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Supreme Court of California
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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,

vs.

COUNTY OF MONTEREY, et al.,

Defendants,

PROTECT MONTEREY COUNTY and DR. LAURA SOLORIO,

Intervenors and Appellants

APPLICATION BY WESTERN STATES PETROLEUM ASSOCIATION AND CALIFORNIA INDEPENDENT PETROLEUM ASSOCIATION TO FILE BRIEF OF AMICI CURIAE IN SUPPORT OF PLAINTIFFS AND RESPONDENTS; PROPOSED BRIEF

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
Hon. Thomas W. Wills, Judge

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APPLICATION TO FILE BRIEF OF AMICI CURIAE

To the Honorable Chief Justice of California:

Pursuant to California Rules of Court, Rule 8.520(f), Western States Petroleum Association and California Independent Petroleum Association hereby apply for permission to file a brief in this case as amici curiae in support of Plaintiffs and Respondents. A copy of the proposed brief is attached to this application.

Western States Petroleum Association (WSPA) and its member companies are proudly dedicated to guaranteeing that every American has access to reliable energy options through socially, economically and environmentally responsible policies and regulations.

Representing the more than 150,000 women and men who have proudly powered the western states since 1907, WSPA works with government leaders, regulators, the media and the public to share information and create an inclusive dialogue around our shared energy future. WSPA believes that, together, we can innovate towards a sustainable energy future that supports the economy, our sense of social equality, and the health of our environment. WSPA has appeared as amicus curiae in this Court in such cases as *Sandoval v. Qualcomm, Inc.* (2021) 12 Cal.5th 256 and *Kesner v. Superior Court* (2016) 1 Cal.5th 1132.

The California Independent Petroleum Association (CIPA) is a non-profit, non-partisan trade association representing approximately 500 independent crude oil and natural gas producers, royalty owners, and service and supply companies operating in California. Its members represent approximately 70% of California's total oil production and 90% of California's natural gas production. CIPA has represented the diverse

interests of its membership before the California State Legislature, the United States Congress and numerous federal, state and local regulatory agencies. CIPA's mission is to promote greater understanding and awareness of the unique nature of California's independent oil and natural gas producers and the market place in which they operate; highlight the economic contributions made by California independents to local, state and national economies; foster the efficient utilization of California's petroleum resources; promote a balanced approach to resource development and environmental protection and improve business conditions for members of our industry. CIPA has appeared as amicus curiae in such cases as *Trail Enterprises, Inc. v. City of Houston* (2014) 135 S.Ct. 76; *Newton v. Parker Drilling Mgmt. Services, Ltd.* (9th Cir. 2019) 773 Fed.Appx. 973; *True Oil Co. v. C.I.R.* (10th Cir. 2000) 170 F.3d 1294.

Resolution of the issue presented in this case regarding the clear conflict between State statutes (Pub. Res. Code § 3106) and local initiative measures like Measure Z will impact oil and gas producers and also other entities statewide.

The proposed brief of amici curiae will assist the Court in deciding the matter. The brief presents additional arguments and authorities demonstrating that the clear wording of California statutes demonstrates an intent to exclude local regulation of oil and gas production, and additionally that the parallel conflict provisions in federal law support and reinforce the settled provisions in California law, as this Court's recent decision in *County of Butte v. Dept. of Water Resources* (2022)13 Cal.5th 612 (2022), plainly demonstrates.

No party, counsel for a party, or any other person or entity other

than amici curiae and their counsel has made a monetary contribution intended to fund the preparation or submission of the brief, and no party or counsel for a party has authored this brief in whole or in part.

Dated: October 14, 2022 MANATT, PHELPS & PHILLIPS, LLP

By: s/Michael M. Berger
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WESTERN STATES PETROLEUM ASSOCIATION AND CALIFORNIA INDEPENDENT PETROLEUM ASSOCIATION

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PROPOSED BRIEF OF AMICI CURIAE

I. Introduction And Interest Of Amici

Amici curiae Western States Petroleum Association (WSPA) and California Independent Petroleum Association (CIPA) file this amici curiae brief in support of Plaintiffs/Respondents because their interests are aligned and they believe they can be of assistance to this Court. Their memberships and interests are discussed *supra*.

As discussed below:

- The clearly stated policy of this State is for the State officials in charge of regulating oil and gas production (the Supervisor or DOGGR[1]) to be in complete charge of determining how oil and gas production will take place, without interference from local government agencies or officials.

- California state policy is that the Supervisor has a dual mandate, i.e., to foster the production of oil and gas so as to "best meet oil and gas needs in this state" (Pub. Res. Code § 3106, subd. (d))[2] and to "prevent, as far as possible, damage to life, health, property and natural resources …." (Pub. Res. Code § 3106, subd. (a)). This dual mandate (which Intervenor/Appellant (PMC) denies exists) cannot be interfered with by local government regulation.

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[1] As in Respondents' briefs, these amici will continue to use the term DOGGR in order to retain consistency with the record in the courts below, notwithstanding that its name has been recently changed.

[2] Unless otherwise specified, all statutory references are to the Public Resources Code.

- No state legislation upsets the balance of regulatory duties entrusted to the Supervisor by Section 3106, nor does any statute elevate the Supervisor's environmental protection duties over his responsibility to ensure the smooth and continuous operation of the state's oil and gas industry.

- No Executive Order elevates environmental protection over oil and gas production, nor could it under settled constitutional precepts.

- The federal law of conflicts and preemption, as recently discussed by this Court in the *County of Butte* case, are parallel and in harmony with California law. A discussion of that parallel federal law will inform the Court's proceedings here.

II. State Law Clearly Conflicts With And Overrides Contrary Local Law In This Case, Where The Local Regulations Cannot Be Reconciled With The Statutory Commands

This is one of those cases in which the Legislature actually wrote a clear statute, whose meaning cannot (or at least should not)[3] be misunderstood.

[3] We say "should not" advisedly, as it appears that PMC fails to understand.

A. State Law Plainly Gives The Supervisor A Dual Mandate: To Encourage The Increased Production Of Oil And Gas And To Prevent Damage To Life, Health, Property And Natural Resources, With An Ultimate Duty To "Best Meet Oil And Gas Needs In This State."

The controlling statute in this case is § 3106, and it plainly mandates that a state official (referred to in the statute as "the supervisor") take charge of oil and gas production in California to ensure that such production is carried on in the most productive fashion. The key is in subd. (d):

> "*To best meet oil and gas needs* in this state, the supervisor *shall* administer this division so as to *encourage the wise development* of oil and gas resources." (Emphasis added.)

Importantly, the statute makes it state policy that the regulations dealing with oil and gas be administered "[t]o best meet oil and gas needs in this state …." The Legislature has long recognized the necessity of satisfying the state's continually growing oil and gas requirements. Our growing population demands no less. The current situation, in which the state's needs are reflected in record prices at the gas pump serves to emphasize the wisdom of centralizing the regulation of this crucial commodity. To allow each of the hundreds of cities and counties in California to impose its own regulations would clearly disrupt the ability of the Supervisor to "[t]o best meet oil and gas needs in this state …."

Nor is that all. The statute also declares that it is part of the Supervisor's duty to "further the elimination of waste by *increasing the*

recovery of underground hydrocarbons …." (subd. (b) (emphasis added)). To the same effect is § 3714. In order to accomplish such "increas[ed] … recovery," the Legislature declared that it is State "policy" to encourage oil and gas producers to operate as:

> "a prudent operator using reasonable diligence would do…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, the supplying of additional motive force, or the creating of enlarged or new channels for the underground movement of hydrocarbons into production wells…." (subd. (b)).

See also § 3715, mandating the Supervisor to exercise his authority, "having in mind the best interest of the lessor, lessee and the state, in *producing and removing* geothermal resources …." (Emphasis added.) In other words, the Supervisor is directed to encourage the use of modern technology to eliminate waste, increase recovery, and satisfy the oil and gas needs of the state. Monterey County's Measure Z interferes with this statutory provision by expressly precluding use of such modern technology.

PMC disputes the Supervisor's duties and responsibilities (Reply Br. 21-22), asserting the Supervisor has no exclusive authority. PMC is simply wrong. A reading of the relevant statutes shows its error. All of them (both preceding and following § 3106) refer solely to the Supervisor and the Supervisor's duties as the entity controlling the state's duties and obligations under this statutory scheme. (See also §§ 3201, 3202, 3203.)

PMC simply asserts — without authority — that the statutory context is otherwise. (Reply Br. 22.) Indeed, PMC concedes that

"section 3106 is *silent* as to local authority" (Reply Br. 22; emphasis added) but asserts that section 3203.5 *implies* something different by requiring that one who applies to the Supervisor for a drilling permit must present a copy of the local authorization pursuant to section 3203.5. That merely acknowledges local zoning, something that is not challenged here and that has nothing to do with the overall regulation of oil and gas production. Although local government, through its zoning power, has the authority to determine the siting of oil wells, it is the state that has the authority over the production of oil and gas resources, as the totality of the statutory design demonstrates.

The same is true of § 3690. That section merely preserves whatever "existing right" municipalities may have had regarding the "conduct and location" of oil production, in other words, standard zoning. But it does not expand it. Prior to the adoption of this section, local government had no authority to regulate oil and gas drilling. That was reserved for DOGGR. That is still the case.

PMC's assertion that § 3012 permits local government to prohibit well drilling is likewise mistaken. That statute merely provides: "The provisions of this division apply to any land or well situated within the boundaries of an incorporated city in which the drilling of oil wells is now or may hereafter be prohibited, until all wells therein have been abandoned as provided in this chapter." Nothing in that statute or any of the surrounding statutes grants power to a city to prohibit well drilling or any of the activities purportedly regulated by Measure Z. Moreover, that statute could have no impact on Measure Z, as Measure Z has nothing to do with any "well situated *within* the boundaries of an incorporated *city*." Measure Z applies only to unincorporated territory

in the County. In any event, this Court has held that:

> "when a statute or statutory scheme seeks to promote a certain activity and, at the same time, permits a more stringent local regulation of that activity, *local regulation cannot be used to completely ban the activity or otherwise frustrate its purpose*." (*Great Western Shows, Inc. v. County of Los Angeles* (2002) 27 Cal.4th 853, 868 (emphasis added).)

That portion of the state statutes is directed solely to the power and authority of DOGGR to regulate drilling. In the case of that statute, it merely mentions areas within the boundaries of a city in which drilling is prohibited. In context, such a prohibition must have been made by the Supervisor, not by any city. Nothing else in the statutory scheme gives cities the authority to prohibit drilling. That includes § 3011, which merely requires the Supervisor to "coordinate with other *state* agencies and entities" (subd. (b) (emphasis added)).[4]

The same is true of newly enacted § 3289, referred to by PMC as SB 1137. To the extent that section "does not prohibit" local government from imposing "more stringent requirements," it is clearly tied to "this article," which deals only with prohibiting new oil wells from being drilled within 3200 feet of sensitive land uses. The statute does not purport to expand local government regulatory authority beyond that.

To be sure, the Supervisor is also tasked with preventing damage

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[4] We recognize that that statute requires additional consultation, but *only consultation*: "It is the intent of the Legislature that the State Air Resources Board *coordinate with state agencies*, as well as *consult* with the environmental justice community, industry sectors, business groups, academic institutions, environmental organizations, and other stakeholders in implementing this division. (Health & Saf. Code

to life and health, which is why amici agree that the Supervisor has been given a dual mandate by the Legislature. But nothing in the legislation provides that the second mandate overrides the first. In fact, given that the statute contains a declared "policy of *increasing* the recovery of underground hydrocarbons" (subd. (b) (emphasis added)) and an overall duty to "best meet oil and gas needs of this state" (subd. (d)), the fundamental legislative mandate is clearly to encourage and sustain the production of oil and gas.

Thus, § 3700 (entitled "Interest of State") provides:

> "It is hereby found and determined that *the people* of the State of California *have a direct and primary interest in the development of geothermal resources*, and that the State of California, through the authority vested in the State Oil and Gas Supervisor, should exercise its power and jurisdiction to require that wells for the discovery and production of geothermal resources be drilled, operated, maintained and abandoned in such manner as to safeguard life, health, property, and the public welfare, *and to encourage maximum economic recovery*." (Emphasis added.)

Thus, as Plaintiffs/Respondents have shown — contrary to PMC's contrary assertions — the Legislature set up a system of dual mandates designed to protect environmental interests, but emphasizing the need to "encourage maximum economic recovery." Many businesses have invested substantial sums in reliance on this established system.

B. Neither Recent Legislation Nor Gubernatorial Decrees Has Overridden The Focus On Hydrocarbon Production In Section 3106.

Recent legislation has been discussed in the preceding section. As shown, it does nothing to impact the overall design of the statutes

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§ 38501, subd. (f)).

governing oil and gas production. Indeed, it reinforces that design.

Beyond that, PMC urges that gubernatorial proclamations can somehow alter measures adopted by the Legislature or explain what the Legislature meant when it acted. Those issues have been here before, most notably in *Professional Engineers in California Government v. Schwarzenegger* (2010) 50 Cal.4th 989, where this Court dealt with the Governor's attempt to deal with a fiscal crisis by changing matters established by statute. This Court would not allow it then and should not allow it now. The Court concluded then that the authority to enact or amend statutes resides solely in "the Legislature," not the executive branch, and that "the ultimate authority to establish or revise" legislative enactments likewise belongs to the Legislature and not to the Governor. (*Id.* at 1015–1016.)

Professional Engineers dealt with an emergency situation, rather than the ordinary functioning of state and local regulatory systems. Yet, even in the case of an emergency, this Court insisted on maintaining the separation of powers established by the Constitution, with a clear wall separating the Legislature from the Governor. The situation is even more clear here, where this Court is faced with a legislative plan developed and implemented over many years that plainly lodges the power and authority to control its primary functions in a specific state official. Nothing in the series of legislative enactments leaves room for the Governor to interject his own beliefs and instructions.

III. The Federal Law Of Conflicts And Preemption Parallels And Reinforces California's Law.

This Court need not look far for guidance. Only recently, in

County of Butte v. Dept. of Water Resources (2022)13 Cal.5th 612, this Court dealt with the issue of conflict and preemption in the context of federal law versus state law. The discussion in *County of Butte* clearly explained how to deal with the primacy of an entity higher in the governmental hierarchy when a lower ranking agency enacts conflicting legislation or regulations.

County of Butte dealt with the interaction of California law with federal law. Specifically, it dealt with the Federal Power Act's (FPA) regulation of dams and hydroelectric power plants (see 16 U.S.C. § 791a et seq.) and the necessity of obtaining a license from the Federal Energy Regulatory Commission (FERC). (16 U.S.C. § 817(1).) Alongside that was the state requirement of complying with the California Environmental Quality Act (CEQA); Pub. Resources Code, § 21000 et seq.). In resolving a challenge by the State's Department of Water Resources' preparation of an Environmental Impact Statement under CEQA, the question arose whether such compliance could be in conflict with the FPA.

This Court divided the issue in two. First, it held that to the extent that CEQA was simply being used to determine how the state managed its own facilities, there was no conflict because the federal government had no interest in that. However, when the analysis moved to the federal licensing process, this Court concluded that federal law was supreme and CEQA (no matter how powerful a tool it had become as a matter of California law) could not be used to interfere with the federal licensing process. The analytical process in that case is helpful here.

We need first to set aside one thing that was present in *County of*

Butte that is absent here: the state regulations applied to a state-owned or state-operated project. In such cases, there is a presumption that protects against undue federal interference in such purely state affairs. (13 Cal.5th at 629.) Here, such deference does not apply, as Measure Z did not purport to deal with County-owned facilities, only with privately-owned facilities located within the County.

County of Butte succinctly summed up the federal law of conflict and preemption:

> "There are three different types of preemption — conflict, express, and field, [citation] — but all of them work in the same way: Congress enacts a law that imposes restrictions or confers rights on private actors; a state law confers rights or imposes restrictions that conflict with the federal law; and therefore the federal law takes precedence and the state law is preempted. [Citation]." (*Id.* at 628.) (Internal punctuation simplified.)
>
> "Conflict preemption exists where compliance with both state and federal law is impossible, or where the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." (*Id.*) (Internal punctuation simplified.)

This Court then discussed a number of decisions of the United States Supreme Court illustrating the action of the preemption doctrine when conflicts arose between federal and state law. The Court noted for example that, in *First Iowa Coop. v. Federal Power Comm'n* (1946) 328 U.S. 152, the state sought to regulate "the very requirements of the project that Congress has placed in the discretion" of the federal agency. (*Id.* at 165.) That could not be done. The higher authority of the Congressional enactment on the same subject preempted the ability of the state to interfere.

As Plaintiffs/Respondents have already explained, this is the

same analysis historically applied by California courts when examining potential conflicts between state and local law. The state statutory design has been described above (as well as in the Respondents' briefs). It plainly lays out a system that is designed to be operated by DOGGR. When Monterey adopted Measure Z, it created the kind of overlapping regulation that the preemption doctrine was designed to eliminate. See *California v. FERC* (1990) 495 U.S. 490, 499, noting how state action that stood as an obstacle to a clear federal process could not withstand a preemption analysis. The same holds for local action that stands as an obstacle to enforcement of statutes as clear as the oil and gas regulation statutes enacted by the Legislature.

IV. CONCLUSION

For the reasons discussed above and in Plaintiffs/Respondents' briefing, amici respectfully submit that this Court should conclude that state statutes have preempted the regulation of oil and gas production in California to the extent that regulations like Monterey County's Measure Z are preempted.

Dated: October 14, 2022 MANATT, PHELPS & PHILLIPS, LLP

By: s/ Michael M. Berger
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CERTIFICATE OF WORD COUNT

Pursuant to California Rules of Court, rule 8.520(c) and (f), I certify that this Proposed Brief of Amici Curiae contains **2,804** words, not including the Application, table of contents, table of authorities, the caption page, or this Certification page.

Dated: October 14, 2022 MANATT, PHELPS & PHILLIPS, LLP

By: s/ Michael M. Berger
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Attorneys for Amici Curiae
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I, BESS HUBBARD, declare: I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 2049 Century Park East, Suite 1700, Los Angeles, California 90067. On **October 14, 2022**, I served the documents described as:

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s/Bess Hubbard
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Supreme Court of California

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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.

10/14/2022

Date

/s/Michael Berger

Signature

Berger, Michael (43228)

Last Name, First Name (PNum)

Manatt, Phelps, & Phillips, LLP

Law Firm