

S271869

IN THE SUPREME COURT 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.

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

Appeal from a Judgment Entered in Favor of Plaintiffs
Monterey County Superior Court
Case No. 16-CV-3978 and consolidated cases
Honorable Thomas W. Wills, Judge

INTERVENORS' MOTION REQUESTING JUDICIAL NOTICE

Volume 1, Pages 1 - 13

Catherine Engberg (SBN 220376)
*Kevin P. Bundy (SBN 231686)
Aaron M. Stanton (SBN 312530)
Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, California 94102
Telephone: (415) 552-7272
Facsimile: (415) 552-5816
Engberg@smwlaw.com
Bundy@smwlaw.com
Stanton@smwlaw.com

*Deborah A. Sivas (SBN 135446)
Environmental Law Clinic
Mills Legal Clinic at Stanford
Law School
559 Nathan Abbott Way
Stanford, California 94305-8610
Telephone: (650) 723-0325
Facsimile: (650) 723-4426
Dsivas@stanford.edu

(Additional attorneys listed on next page)

*Hollin Kretzmann (SBN 290054)
Center for Biological Diversity
1212 Broadway, Suite 800
Oakland, California 94612
Telephone: (510) 844-7100
Facsimile: (510) 844-7150
Hkretzmann@biologicaldiversity.org

*Michael Geibelson (SBN 179970)
Robins Kaplan LLP
2049 Century Park East, #3400
Los Angeles, California 90067
Telephone: (310) 552-0130
Facsimile: (310) 229-5800
MGeibelson@RobinsKaplan.com

Attorneys for Intervenors and Appellants
PROTECT MONTEREY COUNTY and DR. LAURA SOLORIO

INTRODUCTION

Pursuant to California Rules of Court, rule 8.520, subdivision (g), rule 8.252, subdivision (a), and Evidence Code section 459, Intervenor and Appellants Protect Monterey County and Dr. Laura Solorio hereby request judicial notice of the documents attached as Exhibits A through E. This request is submitted concurrently with the Intervenor's Opening Brief. These documents consist of (1) legislative history pertaining to provisions of the California Public Resources Code and (2) executive orders from the Office of the Governor that are relevant to the legal issues at the heart of this case. As such, each of these records meets the requirements for judicial notice as an "official act" of the "legislative [or] executive departments of the United States and of any state of the United States." (Evid. Code, § 452, subd. (c).) A copy of each document to be judicially noticed is filed in accordance with rule 8.74.

ARGUMENT

Pursuant to section 459 of the Evidence Code, this Court may take judicial notice of matters that comport with the requirements of Evidence Code Section 452, provided that the requesting party: (1) gives adequate notice to the adverse party; and (2) includes sufficient information to enable the Court to take judicial notice. (Evid. Code §§ 452, 453.) Intervenor's request meets both of these requirements.

Three of the five documents subject to this request consist of legislative history pertaining to the central statutory provisions of the California Public Resources Code at issue in this case. The

remaining documents are executive orders issued by the California Governor. As such, they fit squarely within “official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.” (*Id.*, § 452(c).) Each excerpt of legislative history is supported by a declaration from the Legislative Intent Service, Inc., verifying its authenticity.

Courts routinely take judicial notice of legislative history materials. (See, e.g., *Heckart v. A-1 Self Storage, Inc.* (2018) 4 Cal.5th 749, 767, fn. 8 [taking judicial notice of bill’s complete legislative history].) These materials may include committee reports, the final legislative history of the act, testimony from public hearings, or correspondence directed at the governor from the legislative analyst, state agencies, or individual lawmakers. (*Post v. Prati* (1979) 90 Cal.App.3d 626, 634; see also *Nguyen v. Western Digital Corp.* (2014) 229 Cal.App.4th 1522, 1550 fn.11 [taking judicial notice of bill amendments and committee analyses].) Such extrinsic materials “are often helpful in assessing constitutional issues raised with respect to a statute.” (*Post v. Prati, supra*, 90 Cal. App. 3d at p. 634.)

Similarly, courts grant judicial notice of executive orders (See, e.g., *Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1157, fn. 1 [granting judicial notice of Governor Schwarzenegger’s greenhouse gas targets in Executive Order S-3-05]; *E.P. v. Superior Court* (2020) 59 Cal.App.5th 52, 55, fn. 5 [taking judicial notice on the court’s own motion of multiple executive

orders addressing the COVID-19 pandemic].) Executive orders also constitute “official acts” under Evidence Code section 452, subdivision (c). (*Id.*)

Lastly, pursuant to California Evidence Code section 453, Intervenors have given Plaintiffs sufficient notice of the request and have provided the Court with sufficient information to enable it to take judicial notice of the matter. Therefore, the Court should grant judicial notice for each document listed and described below.

A. Documents subject to Judicial Notice

Intervenors request that the Court grant judicial notice of the following Exhibits A - E.

Exhibit A: Legislative History of Senate Bill 703, Chapter 2074 (1961).

Exhibit B: Legislative History of Senate Bill 161, Chapter 799 (1970).

Exhibit C: Legislative history of Senate Bill 1022, Chapter 898 (1972).

Exhibit D: Governor’s Executive Order No. B-55-18 (Sept. 10, 2018), available at <https://www.ca.gov/archive/gov39/wp-content/uploads/2018/09/9.10.18-Executive-Order.pdf> (accessed Mar. 23, 2022)

Exhibit E: Governor’s Executive Order No. N-79-20 (Sept. 23, 2020), available at <https://www.gov.ca.gov/wp->

content/uploads/2020/09/9.23.20-EO-N-79-20-Climate.pdf (accessed Mar. 23, 2022)

B. The matter to be noticed is relevant to the legal issues before this Court.

The legislative history of Public Resources Code section 3106 relates directly to the issue before this Court: whether this particular section impliedly preempts provisions LU-1.22 or LU-1.23 of Monterey County's local ballot initiative, Measure Z. The legislative history illuminates the Legislature's reasons for enacting provisions of section 3106 and its purposes in amending the section over time. The legislative history can also reveal whether the lawmakers expressed any intent to preempt local laws. (*See Farm Raised Salmon Cases* (2008) 42 Cal.4th 1077, 1090 [reviewing legislative history and finding no indication of intent to apply preemption].) Intervenors seek judicial notice of committee reports, legislative analyses, and other contemporaneous documents that are part of the legislative history of the evolution of section 3106.

The executive orders are also directly relevant to the legal issues central to this case. Executive orders reflect the state's goals and priorities over time. (Cf. *Viva! International Voice for Animals v. Adidas Promotional Retail Operations, Inc.* (2007) 41 Cal.4th 929, 949-50 [examining federal executive branch actions for evidence of federal policy].) Here, the orders relate to state policies concerning environmental protection and climate change. The executive orders provide important context showing how the executive branch

directs state agencies (and in particular, the California Geologic Energy Management Division, or “CalGEM”) to implement its statutory obligations in light of the urgent and growing need to address climate change. These executive branch policies, in turn, provide context for interpreting the Legislature’s amendments of relevant statutes. (*See, e.g., Robinson v. Fair Employment & Housing Commission* (1992) 2 Cal.4th 226, 234-38 [discussing relevance of executive branch decisions to statutory interpretation].)

C. The Trial Court did not consider judicial notice.

The parties did not request that the trial court grant judicial notice of these records.

D. The matter to be noticed does not relate to proceedings occurring after the order that is the subject of the appeal.

The legislative history and executive orders predate the issuance of the appellate opinion that is the subject of this appeal to the Supreme Court.

CONCLUSION

Intervenors have met the requirements of Evidence Code sections 452, 453, and 459, and this motion provides the information required under California Rules of Court, rule 8.252. Intervenors therefore request that the Court grant judicial notice of the documents attached as Exhibits A-E and filed concurrently with this motion and the Intervenors’ Opening Brief.

DATED: March 28, 2022

SHUTE, MIHALY & WEINBERGER LLP



By: _____

CATHERINE C. ENGBERG

KEVIN P. BUNDY

AARON M. STANTON

Attorneys for Intervenors and
Appellants

PROTECT MONTEREY COUNTY
and DR. LAURA SOLORIO

[PROPOSED] ORDER

The Court finds that Intervenors' submitted records are the proper subject of judicial notice and hereby GRANTS Intervenors' Motion Requesting Judicial Notice in its entirety.

[Presiding Justice]

DECLARATION OF HOLLIN KRETZMANN

I, Hollin Kretzmann, declare as follows:

1. I am an attorney in good standing and licensed to practice before the Courts of this state. I am counsel of record for Intervenor Protect Monterey County in *Chevron U.S.A., Inc. v. County of Monterey*, (case number S271869).

2. I submit this Declaration in support of Intervenors' Opening Brief and Motion Requesting Judicial Notice, filed concurrently herewith.

3. I attest to the authenticity of the documents described below attached to Intervenors' Motion Requesting Judicial Notice.

4. I have attached as Exhibit D a true and correct copy of Governor's Executive Order No. B-55-18 (Sept. 10, 2018), which I downloaded from the state's website:

<https://www.ca.gov/archive/gov39/wp-content/uploads/2018/09/9.10.18-Executive-Order.pdf> (accessed Mar. 23, 2022)

5. I have attached as Exhibit E a true and correct copy of Governor's Executive Order No. N-79-20 (Sept. 23, 2020), which I downloaded from the state's website: <https://www.gov.ca.gov/wp-content/uploads/2020/09/9.23.20-EO-N-79-20-Climate.pdf> (accessed Mar. 23, 2022)

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

March 25, 2022

A handwritten signature in black ink, reading "Hollin Kretzmann". The signature is written in a cursive style with a horizontal line underneath it.

Hollin Kretzmann

1489906.2

INTERVENORS' CHRONOLOGICAL INDEX

<u>Date</u>	<u>Title of Document</u>	<u>Volume</u>	<u>First Page</u>
1961	Exhibit A Legislative History of Senate Bill 703, Chapter 2074 (1961)	2	14
1970	Exhibit B Legislative History of Senate Bill 161, Chapter 799 (1970)	3	148
1970	Exhibit B, Continued Legislative History of Senate Bill 161, Chapter 799 (1970)	4	232
1972	Exhibit C Legislative History of Senate Bill 1022, Chapter 898 (1972)	5	330
1972	Exhibit C, Continued Legislative History of Senate Bill 1022, Chapter 898 (1972)	6	378
Sept. 10, 2018	Exhibit D Governor's Executive Order No. B-55-18	7	472
Sept. 23, 2020	Exhibit E Governor's Executive Order No. N-79-20	7	479
Mar. 28, 2022	Motion Requesting Judicial Notice	1	1

INTERVENORS' ALPHABETICAL INDEX

<u>Title of Document</u>	<u>Date</u>	<u>Volume</u>	<u>First Page</u>
Exhibit A Legislative History of Senate Bill 703, Chapter 2074 (1961)	1961	2	14
Exhibit B Legislative History of Senate Bill 161, Chapter 799 (1970)	1970	3	148
Exhibit B, Continued Legislative History of Senate Bill 161, Chapter 799 (1970)	1970	4	232
Exhibit C Legislative History of Senate Bill 1022, Chapter 898 (1972)	1972	5	330
Exhibit C, Continued Legislative History of Senate Bill 1022, Chapter 898 (1972)	1972	6	378
Exhibit D Governor's Executive Order No. B-55-18	Sept. 10, 2018	7	472
Exhibit E Governor's Executive Order No. N-79-20	Sept. 23, 2020	7	479
Motion Requesting Judicial Notice	Mar. 28, 2022	1	1

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

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

Case Number: **S271869**

Lower Court Case Number: **H045791**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **bundy@smwlaw.com**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
BRIEF	FINAL 2022.03.28 Intervenors_ Opening Brief FINAL AS FILED
REQUEST FOR JUDICIAL NOTICE	Volume 1
REQUEST FOR JUDICIAL NOTICE	Volume 2
REQUEST FOR JUDICIAL NOTICE	Volume 3
REQUEST FOR JUDICIAL NOTICE	Volume 4
REQUEST FOR JUDICIAL NOTICE	Volume 5
REQUEST FOR JUDICIAL NOTICE	Volume 6
REQUEST FOR JUDICIAL NOTICE	Volume 7
PROOF OF SERVICE	FINAL 2022.03.28 - POS RJN Vol. 1-7

Service Recipients:

Person Served	Email Address	Type	Date / Time
Sean Hecht Frank G. Wells Environmental Law Clinic 181502	hecht@law.ucla.edu	e-Serve	3/28/2022 7:51:54 PM
Theodore Boutrous Gibson Dunn & Crutcher LLP 132099	tboutrous@gibsondunn.com	e-Serve	3/28/2022 7:51:54 PM
Jeffrey Dintzer Alston & Bird LLP 139056	jeffrey.dintzer@alston.com	e-Serve	3/28/2022 7:51:54 PM
Dione Garlick Gibson, Dunn & Crutcher 293012	dgarlick@gibsondunn.com	e-Serve	3/28/2022 7:51:54 PM
Andrew Bassak Hanson Bridgett LLP 162440	abassak@hansonbridgett.com	e-Serve	3/28/2022 7:51:54 PM
Donald Oldaker Clifford and Brown 166230	doldaker@clifford-brownlaw.com	e-Serve	3/28/2022 7:51:54 PM
Kevin Bundy	bundy@smwlaw.com	e-	3/28/2022

Shute, Mihaly & Weinberger LLP 231686		Serve	7:51:54 PM
Leslie Girard Monterey County Counsel	girardlj@co.monterey.ca.us	e-Serve	3/28/2022 7:51:54 PM
Gene Tanaka Best Best & Krieger LLP 101423	gene.tanaka@bbklaw.com	e-Serve	3/28/2022 7:51:54 PM
Todd Smith Ragghianti Freitas LLP	tsmith@rflawllp.com	e-Serve	3/28/2022 7:51:54 PM
Deborah Sivas Mills Legal Clinic at Stanford Law School 135446	dsivas@stanford.edu	e-Serve	3/28/2022 7:51:54 PM
Michael Geibelson Robins Kaplan LLP 179970	mgeibelson@robinskaplan.com	e-Serve	3/28/2022 7:51:54 PM
Hollin Kretzmann Center For Biological Diversity 290054	hkretzmann@biologicaldiversity.org	e-Serve	3/28/2022 7:51:54 PM
Jacqueline Zischke Attorney at Law 171670	jzischkelaw@charter.net	e-Serve	3/28/2022 7:51:54 PM
Jason Retterer JRG Attorneys at Law 194651	jason@jrgattorneys.com	e-Serve	3/28/2022 7:51:54 PM
Edward Renwick Hanna and Morton LLP 29325	erenwick@hanmor.com	e-Serve	3/28/2022 7:51:54 PM
Barton Thompson Attorney at Law 72927	bthompson@omm.com	e-Serve	3/28/2022 7:51:54 PM
Alison Hahm Communities for a Better Environment 336969	ahahm@cbecal.org	e-Serve	3/28/2022 7:51:54 PM
Julia Forgie NRDC 304701	jforgie@nrdc.org	e-Serve	3/28/2022 7:51:54 PM
Elizabeth Vissers Office of the County County, County of Santa Clara 321365	elizabeth.vissers@cco.sccgov.org	e-Serve	3/28/2022 7:51:54 PM
Matthew Kline O'Melveny & Myers LLP 211640	mkline@omm.com	e-Serve	3/28/2022 7:51:54 PM
Matthew C. Wickersham 241733	matt.wickersham@alston.com	e-Serve	3/28/2022 7:51:54 PM
Dana L. Craig	dcraig@gibsondunn.com	e-Serve	3/28/2022 7:51:54 PM
Christopher A. Rheinheimer 253890	crheinheimer@hansonbridgett.com	e-Serve	3/28/2022 7:51:54 PM

Heather A. Welles 302256	hwelles@omm.com	e-Serve	3/28/2022 7:51:54 PM
Dimitri D. Portnoi 282871	dportnoi@omm.com	e-Serve	3/28/2022 7:51:54 PM
Glenn Danas 270317	gdanas@robinskaplan.com	e-Serve	3/28/2022 7:51:54 PM
David Balch 226519	david@jrgattorneys.com	e-Serve	3/28/2022 7:51:54 PM
Daniel Ress	dress@crpe-ej.org	e-Serve	3/28/2022 7:51:54 PM
Damon Nagami	dnagami@nrdc.org	e-Serve	3/28/2022 7:51:54 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

3/28/2022

Date

/s/Kevin Bundy

Signature

Bundy, Kevin (231686)

Last Name, First Name (PNum)

Shute, Mihaly & Weinberger LLP

Law Firm