, D.C., all of which are federal enclaves. *See San Mateo*, ECF No. 195 at 38–41.

Fourth, bankruptcy removal is proper because these cases are "related to" numerous bankruptcy cases and have a "close nexus" to many confirmed bankruptcy plans. *See San Mateo*, ECF No. 195 at 51–52. By naming 100 Doe defendants, Plaintiffs have necessarily dragged numerous bankrupt oil and gas companies into this case. *See id.* at 51 & n.39. Moreover, Defendants may seek indemnification against any number of joint tortfeasors—many of which may also be in bankruptcy or operating under a confirmed bankruptcy plan—thus relating Plaintiffs' claims to even more Chap-

[14] As noted at the February 15 hearing, Defendants have a right to appeal any remand order because they removed these actions pursuant to, among other grounds, 28 U.S.C. § 1442. Hr'g Tr. 29. In the event that an appeal is necessary, the Defendants request a temporary stay to allow Defendants to move for a stay pending appeal. *See id.* at 30.

ter 11 cases. *See id.* at 51. Nonetheless, Plaintiffs argue that bankruptcy removal is improper because they are enforcing their police powers through this action. *See, e.g.*, *San Mateo*, ECF No. 203 at 42–44. But this exemption does not apply because Plaintiffs primarily seek to advance their pecuniary interests. Indeed, a bankruptcy court considering the very claims made in this litigation (albeit brought by different governmental plaintiffs) has already held that "[t]he clear purpose [of the claims] . . . is for the Plaintiffs to obtain a pecuniary advantage." *See In re Peabody Energy Corp.*, No. 16-42529 (Bankr. E.D. Mo.), ECF No. 3514 at 15–16. Plaintiffs cite *In re Universal Life Church, Inc.*, 128 F.3d 1294, 1299 (9th Cir. 1997), for the proposition that the police power exemption can apply even when there is a pecuniary interest, but in that case there was a clear public policy goal that was *independent* of collecting funds for the government. *See id.* at 1298 (determining whether organization is tax exempt "serves a general public welfare purpose beyond any pecuniary application in a particular case"—namely, "fraud detection"). In this case, however, Plaintiffs have disclaimed public policy goals independent of their pecuniary interests. As Plaintiffs' counsel informed the Court, these actions "focus on . . . obtaining compensation"—they do not seek "to regulate emissions." Hr'g Tr. 24. Accordingly, under Plaintiffs' asserted theory of the case, there is no applicable exemption to bankruptcy removal.

Finally, Plaintiffs' claims are also removable insofar as they fall within the Court's original admiralty jurisdiction. 28 U.S.C. § 1333; 1441(a).[15] The Constitution extends federal judicial power "to all Cases of admiralty and maritime Jurisdiction." U.S. Const. Art. III, § 2; *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 531 (1995) (citing 28 U.S.C. § 1333(1)). "The admiralty and maritime jurisdiction of the United States extends to and includes cases of injury or damage, to person or property, caused by a vessel on navigable waters, *even though the injury or damage is done or consummated on land*." 46 U.S.C. § 30101(a) (emphasis added). Under the two-part test established by the Supreme Court in *Grubart*, to determine whether there is admiralty jurisdiction, the court considers: (1) whether, *inter alia*, the alleged "tort occurred on navigable water" (the "location" test), 513 U.S. at 534, and (2) the alleged tort is connected to maritime activity (the

[15] This ground for removal was timely raised. *See County of Santa Cruz*, ECF No. 90.

"connection" test), *id.* Both are satisfied here.

Plaintiffs' claims meet the "location" test because the tort, as alleged, occurred on navigable waters, *Red Shield Ins. Co. v. Barnhill Marina & Boatyard, Inc.*, 2009 WL 1458022, at *1 (N.D. Cal. May 21, 2009) (tort occurring in marina "on the navigable waters of the San Francisco Bay . . . falls under our admiralty jurisdiction"), and arises from production of fossil fuels, including worldwide extraction, a significant portion of which takes place on "mobile offshore drilling unit[s]" that operate in navigable waters and are considered "vessels" under established law. *See In re Oil Spill by the Oil Rig Deepwater Horizon in the Gulf of Mexico, on April 20, 2010*, 808 F. Supp. 2d 943, 949 (E.D. La. 2011).

Plaintiffs' claims also have the requisite "connection" to maritime activity. The *Grubart* connection test is satisfied where, as here, "one of the arguably proximate causes of the incident originated in maritime activity" and "one of the putative tortfeasors was engaged in traditional maritime activity." *Taghadomi v. United States*, 401 F.3d 1080, 1087 (9th Cir. 2005) (quoting *Grubart*, 513 U.S. at 541). Indeed, Plaintiffs allege that the navigable waters are or will be dramatically impacted by the alleged tort and that one of the "potential effects" of that conduct is damage to ports (Compl. ¶ 1). Therefore, accepting the allegations in the Complaints as true, Defendants' fossil fuel extraction has the "potential to disrupt maritime commerce." *Grubart*, 513 U.S. at 539. Moreover, "there is no question that the activity" "giving rise to the incident" is "substantially related to traditional maritime activity," *id.* at 540, because "[o]il and gas drilling on navigable waters aboard a vessel is recognized to be maritime commerce," *Theriot v. Bay Drilling Corp.*, 783 F.2d 527, 538–39 (5th Cir. 1986); *see also In re Oil Spill*, 808 F. Supp. 2d at 951. Because Plaintiffs' claims satisfy *Grubart*'s two-part test, they "fall[] within the Court's admiralty jurisdiction," *id.*, and are therefore removable under 28 U.S.C. § 1441, as recently amended by the Federal Courts Jurisdiction and Venue Clarification Act of 2011 ("VCA"), Pub. L. No. 112-63.

III. CONCLUSION

For the foregoing reasons, and those set forth in Defendants' briefing in *San Mateo*, *Imperial Beach*, and *Marin*, the Court should deny Plaintiffs' motion to remand.

DATED: March 2, 2018

By: */s/ Jonathan W. Hughes*

Jonathan W. Hughes (SBN 186829)
ARNOLD & PORTER KAYE SCHOLER LLP
Three Embarcadero Center, 10th Floor
San Francisco, California 94111-4024
Telephone: (415) 471-3100
Facsimile: (415) 471-3400
E-mail: jonathan.hughes@apks.com

Matthew T. Heartney (SBN 123516)
John D. Lombardo (SBN 187142)
ARNOLD & PORTER KAYE SCHOLER LLP
777 South Figueroa Street, 44th Floor
Los Angeles, California 90017-5844
Telephone: (213) 243-4000
Facsimile: (213) 243-4199
E-mail: matthew.heartney@apks.com
E-mail: john.lombardo@apks.com

Philip H. Curtis (*pro hac vice* forthcoming)
Nancy Milburn (*pro hac vice* forthcoming)
ARNOLD & PORTER KAYE SCHOLER LLP
250 West 55th Street
New York, NY 10019-9710
Telephone: (212) 836-8383
Facsimile: (212) 715-1399
E-mail: philip.curtis@apks.com
E-mail: nancy.milburn@apks.com

Attorneys for Defendants BP P.L.C. and BP AMERICA, INC.

By: ***/s/ Theodore J. Boutrous*

Theodore J. Boutrous, Jr. (SBN 132099)
William E. Thomson (SBN 187912)
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
Telephone: (213) 229-7000
Facsimile: (213) 229-7520
E-mail: tboutrous@gibsondunn.com
E-mail: wthomson@gibsondunn.com

Ethan D. Dettmer (SBN 196046)
Joshua S. Lipshutz (SBN 242557)
GIBSON, DUNN & CRUTCHER LLP
555 Mission Street, Suite 3000
San Francisco, CA 94105
Telephone: (415) 393-8200
Facsimile: (415) 393-8306
E-mail: edettmer@gibsondunn.com
E-mail: jlipshutz@gibsondunn.com

Andrea E. Neuman (SBN 149733)
Anne Champion (*pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, NY 10166-0193
Telephone: (212) 351-4000
Facsimile: (212) 351-5281
E-mail: aneuman@gibsondunn.com
E-mail: achampion@gibsondunn.com

Herbert J. Stern (*pro hac vice*)
Joel M. Silverstein (*pro hac vice*)
STERN & KILCULLEN, LLC
325 Columbia Turnpike, Suite 110
Florham Park, NJ 07932-0992
Telephone: (973) 535-1900
Facsimile: (973) 535-9664
E-mail: hstern@sgklaw.com
E-mail: jsilverstein@sgklaw.com

Attorneys for Defendants CHEVRON CORP. and CHEVRON U.S.A., INC.

** Pursuant to Civ. L.R. 5-1(i)(3), the electronic signatory has obtained approval from all other signatories

By: */s/ Andrew McGaan*

Christopher W. Keegan (SBN 232045)
KIRKLAND & ELLIS LLP
555 California Street
San Francisco, California 94104
Telephone: (415) 439-1400
Facsimile: (415) 439-1500
E-mail: chris.keegan@kirkland.com

Andrew R. McGaan, P.C. (*pro hac vice* forthcoming)
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
E-mail: andrew.mcgaan@kirkland.com

Anna G. Rotman, P.C. (*pro hac vice* forthcoming)
KIRKLAND & ELLIS LLP
609 Main Street
Houston, Texas 77002
Telephone: (713) 836-3600
Facsimile: (713) 836-3601
E-mail: anna.rotman@kirkland.com

Bryan D. Rohm (*pro hac vice* forthcoming)
TOTAL E&P USA, INC.
1201 Lousiana Street, Suite 1800
Houston, TX 77002
Telephone: (713) 647-3420
E-mail: bryan.rohm@total.com

Attorneys for Defendants
TOTAL E&P USA INC. and TOTAL SPECIALTIES USA INC.

By: */s/ Shannon Broome*

Shannon S. Broome (SBN 150119)
Ann Marie Mortimer (SBN 169077)
HUNTON & WILLIAMS LLP
50 California Street, Suite 1700
San Francisco, CA 94111
Telephone: (415) 975-3700
Facsimile: (415).975-3701
E-mail: sbroome@hunton.com
E-mail: amortimer@hunton.com

Shawn Patrick Regan (*pro hac vice* forthcoming)
HUNTON & WILLIAMS LLP
200 Park Avenue
New York, NY 10166-0136
Telephone: (212) 309-1000
Facsimile: (212) 309-1100
E-mail: sregan@hunton.com

Attorneys for Defendant
MARATHON PETROLEUM CORPORATION

By: /s/ J. Scott Janoe

Christopher J. Carr (SBN 184076)
Jonathan A. Shapiro (SBN 257199)
BAKER BOTTS L.L.P.
101 California Street
36th Floor, Suite 3600
San Francisco, California 94111
Telephone: (415) 291-6200
Facsimile: (415) 291-6300
Email: chris.carr@bakerbotts.com
Email: jonathan.shapiro@bakerbotts.com

Scott Janoe (*pro hac vice* forthcoming)
BAKER BOTTS L.L.P.
910 Louisiana Street
Houston, Texas 77002
Telephone: (713) 229-1553
Facsimile: (713) 229 7953
Email: scott.janoe@bakerbotts.com

Evan Young (*pro hac vice* forthcoming)
BAKER BOTTS L.L.P.
98 San Jacinto Boulevard
Austin, Texas 78701
Telephone: (512) 322-2506
Facsimile: (512) 322-8306
Email: evan.young@bakerbotts.com

Megan Berge (*pro hac vice* forthcoming)
BAKER BOTTS L.L.P.
1299 Pennsylvania Ave, NW
Washington, D.C. 20004
Telephone: (202) 639-7700
Facsimile: (202) 639-1171
Email: megan.berge@bakerbotts.com

Attorneys for Defendants HESS CORPORATION, MARATHON OIL COMPANY, MARATHON OIL CORPORATION, REPSOL SA, REPSOL ENERGY NORTH AMERICA CORP. and REPSOL TRADING USA CORP.

By: /s/ Daniel P. Collins

Daniel P. Collins (SBN 139164)
MUNGER, TOLLES & OLSON LLP
350 South Grand Avenue
Fiftieth Floor
Los Angeles, California 90071-3426
Telephone: (213) 683-9100
Facsimile: (213) 687-3702
E-mail: daniel.collins@mto.com

Jerome C. Roth (SBN 159483)
Elizabeth A. Kim (SBN 295277)
MUNGER, TOLLES & OLSON LLP
560 Mission Street
Twenty-Seventh Floor
San Francisco, California 94105-2907
Telephone: (415) 512-4000
Facsimile: (415) 512-4077
E-mail: jerome.roth@mto.com
E-mail: elizabeth.kim@mto.com

David C. Frederick (*pro hac vice* forthcoming)
Brendan J. Crimmins (*pro hac vice* forthcoming)
KELLOGG, HANSEN, TODD, FIGEL & FREDERICK, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
Telephone: (202) 326-7900
Facsimile: (202) 326-7999
E-mail: dfrederick@kellogghansen.com
E-mail: bcrimmins@kellogghansen.com

Attorneys for Defendants SHELL OIL PRODUCTS COMPANY LLC and ROYAL DUTCH SHELL PLC

By: */s/ Dawn Sestito*

M. Randall Oppenheimer (SBN 77649)
Dawn Sestito (SBN 214011)
O'MELVENY & MYERS LLP
400 South Hope Street
Los Angeles, California 90071-2899
Telephone: (213) 430-6000
Facsimile: (213) 430-6407
E-Mail: roppenheimer@omm.com
E-Mail: dsestito@omm.com

Theodore V. Wells, Jr. (*pro hac vice* forthcoming)
Daniel J. Toal (*pro hac vice* forthcoming)
Jaren E. Janghorbani (*pro hac vice* forthcoming)
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Telephone: (212) 373-3000
Facsimile: (212) 757-3990
E-Mail: twells@paulweiss.com
E-Mail: jjanghorbani@paulweiss.com

Attorneys for Defendant
EXXON MOBIL CORPORATION

By: */s/ David E. Cranston*

David E. Cranston (SBN 122558)
GREENBERG GLUSKER FIELDS CLAMAN & MACHTINGER LLP
1900 Avenue of the Stars, 21st Floor, Los Angeles, CA 90067
Telephone: (310) 785-6897
Facsimile: (310) 201-2361
E-mail: DCranston@greenbergglusker.com

Attorneys for Defendants
ENI OIL & GAS INC.

By: /s/ Bryan M. Killian

Bryan M. Killian (*pro hac vice* forthcoming)
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Ave NW
Washington, DC 20004
Telephone: (202) 373-6191
E-mail: bryan.killian@morganlewis.com

James J. Dragna (SBN 91492)
Yardena R. Zwang-Weissman (SBN 247111)
MORGAN, LEWIS & BOCKIUS LLP
300 South Grand Ave., 22nd Floor
Los Angeles, CA 90071-3132
Telephone: (213) 680-6436
E-Mail: jim.dragna@morganlewis.com
E-mail: yardena.zwang-weissman@morganlewis.com

Attorneys for Defendant
ANADARKO PETROLEUM CORPORATION

By: /s/ Gregory Evans

Gregory Evans (SBN 147623)
MCGUIREWOODS LLP
Wells Fargo Center
South Tower
355 S. Grand Avenue, Suite 4200
Los Angeles, CA 90071-3103
Telephone: (213) 457-9844
Facsimile: (213) 457-9888
E-mail: gevans@mcguirewoods.com

Joy C. Fuhr (*pro hac vice* forthcoming)
Steven R. Williams (*pro hac vice* forthcoming)
Brian D. Schmalzbach (*pro hac vice* forthcoming)
MCGUIREWOODS LLP
800 East Canal Street
Richmond, VA 23219-3916
Telephone: (804) 775-1141
Facsimile: (804) 698-2208
E-mail: jfuhr@mcguirewoods.com
E-mail: srwilliams@mcguirewoods.com
E-mail: bschmalzbach@mcguirewoods.com

Attorneys for Defendants
DEVON ENERGY CORPORATION and DEVON ENERGY PRODUCTION COMPANY, L.P.

By: /s/ Peter Duchesneau

Craig A. Moyer (SBN 094187)
Peter Duchesneau (SBN 168917)
MANATT, PHELPS & PHILLIPS, LLP
11355 West Olympic Boulevard
Los Angeles, CA 90064-1614
Telephone: (310) 312-4000
Facsimile: (310) 312-4224
E-mail: cmoyer@manatt.com
E-mail: pduchesneau@manatt.com

Stephanie A. Roeser (SBN 306343)
MANATT, PHELPS & PHILLIPS, LLP
One Embarcadero Center, 30th Floor
San Francisco, CA 94111
Telephone: (415) 291-7400
Facsimile: (415) 291-7474
E-mail: sroeser@manatt.com

Attorneys for Defendant
CITGO PETROLEUM CORPORATION

By: /s/ Patrick W. Mizell

Mortimer Hartwell (SBN 154556)
VINSON & ELKINS LLP
555 Mission Street Suite 2000
San Francisco, CA 94105
Telephone: (415) 979-6930
E-mail: mhartwell@velaw.com

Patrick W. Mizell (*pro hac vice* forthcoming)
Deborah C. Milner (*pro hac vice* forthcoming)
VINSON & ELKINS LLP
1001 Fannin Suite 2300
Houston, TX 77002
Telephone: (713) 758-2932
E-mail: pmizell@velaw.com
E-mail: cmilner@velaw.com

Attorneys for Defendant
APACHE CORPORATION

By: */s/ Michael F. Healy*
Michael F. Healy (SBN 95098)
SHOOK HARDY & BACON LLP
One Montgomery St., Suite 2700
San Francisco, CA 94104
Telephone: (415) 544-1942
E-mail: mfhealy@shb.com

Michael L. Fox (SBN 173355)
DUANE MORRIS LLP
Spear Tower
One Market Plaza, Suite 2200
San Francisco, CA 94105-1127
Telephone: (415) 781-7900
E-mail: MLFox@duanemorris.com

Attorneys for Defendant
ENCANA CORPORATION

By: */s/ Marc A. Fuller*

Marc A. Fuller (SBN 225462)
Matthew R. Stammel (*pro hac vice* forthcoming)
VINSON & ELKINS L.L.P.
2001 Ross Avenue, Suite 3700
Dallas, TX 75201-2975
Telephone: (214) 220-7881
Facsimile: (214) 999-7881
E-mail: mfuller@velaw.com
E-mail: mstammel@velaw.com

Stephen C. Lewis (SBN 66590)
R. Morgan Gilhuly (SBN 133659)
BARG COFFIN LEWIS & TRAPP, LLP
600 Montgomery Street, Suite 525
San Francisco, California 94111
Telephone: (415) 228-5400
Facsimile: (415) 228-5450
E-mail: slewis@bargcoffin.com
E-mail: mgilhuly@bargcoffin.com

Attorneys for Defendants
OCCIDENTAL PETROLEUM CORP. and
OCCIDENTAL CHEMICAL CORP.

By: */s/ Nicholas A. Miller-Stratton*

Megan R. Nishikawa (SBN 271670)
Nicholas A. Miller-Stratton (SBN 319240)
KING & SPALDING LLP
101 Second Street, Suite 2300
San Francisco, CA 94105
Telephone: (415) 318-1200
Facsimile: (415) 318-1300
Email: mnishikawa@kslaw.com
Email: nstratton@kslaw.com

Tracie J. Renfroe (*pro hac vice* forthcoming)
Carol M. Wood (*pro hac vice* forthcoming)
KING & SPALDING LLP
1100 Louisiana Street, Suite 4000
Houston, Texas 77002
Telephone: (713) 751-3200
Facsimile: (713) 751-3290
E-mail: trenfroe@kslaw.com
Email: cwood@kslaw.com

Justin A. Torres (*pro hac vice* forthcoming)
KING & SPALDING LLP
1700 Pennsylvania Avenue, NW
Suite 200
Washington, DC 20006-4707
Telephone: (202) 737 0500
Facsimile: (202) 626 3737
Email: jtorres@kslaw.com

Attorneys for Defendants CONOCOPHILLIPS and CONOCOPHILLIPS COMPANY

By: */s/ Steven M. Bauer*

Steven M. Bauer (SBN 135067)
Margaret A. Tough (SBN 218056)
LATHAM & WATKINS LLP
505 Montgomery Street, Suite 2000
San Francisco, California 94111-6538
Telephone: +1.415.391.0600
Facsimile: +1.415.395.8095
E-mail: steven.bauer@lw.com
E-mail: margaret.tough@lw.com

Attorneys for Defendant PHILLIPS 66

CERTIFICATE OF SERVICE

I, Kelsey J. Helland, declare as follows:

I am employed in the County of San Francisco, State of California, I am over the age of eighteen years and am not a party to this action; my business address is 555 Mission Street, Suite 3000, San Francisco, CA 94105-0921, in said County and State.

I hereby certify that on March 2, 2018, the foregoing Joint Opposition to Motion to Remand was filed with the Clerk of the Court via CM/ECF. Notice of this filing will be sent by email to all registered parties by operation of the Court's electronic filing systems.

I further certify that on March 2, 2018, the foregoing Joint Opposition to Motion to Remand was served on the following parties by the means described below:

☑ **BY ELECTRONIC SERVICE**: On the above-mentioned date, the documents were sent to the persons at the electronic notification addresses as shown below.

Attorneys for Plaintiff The County of Santa Cruz	**Attorneys for Plaintiff The County of Santa Cruz**
Dana McRae dana.mcrae@santacruzcounty.us Jordan Sheinbaum jordan.sheinbaum@santacruzcounty.us SANTA CRUZ OFFICE OF THE COUNTY COUNSEL 701 Ocean Street, Room 505 Santa Cruz, CA 95060 Tel: (831) 454-2040 Fax: (831) 454-2115	Victor M. Sher vic@sheredling.com Matthew K. Edling matt@sheredling.com Meredith S. Wilensky meredith@sheredling.com Timothy R. Sloane tim@sheredling.com Martin D. Quiñones marty@sheredling.com Katie H. Jones katie@sheredling.com SHER EDLING LLP 100 Montgomery Street, Suite 1410 San Francisco, CA 94104 Tel: (628) 231-2500 Fax: (628) 231-2929

Attorneys for Plaintiff The City of Santa Cruz	Attorneys for Plaintiff The City of Santa Cruz
Anthony P. Condotti tcondotti@abc-law.com ATCHISON, BARISONE & CONDOTTI, APC City Attorney for City of Santa Cruz 333 Church Street Santa Cruz, CA 95060 Tel: (831) 423-8383 Fax: (831) 576-2269	Victor M. Sher vic@sheredling.com Matthew K. Edling matt@sheredling.com Meredith S. Wilensky meredith@sheredling.com Timothy R. Sloane tim@sheredling.com Martin D. Quiñones marty@sheredling.com Katie H. Jones katie@sheredling.com SHER EDLING LLP 100 Montgomery Street, Suite 1410 San Francisco, CA 94104 Tel: (628) 231-2500 Fax: (628) 231-2929

Attorneys for Plaintiff The City of Richmond	Attorneys for Plaintiff The City of Richmond
Bruce Reed Goodmiller bruce_goodmiller@ci.richmond.ca.us Rachel H. Sommovilla rachel_sommovilla@ci.richmond.ca.us CITY ATTORNEY'S OFFICE FOR THE CITY OF RICHMOND 450 Civic Center Plaza Richmond, CA 94804 Tel: (510) 620-6509 Fax: (510) 620-6518	Victor M. Sher vic@sheredling.com Matthew K. Edling matt@sheredling.com Meredith S. Wilensky meredith@sheredling.com Timothy R. Sloane tim@sheredling.com Martin D. Quiñones marty@sheredling.com Katie H. Jones katie@sheredling.com SHER EDLING LLP 100 Montgomery Street, Suite 1410 San Francisco, CA 94104 Tel: (628) 231-2500 Fax: (628) 231-2929

Attorneys for Defendant Anadarko Petroleum Corp.

James J. Dragna
Bryan Killian
Yardena Zwang-Weissman
Morgan, Lewis & Bockius LLP
300 South Grand Ave., 22nd Floor
Los Angeles, CA 90071-3132
Telephone: (213) 680-6436
E-Mail: jim.dragna@morganlewis.com
bryan.killian@morganlewis.com
yardena.zwang-weissman@morganlewis.com

Attorneys for Defendants Devon Energy Corp.; Devon Energy Production Co., L.P.

Joy C. Fuhr
Greg Evans
Steven Williams
McGuireWoods LLP
Gateway Plaza
800 East Canal Street
Richmond, VA 23219-3916
Telephone: (804) 775-4341
E-Mail: jfuhr@mcguirewoods.com
gevans@mcguirewoods.com
srwilliams@mcguirewoods.com

Attorneys for Defendants ConocoPhillips, ConocoPhillips Co.; Phillips66

Carol M. Wood
King & Spalding
1100 Louisiana, Suite 4000
Houston, TX 77002
Telephone: (713) 751-3209
E-Mail: cwood@kslaw.com

Attorneys for Defendants Eni Oil & Gas Inc.

David E. Cranston
Greenberg Glusker Fields Claman & Machtinger LLP
1900 Avenue of the Stars, 21st Floor
Los Angeles, CA 90067
Telephone: (310) 785-6897
E-Mail: Dcranston@greenbergglusker.com

Attorneys for Defendants BP P.L.C. and BP America, Inc.

Philip H. Curtis
Nancy Milburn
Matthew T. Heartney
John D. Lombardo
Jonathan W. Hughes
Arnold & Porter Kaye Scholer
250 West 55th Street
New York, NY 10019-9710
Telephone: (212) 836-7199
E-Mail: Philip.Curtis@apks.com
Nancy.Milburn@apks.com
Matthew.Heartney@apks.com
John.Lombardo@apks.com
Jonathan.Hughes@apks.com

Attorneys for Defendant CITGO Petroleum Corporation

Peter Duchesneau
Craig A. Moyer
Jeffrey Davidson
Douglas Boggs
Manatt, Phelps & Phillips, LLP
11355 W. Olympic Blvd.
Los Angeles, CA 90064
Telephone: (310) 312-4209
E-Mail: pduchesneau@manatt.com
cmoyer@manatt.com
JDavidson@manatt.com
DBoggs@manatt.com

Attorneys for Defendant Apache Corporation	Attorneys for Defendant Exxon Mobil Corp.
Patrick W. Mizell Vinson & Elkins LLP 1001 Fannin St., Suite 2500 Houston, TX 77002 Telephone: (713) 758-2932 E-Mail: pmizell@velaw.com	Jaren Janghorbani Paul, Weiss, Rifkind, Wharton & Garrison LLP 1285 Avenue of the Americas New York, NY 10019-6064 Telephone: (212) 373-3211 E-Mail: jjanghorbani@paulweiss.com Dawn Sestito O'Melveny & Myers LLP 400 South Hope Street, 18th Floor Los Angeles, CA 90071 Telephone: (213) 430-6352 E-Mail: dsestito@omm.com
Attorneys for Defendant Hess Corporation	**Attorneys for Defendants Marathon Oil Co., Marathon Oil Corp.**
J. Scott Janoe Chris Carr Jonathan Shapiro Baker Botts LLP One Shell Plaza 910 Louisiana Street Houston, TX 77002-4995 Telephone: (713) 229-1553 E-Mail: scott.janoe@bakerbotts.com chris.carr@bakerbotts.com jonathan.shapiro@bakerbotts.com	J. Scott Janoe Chris Carr Jonathan Shapiro Baker Botts LLP One Shell Plaza 910 Louisiana Street Houston, TX 77002-4995 Telephone: (713) 229-1553 E-Mail: scott.janoe@bakerbotts.com chris.carr@bakerbotts.com jonathan.shapiro@bakerbotts.com

Attorneys for Defendant Marathon Petroleum Corp.

Shawn Regan
Ann Marie Mortimer
Shannon S. Broome
Clare Ellis
Jennifer L. Bloom
Hunton & Williams LLP
200 Park Ave., 52nd Floor
New York, NY 10166
E-Mail: sregan@hunton.com
amortimer@hunton.com
sbroome@hunton.com
cellis@hunton.com
JBloom@hunton.com

Attorneys for Defendants Occidental Petroleum Corp. and Occidental Chemical Corp.

Matthew R. Stammel
Vinson & Elkins LLP
Trammell Crow Center
2001 Ross Avenue, Suite 3700
Dallas, TX 75201-2975
Telephone: (214) 220-7776
E-Mail: mstammel@velaw.com

Attorneys for Defendants Total E&P USA Inc., Total Specialties USA Inc.

Chris Keegan
Andy McGaan
Anna Rotman
Kirkland & Ellis LLP
609 Main Street, Suite 4700
Houston, Texas 77002
Telephone: (713) 836-3600
E-Mail: christopher.keegan@kirkland.com
andrew.mcgaan@kirkland.com
anna.rotman@kirkland.com

Attorneys for Defendants Repsol S.A., Repsol Energy North America Corp., and Repsol Trading USA Corp.

J. Scott Janoe
Chris Carr
Jonathan Shapiro
Baker Botts LLP
One Shell Plaza 910 Louisiana Street
Houston, TX 77002-4995
Telephone: (713) 229-1553
E-Mail: scott.janoe@bakerbotts.com
chris.carr@bakerbotts.com
jonathan.shapiro@bakerbotts.com

Attorneys for Defendants Royal Dutch Shell plc and Shell Oil Products Co., LLC	Attorneys for Defendant Encana Corp.
Daniel P. Collins Munger Tolles & Olson LLP 350 South Grand Ave., 50th Floor Los Angeles, CA 90071-3426 Telephone: (213) 683-9100 Facsimile: (213) 687-3702 E-Mail: daniel.collins@mto.com	Michael F. Healy Shook Hardy & Bacon LLP One Montgomery St., Suite 2700 San Francisco, CA 94104 Telephone: (415) 544-1942 Email: mfhealy@shb.com
Jerome C. Roth Elizabeth A. Kim Munger Tolles & Olson LLP 560 Mission Street, 27th Floor San Francisco, CA 94105-2907 Telephone: (415) 512-4000 Facsimile: (415) 512-4077 E-Mail: jerome.roth@mto.com elizabeth.kim@mto.com	Michael L. Fox Duane Morris LLP Spear Tower One Market Plaza, Suite 2200 San Francisco, CA 94105-1127 Telephone: (415) 957-3092 Email: MLFox@duanemorris.com
David Frederick Brendan Crimmins Kellogg Hansen Todd Figel & Frederick PLLC Sumner Square 1615 M Street, N.W., Suite 400 Washington, D.C. 20036 Telephone: (202) 326-7951 E-Mail: dfrederick@kellogghansen.com bcrimmins@kellogghansen.com	

☑ **(FEDERAL)** I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 2, 2018 By: */s/ Kelsey J. Helland*
Kelsey J. Helland

EXHIBIT E

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

COUNTY OF SANTA CRUZ, Plaintiff, v. CHEVRON CORP., et al., Defendants.	Case No. 18-cv-00450-VC Re: Dkt. No. 68
CITY OF SANTA CRUZ, Plaintiff, v. CHEVRON CORP., et al., Defendants.	Case No. 18-cv-00458-VC Re: Dkt. No. 66
CITY OF RICHMOND, Plaintiff, v. CHEVRON CORP., et al., Defendants.	Case No. 18-cv-00732-VC **ORDER GRANTING MOTIONS TO REMAND** Re: Dkt. No. 45

For the reasons stated in this Court's prior order, *see* Order Granting Motions to Remand, No. 3:17-cv-04929-VC (Dkt. No. 223), as well as for the reasons stated in *Coronel v. AK Victory*, 1 F. Supp. 3d 1175, 1178-89 (W.D. Wash. 2014), the motions to remand filed by the County of Santa Cruz, City of Santa Cruz, and City of Richmond are granted. However, the remand orders are stayed pending the outcome of the appeals in the County of San Mateo, City

of Imperial Beach, and County of Marin cases.

IT IS SO ORDERED.

Dated: July 10, 2018

VINCE CHHABRIA
United States District Judge