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Supreme Court of California
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IN THE SUPREME COURT OF CALIFORNIA

CHEVRON U.S.A., INC., ET AL.

Plaintiffs and Respondents,
v.

COUNTY OF MONTEREY, ET AL.
Defendants;

PROTECT MONTEREY COUNTY and DR. LAURA SOLORIO

Intervenors and Appellants

After a Decision by the Court of Appeal
Sixth Appellate District, Case No. H045791
Appeal from a Judgment Entered in Favor of Plaintiffs
State of California, County of Monterey
Case No. 16-CV-3978 (and consolidated cases)
The Honorable Thomas Wills

ANSWERING BRIEF OF RESPONDENTS NARO-CA ET. AL.

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TABLE OF CONTENTS

I. INTRODUCTION 1

II. ARGUMENT 2

A. OTHERWISE VALID LOCAL LEGISLATION IS PREEMPTED AND VOID IF IT CONFLICTS WITH STATE LAW..... 2

B. THE FIRST SENTENCE OF PRC SECTION 3106(b) EXPRESSLY PREEMPTS PROVISIONS LU-1.22 AND LU-1.23 OF MONTEREY COUNTY'S INITIATIVE "MEASURE Z". 2

C. EVEN IF THE FIRST SENTENCE OF PRC SECTION 3106(b) IS DEEMED NOT TO EXPRESSLY PREEMPT PROVISIONS LU-1.22 AND LU-1.23 OF MEASURE Z, IT WOULD MAKE NO DIFFERENCE. PRC SECTION 3106, TAKEN TOGETHER WITH OTHER RELEVANT SECTIONS OF THE PUBLIC RESOURCES CODE, WOULD IMPLIEDLY PREEMPT LU-1.22 AND LU-1.23. 6

D. IN ADDITION TO THE ANSWERS TO INTERVENORS' ARGUMENTS SUBSUMED IN THE FOREGOING DISCUSSIONS, WE ANSWER INTERVENORS THREE ADDITIONAL ERRONEOUS ARGUMENTS..... 17

1. Intervenors' first erroneous argument is that Measure Z is not inimical to PRC Section 3106 because Section 3106 does not mandate using any particular method or practice that Measure Z prohibits or prohibits using any particular method or practice that Measure Z mandates. 17

2. Intervenors' second erroneous argument is that because some other Public Resources Code Sections contain language expressly disclaiming any intent to preempt or otherwise indicating no intent to preempt local regulatory authority, PRC Section 3106 cannot be read to preempt Measure Z. 19

3. Intervenors' third erroneous argument is that Measure Z is just a traditional land use/zoning law that regulates where and whether certain operations may occur, not how they occur. Therefore, they say Respondents are ignoring the strong presumption against preemption where such local laws are involved. 20

III. CONCLUSION 21

IV. CERTIFICATE OF WORD COUNT I

TABLE OF AUTHORITIES

Cases

Beverly Oil Co. v City of Los Angeles (1953) 40 Cal. 2d 552.....20, 21
California Water & Telephone Co. v. County of Los Angeles, supra, 253 Cal. App. 2d 16, 31.....16
Candid Enterprises, Inc. v. Grossmont Union High School Dist.(1985) 39 Cal. 3d 878, 885).....7
City of Riverside v Inland Empire Patients Health & Wellness Center, Inc. (2013) 56 Cal.4th 729, 743.....22, 23
Cohen v Board of Supervisors (1985) 40 Cal. 3rd 277.....23
Friel v. County of Los Angeles (1959) 172 Cal. App.2d 142, 157.....20
Harris v Capital Growth Investors (1991) 52 Cal. 3rd 1142, 1158.....19
Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach (2001) 86 Cal. App. 4th 534, 555 20
Marblehead Land Co. v. City of Los Angeles (9th Cir. 1931) 47 F.2d 528, 532 20
N. Cal. Psychiatric Soc'y v. City of Berkeley, (1986) 178 Cal. App. 3d 90.... ……..24
Pac. Tel. & Tel. Co. v City and County of S.F. (1959) 51 Cal. 2d 766, 771 22
Pacific Palisades Assn. v. City of Huntington Beach (1925) 196 Cal. 211, 217 20
Sherwin-Williams Co. v. City of Los Angeles (1993) 4 Cal. 4th 893, 897 7
Wood v. City Planning Com. (1955) 130 Cal. App.2d 356, 364.....20

Statutes

P.R.C. § 3103.....14
P.R.C. § 3104.....14
P.R.C. § 3106……passim
P.R.C. § 3275.....13
P.R.C. § 3276.....13
P.R.C. § 3277.....13
P.R.C. § 3534.....19
P.R.C. § 3011(a) 13
P.R.C. § 3106(b).....passim
P.R.C. § 3690.....18, 19

Other Authorities

59 Ops. Cal.Atty.Gen. 461, 478 26
59 Ops. Cal.Atty.Gen. 461, 477 ..... 15, 16
Welf. & Inst. Code, § 5325.1 24

Rules

Rule 8.504(d)(1) I
Rule 8.516 6

Constitutional Provisions

Article XI, Section 7 ..... 8, 24

I. INTRODUCTION

The order granting review, in this case, ordered the parties to brief whether Public Resources Code Section 3106 impliedly preempts provisions LU-1.22 and LU-1.23 of Monterey County's initiative "Measure Z"? We are also instructed by Rule 8.516 of the California Rules of Court that we must limit our briefs and arguments to the foregoing issue and any issue fairly included therein. Applying Rule 8.516, we respectfully submit that there are two issues to be addressed:

1. The first issue is whether the first sentence of Public Resources Code Section 3106(b) expressly preempts provisions LU-1.22 and LU-1.23 of Monterey County's initiative "Measure Z"?
2. The second issue, even if the first sentence of PRC Section 3106(b) does not expressly do so, is whether Section 3106 and other sections of the Public Resources Code—taken as a whole—impliedly preempt provisions LU-1.22 and LU-1.23 of Monterey County's initiative "Measure Z"?

The answer to both these issues is, "yes!"

II. ARGUMENT

A. OTHERWISE VALID LOCAL LEGISLATION IS PREEMPTED AND VOID IF IT CONFLICTS WITH STATE LAW.

As the California Supreme Court has declared, "[i]f otherwise valid local legislation conflicts with state law, it is preempted by such law and is void." See *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal. 4th 893, 897 (citing *Candid Enterprises, Inc. v. Grossmont Union High School Dist.(1985)* 39 Cal. 3d 878, 885)). Local legislation conflicts with state law where it "duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication." Id. Local legislation is "duplicative" when it is coextensive of state law. Id. And local law is contradictory where it obstructs or harms state law. *Id.* at 898. Finally, local legislation enters an area that is "fully occupied" by state law when the legislature expressly or impliedly manifested an intent to occupy the area. *Id*; *see also Candid Enterprises, Inc.*, 39 Cal. 3d at 885.

B. THE FIRST SENTENCE OF PRC SECTION 3106(b) EXPRESSLY PREEMPTS PROVISIONS LU-1.22 AND LU-1.23 OF MONTEREY COUNTY'S INITIATIVE "MEASURE Z".

The first sentence of PRC Section 3106(b) does expressly preempt the provisions of LU-1.22 and LU-1.23 of Monterey County's initiative Measure Z. The first sentence of PRC Section 3106(b) says,

> The supervisor shall also supervise the drilling, operation, maintenance, and abandonment, of wells so as to *permit the owners or operators of the wells to utilize all methods and practices known to the oil industry for the purpose of increasing the ultimate recovery* of

> underground hydrocarbons and which, in the opinion of the supervisor, are suitable for this purpose *in each proposed case* (emphasis supplied).

The language of PRC Section 3106(b) is clear and unambiguous. If the activities prohibited by LU-1.22 (underground disposal of produced water) and LU-1.23 (drilling new wells) are "methods" or "practices" which are known in the industry to increase the ultimate recovery of underground hydrocarbons, it is the Oil and Gas Supervisor who shall determine their use-not the voters or the Board of Supervisors of Monterey County.

Very simply, the statute empowers the Oil and Gas Supervisor to say, "Yes." Therefore, neither the Board of Supervisors nor the voters of Monterey County may say, "No." Saying "No", would directly conflict with PRC Section 3106(b) and therefore violate Article XI Section 7 of the California Constitution, which says:

> A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations *not in conflict with general laws* (emphasis supplied).

It follows that the plain language of the first sentence of PRC Section 3106(b) *expressly* preempts LU-1.22 and LU-1.23 because it *expressly* gives the California Oil and Gas Supervisor—and no one else—the power to permit the use of "methods" and "practices" known in the industry to increase the ultimate recovery of oil and gas and to determine which "methods and practices" are "suitable" in each proposed case.[1]

[1] At page 25 footnote 15 of their Opening Brief Intervenors assert that "No party claimed below that Measure Z is expressly preempted…" Not so,

This brings us to whether the drilling of new oil and gas wells or new injection wells and the underground disposal of produced water are "methods and practices" known in the industry to increase the ultimate recovery of oil and gas. The answer is, yes.

As the trial court found at pages 2 and 3 of its Final Statement of Decision [AA vol. 32 pg. 7690-7691], the drilling of new wells and the underground disposal of produced water are essential to the continued production of oil and gas:

> There exists naturally in these formations, accompanying the oil deposits, a huge volume of water laden with salt and hydrocarbons (95% water volume for every 5% of oil, by one expert's estimation). Because of the highly viscous nature of the oil deposits, the oil must be heated by injecting steam underground in order to make it more fluid so that it can be pumped out. In San Ardo, as oily water is pumped out of the ground, it is placed into storage tanks where the oil and water settle out and separate. The extracted water is then dealt with in one of three different ways. It is either 1) purified, in part (and the purified water placed back into the ground to recharge

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Naro-Ca, et. al. have consistently claimed that PRC Section 3106 expressly preempts. See, for instance, paragraph 111 at page 25 of Naro's First Amended Complaint where we allege, "The Legislature has expressly delegated to DOGGR the authority to "supervise the drilling, operation, maintenance, and abandonment of wells" (PRC Section 3106, subd. (a)). In exercising this power, the Legislature has directed that DOGGR must "permit the operators of the wells to utilize all methods and practices known to the oil industry for the purpose of increasing the ultimate recovery of underground hydrocarbons and which, in the opinion of the supervisor, are suitable for this purpose in each proposed case." (Id., subd. (b)). AA vol. 6 pg. 1352 lines 10-15.

> the water table and maintain wetlands; 2) treated and injected into the ground as steam at the Lombardi formation level to heat the viscous oil deposits; or 3) reinjected –with the oil removed but otherwise untreated and in its natural state–along with the saline brine extracted in the reverse osmosis purification process, into the Aurignac Formation. As the pumped-out water is subjected to these processes, it must be stored temporarily.[2]
>
> All of the water used for steam injection comes from the underground, pumped-out water (after some treatment). The process of removing oil and naturally occurring water necessarily results in less volume to occupy the space previously occupied by the extracted oil/water and, consequently in colder, naturally occurring water encroaching into that space. This in turn requires extraction of the encroaching cold oil/water and further steam injection to maintain the temperature (and lower viscosity) of the oil so that it can be removed. As the oil/water is extracted, the perimeter of the area that needs to be heated expands – necessitating further steam injection and new wells at the increasing periphery of the area from where the recoverable oil lies.
>
> *Oil cannot be extracted without the continuous drilling of new steam injection wells. Unless steam is continuously added, the underground steamed area (known as a "steam chest") cools and the oil is no longer extractable. Oil production would then decline relatively quickly and come to a complete halt in five years or less.* (Emphasis supplied)

It is undeniable that the underground disposal of produced water (sometimes referred to as "wastewater"), permitted by the Supervisor and prohibited by Measure Z as well as the drilling of new wells permitted by the Supervisor

[2] Oil producers such as Eagle Petroleum, LLC (Eagle), which operates out of the Lynch Canyon, also inject steam and produced water into underground formations. Eagle injects steam into the Lanigan Formation and produced water into either the Lanigan Formation or the Santa Margarita Formation."

and prohibited by Measure Z, are methods and practices which help maximize the ultimate production of oil. PRC Section 3106(b) expressly and exclusively assigns the job of permitting such methods and practices to the Oil and Gas Supervisor and no one else. LU-1.22 and LU-1.23 of Measure Z are therefore expressly preempted.

C. EVEN IF THE FIRST SENTENCE OF PRC SECTION 3106(b) IS DEEMED NOT TO EXPRESSLY PREEMPT PROVISIONS LU-1.22 AND LU-1.23 OF MEASURE Z, IT WOULD MAKE NO DIFFERENCE. PRC SECTION 3106, TAKEN TOGETHER WITH OTHER RELEVANT SECTIONS OF THE PUBLIC RESOURCES CODE, WOULD IMPLIEDLY PREEMPT LU-1.22 AND LU-1.23.

In the preceding subsection of this brief, we urge that the first sentence of PRC Section 3106(b) *expressly* preempts LU-1.22 and LU-1.23 because the first sentence of PRC Section 3106(b) *expressly* gives the Oil and Gas Supervisor—and no one else—the power to permit the use of "methods" and "practices" known in the industry to increase the ultimate recovery of oil and gas.

If this Court were to disagree with our characterization of the preemption's being expressed, it would not change the outcome. There are at least three ways the Public Resources Code would have impliedly preempted LU-1.22 and LU-1.23. First, PRC Section 3106 impliedly would preempt LU-1.22 and LU-1.23 by completely occupying the field of regulating "methods and practices" known in the industry to maximize the

ultimate recovery of oil and gas. Second, as we will demonstrate below, the Legislature has given the Oil and Gas Supervisor the task of balancing environmental safety and greenhouse gas emission reduction against the state's need for adequate oil and gas energy needs. That is a statewide, not a local matter. Third, the Legislature has tasked the Oil and Gas Supervisor with regulating all down-hole activities so as to achieve the safe production of oil and gas. LU-1.22 and LU-1.23 impact down-hole activities.

Turning first to "methods and practices, by unambiguous language the legislature gave the Oil and Gas Supervisor his or her marching orders. As we have already seen, the first sentence of PRC Section 3106(b) mandates that the Supervisor of Oil and Gas shall permit owners and operators to use various methods and practices (which he or she finds suitable in each proposed case) to *maximize the ultimate economic production* of oil and gas.

But that is not all, the rest of Section 3106 makes it clear that even though the Supervisor of oil and gas is to *"prevent, as far as possible, damage to life, health, property, and natural resources…,"* it is the policy of the State of California to eliminate waste by *"increasing the recovery of underground hydrocarbons"* and that *"to best meet oil and gas needs in this state, the supervisor shall administer this division so as to encourage the wise development of oil and gas resources."* (Emphasis supplied).

Certainly, that statutory language is clear and unambiguous. It constitutes a complete occupation of the field of regulating "methods and practices" known in the industry to maximize the ultimate recovery of oil and gas.

Second, we turn to the Supervisor's task of balancing environmental safety and greenhouse gas emission reduction against the state's need for adequate energy. Over the years, particularly recently, there have been legislative mandates other than PRC Section 3106, instructing the oil and gas supervisor to regulate in such a way as to protect the environment while at the same time continuing to meet the energy needs of the state.

One example is PRC Sections 3275, 3276, and 3277 (added by Stats. 1974, Ch. 1335), under which California became a member of The Interstate Compact to Conserve Oil and Gas. The purpose of the Compact is to conserve oil and gas by the prevention of physical waste of oil and gas from any cause. It was originally formed by its then member states on February 16, 1935. Thereafter, effective September 1, 1971, it was amended and thereafter received Congressional consent. Each member state—California included— agrees that it will enact and maintain laws so as to accomplish within reasonable limits the prevention of, among other things, physical waste of oil or gas or *"loss in the ultimate recovery thereof."* See PRC Section 3276. (Emphasis supplied).

Yet another example, indeed a rather recent example which became effective January 1, 2020, is PRC Section 3011(a). It provides that

> The purposes of this division *include* protecting public health and safety and environmental quality, including reduction and mitigation of greenhouse gas emissions associated with the development of hydrocarbon and geothermal resources *in a manner that meets the energy needs of the state.* (Emphasis Supplied)

What has clearly happened in recent years is that the legislature has expanded the Oil and Gas Supervisor's responsibilities in the environmental arena while still entrusting him or her with the responsibility of meeting the oil, gas, and geothermal energy needs of the state. Balancing public health and safety and environmental quality, including reducing greenhouse gas emissions in a manner that meets the energy needs of the state is a demanding task. It requires access to technical knowledge and skills that are more likely to be available to statewide agencies than to city councils, county boards of supervisors and local voters in initiative measures.[3] It also requires a statewide rather than local perspective.

Leaving it to the Oil and Gas Supervisor to permit the use of oil and gas "methods and practices" in order to meet the energy needs of the state, and at the same time entrusting him or her with protecting public health,

[3] In fact, the law requires that the chief deputy, as well as each district deputy within CalGEM must be a competent engineer or geologist experienced in the development of production of oil and gas. (Public Resources Code Section 3103 and 3104) Moreover, the State of California has the ability to draw on the expertise of multiple state agencies. An example is the Ad Hoc Committee, State Regulations and Practices, Oil and Gas Operations and Oil Pollution referenced in Intervenors' Motion Requesting Judicial Notice appended to Intervenors' Opening Brief herein at Volume 4, pages 237-329, it drew on the expertise of the Division of Oil and Gas, the Water Resources Control Board, the Department of Conservation, the State Lands Division, the Department of Fish and Game, the California Disaster Office, the Environmental Quality Study Council, the Department of Harbors and Watercraft, the Interagency Council on Ocean Resources, the Public Utilities Commission and the Division of Industrial Safety.

safety and environmental quality, including reduction of greenhouse gas emissions associated with the development of hydrocarbon and geothermal resources is consistent with *exclusively* entrusting the Oil and Gas Supervisor with the responsibility of balancing environmental needs against hydrocarbon energy needs. To require the Oil and Gas Supervisor to somehow share that responsibility with local city councils, county boards of supervisors and local voters in the initiative process is inconsistent with giving him or her the responsibility of balancing those needs. Indeed it is asking the supervisor to perform the impossible.[4]

Clearly the responsibility of balancing environmental needs against energy needs is a matter of statewide concern, not local concern. Local control over the "methods and practices" described in PRC Section 3106 is clearly preempted.

The office of the Attorney General of California is on record as agreeing that meeting the energy needs of the state is a matter of statewide, not local, concern. In Opinion No. SO 76-32, 59 Ops.Cal.Atty.Gen. 461, 477, issued August 24, 1976, the Attorney General opined on the subject of local versus statewide regulation of oil and gas. Curiously enough he confined himself to field preemption and did not discuss the express nature

[4] Note that the first sentence of PRC Section 3106(b) when referring to permitting "methods and practices" uses the conditional phrase "suitable…in each proposed case." It thus implies a case-by-case consideration. Sharing case-by-case regulatory authority with city councils and county boards of supervisors is an unworkable challenge at best. Doing so with voters in the initiative process is an impossibility. There is no way it can be done.

of the first sentence of PRC Section 3106(b). However, when he came to the hydrocarbon energy needs of the state, he was quite clear that the Oil and Gas Supervisor had been entrusted with protecting those needs. On that subject, there is no room for local regulation. Commencing at page 477 of 59 Ops. Cal.Atty.Gen., he declared:

> Having examined the local concerns with the drilling and production of oil, gas, and geothermal resources as well as the state's statutory and administrative regulatory scheme, we now turn to an examination of statewide policies applicable to the same operations. To the extent that the 1974 letter of this office referred to above is inconsistent with this conclusion, it is disapproved.
>
> In our view, the conservation of and protection of the state's finite energy resources, by means of the regulatory policy reviewed herein, transcends local boundaries and interests. Oil, gas, and geothermal resources are flung far and wide around the state: to leave the simultaneous regulation of their development to various local entities would subject development of the state's fuel resources to the "checkerboard of regulations" avoided by the court in *California Water & Telephone Co. v. County of Los Angeles*, supra, 253 Cal. App. 2d 16, 31. Such local regulation could obviously interfere with and frustrate the state's conservation and protection regulatory scheme reviewed above. This "checkerboard" problem seems highlighted by the fact that this state's deposits of energy resources do often extend under the boundaries of several local entities as, for example, in the Los Angeles basin. In our view, the drilling and production of energy resources represents an endeavor of commercial activity that commands uniform regulation. . . .
>
> ***
>
> The statutory and administrative regulatory scheme outlined above reveal to us a comprehensive purpose and scope broad enough to exclude local regulation…"

When it comes to weighing environmental impacts against the state's energy needs, there is no doubt that local county boards of supervisors and

city councils have knowledge of the environmental concerns of the local electorate. That, however, is only part of the picture. There are two other parts. One is technical knowledge of oil and gas production and its true environmental impact. The other is meeting the oil, gas, and geothermal energy needs of California. Meeting the energy needs of the state is a matter of statewide concern, not a local concern. The Legislature has given the Oil and Gas Supervisor that responsibility when it comes to oil, gas. and geothermal energy. Therefore, tasking the Oil and Gas Supervisor with balancing environmental impacts against oil, gas, and geothermal energy needs (the latter being a matter of statewide concern) it necessarily means that the task of balancing the two becomes a matter of statewide concern. If so, local regulation on that subject is preempted. Therefore LU-1.22 and LU-1.23 are preempted.

Third, turning to CalGEM's occupying the field of safe oil and gas production, it is clear that LU-1.22 and LU-1.23 pretend to only regulate surface uses but are actually trying to regulate what goes on down-hole. Down-hole producing regulation has been completely occupied by the State of California. This subject has been addressed in detail by the Answering Brief of Chevron USA, Inc., filed concurrently herewith. Rather than burden the Court with unnecessary repetition, we hereby adopt Chevron's arguments on this issue.

Note what we are not arguing. We are not arguing that the legislature has fully occupied the entire field of oil and gas regulation. PRC Section 3106(b) does not prohibit counties from exercising their zoning powers to

decide where, if at all, oil and gas operations within their boundaries may be conducted. What they cannot do is designate physical areas where oil and gas operations will be permitted and then pick and choose which methods and practices may or may not be used by oil operators to increase the ultimate recovery of oil and gas in those producing areas.

There is one statute that may give some guidance on what those subjects open to local regulation might be. It is PRC Section 3690 which provides:

> This chapter shall not be deemed a preemption by the state of *any existing* right of cities and counties to enact and enforce laws and regulations regulating the conduct and location of oil production activities, including, but not limited to, *zoning, fire prevention, public safety, nuisance, appearance, noise, fencing, hours of operation, abandonment, and inspection.* (Emphasis supplied)

It is true that the guidance is only indirect because section 3690 expressly provides that nothing in Chapter 3.5 preempts any existing rights cities and counties might have. It does not purport to be a list of rights they do have, and it in no way restricts the preemptive effect of Section 3106 or any other code section not located in Chapter 3.5. However, the language of PRC Section 3690 does suggest that counties can regulate in such areas as zoning, fire prevention, public safety, nuisance, appearance, noise, fencing, hours of operation, abandonment, and inspection.[5]

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[5] Although nothing in Chapter 3.5 preempts any rights a city or county may have regarding abandonment, any such rights may be preempted by PRC

Might the words "including, but not limited to," in Section 3690 broaden out that list? The answer is no. Those words bring into play the well-known rule of statutory construction *ejusdem generis.* Under that rule, where specific words follow general words in a writing or where specific words precede general words, the general words are construed to embrace only things similar in nature to those enumerated by the specific words. In *Harris v Capital Growth Investors* (1991) 52 Cal. 3rd 1142, 1158, the California Supreme Court explained the rule as follows:

> Among the maxims of jurisprudence in the Civil Code is the following: "Particular expressions qualify those which are general." (§ 3534 [enacted 1872].) The principle is an expression of the doctrine of *ejusdem generis* (or Lord Tenterden's rule), which seeks to ascertain common characteristics among things of the same kind, class, or nature when they are cataloged in legislative enactments…. Ejusdem generis is illustrative of the more general legal maxim *nocitur a sociis*—"it is known from its associates."

We suggest that the list of examples in PRC Section 3690 may give at least some guidance to counties and cities of the sort of regulatory powers which they have over the conduct of oil and gas operations within their boundaries.

Another argument raised by Intervenors in defense of Measure Z is based on their mistaken view of the history of oil and gas regulation. The first sentence of the introduction to their opening brief makes this clear. They argue, "For more than a Century, local governments and the state have shared

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section 3106 which specifically names abandonment as one of the areas within the jurisdiction of the Oil and Gas Supervisor.

regulatory authority over oil and gas drilling and production in California" At page 18 of their opening brief, they argue that PRC Section 3106 "must be interpreted in light of a century of case law preserving local authority to prohibit oil and gas development." Moreover, they there cite six cases purportedly "confirming local authority to regulate and prohibit oil and gas development". The cases they cite are *Pacific Palisades Assn. v. City of Huntington Beach* (1925) 196 Cal. 211, 217; *Marblehead Land Co. v. City of Los Angeles (9th Cir. 1931) 47 F.2d 528, 532; Friel v. County of Los Angeles* (1959) 172 Cal. App.2d 142, 157; *Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach* (2001) 86 Cal. App. 4th 534, 555; *Wood v. City Planning Com.* (1955) 130 Cal. App.2d 356, 364 and *Beverly Oil Co. v City of Los Angeles* (1953) 40 Cal. 2d 552

Note the use of the word "regulate." This is an exaggeration. None of them are cases supporting local regulation of methods and practices designed to maximize ultimate production of oil and gas. None of them involved preemption. All of them are essentially zoning cases which dealt with local governments' power to exclude oil and gas development from within their borders or to relegate oil and gas development to certain designated zones within their borders.[6]

Only one of them dealt with anything that could be remotely described as a "method or practice" having anything to do with maximizing ultimate

[6] We say "essentially zoning cases" because one of them, the *Hermosa Beach* Case, may be a nuisance case.

oil and gas production. That case is *Beverly Oil Co. v City of Los Angeles* (1953) 40 Cal 2d 552. There this court upheld an ordinance prohibiting drilling and *deepening* wells in certain zones. If "deepening" a well is a method or practice within the meaning of PRC Section 3106(b) the *Beverly Oil Co.* case is no longer good law. The enactment of the first sentence of PRC Section 3106(b) in 1961, some eight years after *Beverley Oil*, has changed the law and that case is no longer good law, at least on that point.[7]

We say Intervenors' view of the history of oil and gas regulation is faulty. They see their zoning power upheld in the foregoing cases and they also see that in the right fact situation zoning power can include excluding oil and gas operations within their boundaries. They then assume that because they have a right to zone they also have a right to broadly regulate. Perhaps they are thinking that the greater must necessarily include the lesser. In any event, they ignore the fact that ever since the creation of the Division of Oil and Gas (now CalGEM) in 1915, the regulator of oil and gas in California has been the State of California acting through the Division of Oil and Gas (now CalGEM).[8] More important to the case at bar, they ignore the

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[7] The first sentence of PRC Section 3106(b) was added in 1961 by Stats. 1961 ch. 2074, Section 1

[8]The CalGEM website states, "The Legislature created what is now the Geologic Energy Management Division (CalGEM) in 1915 to ensure the safe development and recovery of energy resources." https://www.conservation.ca.gov/calgem/Pages/Oil-and-Gas.aspx#:~:text=%E2%80%8B%E2%80%8B%E2%80%8BOil%20production,and%20recovery%20of%20energy%20resources.

significance of the year 1961when the first sentence of PRC Section 3106(b) was enacted. As the California Supreme Court observed in *Pac. Tel. & Tel. Co. v City and County of S.F*. (1959) 51 Cal. 2d 766, 771, "What may at one time have been a matter of local concern may at a later time become a matter of state concern controlled by the general laws of the state."

D. IN ADDITION TO THE ANSWERS TO INTERVENORS' ARGUMENTS SUBSUMED IN THE FOREGOING DISCUSSIONS, WE ANSWER INTERVENORS THREE ADDITIONAL ERRONEOUS ARGUMENTS.

We count three additional erroneous arguments that Intervenors make in support of their position.

1. Intervenors' first erroneous argument is that Measure Z is not inimical to PRC Section 3106 because Section 3106 does not mandate using any particular method or practice that Measure Z prohibits or prohibits using any particular method or practice that Measure Z mandates.

Appellants erroneously argue that LU-1.22 and LU-1.23 do not conflict with the Public Resources Code because PRC § 3106 does not *require* oil and gas operators to inject wastewater or to drill new wells. It merely permits those activities. Appellants rely on language in *City of Riverside v Inland Empire Patients Health & Wellness Center, Inc.* (2013) 56 Cal.4th 729, 743 that a local ordinance does not conflict with state law "unless the ordinance directly requires what the state statute forbids or prohibits what the state enactment demands." They read this statement of the rule as meaning that Measure Z would only conflict with PRC § 3106 if

PRC § 3106 *required* oil and gas producers to inject produced water into subsurface disposal sites or *required* them to drill new oil and gas wells.

Appellants are wrong. They are playing a semantic game that ignores the plain language of PRC § 3106. The plain language of PRC § 3106 does not mandate that oil and gas producers are required to undertake wastewater injection projects or are required to undertake well drilling projects. However, its plain language does *mandate* that oil and gas producers *be allowed* to undertake wastewater injection projects properly approved by the Oil and Gas Supervisor and also be allowed to undertake oil and gas well drilling projects properly approved by the Oil and Gas Supervisor. Measure Z, on the other hand, prohibits oil and gas producers from doing so. Therefore Measure Z very clearly does prohibit that which PRC § 3106 mandates.

Indeed the concurring opinion in *City of Riverside v Inland Empire Patients Health & Wellness lnc.,* (2013) 56 Cal. 4th 729, 763 makes the invalidity of Intervenors' argument clear. The concurring opinion points out that the majority opinion should not be misunderstood to improperly limit the scope of preemption analysis: "As the court's opinion makes clear elsewhere (referring to the majority opinion's discussion at page 758 of 56 Cal 4th where the Court discusses *Cohen v Board of Supervisors* (1985) 40 Cal. 3rd 277 state law may preempt local law when local law prohibits not only what a state statute "demands" but also what the statute permits or authorizes." The concurring opinion points to the majority opinion's description of the Cohen case as "addressing a local ordinance that closely

regulated escort services, stat[ing] that "[I]f the ordinance…attempted to prohibit conduct proscribed *or permitted* by state law,] either explicitly or impliedly, it would be preempted." (Emphasis supplied.)

Moreover, *N. Cal. Psychiatric Soc'y v. City of Berkeley,* (1986) 178 Cal. App. 3d 90 is a clear holding that local law is preempted where it prohibits what state law permits-which of course, is precisely our case. In the *City of Berkeley* case, the City enacted an ordinance prohibiting the use of electroconvulsive therapy [ECT] within the city. A psychiatric association and others challenged the ordinance on various grounds including the claim that it violated Article XI, Section 7 of the California Constitution because it conflicted with the California legislature's intent, expressed in Welf. & Inst. Code, § 5325.1, that although use of ECT was not mandated, all mentally ill persons have a "right to treatment services [including ECT] which promote the potential of the person to function independently."

2. Intervenors' second erroneous argument is that because some other Public Resources Code Sections contain language expressly disclaiming any intent to preempt or otherwise indicating no intent to preempt local regulatory authority, PRC Section 3106 cannot be read to preempt Measure Z.

Intervenors point to several PRC Sections other than Section 3106 as disclaiming any intent to preempt local regulatory authority and say such statutory language prohibits any preemption otherwise implied in Section 3106. They concede that the legislature inserted no such language in Section 3106 and insist that this is evidence of an intent to not preempt.

The common sense answer to this argument is that the legislature has demonstrated that when it wants to disclaim any intent to preempt it knows how to do so. Here it chose not to and probably for good policy reasons. The task of balancing the legislature's desire to reduce greenhouse gas emissions against the need for adequate California energy resources makes this a matter of statewide concern, not a matter of local concern. The balancing should be done at the state level. Any attempt to do so at the local level is preempted.

3. Intervenors' third erroneous argument is that Measure Z is just a traditional land use/zoning law that regulates where and whether certain operations may occur, not how they occur. Therefore, they say Respondents are ignoring the strong presumption against preemption where such local laws are involved.

The Intervenors have done their best to portray Measure Z as merely being an everyday, run-of-the-mill land use measure. Even though their aim was not really to regulate land but really to shut down oil and gas operations by prohibiting the disposal of produced water into the very aquifers from whence it had come and by prohibiting new oil and gas wells, even in the San Ardo field which is zoned for heavy industry. Their Measure Z was drafted to resemble a land use measure. Thus they didn't directly purport to shut down produced water disposal but pretended to prohibit surface uses in support of produced water disposal. Therefore, LU-1.22 was worded as follows:

> The development, construction, installation, or use of any facility, appurtenance or above-ground equipment, whether temporary or permanent, mobile or fixed, accessory or principal, in support of oil and gas wastewater injection or oil and gas wastewater impoundment is prohibited on all lands within the County's unincorporated area.

The trial court saw through this immediately and noted that the "County and Intervenors… characterize Measure Z as a land use regulation addressing surface, as opposed to subsurface activities." (AA vol. 32 pg. 7714) "[M]easure Z's purported prohibition on certain "land uses" *is clearly a pretextual attempt to do indirectly what it cannot do directly.* (See 59 Ops. Cal.Atty.Gen. at p. 478 ["there will …be a conflict with state regulation when a local entity, attempting to regulate for a local purpose, *directly or indirectly* attempts to exercise control over subsurface activities"]…And tellingly, Intervenors conceded at argument that Measure Z does not merely regulate surface land uses but instead, "specifically prohibit[s] wastewater injection for storage and disposal." (AA vol. 32 pg. 7714) (Emphasis supplied) [See also Court Transcript, Volume VI, p. 1516).

III. CONCLUSION

We respectfully submit that this Court should affirm the decisions below.

DATED: June 24, 2022

Respectfully submitted,

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IV. CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, Rule 8.504(d)(1))

I, Edward S. Renwick, declare and state as follows:

1. I am an attorney duly licensed to practice law before all courts of the State of California and am an associate with the law firm of Hanna and Morton LLP, attorneys of record herein for Respondent, Chevron U.S.A. Inc.

2. I make this declaration in support of Respondent's Brief.

3. I have personal knowledge of the facts set forth in this declaration and if called as a witness, could and would testify competently to them.

4. Pursuant to California Rules of Court, Rule 8.504 (d)(1), I hereby make the following certification: The text of this brief consists of 5747 words as counted by the word-processing program used to generate this brief.

Executed on June 24, 2022, under the laws of the State of California at Los Angeles, California.

Edward S. Renwick

PROOF OF SERVICE

I, Irma Aguilar, declare:

I am employed in the County of Los Angeles, State of California. My business address is Hanna and Morton LLP, 444 South Flower Street, Suite 2530, Los Angeles, California 90071. I am over the age of eighteen years and not a party to the action in which this service is made.

On June 24, 2022, I served the document(s) described as ANSWERING BRIEF OF RESPONDENTS NARO-CA, INC., ET. AL. on the interested parties in this action as follows:

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☒ [State] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 24, 2022, at Los Angeles, California.

/s/ *Irma Aguilar*

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Supreme Court of California

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Lower Court Case Number: **H045791**

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/s/Irma Aguilar

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