

**S271869**

**IN THE SUPREME COURT OF THE STATE OF CALIFORNIA**

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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.*

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After a Decision by the Court of Appeal,  
Sixth Appellate District, Case No. H045791

Monterey County Superior Court Case No. 16-CV-3978  
(and consolidated cases), The Hon. Thomas Wills

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**CHEVRON U.S.A., INC.'S OPPOSITION TO  
INTERVENORS' MOTION REQUESTING JUDICIAL  
NOTICE**

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## I. INTRODUCTION

Intervenors PROTECT MONTEREY COUNTY and DR. LAURA SOLORIO (“Intervenors”) filed a Motion Requesting Judicial Notice (“Motion”) with their opening brief asking this Court to take judicial notice of certain documents pursuant to California Evidence Code section 459. Respondents CHEVRON U.S.A. Inc., *et al.* (“Respondents”) object to the following documents attached to the Intervenors’ Motion Requesting Judicial Notice:

- **Exhibit D:** Governor’s Executive Order No. B-55-18 (Sept. 10, 2018), available at <https://www.ca.gov/archive/gov39/wp-content/uploads/2018/09/9.10.18-Executive-Order.pdf>
- **Exhibit E:** Governor’s Executive Order No. N-79-20 (Sept. 23, 2020), available at <https://www.gov.ca.gov/wp-content/uploads/2020/09/9.23.20-EO-N-79-20-Climate.pdf>

These exhibits were not presented to the trial court or appellate court and are not relevant to any issue before the Court. As such, they are improperly before the Court and are not properly subject to judicial notice on appeal.

**II. INTERVENORS IMPROPERLY REQUEST JUDICIAL NOTICE OF DOCUMENTS THAT WERE NOT BEFORE THE TRIAL COURT OR COURT OF APPEAL AND ARE IRRELEVANT TO THE DISPUTE AT ISSUE**

Intervenors' Motion asks this Court to take judicial notice of Exhibits D and E that were not presented to the trial court or Court of Appeal for consideration. This Court should not take judicial notice of these two documents since they were not presented to the underlying trial court. "Reviewing courts generally do not take judicial notice of evidence not presented to the trial court." (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444, fn. 3.)

In fact, Exhibits D and E were also not presented to the court of appeal, although both were issued prior to the issuance of the appellate opinion. As the Supreme Court reviews the judgment of the Court of Appeal, the Court should decline to take judicial notice of these documents where Intervenors present no justification as to why notice of these documents could not have been presented earlier. (*Brosterhous v. State Bar* (1995) 12 Cal.4th 315, 325 ["declin[ing to take judicial notice] as the State Bar puts forth no reason for its failure to request the trial court and Court of Appeal to take judicial notice of the [materials] it now asks this court to review".]) This Court should reject Intervenors' attempt to insert new evidence into this appeal at this late stage, without any justification for why these documents could not have been presented earlier.

The request for judicial notice also seeks to interject new issues that were not previously discussed before the lower courts and that are not relevant to this dispute. Exhibits D and E concern Executive Orders from the Governor, which have not been placed at issue by this litigation. These Executive Orders are not relevant to the preemption issues that are the subject of Intervenor’s petition because these are Executive Orders of the Governor, not the Legislature. While Intervenor’s cite these exhibits in support of their argument concerning the intent of the Legislature, these Orders are plainly irrelevant to the purpose of a statute that the Legislature passed at least 45 years before. (Intervenor’s Brief at p. 56.) These documents are not relevant to the question of whether Public Resources Code section 3106 preempts Measure Z, and therefore the orders should not be judicially noticed.

### III. CONCLUSION

For all the reasons set forth above, Respondents respectfully request that the Court deny Intervenor’s request for judicial notice of Exhibits D and E.

DATED: June 27, 2022

**GIBSON, DUNN & CRUTCHER  
LLP**

/s/ Theodore J. Boutrous, Jr.

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**CERTIFICATE OF WORD COUNT**

Pursuant to California Rules of Court, Rule 8.204(c), undersigned counsel certifies that this CHEVRON U.S.A. INC.'S OPPOSITION TO INTERVENORS' MOTION REQUESTING JUDICIAL NOTICE consists of 824 words, including footnotes but excluding the cover, tables, signature block, and this certificate, according to the word count generated by the program used to prepare this request.

DATED: June 27, 2022

**GIBSON, DUNN & CRUTCHER  
LLP**

*/s/ Dione Garlick*

\_\_\_\_\_   
Dione Garlick

## PROOF OF SERVICE

I, Dione Garlick, declare:

I am employed in the County of Los Angeles, State of California. My business address is Gibson, Dunn & Crutcher LLP, 333 South Grand Avenue, 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 27, 2022, I served the document(s) described as **CHEVRON U.S.A. INC.'S OPPOSITION TO INTERVENORS' MOTION REQUESTING JUDICIAL NOTICE** on the interested parties in this action as follows:

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Executed on June 27, 2022, at Los Angeles, California.

*/s/ Dione Garlick*

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Dione Garlick

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STATE OF CALIFORNIA  
Supreme Court of California

**PROOF OF SERVICE**

STATE OF CALIFORNIA  
Supreme Court of California

Case Name: **CHEVRON U.S.A. v. COUNTY OF MONTEREY (PROTECT MONTEREY COUNTY)**

Case Number: **S271869**

Lower Court Case Number: **H045791**

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

6/27/2022

Date

/s/Dione Garlick

Signature

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Last Name, First Name (PNum)

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