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No. S271869

IN THE SUPREME COURT OF THE STATE 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
Monterey County Superior Court Case No. 16-CV-3978,
(and consolidated cases)
The Honorable Thomas Wills

RESPONDENT CHEVRON U.S.A. INC.'S ANSWERING BRIEF

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I. INTRODUCTION

In 2016, the voters of Monterey County passed Measure Z in response to a public marketing campaign that touted the Measure as a law that would ban fracking in the County. But there is no fracking in Monterey County. And because of the geology of the oil deposits, fracking is unlikely there in the future. Thus, fracking is not at issue in this case. Measure Z, however, contains two other provisions, both of which are at issue. These provisions ban two oil and gas production methods: (1) the subsurface re-injection of "wastewater," which is water that is inevitably produced from the ground along with the oil deposits, and (2) the drilling of new oil and gas wells. If enforced, these two provisions of Measure Z—which received little to no airtime in the marketing campaign promoting it—would dramatically decrease the production and tax revenue from Monterey County's long-extant oil operations. It is perhaps not surprising, therefore, that the County of Monterey is not pursuing relief in this Court, just as it abandoned its appeal in the court below.

To this Court's question—Does Public Resources Code section 3106 impliedly preempt provisions LU-1.22 and LU-1.23 of Monterey County's initiative "Measure Z"?—the trial court and then the court of appeal rendered, unanimously, the correct answer: Yes. Measure Z improperly attempts to subject to local

regulation two operational methods of oil and gas production that state law encourages and promotes, and that state law has vested the expert state agency with the exclusive authority to regulate and permit. Section 3106 of the Public Resources Code,[1] which sets forth a series of legislative policies regarding oil and gas operations within the State, broadly declares that the Public Resources Code shall be administered "so as to encourage the wise development of oil and gas resources." (§ 3106, subd. (d).) Section 3106 further mandates that the State "shall . . . permit the owners and 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." (§ 3106, subd. (b).) Even more on point, section 3106 expressly states that, "as a policy of this state," oil and gas operators are "deemed" to be allowed to do "what a prudent operator using reasonable diligence would do," which expressly includes the subsurface injection of wastewater—the production method that Measure Z purports to prohibit. (*Ibid.*)

By prohibiting oil and gas production methods that the State expressly permits and promotes, Measure Z directly conflicts with a superior law. Contrary to Intervenors' claims, the court of appeal's preemption finding is based squarely on a substantial line

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[1] All subsequent undesignated statutory references are to the Public Resources Code.

of cases that includes decisions from this Court. (See Opn. at p. 20, citing, e.g., *Great Western Shows, Inc. v. County of Los Angeles* (2002) 27 Cal.4th 853, 868.) Indeed, as Justice Liu has explained, "Local law that prohibits an activity that state law intends to promote is preempted, even though it is possible for a private party to comply with both state and local law by refraining from that activity." (*City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, 764 (conc. opn. of Liu, J.).)

Intervenors defend Measure Z on the grounds that it supposedly is consistent with the "environmental protection purposes" of state law governing oil and gas. Environmental protection is an important policy goal and one that is part of DOGGR's dual mandate to enforce. But the State has already taken a series of authoritative and comprehensive steps to address climate change and reduce greenhouse gas emissions and, at the same time, balance and meet the State's energy needs. (See Health & Saf. Code, § 38500, et seq.) Under that system, the ongoing production of oil and gas within the State is expressly permitted and is not inconsistent with the ultimate goal of protecting the environment. In any event, Measure Z does not *balance* environmental concerns. Instead, it completely bans specific methods of oil and gas production that the State has already determined are appropriate under state law, while

incorrectly characterizing these production-method prohibitions as "land use" regulations.

Intervenors claim that the court of appeal's ruling will have catastrophic impacts on the police powers of local governments, undermining local governments' ability to regulate land uses. But this parade of horribles rings hollow. The local government actually affected by Measure Z's invalidation—the County of Monterey—chose not to appeal, leaving only the Intervenors to do so. And the court of appeal expressly found that its opinion shall not "be construed to cast any doubt on the validity of local regulations requiring permits for oil drilling operations or restricting oil drilling operations to particular zoning districts." (Opn. at p. 19, fn. 16.) Local governments will be able to do what they have always done: regulate within their borders in a way that does not conflict with state law.

Conversely, the record shows that to reverse the unanimous Sixth Appellate District and permit the enforcement of Measure Z would inflict a material and cascading impact on the oil operations in Monterey County and the towns, businesses, schools, and individuals that the oil industry supports. Plaintiffs in this lawsuit are not just oil and gas operators, but include the local Monterey school district, small businesses, and individual royalty owners who would be severely impacted by Measure Z's enforcement.

In sum, Measure Z is an impermissible local overreach that directly conflicts with the letter and frustrates the purpose of controlling State law. As a consequence, this Court should affirm the court of appeal's correct and well-reasoned decision.

II. BACKGROUND

A. The State Comprehensively Regulates Oil and Gas Operations.

Oil and gas operations have been one of California's central industries for more than a century, and, for this reason, the State has long maintained a comprehensive regulatory system. Division 3 of the Public Resources Code (§ 3000, et seq.) and its implementing regulations (Cal. Code Regs., tit. 14, § 1712, et seq.) govern oil and gas operations in the State. The Division of Oil, Gas and Geothermal Resources ("DOGGR") is the agency charged with the administration of these laws and regulations.[2]

Public Resources Code section 3106, which consists of four subsections, sets forth a series of policies and mandates that it charges DOGGR with enforcing, including:

- "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*

[2] DOGGR was recently renamed as the California Geologic Energy Management Division (known as "CalGEM"). For purposes of consistency with the court of appeal's decision, this brief continues to identify the agency as DOGGR.

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." (§ 3106, subd. (b), italics added.)

- "To further the elimination of waste by increasing the recovery of underground hydrocarbons, *it is hereby declared as a policy of this state* that the grant in an oil and gas lease or contract to a lessee or operator of the right or power, in substance, to explore for and remove all hydrocarbons from any lands in the state . . . is deemed to allow the lessee or contractor . . . *to do what a prudent operator using reasonable diligence would do*, having in mind the best interests of the lessor, lessee, and the state in producing and removing hydrocarbons, *including, but not limited to, the injection of air, gas, water, or other fluids into the productive strata*, the application of pressure heat or other means for the reduction of viscosity of the hydrocarbons." (§ 3106, subd. (b), italics added.)

- "To best meet the 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*." (§ 3106, subd. (d), italics added.)

As the court of appeal noted, "[T]he legislative history of section 3106 is consistent with our understanding of the statute's text." (Opn. at p. 9.) The Legislature enacted Section 3106 in 1939, along with the original Public Resources Code. (Stats. 1939, ch. 93, § 3106.) The provision originally mandated that DOGGR supervise oil and gas operations "to prevent" "damage to

underground oil and gas deposits from infiltrating water," "loss of oil and gas, and damage to underground and surface waters." (*Ibid*.)

In 1961, the Legislature added subdivision (b), the provision that, as the court of appeal correctly noted, is "the critical one for our purposes." (Opn. at p. 10; Stats. 1961, ch. 2074, § 1.) The legislative history is replete with references supporting the addition of this provision in order to permit and promote the use of certain oil recovery techniques and increase the recovery of oil and gas resources. For example, the Director of the Department of Natural Resources wrote to then-Governor Edmund G. "Pat" Brown in support of the revisions, stating that the "[p]rovisions are added to assist and encourage the oil industry in the use of secondary recovery operations . . . and thereby increase the ultimate oil recovery percentage." (RJN[2]A:100; see also RJN[2]A:102 ["an addition to Section 3106 . . . will assist oil operators in the use of secondary recovery operations in the production of oil. Such methods are becoming more important each year"]; RJN[2]A:99 ["This bill . . . involves the duties of the supervisors . . . with respect to secondary recovery methods to assure maximum recovery of underground hydrocarbons."])

In 1972, the Legislature added the text of subdivision (d), expressly directing DOGGR to "encourage the wise development of oil and gas resources." (Stats. 1972, ch. 898, § 3106) The

legislative history of this provision states that the revision's purpose is to "strengthen[] the role of [DOGGR] in dealing with environmental problems." (RJN[6]C:456.) There have been no material changes to the provision since 1972, although all subsequent amendments have continued to add to DOGGR's authority to regulate oil and gas operations consistent with the provision. (Stats. 1989, ch. 1383, § 2 [increasing the methods referenced in section 3106 and giving the supervisor authority to impose a monitoring program]; Stats. 1994, ch. 523, § 3 [granting supervisor authority over tanks, pipelines, and other facilities].)

Over the course of the last 83 years, the revisions to section 3106 further emphasized the legislative policies of encouraging oil and gas operations, permitting specific production techniques, and maximizing the ultimate recovery of oil within the state. Similarly, the revisions to section 3106 have only increased DOGGR's statutory authority to achieve these goals, including by adding to DOGGR's authority to respond to environmental considerations. Intervenors' claims to the contrary notwithstanding, the Legislature has not added any provisions to section 3106 that restrict any of DOGGR's legislative mandates in favor of environmental considerations. (See Intervenors' Brief ("Interv. Br.") at pp. 16–18.)

In addition to the mandates set forth in section 3106, Division 3 of the Public Resources Code regulates oil and gas

exploration and extraction in detail, including notices of intent to drill and abandon (Pub. Resources Code, §§ 3203, 3229); bonding (§§ 3204–3207); abandonment of wells (§ 3208); recordkeeping (§§ 3210–3216); blowout prevention (§ 3219); use of well casing to prevent water pollution (§ 3220); protection of water supplies (§§ 3222; 3228); repairs (§ 3225); regulation of production facilities (§ 3270); waste of gas (§§ 3300–3314); unit operations (§§ 3630–3690); and regulation of oil sumps (§§ 3780–3787). (32:AA 7705.)

DOGGR also permits and regulates underground injection activities as part of the federal Underground Injection Control ("UIC") Program. The UIC program "cover[s] Class II wells," used to inject fluids associated with oil and gas production, "for which [DOGGR] has received primacy" under the federal Safe Drinking Water Act ("SDWA"). (Pub. Resources Code, § 3130, subd. (e); see also Cal. Code Regs., tit. 14, § 1724.6 ["Approval of Underground Injection and Disposal Project"].)) DOGGR has permitted and regulated underground injection wells pursuant to the state UIC Program since at least 1982. (40 C.F.R. § 147.250.)

In 2013, the legislature passed Senate Bill 4 ("SB 4"), a comprehensive state system of laws and regulations governing well stimulation, including fracking. (Stats. 2013, ch. 313; § 3150, et seq.) In adopting SB 4, the State required DOGGR to develop an Environmental Impact Report ("EIR") evaluating the impact of SB 4 in light of the current regulatory environment. The SB 4 EIR

found that the State has "exclusive legal jurisdiction" over subsurface production regulations. (12:AA 2902 [SB 4 EIR at C.2-44].) The SB 4 EIR further found that "California has the most rigorous regulations in the country for oil and gas exploration, development and production." (12:AA 2911 [SB 4 EIR at C.10-24].)

B. Measure Z Upends a Long History of Oil and Gas Operations in Monterey County.

Oil and gas production began in Monterey County in the 1940s. (9:AA 2233 [Declaration of Dallas Tubbs in Support of Chevron's Phase I Briefing ("Tubbs Decl.") ¶ 3.]; 32:AA 7690) The first operator was granted a permit to produce oil at the field in 1949. (11:AA 2645-2656.) Geographically, all oil and gas operations are located in and around the town of San Ardo, a remote town of about 500 residents in the southeastern corner of the County. (9:AA 2274 [Declaration of Catherine Reimer ("Reimer Decl."), ¶ 4.]; 32:AA 7690) San Ardo is the eighth largest oil field in California in terms of production. (9:AA 2233 [Tubbs Decl., ¶ 3]; 12:AA 2854.) San Ardo is not a center of tourism in Monterey County. (32:AA 7690 ["The oil producing fields in Monterey County are principally located in . . . arid, sparsely populated regions well inland from the coastline."].)

The oil production techniques used in San Ardo are determined by the geologic nature of the field, including the characteristics of the rock and sand, as well as the properties of

the oil. The oil at San Ardo is viscous and cannot flow easily under normal conditions, much like ketchup. (9:AA 2244 [Tubb Decl., ¶ 32]; 32:AA 7690.) Additionally, the rock below the surface, called the "formation," is made of permeable, porous sand. (*Id*. at 2244, [¶ 33].) The viscous nature of the oil and the sandy formation require that an operator use an enhanced oil recovery technique in order to produce oil from the formation. (9:AA 2244 [Tubbs Decl., ¶ 43].) There is currently no hydraulic fracturing (also called "fracking") at San Ardo because fracking would be an ineffective technique to recover oil in light of the sandy nature of the formation. (9:AA 2249 [Tubbs Decl., ¶ 42]; 32:AA 7690.)

Although there is no fracking at San Ardo, the highly viscous oil requires the use of special recovery techniques. Chevron uses a technique called "steamflooding" in San Ardo, wherein Chevron uses steam to heat the oil, making it flow more easily and allowing it to flow into a production well. (9:AA 2249–2250 [Tubbs Decl., ¶¶ 43–44]; 32:AA 7690.) During steamflooding, steam is generated on the surface and injected into the formation through a dedicated steam injection well, where the steam heats the oil. (*Ibid*.)

Operationally, steamflooding must be done to an entire field or area of production, rather than well by well, as the process depends on the accumulated steam forming a bubble below the surface. (9:AA 2249–2250 [Tubbs Decl., ¶¶ 43–44].) The

cumulative effect of many injection wells injecting steam in the ground is the creation of a subsurface "steam chest." (*Ibid.*)

Operators must drill new wells in order to maintain the steam chest, otherwise it is vulnerable to rapid collapse. (9:AA 2250–2253 [Tubbs Decl., ¶¶ 45–47].) Accordingly, Chevron must continually replace nonproductive wells and drill new wells at the perimeter of the steam chest in order to avoid the cooling and collapse of the steam chest. (9:AA 2252 [Tubbs Decl., ¶ 47]; 32:AA 7691.) In addition to injecting steam into the subsurface, Chevron must also remove water from the subsurface in order to create the appropriate amount of pressure in the formation to maintain the steam chest. (9:AA 2253 [Tubbs Decl., ¶ 48].)

The subsurface formation at San Ardo contains not just oil, but vast quantities of non-potable water. The water in the formation is low-quality, salty water that is unusable for beneficial uses. (9:AA 2241 [Tubbs Decl., ¶ 25].) When oil is produced at San Ardo, large amounts of water are produced with the oil, which is referred to as "produced water" or "wastewater." For every gallon of oil produced, ten to twenty gallons of produced water is extracted from the formation. (9:AA 2244 [Tubbs Decl., ¶ 32].) Chevron uses environmentally sound techniques to handle the produced water. For a portion of the produced water, Chevron uses a reverse osmosis plant to clean and process the water. (9:AA 2246-47 [Tubbs Decl., ¶ 38]; 32:AA 7690–7691.) Of the produced

water that is treated by the reverse osmosis plant, roughly 75% of the water is purified and contributed to the County for beneficial use. (*Ibid.*) This water is introduced into the local groundwater through recharge basins. (9:AA 2248 [Tubbs Decl., ¶ 41].) Another portion of the produced water is reinjected back into the formation, using disposal wells. Finally, Chevron uses some produced water to conduct its steamflooding operation. (*Ibid.*) Each of these techniques is done in compliance with all applicable regulations.

Although there is no fracking at San Ardo (or anywhere else in Monterey County), Measure Z's supporters drafted and marketed it as an effort to ban fracking. On March 17, 2015, the Monterey County Board of Supervisors rejected a proposed interim ordinance that would prohibit fracking. (1:AR 1-2.) In response, Intervenor Protect Monterey County ("PMC") was formed, with the intention of developing a voter initiative to ban fracking in the County. (6:AA 1448.) PMC was the formal sponsor of Measure Z, which was included on the November 2016 ballot. (2:AR 314; 32: AA 7692.)

Not restricted to fracking, Measure Z bans three specific oil and gas production activities. (1:AR 128–140.) First, Policy LU-1.21 bans well stimulation treatments, which includes fracking. (1:AR 127.) Policy LU-1.21 is not at issue in this appeal. Second, Policy LU-1.22 prohibits wastewater injection and impoundment in the County. (1:AR 128–129.) Policy LU-1.22 provides a five-

year phaseout for nonconforming uses, which requires all wastewater injection and impoundment uses to cease within five years of the effective date of Measure Z. (*Ibid.*) Third, Policy LU-1.23 prohibits the use of any land located in the County for the "drilling of new oil and gas wells." (1:AR 129.) Policy 1.23 broadly bans all new wells, regardless of whether those wells are for production, underground injection, temperature monitoring, or other uses.

The campaign to pass Measure Z focused almost entirely on the provision that banned fracking, despite Monterey County's lack of fracking and the fact that banning fracking would have little impact on the current operations at San Ardo. (See 11:AA 2632–2635.) In contrast, the other two provisions—banning all wastewater injection and impoundment and the drilling of all new wells—would dramatically change the operations there. (9:AA 2258–2259 [Tubbs Decl., ¶ 60].) If enforced, Measure Z would severely limit the production of oil at San Ardo, which would have a harmful ripple effect on the community in and around the field. The reduction in production would impair local businesses' revenue streams, would reduce income for royalty owners, and would force the closing of the San Ardo Union Elementary School. (9:AA 2202 [Declaration of John Orradre, ¶ 6]; 9:AA 2277 [Reimer Decl., ¶ 11].)

On November 8, 2016, Measure Z passed. (1:AR 190, 195.)

C. After a Bench Trial, the Superior Court Determines That Measure Z Is Preempted.

Immediately following the effective date of Measure Z, on December 14, 2016, Chevron U.S.A. Inc. and Aera Energy LLC each filed a petition for writ of mandate and complaint. (1:AA tabs 1, 2.) A group of individual royalty owners, small businesses local to San Ardo, and the San Ardo school district also sued as Plaintiffs along with Chevron U.S.A. (the "Chevron and Community Plaintiffs"). (See 1:AA tab 8.) In the petition and complaint, Plaintiffs challenged Measure Z on the grounds that: (1) Measure Z is preempted by state law governing oil and gas operations; (2) Measure Z is preempted by federal law, including the SDWA; and (3) Measure Z constitutes an unconstitutional taking of property without just compensation, among other challenges. (See 1:AA tab 8.) The same day the petition was filed, Plaintiffs filed a motion to stay Measure Z's effective date, which was granted. (1:AA 83–91, 92–96.)

Shortly after the Chevron and Community Plaintiffs and Aera filed their petitions and complaints, four additional groups of oil companies and mineral rights holders filed similar lawsuits challenging Measure Z, including California Resources Corporation, Eagle Petroleum, LLC, Trio Petroleum, LLC and the National Association of Royalty Owners-California, Inc. (4:AA tab 21; 5:AA tab 33; 5:AA tab 34.)

On February 2, 2017, PMC and Center for Biological Diversity ("CBD") filed a Motion for Leave to Intervene. (1:AA tabs 9–14.) The superior court granted in part and denied in part the Motion for Leave to Intervene. The superior court denied the motion with respect to CBD's request to intervene, and granted the motion with respect to PMC, conditioned on the addition of Dr. Laura Solorio, "a signatory and proponent of Measure Z who is a member of PMC," as an intervenor. (5:AA 1063.) The superior court consolidated all six of the cases. (7:AA 1565–1567.)

The superior court bifurcated the trial into three phases, where Phase I addressed only facial challenges to Measure Z. (See 5:AA 1149–1152.) After briefing on the Phase I issues, the superior court held a four-day bench trial, beginning on November 13, 2017. (9:AA tabs 76–82; 11–12:AA tabs 89–84; 15–18:AA tabs 96–107; 19:AA tabs 117–122). The superior court issued its Final Statement of Decision on January 25, 2018, finding: (1) Measure Z's prohibition on wastewater injection and impoundment is preempted, as it contradicts state law and the SDWA (31:AA 7572–7574); (2) Measure Z's prohibition on new wells is preempted because it "directly conflicts with DOGGR's mandate" under section 3106, and is preempted under the SDWA (31:AA 7578); and (3) the question of whether Measure Z's prohibition on well stimulation ("fracking") was not ripe because

no Petitioner was engaging in or proposing to engage in such activity (31:AA 7568).

D. The Court of Appeal Unanimously Affirms the Superior Court's Judgment.

Intervenors timely appealed. (32:AA tab 181.) While the County of Monterey initially filed a Notice of Appeal, it later formally abandoned this Appeal. (32:AA tab 198.) The County is not defending Measure Z before this Court.

The court of appeal issued its opinion on October 12, 2021, affirming the superior court's judgment and concluding that Policies LU-1.22 and LU-1.23 are preempted by state law.

The court of appeal determined that section 3106 supports the superior court's preemption finding because it "identifies the State's policy as '*encourag[ing]* the wise development of oil and gas resources,' and expressly provides that *the State* will supervise the drilling of oil wells 'so as to *permit'* the use of '*all'* practices that will increase the recovery of oil and gas." (Opn. at p. 9, original italics.) Section 3106 thus "plainly lodges the authority to permit 'all methods and practices' firmly in *the State's hands*," and does not reserve any authority to local entities to limit the State's authority as to these "methods and practices." (*Ibid.*, original italics.) Since Measure Z prohibits all wastewater injection and bans new well drilling, section 3106 preempts it. (Opn. at pp. 7, 9.)

In response to Intervenors' contention that the supposed police power of local entities to regulate oil and gas drilling rebuts any preemption claim, the court of appeal held the mere fact that some local regulation is within the police power does not resolve whether a particular local regulation is preempted by a particular state law. If a local regulation conflicts with a state law, the local regulation exceeds the local entity's power under article XI, section 7 of the California Constitution. (Opn. at p. 14.)

The court of appeal rejected Intervenors' argument that Measure Z controls only "where and whether" oil drilling occurs such that it is a "land use" regulation beyond State control. (Opn. at pp. 15–16.) Rather, Measure Z regulates "*what* and *how* any oil drilling operations could proceed," and bans oil and gas drilling "activities that section 3106 not only promotes and encourages, but also explicitly places the authority to permit in the hands of the State. Consequently, Measure Z conflicts with section 3106." (*Ibid*., original italics.)

Finally, the court of appeal rejected Intervenors' contention that conflict preemption does not apply because section 3106 supposedly does not "demand" what Measure Z "forbids." (Opn. at p. 17.) The Court distinguished each of the cases cited by Intervenors, (*id*. at pp. 17–20), and concluded that "Measure Z forbids the State from permitting certain methods and practices, while section 3106 encourages those methods and practices and

mandates that the State be the entity deciding whether to permit those methods and practices." (*Id.* at p. 19.)

Because it upheld the superior court's judgment on grounds of state law preemption, the court of appeal did not consider whether federal law preempts Measure Z or whether it amounts to a taking of Plaintiffs' property. (*Id.* at p. 20.) Further, since the court of appeal concluded that Measure Z "conflicts" with section 3106, it did not consider whether the State preempted the "field" of oil and gas regulation. (*Id.* at p. 7, fn. 8.) The Court also explained that its "narrow holding" should not "be construed to cast any doubt on the validity of local regulations requiring permits for oil drilling operations or restricting oil drilling operations to particular zoning districts. This case involves no such regulations." (*Id.* at pp. 2, 19, fn. 16.)

III. STANDARD OF REVIEW

"In reviewing a judgment granting a writ of mandate, [appellate courts] apply the substantial evidence standard of review to the court's factual findings, but independently review its findings on legal issues." (*Citizens for Amending Proposition L v. City of Pomona* (2018) 28 Cal.App.5th 1159, 1186, citation omitted.) "Interpretation of statutes, including local ordinances and municipal codes, is subject to de novo review." (*Ibid.*)

Measure Z is a local initiative that conflicts with state law. As such, even though Measure Z was enacted by County voters, this Court should "apply similar principles [as] when construing constitutional provisions and statutes[.] . . . Our primary concern is giving effect to the intended purpose of the provisions at issue." (*Cal. Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, 933, citation omitted.) For constitutional analysis such as this, the "sole function is to evaluate [it] legally in the light of established constitutional standards." (*Briggs v. Brown* (2017) 3 Cal.5th 808, 828, quotation omitted.) "[I]ndependent judgment" is applied "when construing constitutional and statutory provisions." (*Cal. Cannabis Coalition*, *supra*, 3 Cal.5th at p. 934, citation omitted.)

IV. ARGUMENT

Measure Z directly prohibits activities that state law encourages, promotes, and directly regulates. As a local measure in conflict with state law, Measure Z is, therefore, preempted.

A. Measure Z Is Preempted Because it Conflicts With State Law, Frustrates Section 3106's Letter and Purpose.

Measure Z directly conflicts with section 3106 because it bans two oil and gas activities that are expressly regulated and encouraged by state law and for which state law places the authority to permit in the hands of the State.

1. Section 3106 promotes petroleum production, authorizes specific production techniques, and empowers the expert state agency to implement the Legislature's balance between competing goods.

In no uncertain terms, section 3106 sets the policies of the State as to the production of oil and gas resources, as well as the production techniques that may be employed to extract those resources. Section 3106 mandates not just that all available production techniques be available to operators in order to increase oil and gas recovery, but section 3106 also places the decision of whether and how to permit those activities according to their specific circumstances in each instance in the hands of the State, through DOGGR. Section 3106 mandates that DOGGR "*shall*" "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 hydrocarbons," where, based on the Legislature's criteria, such activities are appropriate "in the opinion of the supervisor." (§ 3106, subd. (b), italics added.)

And if this language left any room for doubt, subdivision (b) identifies specific production techniques that the State deems to be permitted, subject to DOGGR's oversight. Section 3106 "declare[s] as a policy of this state" that an oil and gas operator is deemed to be permitted "to do what a prudent operator using reasonable diligence would do" in producing oil and gas in order to

"increas[e] the recovery of hydrocarbons." (§ 3106, subd. (b).) Indeed, section 3106, subdivision (b), specifically identifies the production technique of "inject[ing] . . . air, gas, water, or other fluids into the productive strata," as well as the technique of applying "pressure[,] heat or other means for the reduction of viscosity of the hydrocarbons" as techniques that are permitted as "a policy of the state." (*Ibid.*)

Finally, as a governing principle, section 3106 mandates that DOGGR administer the laws "so as to encourage the wise development of oil and gas resources." (§ 3106, subd. (d).)

2. By overriding the State's policy choices and precluding the policy balancing placed by statute in the Supervisor, Measure Z directly conflicts with state law and is preempted.

As the court of appeal correctly found, section 3106 "explicitly encouraged all methods that would increase oil production, including wastewater injection, and, crucially, placed the decision-making power in the State." (Opn. at pp. 16–17.) Policy LU-1.22 prohibits wastewater injection and impoundment—one of the very techniques that section 3106 declares "as a policy of the state" to be permissible. (§ 3106, subd. (b).) The prohibition on wastewater injection would prohibit Chevron from continuing its extraction operations at San Ardo.

Chevron relies on wastewater injection to safely dispose of the vast amounts of water that is produced with the oil. (9:AA 2247.)

Even more fundamentally, Policy LU-1.23 prohibits the drilling of any new wells of any sort within the County. This prohibition on production of any oil and gas within the County is in direct conflict with the stated policy of the State to "permit . . . operators . . . to utilize all methods and practices known to the oil industry for the purpose of increasing the ultimate recovery of underground hydrocarbons." (§ 3106, subd. (b).) The prohibition on new wells would not just prohibit an expansion of the San Ardo field, but would severely limit Chevron's ability to produce any oil and gas at San Ardo. Drilling new wells is a crucial part of Chevron's production at San Ardo, as Chevron must drill new wells to maintain the integrity of the steam chest. (9:AA 2250 [Tubbs Decl., ¶ 45].) Without the new wells injecting steam into the formation, the steam chest could collapse and the formation would cool, increasing the viscosity of the oil and making production infeasible. (32:AA 7690–7691.) Steamflooding is a method of injecting "air, gas, water, or other fluids into the productive strata," and is therefore a production technique that the state has declared "as a policy of the state" to be permissible. (§ 3106, subd. (b).) The ban on drilling new wells and the ban on wastewater injection conflict with the State's charge to DOGGR to administer

the law "so as to encourage the wise development of oil and gas resources." (*Id.*, subd. (d).)

California preemption law recognizes this conflict as a classic example of preemption. "[W]hen a statute or statutory scheme seeks to promote a certain activity . . . *local regulation cannot be used to completely ban the activity or otherwise frustrate the statute's purpose.*" (*Great Western Shows, Inc.*, *supra*, 27 Cal.4th at pp. 867–870, italics added [defining scope of state implied field preemption], citing *Blue Circle Cement, Inc. v. Board of County. Coms.* (10th Cir. 1994) 27 F.3d 1499 [finding federal obstacle preemption].) This is true even where—*unlike* here—the state statute "permits more stringent local regulation of that activity." (*Ibid.*) Courts consistently find that where the local ban undermines or frustrates the purpose of the superior law, the local law is preempted.

For example, in *Fiscal v. City and County of San Francisco* (2008) 158 Cal.App.4th 895, 914–915, the court held that state law preempted a local initiative that prohibited nearly all residents from possessing handguns. The *Fiscal* court found the local initiative banning possession of handguns would invalidate certain concealed carry licenses and prohibit handgun possession, even when the person has been "expressly authorized by state law to possess handguns for self-defense or other lawful purposes." (*Id.* at p. 911.) The court in *Fiscal* explained that "[i]f the preemption

doctrine means anything, it means that a local entity may not pass an ordinance, the effect of which is to completely frustrate a broad, evolutional statutory regime enacted by the Legislature." (*Ibid.*)

Similarly, in *City of Riverside*, this Court considered whether the California Medical Marijuana Program preempts local law. In so doing, the Court analyzed whether a local ban would be preempted by the Resource Conservation and Recovery Act ("RCRA"), which "is the comprehensive federal hazardous waste management statute governing the treatment, storage, transportation, and disposal of hazardous wastes." (*City of Riverside*, *supra*, 56 Cal.4th at p. 760, quoting *Blue Circle Cement, Inc.*, *supra*, 27 F.3d at p. 1505.) While the court ultimately held the regulation at issue in the case was not preempted, it found that, despite expressly leaving room for additional local regulation, RCRA preempts "a complete local ban on the processing, recycling, and disposal of industrial waste, imposed without consideration of the specific and legitimate local health and safety concerns." (*City of Riverside*, *supra*, 56 Cal.4th at p. 760, citing *Blue Circle Cement, Inc.*, *supra*, 27 F.3d at pp. 1506–1509.) Local bans on those activities would undermine the "overarching purpose" of RCRA to encourage regulatory collaboration "in furtherance of the efficient treatment, use, and disposal of such material." (*City of Riverside*, *supra*, 56 Cal.4th at p. 760.)

Here, California state petroleum regulations are, like the extensive regulations established pursuant to RCRA governing hazardous waste, "the most rigorous regulations in the country for oil and gas exploration, development and production." (12:AA 2911 [SB 4 EIR at C.10-24].) Both RCRA and California oil and gas regulations represent comprehensive systems of governance for certain encouraged activities—i.e., hazardous waste management and energy production, respectively—intended to protect human health and the environment. It would defeat the balance that California law strikes between promoting subsurface activity and protecting the environment to allow complete local bans on the very subsurface activities regulated and permitted by state law.

The court of appeal also correctly noted that section 3106 "explicitly places the authority to permit [certain production activities] in the hands of the State." (Opn. at p. 18.) Section 3106 expressly mandates that all methods and practices used to increase the recovery of hydrocarbons shall be permitted where according to state regulatory criteria and "in the opinion of the supervisor," such methods "are suitable for this purpose in each proposed case." (§ 3106, subd. (b).) Measure Z directly contradicts the express delegation of authority in section 3106 by flatly prohibiting these activities—for the purpose and with the direct

effect of preventing the authorized state official—the Supervisor—from considering and permitting such activities.

Intervenors argue that Measure Z does not frustrate the purposes of section 3106. (Interv. Br. at pp. 55–62.) But this notion is belied by a straightforward reading of the language of the two laws: the State, directing DOGGR to maximize the ultimate recovery of hydrocarbons consistent with safety and environmental considerations, mandates and encourages certain production activities, while Measure Z prohibits those same production activities, rendering the longstanding oil and gas operations in the County impracticable. Failing to address this obvious tension, Intervenors instead contort the statutory scheme in the Public Resources Code to argue that Measure Z "is entirely consistent" with the statute." (Interv. Br. at p. 60.) This argument is not supported either by the caselaw or the statute.

In essence, Intervenors argue that the purpose of section 3106 is either solely to protect the environment, or, at the very least, to "prioritize[] environmental protection over increased production." (Interv. Br. at p. 61.) This conclusion lacks any support in the statute. DOGGR has long been charged with a dual mandate, both to "encourage the wise development of oil and gas resources" in order to "meet oil and gas needs in this state," while protecting the environment in the process. (§ 3106, subd. (d).) Yet, that is the crux of the dispute. It is the State, through DOGGR,

that must weigh these two competing interests and, where appropriate pursuant to individualized criteria, "permit . . . all methods and practices known to the oil industry for the purpose of increasing the ultimate recovery of underground hydrocarbons." (*Id*., subd. (b).) Nor does this dual mandate mean, as Intervenors suggest, that serving one of these interests to the exclusion of the other would be consistent with the statute, which requires the expert state agency to balance them so as to "meet oil and gas needs in this state." (*Ibid*.)

3. Examining the purpose and statutory text "as a whole," as Petitioners demand, confirms the conflict and preemption.

Intervenors further challenge the court of appeal's determination regarding the purpose of the statute by claiming that the court of appeal failed to "grapple[] with the statutory text and purposes 'as a whole.'" (Interv. Br. at p. 55.) But it is Intervenors who ignore that statutory context and structure "as a whole," and instead insist that the only text with which this Court must grapple is the limited language in section 3106 related to water quality and a single section of the Code, section 3011, which Intervenors identify in support of the "environmentally protective purposes." (*Id*. at pp. 56–57.) This is incorrect.

Intervenors fail to look beyond one cherrypicked provision of the Public Resources Code, and therefore fail to view, holistically,

the "substantive provisions" of the applicable law. (*City of Riverside, supra,* 56 Cal.4th at pp. 745, 753.) A proper examination of the Code reveals the complex, comprehensive nature of DOGGR's regulation of oil and gas operations. Division 3, Chapter 1 of the Public Resources Code, titled "Oil and Gas Conservation," contains hundreds of provisions governing all aspects of oil and gas operations, including specific methods, like wastewater injection (§ 3130) or well stimulation (§§ 3150–3161), as well as regulation of production operations more generally, like idle and abandoned wells (§§ 3106–3208.1) or blowout prevention (§§ 3219–3220). DOGGR has further promulgated regulations to fulfill its statutory obligations regarding oil and gas resources, creating detailed regulations relating to production methods. (Cal. Code Regs., tit. 14, ch. 4; see Section IV.C, *post*.)

This complex system of statewide regulations is comparable to the "statewide licensing schemes, exceptions, and exemptions dealing with the possession and use of handguns," which the *Fiscal* court found to preempt a local ordinance prohibiting private and public handgun possession. (*Fiscal, supra,* 158 Cal.App.4th at p. 909.) Like the local ordinance in *Fiscal*, Measure Z prohibits activities expressly regulated by the State. Here too, Measure Z's ban on specific production methods, including wastewater injection and drilling new wells, "completely frustrate[s] a broad,

evolutional statutory regime enacted by the legislature." (*Id.*, at p. 911.)

Indeed, here, the Legislature has expressly codified that the State "encourages" wise oil and gas production and, as a policy of the State, that DOGGR must permit oil and gas operators to use all reasonable methods of production, including wastewater injection. (§ 3106, subds. (b), (d).) The State's expressed purpose to encourage these activities, as opposed to simply regulating them, necessarily means that Measure Z's attempt to ban these activities would frustrate the stated objectives of the state law. (Cf. *Great Western Shows*, *supra*, 27 Cal.4th at p. 868 [finding no preemption where the state law lacks the "stated purpose of promoting or encouraging" an activity, as opposed to simply regulating an activity].)

Even section 3011, the provision that Intervenors claim proves that the "statutory scheme as a whole" contains "environmentally protective purposes" (Interv. Br. at p. 57), only identifies the purpose of "protecting health and safety and environmental quality" insofar as it is done "*in a manner that meets the energy needs of the state*." (§ 3011, subd. (a), italics added.) The Legislature's direction in section 3011 that DOGGR shall "coordinate . . . in furtherance of the goals of the California Global Warming Solutions Act of 2006," in addition to DOGGR's other obligations, likewise does not undermine the purpose of

section 3106 to "encourage the wise development of oil and gas." (§ 3011, subd. (b).) These dual purposes must be considered in conjunction with one another as DOGGR regulates oil and gas operations.[3]

As the court of appeal correctly found, the legislative history of section 3106 "is consistent" with the plain language of the statute, which mandates that DOGGR permit certain methods and practices and encourage the production of oil and gas. (Opn. at p. 9.) The key language, subdivision (b), was added to section 3106 in 1961. The legislative history is clear that this provision was "added to assist and encourage the oil industry in the use of secondary recovery operations," with the ultimate goal to "assure maximum recovery of underground hydrocarbons." (RJN[2]A:100; RJN[2]A:99.) The Legislature added the language in subdivision (d) in 1972, for the purpose of "strengthen[ing] the role of [DOGGR] in dealing with environmental problems." (RJN[6]C:456.)

Despite Intervenors' claim that changes to other laws have transformed the regulatory regime into a legislative policy that

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[3] The executive orders regarding climate and clean energy goals referenced by Intervenors are wholly irrelevant to the stated goals in Section 3106 and have no bearing on the stated purpose of the *Legislature* (nor any of the Governors referenced by Intervenors) in section 3106. (See Interv. Br. at p. 58, fn. 18.)

elevates environmental protection above all without regard to other policies of the State, the history of Section 3106 is clear and longstanding: the Legislature has not substantively altered Section 3106 since adding these provisions in 1961 and 1972, respectively. (See Interv. Br. at pp. 57–59.) And the Legislature plainly added those provisions with the purpose of encouraging the production of oil and gas and increasing the role of DOGGR in regulating oil and gas operations. Intervenors cannot identify a single provision or portion of legislative history that mandates or encourages a reduction in oil and gas production or supports removing authority from DOGGR and placing it in localities. (See *ibid.*)

4. Section 3106 does not preserve any local authority to regulate methods of production.

The plain conflict between Measure Z and section 3106 is made further apparent by the lack of any express reservation of local authority in state law. The terms of section 3106 delegate authority to the State and make no mention of local authority to further regulate the methods of oil and gas production. Intervenors argue—as they did unsuccessfully before both the superior court and the appellate court—that local authority was preserved in the adoption of section 3690 and section 3160, subdivision (n). (Interv. Br. at pp. 20–21.) The court of appeal correctly rejected this argument.

Section 3690 provides that "[t]his chapter [chapter 3.5] shall not be deemed preempted 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." (§ 3690.) By its own terms, section 3690 is limited only to Chapter 3.5, which concerns "unit operations" and does not include Section 3106. Section 3690 governs only "unitized" oil fields, which is not relevant here and therefore section 3690 has no impact on non-unitized production. "Thus, section 3690's provision that *chapter 3.5* does not preempt local regulations provides no support for the proposition that *section 3106* does not preempt local regulation of oil drilling operational methods and practices." (Opn. at p. 12.)

Intervenors also point to a provision included in SB 4—the law adopted exclusively to govern fracking operations—to argue that the Legislature intended to preserve local authority. (Interv. Br. at pp. 20–21; see section 3160, subd. (n).) The court of appeal again rejected this argument, because the "narrow scope of section 3160, subdivision (n)" "applies only to well stimulation and concerns the obligations of DOGGR and other agencies. Nothing in that subdivision implicates the provisions of section 3106, subdivision (b) that we find preempt Measure Z." (Opn. at p. 12.)

The court then made the same finding as to section 3161, subdivision (b)(1)(C), which "is also limited to well stimulation and does not explicitly or implicitly grant local entities the power to regulate anything other than well stimulation, which is not at issue in this appeal." (Opn. at p. 13.) In any event, the SB 4 EIR reveals not only that there is no evidence of a preservation of local authority, but that DOGGR's regulations are so comprehensive as to preempt any additional regulation of subsurface activities. The SB 4 EIR finds: "DOGGR has exclusive legal jurisdiction over, and thus 'occupies the field' regarding subsurface regulation. This means that no other State or local agencies can impose regulations or mitigation on top of those by DOGGR in that context." (12:AA 2902 at C.2-44.)

Finally, Intervenors reference the requirement that oil and gas operators submit "a copy of the local land use authorization that supports the installation of a well" with a notice of intention to begin drilling. (Interv. Br. at p. 45, citing § 3203.5, subd. (a).) Contrary to Intervenors' claim, this provision does not reserve any authority for local governments to regulate the production techniques employed in extracting petroleum, but merely places another requirement on the operators to provide information that the production operations are consistent with the permissible land uses as regulated by local zoning laws. In no way does this

provision imply that a local government could regulate oil and gas production methods.

5. The court of appeal applied the correct preemption standard.

Intervenors argue, despite the obvious and irreconcilable conflict between Measure Z and section 3106, that Measure Z is not preempted because "section 3106 does not mandate that either the state or local governments allow any particular methods and practices." (Interv. Br. at p. 35.) In support, Intervenors argue that the court of appeal misapplied the "test for determining whether a local measure is 'contradictory' or 'inimical' to general law," which they claim is that a local law is not preempted "unless the challenged local ordinance 'directly requires what the state statute forbids or prohibits what the state enactment demands.'" (*Id.*, at p. 34.) This is not correct.

While a local law that prohibits something state law requires would certainly be preempted, this specific scenario is not the exclusive way a local law can conflict with state law so as to be preempted. Justice Liu's concurrence in *City of Riverside* addresses this issue directly, to "clarify the proper test for state preemption of local law." (*City of Riverside, supra,* 56 Cal.4th at p. 763 (conc. opn. of Liu, J.).) The concurrence first notes the refrain oft quoted by Intervenors that contradictory and inimical preemption is established where "the ordinance directly requires

what the state statute forbids or prohibits what the state enactment demands." (*Ibid.*) Justice Liu goes on to clarify that a "more complete statement of conflict preemption" is found in federal obstacle preemption, which "no doubt applies to California law." (*Id.* at p. 764.) The concurrence concludes by summarizing the key distinction: "Local law that prohibits an activity that state law intends to promote is preempted, even though it is possible for a private party to comply with both state and local law by refraining from that activity." (*Ibid.*)

Justice Liu's concurrence is consistent with cases applying conflict preemption. As the *Fiscal* court noted, while the state law at issue there "d[id] not mandate that local governments permit such sales[,]" the local regulation was preempted because a ban on the sales allowed by state law makes the two laws "irreconcilable." (*Fiscal*, *supra,* 158 Cal.App.4th at pp. 914–915.) Instead, "here the state and local acts are . . . so inconsistent that the two cannot have concurrent operation." (*Ibid.*, citation omitted.) As found in *Fiscal*, *City of Riverside*, and *Great Western Shows*, it is sufficient for preemption that the local law frustrate the purpose of the state law, which local laws may improperly do by banning an activity that the state law encourages.

The court of appeal correctly rejected Intervenors' argument regarding the legal basis for establishing preemption, finding that Intervenors "misread[] the authorities" upon which they rely.

(Opn. at p. 17.) Intervenors rely upon three cases in support: (1) *Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139; (2) *City of Riverside, supra,* 56 Cal.4th 729; and (3) *T-Mobile West LLC v. City and County of San Francisco* (2019) 6 Cal.5th 1107. These cases do not necessitate a different result.

In *Big Creek*, Santa Cruz County adopted a series of ordinances "amend[ing] County[] zoning laws to restrict timber harvesting operations to areas zoned for timber production, mineral extraction industrial, or parks, recreation and open space." (*Big Creek Lumber Co.,* , *supra*, 38 Cal.4th at p. 1146.) A lumber company filed suit against the County arguing that state forestry statutes preempted the local zoning ordinances. This Court ruled that state law did not preempt the ordinances. (*Ibid.*) First, the Court noted that the state law contained an express preemption provision that preempted only the "conduct of timber operations," but, elsewhere in the state statute, "it is clear that the Legislature has deferred a number of important zoning decisions to local authority." (*Id.*, at pp. 1151, 1153.)

Here, as the court of appeal notes, "Measure Z is not a local zoning ordinance that simply regulates the location of oil drilling operations. Instead it bans particular methods and practices." (Opn. at p. 19.) Indeed, Measure Z's impact would go beyond a typical zoning ordinance. If the County were to enforce it, Measure Z would prohibit the specific enhanced recovery

techniques that Chevron relies upon to operate the field. Measure Z would prohibit Chevron from reinjecting any produced water, which is a necessary operational technique required to safely and efficiently dispose of the vast amounts of salty, low-quality water produced with the oil. (9:AA 2244, 2256 [Tubbs Decl., ¶¶ 32, 54].) Similarly, Measure Z would prohibit Chevron from drilling new wells, a technique that is necessary to maintain the integrity of the steam chest. (9:AA 2250 [Tubbs Decl., ¶ 45].)

For these reasons, the court of appeal found that "*Big Creek* is consistent with our analysis." (Opn. at p. 19.) The court of appeal went on to note that "Measure Z forbids the State from permitting certain methods and practices, while section 3106 encourages [them] and mandates that the State be the entity deciding whether to permit those methods and practices." (*Ibid.*) Further, "[t]he conflict here, unlike the situation in *Big Creek*, is not limited to a general State policy encouraging oil drilling and a local ordinance restricting where drilling may take place." (*Ibid.*)

Intervenors next argue that *City of Riverside* compels a finding that Measure Z is not preempted. (Interv. Br. at pp. 36–37.) In *City of Riverside,* this Court rejected a claim that a state statute preempted local land use ordinances that prohibited medical marijuana dispensaries. The Court found that, despite some lofty statements in the state statute at issue, the Compassionate Use Act ("CUA"), regarding its "purposes," CUA's

actual substantive provisions were cabined to decriminalization. (*City of Riverside, supra,* 56 Cal.4th at 759–760.) The Court found that CUA "is a limited measure" that "creates no comprehensive scheme for the protection or promotion of facilities that dispense medical marijuana." (*Id*., at pp. 760–761, fn. 12.) The substantive provisions of the CUA "simply remove[d] specified state-law sanctions from certain marijuana activities" and therefore did not preempt the local ordinance. (*Id.* at pp. 759–760.)

In contrast, section 3106 mandates that certain oil recovery techniques be permitted, including wastewater injection, and that DOGGR must enforce the law in a way so as to promote and increase the ultimate recovery of hydrocarbons. Where the CUA only decriminalized certain activities related to marijuana use and cultivation, which the local regulations did not address, here Measure Z directly bans activities that section 3106 substantively permits, encourages, and designates as within the State's power to permit.

Intervenors also attempt to rely on *T-Mobile*, in which a group of telecommunication companies challenged a San Francisco ordinance that limited the placement of telecommunications equipment based on the aesthetic impact. The plaintiffs argued that the ordinance was preempted by state law that provided that telephone corporations "may construct . . . telephone lines along any public road . . . in such manner and at such points as not to

incommode the public use of the road or highway." (*T-Mobile, supra*, 6 Cal.5th at p. 1115.) This Court, however, held that the state statute did not preempt the local ordinance because the "statute and the ordinance can operate in harmony" since the statute simply "ensures that telephone companies are not required to obtain a local franchise, while the Ordinance ensures that lines and equipment will not unreasonably incommode public road use." (*Id*. at p. 1125.)

T-Mobile is distinguishable on its face. In *T-Mobile*, the state statute contained no mandate as to any specific state policies, but section 3106 expressly sets forth specific state policies that Measure Z frustrates. Further, the ordinance in *T-Mobile* was not a prohibition on any activities deemed to be permissible by the State, and the local ordinance governed placement of the telephone poles based on aesthetic attributes. Here, Measure Z bans activities the State has expressly deemed to permit, and Measure Z's regulations are simply substantive regulations of oil and gas operations, unrelated to any land use considerations.

The court of appeal thus correctly rejected Intervenors' interpretation of *T-Mobile*: "In *T-Mobile*, unlike here, the state statutes made no mention of the subject matter addressed by the local ordinance so there was no conflict." Here, in sharp contrast, section 3106 "explicitly places" "in the hands of the state" "the authority to permit" certain methods and practices banned by

Measure Z. (Opn. at p. 18.) And "[i]t is not possible for the authority to permit these methods and practices to rest in the State's hands if the local ordinance forbids these methods and practices," and thus the two laws conflict. (*Ibid.*)

Notwithstanding Intervenors' arguments to the contrary, the plain conflict between section 3106, which mandates that certain operational practices be permitted where DOGGR properly deems appropriate, and Measure Z, which bans such activities, creates a conflict between state and local law. Where such a conflict exists, "the local ordinance must yield to the supreme state law." (Opn. at p. 18.)

6. California law recognizes obstacle preemption, and the record would support finding federal obstacle preemption here.

The court of appeal correctly relied exclusively upon California cases in finding that "Measure Z conflicts with section 3106" because Measure Z "ban[s] activities that section 3106 not only promotes and encourages, but also explicitly places the authority to permit in the hands of the State." (Opn. at p. 16.) Contrary to Intervenors' assertions (see Interv. Br. at pp. 53–54), precedent from this Court and the courts of appeal provides ample support for this finding, and this Court need not formally adopt the federal doctrine of obstacle preemption in order to find that section 3106 preempts Measure Z. Nonetheless, were this Court inclined to go

further and expressly embrace a doctrine akin to that of federal obstacle preemption, the record here, and the Court's rationale in its prior decisions, would support it. (See *City of Riverside, supra,* 56 Cal.4th at pp. 763-764 (conc. opn. of Liu, J.) [noting that federal obstacle preemption "no doubt applies to California law"]; *Fiscal, supra,* 158 Cal.App.4th at p. 911 [finding preemption where local ordinance "stands as an obstruction to the accomplishment and execution of the full purposes and objectives of the legislative scheme"], citing *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 895.)

Although this Court has not formally adopted this doctrine, this Court and other California courts have consistently and favorably cited and considered it. (See, e.g., *Great Western Shows, supra,* 27 Cal.4th at pp. 867–868; *T-Mobile, supra,* 6 Cal.5th at p. 1123 ["This court has never said explicitly whether state preemption principles are coextensive with the developed federal conception of obstacle preemption . . . [b]ut assuming for the sake of argument that the theory applies . . ."]; *City of Riverside, supra* 56 Cal.4th at p. 760, citing *Blue Circle Cement, Inc., supra*, 27 F.3d at p. 1505.)

If this Court were to formally adopt the federal obstacle preemption doctrine, there is little danger that it would allow courts to make an "arbitrary selection of one purpose" or "an overly expansive reading of statutory text," as Intervenors argue. (Interv.

Br. at p. 63, quotations omitted.) California courts are regularly asked to determine the intent of the Legislature in interpreting laws, and often do so in the context of preemption analysis without overreach. (See, e.g. *City of Riverside, supra,* 56 Cal.4th at p. 760 ["We cannot employ the Legislature's expansive declaration of aims to stretch the [law's] effect beyond a reasonable construction of its substantive provisions"]; *Great Western Shows, supra,* 27 Cal.4th at p. 868 ["there is no evidence in the gun show statutes, or, as far as we can tell, in their legislative history, that indicates a stated purpose of promoting or encouraging gun shows"].)

Indeed, one empirical study of federal obstacle preemption found that, despite critiques such as those raised by Intervenors, the United States Supreme Court's application of obstacle preemption was no more frequent and involved no greater splits between justices than that Court's application of other preemption doctrines. (Gregory M. Dickinson, An Empirical Study of Obstacle Preemption in the Supreme Court (2011) 89 Neb. L. Rev. 682, 694 ["obstacle preemption was found in 50% of cases, compared to 52% in all types of preemption cases considered collectively;" "[t]he percentage of obstacle preemption cases decided unanimously also appears relatively consistent with all other types of preemption"].)

Here, the plain terms of the local ordinance prohibit specific activities that the State has the exclusive authority to permit and that state law encourages and actually mandates be permitted,

where appropriate. (See Opn. at p. 20.) Accordingly, while not necessary in order for this Court to affirm the decision below, this case represents a proper and indeed compelling occasion for formally recognizing obstacle preemption under California law. (See *Blue Circle Cement, Inc., supra,* 27 F.3d at p. 1508 ["ordinances that amount to an explicit or de facto total ban of an activity that is otherwise encouraged by RCRA will ordinarily be preempted by RCRA."])

B. Intervenors' Characterization of Measure Z as a Land Use Ordinance Is Incorrect and Irrelevant Because the County Cannot Do Indirectly What It Cannot Do Directly.

Intervenors argue, at various times and through various theories, that Measure Z is not preempted because it supposedly must be categorized as a mere local "land use" regulation. Intervenors present this argument through a series of different lenses (i.e., a presumption against preemption, a backdrop of caselaw regarding local authority, and so forth), but none of them is either accurate (because Measure Z is plainly an effort to regulate the conduct of oil and gas operations), or persuasive (because even an otherwise valid land use regulation cannot conflict with a superior law).

1. Measure Z is not a traditional land use regulation.

As a threshold issue, Measure Z is not a true land use regulation. Beyond the Measure's own, self-imposed title as a "land use" regulation, the Measure does not regulate land in the way that typical land use regulations do.

Measure Z does not place any conditions on the oil and gas production activities related to density, design, or preservation issues. For example, the Measure does not establish set-back limits or zoning amendments that would restrict subsurface activities to nonresidential zones. (See e.g., *Marblehead Land Co. v. City of L.A.* (9th Cir. 1931) 47 F.2d 528, 532–533 [holding that use of residential property for oil production "would be entirely out of harmony with the development of the neighborhood"]; see also *Friel v. Los Angeles Cnty.* (1959) 172 Cal.App.2d 142, 150–154 [upholding ordinance that zoned certain areas for "residential use and prohibit[ed] drilling for oil"]; *Beverly Oil Co. v. City of L.A.* (1953) 40 Cal.2d 552, 558 [holding that local governments may "prohibit[] the production of oil in designated areas" subject to due process].) Nor does Measure Z require that the County take into account aesthetics or historical preservation of the County in determining where oil and gas operations would be appropriate. (See, e.g. *T-Mobile, supra,* 6 Cal.5th at pp. 1114–1115.)

By failing to regulate the "location of particular land uses," Measure Z tips its hand. (See *Big Creek Lumber Co.*, *supra*, 38 Cal.4th at p. 1149.) In *Big Creek Lumber Co.*, for example, the Court held that state law, which otherwise preempted "local regulation of the conduct of timber operations" did not preempt a local land use ordinance that "restricted timber harvesting to specified zone districts." (*Id.* at pp. 1145, 1158.) As the Court explained, "an ordinance that avoids speaking to *how* timber operations may be conducted and addresses only *where* they may take place falls short of being a clear attempt to regulate the conduct thereof." (*Id.* at pp. 1152–53, quotations omitted, original italics.) While the *Big Creek Lumber* plaintiffs expressed concern "that localities may by locational zoning prohibit timber harvesting altogether," the Court emphasized that "[t]he ordinance before us does not have that effect, nor does it appear that any county has attempted such a result." (*Id.* at pp. 1160–1161.)

Measure Z stands in stark contrast. It does not address *where* subsurface activities may occur within the County, except to say that these subsurface activities may not occur anywhere at all. And Measure Z's purported "surface" regulations are all defined with respect to their *sub*surface functions. Unlike the ordinance in *Big Creek Lumber Co.*, here the ostensible local "land use" regulation has the clearly intended effect of prohibiting certain

subsurface activities altogether. (See *id.*) Ultimately, Measure Z "is not simply imposing additional restrictions on state law to accommodate local concerns; but instead, it has enacted a total ban on an activity state law allows." (*Fiscal*, *supra*, 158 Cal.App.4th at p. 915.) "[T]otal bans are not viewed in the same manner as added regulations, and justify greater scrutiny." (*Id.*, citing *Great W. Shows, Inc.*, *supra*, 27 Cal.4th at pp. 867–868.)

The court of appeal correctly rejected Intervenors' argument that Measure Z controls only "where and whether" certain activities occur: "Measure Z did not identify any locations *where* oil drilling may or may not occur. Instead, it permitted continued operation of existing wells but barred new wells and wastewater injection even if the new wells and wastewater injection would be on the same land as the existing operation." (Opn. at p. 15, original italics.) As the court of appeal correctly noted, under Measure Z, oil and gas "[o]perations could proceed only if they involved no new wells and no wastewater injection, which are operational methods and practices." (*Ibid.*)

State law still preempts any local attempt to use land use regulations to regulate subsurface activity and frustrate the purpose of state law, even if the local law is labeled as a land use regulation. (*Desert Turf Club v. Bd. of Sup'rs of Riverside Cnty.* (1956) 141 Cal.App.2d 446, 452 [local entity "cannot under guise of doing one thing, accomplish a wholly disparate end."]; see also

Monterey Oil Co. v. City Court of City of Seal Beach (1953) 120 Cal.App.2d 41, 43 [holding that "[i]t is apparent" that restrictions on surface buildings were intended to prevent drilling operations, which was preempted].) And as noted by the Attorney General in 1976, a conflict will arise whenever local governments attempt to "exercise control over subsurface activities," whether "directly or indirectly." (13:AA 3006 [59 Ops.Cal.Atty.Gen. 461, 478].)

Relying on the characterization of Measure Z as a land use regulation, Intervenors reference, without expressly invoking, "a century of caselaw" regarding a locality's authority through the police power to regulate the location of oil and gas operations. (Interv. Br. at pp. 18–19.) The court of appeal correctly dismissed this line of cases on the basis that "[t]he mere fact that *some* local regulation of oil and gas drilling is within a local entity's police power does not resolve the question of whether a particular local regulation is *preempted* by a particular state law." (Opn. at p. 14, original italics.)

In any event, the line of cases cited by Intervenors is not relevant to the question of preemption, as only one case, *Higgins v. Santa Monica* (1964) 62 Cal.2d 24, even considers whether state law preempted a local oil and gas regulation. And even the *Higgins* decision is not relevant here because the question in *Higgins* was whether a city could prohibit oil development on city-owned tidelands, not whether state law preempted a city-wide prohibition

on oil and gas production. (*Id*. at p. 32.) The remainder of the cases do not address preemption, and many were decided before the key language was added to subdivision (b) of section 3106. (*Beverly Oil Co., supra,* 40 Cal.2d 552 [no discussion or consideration of preemption and decision pre-dated revisions to Section 3106]; *Friel, supra,* 172 Cal.App.2d 142 [same]; *Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach* (2001) 86 Cal.App.4th 534 [no discussion of preemption]; *Pacific Palisades Ass'n v. City of Huntington Beach* (1925) 196 Cal. 211 [no discussion or consideration of preemption and decision pre-dated enactment of section 3106]; *Marblehead Land Co., supra,* 47 F.2d 528 [same].) As recognized by the court of appeal's opinion, "it is axiomatic that cases are not authority for propositions not considered." (Opn. at p. 15, quoting *People v. Alvarez* (2002) 27 Cal.4th 1161, 1176.)

2. No presumption against preemption applies here, and it would not matter if it did.

Finally, Intervenors argue that a presumption against preemption applies to Measure Z. (Interv. Br. at pp. 29-30.) Ultimately, the court of appeal found this question irrelevant because "[p]reemption is established as a matter of law," "as any presumption was amply rebutted in this case." (Opn. at p. 16, fn. 15.) Indeed, even if such a presumption did apply, it has been "amply rebutted" by the showing made in this case. Nonetheless,

the presumption does not apply to Measure Z because it attempts to regulate an area of law historically regulated by the State.

This Court has held, "when local government regulates in an area over which it traditionally has exercised local control, such as the location of particular land uses, California courts will presume, absent a clear indication of preemptive intent from the Legislature, that such regulation is *not* preempted by state statute." (*Big Creek Lumber Co., supra,* (2006) 38 Cal.4th 1139, 1149, quotation omitted, original italics.) However, "the mere exercise of a local government's police power is not sufficient to invoke the presumption against preemption." (*People v. Nguyen* (2014) 222 Cal.App.4th 1168, 1186.)

Indeed, "[t]here is no presumption against preemption *when a local ordinance regulates in an area historically dominated by state regulation*." (*Id.* at p. 1187, italics added.) In the event that it is unclear whether the local ordinance relates to a historically state or local issue, or where it is a "mixed concern of both, the doubt must be resolved in favor of the legislative authority of the state." (*Ibid.*, quotation omitted.)

The presumption does not apply to Measure Z because Measure Z does not regulate "the location of particular land uses." (*Big Creek Lumber Co.*, *supra*, 38 Cal.4th at p. 1149.) Rather, Measure Z regulates oil and gas production methods, which is a regulatory field "historically dominated by" DOGGR. (*Nguyen*,

supra, 222 Cal.App.4th at pp. 1186–1187; see also Section IV.C, *post*.) The regulation of wastewater injection and the drilling of new wells are both oil and gas production methods that have historically been regulated by DOGGR.

With respect to the regulation of wastewater injection through Policy LU-1.22, DOGGR has regulated underground injection activities pursuant to the state UIC program since at least 1982, when California was granted primacy under the federal SDWA. (40 C.F.R. § 147.250.) Further, wastewater injection wells are governed by the general requirements applicable to all other "wells" under the Public Resources Code, as well as the implementing regulations promulgated and enforced by DOGGR. (See § 3008, subd. (a) [defining "wells" subject to DOGGR authority to include "any well drilled for the purpose of injecting fluids . . . or disposing of waste fluids from an oil or gas field"].) These general well requirements have been administered by DOGGR since long before 1982.

Similarly, Policy LU-1.23, which prohibits drilling new oil and gas wells, regulates subsurface activities historically regulated by DOGGR. All new wells related to energy production throughout the state are subject to DOGGR approval and regulation, and DOGGR has historically regulated new wells. (See § 3203, subd. (a); see also Cal. Code Regs., tit. 14, ch. 4.) Each of

these wells is drilled subject to permitting and oversight by DOGGR, as has been historically done.

In sum, the "presumption against preemption" does not apply because Measure Z does not regulate land use locations, and it attempts to regulate an area "historically dominated by" DOGGR. (*Nguyen*, *supra*, 222 Cal.App.4th at pp. 1186–1187.) Instead, Measure Z dictates *how* subsurface energy production must occur by eliminating certain activities—underground injection and drilling new wells—from the menu of options available to operators to extract subsurface oil. Consequently, no presumption against preemption can attach. (See *Lockard v. City of L.A.* (1949) 33 Cal.2d 453, 467–468 [distinguishing between land use authority that prevents business operations and "regulations that . . . merely restrict its location"].)

C. The State Has Fully Occupied the Field of Oil and Gas Operations, Preempting Local Attempts to Regulate Extraction Methods.

Since the court of appeal found a conflict between Measure Z and section 3106, the court of appeal did not reach the question of whether the State has fully occupied the field of oil and gas operations so as to preempt local regulation. (Opn. at p. 7, fn. 8.) Field preemption is an independent basis for affirming the decision below that state law preempts Measure Z.

1. The State's statutory regulatory regime is so comprehensive as to fully occupy the field.

As explained in detail above, the state regulatory scheme governing oil and gas operations is a complex, comprehensive system of laws and regulations that governs all subsurface activity related to oil and gas production. The state regulatory scheme is so thorough that it has fully occupied the field of regulating subsurface activity related to oil and gas production, creating an independent basis for finding that state law the preempts Measure Z. State law preempts Measure Z's ban on two subsurface production techniques (underground wastewater injection and the drilling of new wells), and leaves no room for local regulation.

The Legislature charged DOGGR with the responsibility "to supervise and protect" California's subsurface energy deposits. (§ 3400.) The Legislature mandated that DOGGR "shall administer" its regulatory duties "so as to encourage the wise development of oil and gas resources." (§ 3106, subd. (d).) Concurrently, the Legislature has directed that DOGGR "shall so supervise the drilling operation, maintenance, and abandonment of wells . . . so as to prevent, as far as possible, damage to life, health, property, and natural resources." (§ 3106, subd. (a).)

To satisfy the dual purposes of energy production and environmental protection, the Legislature has given DOGGR

expansive powers to permit and regulate subsurface production activities in the state. (See §§ 3000–3865.) The Legislature has declared that these statutory powers "shall be liberally construed to meet its purposes." (§ 3013.) Pursuant to these powers, DOGGR established "the most rigorous regulations in the country for oil and gas exploration, development and production[,]" as DOGGR recognized when it adopted the SB 4 EIR. (12:AA 2911 [SB 4 EIR at C.10-24].) In the SB 4 EIR, DOGGR addressed whether the State preempted local regulation of subsurface activities and found that "DOGGR has exclusive legal jurisdiction over, and thus 'occupies the field' regarding, 'subsurface regulation.' This means that no other State or local agencies can impose regulations or mitigation on top of those imposed by DOGGR in that context." (12:AA 2902 [SB 4 EIR at C.2-44].)

Once a well is drilled, DOGGR is required to take significant regulatory action intended to maximize production, while simultaneously protecting the environment. DOGGR "shall, by regulation, prescribe minimum facility maintenance standards for all production facilities in the state," including leak detection, corrosion prevention, tank inspection, valve and gauge maintenance, and other requirements. (§ 3270, subd. (a).) The Legislature has further prescribed specific requirements related to underground injection (§§ 3130–3132), well stimulation (§§ 3150–3161), natural gas storage wells (§§ 3180–3187), abandoned wells

(§§ 3240–3241), hazardous wells (§§ 3250–3258), sumps (§§ 3780–3787), subsidence (§§ 3315–3347), used oil (§§ 3460–3494), methane gas hazards (§§ 3850–3865), wasted resources (§§ 3300–3314, 3500–3503), and geothermal resources (§§ 3700–3776, 3800–3827). DOGGR is further obligated to levy annual charges on subsurface energy operations that "are necessary in the exercise of the police power of the State." (§ 3400.)

To satisfy its statutory obligations, DOGGR has implemented an extensive regulatory program governing every aspect of subsurface production. (Cal. Code Regs., tit. 14, ch. 4 ["Development, Regulation, and Conservation of Oil and Gas Resources"].) "These regulations shall be statewide in application for onshore drilling, production, and injection operations." (*Id.*, tit. 14, § 1712.) DOGGR has emphasized that "[w]ritten approval of the Supervisor is required prior to commencing drilling, reworking, injection, plugging, or plugging and abandonment operations." (*Id.*, § 1714.)

Once operations commence, DOGGR enforces exhaustive regulations that govern every aspect of subsurface activities, including casing (*id.*, §§ 1722.2–1722.4), blowout prevention (*id.*, § 1722.5), drilling fluids (*id.*, § 1722.6), directional surveys (*id.*, § 1722.7), spill contingencies (*id.*, §§ 1722.9), plugging and abandonment (*id.*, §§ 1723–1723.7), idle wells (*id.*, § 1723.9), critical wells (*id.*, §§ 1724.3–1724.4), underground injection and

disposal wells (*id.*, §§ 1724.6, 1724.10), and record and data requirements (*id.*, §§ 1724–1724.2, 1724.7–1724.8). These technical, operational requirements are further buttressed by a suite of regulations specifically intended to protect the environment during subsurface production. (*Id.*, §§ 1750–1789.) DOGGR is clear that "[o]perations approved by the Division shall not deviate from the approved program." (*Id.*, § 1722, subd. (g).)

On the basis of these comprehensive laws and regulations governing subsurface production, California's Attorney General concluded in 1976 that "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." (13:AA 3006 [59 Ops.Cal.Atty.Gen. 461, 478].) The Attorney General based this conclusion on the recognition that state oil and gas laws "have assumed added importance" over the years. (13:AA 2997 [*id.* at 469].) The Public Resources Code reflects both "growing concern over the limited nature of energy resources," balanced with the "additional purpose" to protect "life, health, property, and natural resources." (*Ibid.*) To achieve these purposes, state law requires "uniform regulation" of subsurface activities by DOGGR, to the exclusion of supplemental local regulation. (13:AA 3005 [*id.* at 477].) According to the Attorney General, "where state regulation approves of or specifies plans of operations, methods, materials,

procedures, or equipment to be used by the well operator or where activities are to be carried out under the direction of [DOGGR], there is no room for local regulation." (13:AA 2990 [*id.* at 462].)

The "comprehensive nature" of subsurface production regulations—which define subsurface activities, authorize and regulate their operation, and set penalties for their violation—"is so thorough and detailed as to manifest the Legislature's intent to preclude local regulation." (*O'Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1071.)

In *O'Connell*, this Court addressed a local ordinance authorizing vehicle forfeiture upon a preponderance of evidence that the vehicle was used in an attempt to acquire any amount of a controlled substance. (*Ibid.*) In contrast, under state forfeiture law, a vehicle could permissibly be forfeited only upon proof beyond a reasonable doubt that the vehicle was used "to facilitate certain serious drug crimes." (*Ibid.*) This Court found that, by imposing "penalties in excess of those prescribed by the Legislature" for "conduct exclusively within the purview of state law," the ordinance "conflicts with state law." (*Id.* at p. 1075.)

The logic in *O'Connell* applies with equal force here. The Legislature has clearly defined the scope of oil and gas production activities subject to exclusive state regulation, namely subsurface production activities. DOGGR, pursuant to its statutory mandates to ensure energy production and environmental protection, has

implemented comprehensive regulations that govern every aspect of subsurface production. This includes penalties for violations of state laws and regulations. The Legislature has made clear that subsurface production activities are matters of statewide concern, which are not fit for additional regulation at the local level.

2. Measure Z's wastewater injection ban is preempted because it prohibits a specific subsurface production technique that state law permits and that DOGGR has approved.

As the superior court found, "[b]ecause Policy LU-1.22 seeks to regulate the manner of oil and gas production by restricting particular production techniques, namely wastewater injection and impoundment, it is 'in conflict with general law,' and is therefore preempted." (32:AA 7716, citing *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 747 ("Local legislation in conflict with general law is void. A conflicts exists if the ordinance duplicates, contradicts, or enters an area fully occupied by general law, expressly or by legislative implication.")].)

Each operational well at San Ardo that relies on underground injection was specifically permitted and approved by DOGGR. (9:AA 2336–2337 [Declaration of Burt Ellison ("Ellison Decl."), ¶¶ 14–17]; 9:AA 2239 [Tubbs Decl., ¶¶ 20, 21].) DOGGR has regulated Class II injection wells since the 1940s, and, on September 29, 1982, was granted Primacy in the regulation of

Class II injection wells by the U.S. Environmental Protection Agency. (9:AA 2336 [Ellison Decl., ¶ 14].) Before a UIC project can use underground wastewater injection, the operator must undergo a comprehensive regulatory application and review process, including a DOGGR technical review, State and Regional Water Board review, and possibly notice and a public hearing. (9:AA 2336–2337 [Ellison Decl., ¶ 16].)

Each UIC Project must obtain specific approvals from DOGGR before injection can begin. The operator must "provide the appropriate Division district deputy with" any data that, in the judgment of the Supervisor, are "pertinent and necessary for the proper evaluation of the proposed project." (Cal. Code Regs., tit. 14, § 1724.6, subd. (a).) The UIC application must include a statement of primary purpose, an engineering study, a geologic study, an injection plan, and offset operator notification. (*Id.*, § 1724.7.)

After the project is approved, DOGGR has specific well construction standards that must be met, and all injection wells are subject to rigorous testing requirements. (9:AA 2336–2338 [Ellison Decl., ¶¶ 16, 18].) These include tests for pressure and mechanical integrity, which, following the approval of the project, must be performed at regular intervals specified in the regulations. (Cal. Code Regs., tit. 14, § 1724.10; see also 9:AA 2337–2338 [Ellison Decl., ¶ 18].)

The State intended to—and did—occupy the field of underground injection because it gave DOGGR comprehensive control over underground injection regulations. DOGGR, as the State's experts, consider whether each UIC project should be permitted. Measure Z attempts to override these detailed regulations and "impinges on an area fully occupied or exclusively covered by state law[.]" (*O'Connell*, *supra*, 41 Cal.4th at p. 1076.)

3. Measure Z's ban on new wells is preempted because it prohibits a specific subsurface production technique allowed by state law and approved by DOGGR.

Measure Z's Policy LU-1.23 bans the drilling of any new wells. The superior court found that this ban "impermissibly prohibits certain production techniques." (32:AA 7722.) Substantial evidence supports the superior court's factual finding that "Petitioners have shown that their operations require them to drill new wells for the purposes of injecting steam to maintain the 'steam chest,' an enhanced oil recovery technique necessary to their profitable operation." (32:AA 7722; 9:AA 2249–2253 [Tubbs Decl., ¶¶ 42–47].) Indeed, drilling new wells is an integral part of the continued viability of subsurface operations at San Ardo.

As explained above, the oil in San Ardo is "heavy" crude, meaning it is highly viscous and cannot flow easily to production wells. (9:AA 2244 [Tubbs Decl., ¶ 32].) Because of this, the

enhanced oil recovery technique of "steamflooding" is used to produce oil, where steam is injected into the subsurface and heats the oil, reducing its viscosity. (9:AA 2244, 2249–2250 [Tubbs Decl., ¶ 33, 44].) Production at San Ardo thus depends on the continual drilling of new steam injection wells at the perimeter of the steam chest to sustain the chest and prevent it from collapse. (9:AA 2249–2253 [Tubbs Decl., ¶¶ 44–47].)

The County cannot use local regulations to prohibit this subsurface production technique. The entire UIC project at San Ardo has been approved, leaving no room for additional regulation of downhole activity: "Where the statutory scheme or Supervisor specifies a particular method, material or procedure by a general rule or regulation or gives approval to a plan of action with respect to a particular well or field or approves a transaction at a specified well or field, it is difficult to see how there can by any room for local regulation." (13:AA 3006 [59 Ops.Cal.Atty.Gen. 461, 478].) Here, DOGGR has used its regulatory authority to approve drilling new wells, each of which it has independently authorized, as part of the subsurface techniques required to produce oil at San Ardo. Measure Z's attempt to regulate downhole activity is preempted.

V. CONCLUSION

The court of appeal correctly concluded that state law preempts Measure Z. Accordingly, this Court should affirm.

DATED: June 27, 2022

Respectfully submitted,

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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 Answering Brief consists of 13,966 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

/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 ANSWERING BRIEF** on the interested parties in this action as follows:

☒ BY ELECTRONIC TRANSMISSION WITH TRUEFILING: I served the document(s) on the person(s) listed on the Service List by submitting an electronic version of the document(s) to TrueFiling, through the user interface at www.truefiling.com.

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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 27, 2022, at Los Angeles, California.

/s/ *Dione Garlick*

Dione Garlick

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