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May 13, 2020

VIA ECF

Maria R. Hamilton
Clerk of Court
U.S. Court of Appeals for the First Circuit
John Joseph Moakley U.S. Courthouse
1 Courthouse Way, Suite 2500
Boston, MA 02210

Re: *State of Rhode Island v. Shell Oil Prods. Co., et al.*, No. 19-1818

Dear Ms. Hamilton:

Defendant-Appellant Chevron writes in response to Plaintiff-Appellee's letter regarding *Miree v. DeKalb County*, 433 U.S. 25 (1977).

In *Miree*, parties injured by a plane crash sued DeKalb County for breaching contracts with the FAA requiring the County to maintain the grounds surrounding the airport. *Id.* at 27. The case presented the “narrow” question “whether petitioners as third-party beneficiaries of the contracts have standing to sue,” *id.* at 29, which the Court reasoned was governed by state law. The Court acknowledged that “federal common law may govern ... where a uniform national rule is necessary to further the interests of the Federal Government,” but concluded that federal interests would not “be burdened or subjected to uncertainty by variant state-law interpretations regarding whether those with whom the United States contracts might be sued by third-party beneficiaries to the contracts.” *Id.* at 29–30.

Unlike *Miree*, this is a case where a uniform national rule is necessary. *See Illinois v. City of Milwaukee*, 406 U.S. 91, 105 n.6 (1972) (finding the “overriding federal interest in the need for a uniform rule of decision” required applying federal common law to a dispute involving “pollution of a body of water such as Lake Michigan bounded, as it is, by four States”). The Supreme Court has concluded that “[w]hen we deal with air and water in their ambient or interstate aspects, there is a federal common law.” *Id.* at 105; *see also California v. BP P.L.C.*, 2018 WL 1064293, at *3 (N.D. Cal. Feb. 27, 2018) (“[A] uniform standard of decision is necessary to deal with the issues raised in plaintiffs’ complaints.”).

And unlike in *Miree* where the federal government expressly disclaimed a need for uniform standards, *Miree*, 433 U.S. at 29 (noting “its interests would not be directly affected by the

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resolution of these issues”), here the United States has emphasized the need for uniformity concerning national environmental standards as *amicus curiae* in similar actions. *City of New York v. BP P.L.C.*, No. 18-2188 (2d Cir.), Dkt. 210 at 14; *City of Oakland v. B.P. p.l.c.*, No. 18-16663 (9th Cir.), Dkt. 97 at 24.

Sincerely,

/s/ Theodore J. Boutrous, Jr.

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cc: All counsel of record (via ECF)