

1 Theodore J. Boutrous, Jr., SBN 132099
tboutrous@gibsondunn.com
2 Andrea E. Neuman, SBN 149733
aneuman@gibsondunn.com
3 William E. Thomson, SBN 187912
wthomson@gibsondunn.com
4 Ethan D. Dettmer, SBN 196046
edettmer@gibsondunn.com
5 GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
6 Los Angeles, CA 90071
Telephone: 213.229.7000
7 Facsimile: 213.229.7520

8 Herbert J. Stern (*pro hac vice* pending)
hstern@sgklaw.com
9 Joel M. Silverstein (*pro hac vice* pending)
jsilverstein@sgklaw.com
10 STERN & KILCULLEN, LLC
325 Columbia Turnpike, Suite 110
11 P.O. Box 992
Florham Park, NJ 07932-0992
12 Telephone: 973.535.1900
Facsimile: 973.535.9664

13
14 Attorneys for Defendants CHEVRON
CORPORATION and CHEVRON U.S.A., INC.

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

17 The COUNTY OF SAN MATEO, individually
18 and on behalf of THE PEOPLE OF THE
STATE OF CALIFORNIA,

19 Plaintiff,

20 v.

21 CHEVRON CORP.; CHEVRON U.S.A.,
22 INC.; EXXONMOBIL CORP.; BP P.L.C.; BP
AMERICA, INC.; ROYAL DUTCH SHELL
23 PLC; SHELL OIL PRODUCTS COMPANY
LLC; CITGO PETROLEUM CORP.;
24 CONOCOPHILLIPS; CONOCOPHILLIPS
COMPANY; PHILLIPS 66; PEABODY
25 ENERGY CORP.; TOTAL E&P USA INC.;
TOTAL SPECIALTIES USA INC.; ARCH
26 COAL, INC.; ENI S.p.A.; ENI OIL & GAS
INC.; RIO TINTO P.C; RIO TINTO LTD.;
27 RIO TINTO ENERGY AMERICA INC.; RIO
TINTO MINERALS, INC.; RIO TINTO
28 SERVICES INC.; STATOIL ASA;
ANADARKO PETROLEUM CORP.;

CASE NO. _____

**NOTICE OF REMOVAL BY DEFENDANTS
CHEVRON CORPORATION AND
CHEVRON U.S.A., INC.**

[Removal from the Superior Court of the State of
California, County of San Mateo, Case No. 17
CIV 03222]

Action Filed: July 17, 2017

1 OCCIDENTAL PETROLEUM CORP.;
2 OCCIDENTAL CHEMICAL CORP.;
3 REPSOL S.A.; REPSOL ENERGY NORTH
4 AMERICA CORP.; REPSOL TRADING USA
5 CORP.; MARATHON OIL COMPANY;
6 MARATHON OIL CORPORATION;
7 MARATHON PETROLEUM CORP.; HESS
8 CORP.; DEVON ENERGY CORP.; DEVON
9 ENERGY PRODUCTION COMPANY, L.P.;
10 ENCANA CORP.; APACHE CORP.; and
11 DOES 1 through 100, inclusive,

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Defendants.

1 **TO THE CLERK OF THE ABOVE-TITLED COURT AND TO PLAINTIFF THE COUNTY**
2 **OF SAN MATEO AND ITS COUNSEL OF RECORD:**

3 PLEASE TAKE NOTICE THAT Defendants Chevron Corp. and Chevron U.S.A., Inc. (col-
4 lectively, “the Chevron Parties”), remove this action—with reservation of all defenses and rights—
5 from the Superior Court of the State of California for the County of San Mateo, Case No. 17 CIV
6 03222, to the United States District Court for the Northern District of California pursuant to 28
7 U.S.C. §§ 1331, 1334, 1441(a), 1442, 1452, and 1367(a), and 43 U.S.C. § 1349(b). All other defend-
8 ants that have been properly joined and served (collectively, “Defendants”) join in or have consented
9 to this Notice of Removal.

10 This Court has original federal question jurisdiction under 28 U.S.C. § 1331, because the
11 Complaint arises under federal laws and treaties, and presents substantial federal questions as well as
12 claims that are completely preempted by federal law. This Court has supplemental jurisdiction under
13 28 U.S.C. § 1367(a) over any claims over which it does not have original federal question jurisdiction
14 because they form part of the same case or controversy as those claims over which the Court has
15 original jurisdiction. As set forth below, removal is proper pursuant to 28 U.S.C. §§ 1441, 1442,
16 1446, and 1452, and 43 U.S.C. § 1349(b).

17 In addition, the Complaint is legally without merit, and, at the appropriate time, Defendants
18 will move to dismiss Plaintiff’s claims pursuant to Rule 12 of the Federal Rules of Civil Procedure.

19 Through its Complaint, the County of San Mateo calls into question longstanding decisions
20 by the Federal Government regarding, among other things, national security, national energy policy,
21 environmental protection, development of outer continental shelf lands, the maintenance of a national
22 petroleum reserve, mineral extraction on federal lands (which has produced billions of dollars for the
23 Federal Government), and the negotiation of international agreements bearing on the development
24 and use of fossil fuels. Many of the Defendants have contracts with the Federal Government to de-
25 velop and extract minerals from federal lands and to sell fuel and associated products to the Federal
26 Government for the Nation’s defense. The gravamen of the Complaint seeks either to undo all of
27 those Federal Government policies or to extract “compensation” and force Defendants to relinquish
28

1 the profits they obtained by having contracted with the Federal Government or relied upon national
2 policies to develop fossil fuel resources.

3 In the Complaint’s view, a state court, on petition by a county, may regulate the nationwide—
4 and indeed, worldwide—economic activity of key sectors of the American economy, those that sup-
5 ply the fuels that power production and innovation, keep the lights on, and that form the basic materi-
6 als from which innumerable consumer, technological, and medical devices are themselves fashioned.
7 Though nominally asserted under state law, the Complaint puts at issue long-established federal stat-
8 utory, regulatory, and constitutional issues and frameworks. It implicates bedrock federal-state divi-
9 sions of responsibility, and appropriates to itself the direction of such federal spheres as nationwide
10 economic development, international relations, and America’s national security. Reflecting the
11 uniquely federal interests posed by greenhouse gas claims like these, the Ninth Circuit has recognized
12 that causes of action of the types asserted here are governed by federal common law, not state law.

13 The Complaint has no basis in law and is inconsistent with serious attempts to address im-
14 portant issues of national and international policy. Accordingly, Plaintiff’s Complaint should be
15 heard in this federal forum to protect the national interest by its prompt dismissal.

16 **I. TIMELINESS OF REMOVAL**

17 1. Plaintiff the County of San Mateo filed a Complaint against the Chevron Parties and
18 other named Defendants in the Superior Court for San Mateo County, California, Case No. 17 CIV
19 03222, on July 17, 2017. The Chevron Parties were served on August 2, 2017. A copy of all pro-
20 cess, pleadings, or orders served upon the Chevron Parties is attached as Exhibit A to the Declaration
21 of William E. Thomson, filed concurrently herewith.

22 2. This notice of removal is timely under 28 U.S.C. § 1446(b) because it is filed fewer
23 than 30 days after service. 28 U.S.C. § 1446(b). All Defendants that have been served as of this date
24 either join in or have consented to this removal. *See* Thomson Decl. ¶ 4. In addition, consent to this
25
26
27
28

1 removal petition is not required as removal does not proceed “solely under 28 U.S.C. § 1441.” 28
2 U.S.C. § 1446(b)(2)(A); *see also, e.g.*, 28 U.S.C. § 1452.¹

3 **II. SUMMARY OF ALLEGATIONS AND GROUNDS FOR REMOVAL**

4 3. Plaintiff is the County of San Mateo, California. Plaintiff brings claims against De-
5 fendants for alleged injuries relating to climate change, including damages and injunctive relief from
6 alleged sea level rise, storms, and other natural phenomena. Plaintiff asserts the following claims on
7 behalf of itself: public nuisance; private nuisance; strict liability for failure to warn; strict liability for
8 design defect; negligence; negligence for failure to warn; and trespass. Plaintiff also purports to as-
9 sert a public nuisance claim on behalf of the People of the State of California. In addition to compen-
10 satory and punitive damages, Plaintiff seeks the “equitable disgorgement of all profits Defendants ob-
11 tained” through their business of manufacturing, producing, and/or promoting the sale of fossil fuel
12 products (Compl. ¶ 186), as well as “equitable relief to abate the nuisances complained of” in the
13 Complaint (Compl., Prayer for Relief).

14 4. Multiple Defendants will deny any California court has personal jurisdiction, and
15 those Defendants properly before the Court will deny any liability as to Plaintiff’s individual claims
16 and as to the claim brought on behalf of the People of California. Defendants expressly reserve all
17 rights in this regard. For purposes of meeting the jurisdictional requirements for removal only, how-
18 ever, Defendants submit that removal is proper on at least seven independent and alternative grounds.

19 5. **First**, the action is removable under 28 U.S.C. § 1441(a) and 28 U.S.C. § 1331 be-
20 cause Plaintiff’s claims, to the extent that such claims exist, implicate uniquely federal interests and
21 are governed by federal common law, and not state common law. *See Nat’l Farmers Union Ins. Cos.*
22 *v. Crow Tribe of Indians*, 471 U.S. 847, 850 (1985). The Ninth Circuit has held that comparable
23 claims, in which a municipality alleged that the defendants’ greenhouse gas emissions led to global
24

25
26 ¹ In filing or consenting to this Notice of Removal, Defendants do not waive, and expressly pre-
27 serve, their right to challenge personal jurisdiction in any federal or state court with respect to this
28 action. A number of Defendants contend that personal jurisdiction in California is lacking over
them, and these Defendants will move to dismiss for lack of personal jurisdiction at the appropri-
ate time. *See, e.g., Carter v. Bldg. Material & Const. Teamsters’ Union Local 216*, 928 F. Supp.
997, 1000-01 (N.D. Cal. 1996) (“A petition for removal affects only the forum in which the ac-
tion will be heard; it does not affect personal jurisdiction.”).

1 warming-related injuries such as coastal erosion, were governed by federal common law. *See Native*
2 *Village of Kivalina v. ExxonMobil Corp.*, 696 F.3d 849, 855 (9th Cir. 2012) (“*Kivalina*”). Federal
3 common law applies only in those few areas of the law that so implicate “uniquely federal interests”
4 that application of state law is affirmatively inappropriate. *See, e.g., Boyle v. United Techs. Corp.*,
5 487 U.S. 500, 504, 507 (1988); *Am. Elec. Power Co., Inc. v. Connecticut*, 564 U.S. 410, 424 (2011)
6 (“*AEP*”) (“borrowing the law of a particular State would be inappropriate”). As a result, the Ninth
7 Circuit’s determination in *Kivalina* that federal common law applies to comparable claims of global
8 warming-related tort claims necessarily means that state law should not apply to those types of
9 claims. Plaintiff’s claims, therefore, (to the extent they exist at all) arise under federal common law,
10 not state law, and are properly removed to this Court.

11 6. **Second**, removal is authorized under 28 U.S.C. § 1441(a) and 28 U.S.C. § 1331 be-
12 cause the action necessarily raises disputed and substantial federal questions that a federal forum may
13 entertain without disturbing a congressionally approved balance of responsibilities between the fed-
14 eral and state judiciaries. *See Grable & Sons Metal Prods., Inc. v. Darue Eng’g & Mfg.*, 545 U.S.
15 308 (2005). In fact, the causes of action as alleged in the Complaint attack federal policy decisions
16 and threaten to upset longstanding federal-state relations, second-guess policy decisions made by
17 Congress and the Executive Branch, and skew divisions of responsibility set forth in federal statutes
18 and the United States Constitution.

19 7. **Third**, removal is authorized under 28 U.S.C. § 1441(a) and 28 U.S.C. § 1331 because
20 Plaintiff’s claims are completely preempted by the Clean Air Act and/or other federal statutes and the
21 United States Constitution, which provide an exclusive federal remedy for plaintiffs seeking stricter
22 regulations regarding the nationwide and worldwide greenhouse gas emissions put at issue in the
23 Complaint.

24 8. **Fourth**, this Court has original jurisdiction over this lawsuit and removal is proper
25 pursuant to the Outer Continental Shelf Lands Act (“*OCSLA*”), because this action “aris[es] out of,
26 or in connection with (A) any operation conducted on the outer Continental Shelf which involves ex-
27
28

1 ploration, development, or production of the minerals, or the subsoil or seabed of the outer Continen-
2 tal Shelf, or which involves rights to such minerals.” 43 U.S.C. § 1349(b); *see also Tenn. Gas Pipe-*
3 *line v. Houston Cas. Ins. Co.*, 87 F.3d 150, 155 (5th Cir. 1996).

4 9. **Fifth**, Defendants are authorized to remove this action under 28 U.S.C. § 1442(a)(1)
5 because, assuming the truth of Plaintiff’s allegations, a causal nexus exists between their actions,
6 taken pursuant to a federal officer’s directions, and Plaintiff’s claims; they are “persons” within the
7 meaning of the statute; and can assert several colorable federal defenses. *See Leite v. Crane Co.*, 749
8 F.3d 1117 (9th Cir. 2014).

9 10. **Sixth**, removal is authorized under 28 U.S.C. § 1441(a) and 28 U.S.C. § 1331 because
10 Plaintiff’s claims are based on alleged injuries to and/or conduct on federal enclaves. As such, Plain-
11 tiff’s claims arise under federal-question jurisdiction and are removable to this Court. *See U.S.*
12 *Const.*, art. I, § 8, cl. 17; *Durham v. Lockheed Martin Corp.*, 445 F.3d 1247, 1250 (9th Cir. 2006)
13 (“Federal courts have federal question jurisdiction over tort claims that arise on ‘federal enclaves.’”).

14 11. **Seventh and finally**, removal is authorized under 28 U.S.C. § 1452(a) and 28 U.S.C.
15 § 1334(b) because Plaintiff’s state-law claims are related to cases under Title 11 of the United States
16 Code. Plaintiff alleges that Defendants (defined by Plaintiff to include certain of Defendants’ subsid-
17 iaries named in the Complaint) engaged in tortious conduct from 1965 to the present, and at least two
18 Defendants, which consent to this Notice of Removal, emerged from Chapter 11 bankruptcy less than
19 a year ago and continue to implement their Chapter 11 plans. *See PDG Arcos, LLC v. Adams*, 436 F.
20 App’x 739 (9th Cir. 2011). And because Plaintiff’s claims are predicated on historical activities of
21 the Defendants, including predecessor companies and companies that they may have acquired or with
22 which they may have merged, and because there are hundreds of non-joined necessary and indispen-
23 sable parties, there are many other Title 11 cases that may be related.

24 12. For the convenience of the Court and all parties, Defendants will address each of these
25 grounds in additional detail. Should Plaintiff challenge this Court’s jurisdiction, Defendants will fur-
26 ther elaborate on these grounds and will not be limited to the specific articulations in this Notice.

III. THIS COURT HAS FEDERAL-QUESTION JURISDICTION BECAUSE PLAINTIFF’S CLAIMS ARISE, IF AT ALL, UNDER FEDERAL COMMON LAW

13. This action is removable because Plaintiff’s claims, to the extent that such claims exist, necessarily are governed by federal common law, and not state common law. 28 U.S.C. § 1331 grants federal courts original jurisdiction over “claims founded upon federal common law as well as those of a statutory origin.” *Nat’l Farmers Union*, 471 U.S. at 850 (quoting *Illinois v. City of Milwaukee*, 406 U.S. 91, 100 (1972) (“*Milwaukee I*”). As the Ninth Circuit explained in holding that similar claims for injuries caused by global warming were governed by federal common law, even “[p]ost-*Erie*, federal common law includes the general subject of environmental law and specifically includes ambient or interstate air or water pollution.” *Kivalina*, 696 F.3d at 855. As Plaintiff’s claims arise under federal common law, this Court has federal-question jurisdiction and removal is proper. That remains true even though Plaintiff’s claims in the final analysis fail to state a claim: among other deficiencies, any such federal common law claim has been displaced by the Clean Air Act. *See, e.g., AEP*, 564 U.S. at 424; *Kivalina*, 696 F.3d at 856-67.

14. Though “[t]here is no federal *general* common law,” *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938) (emphasis added), federal common law continues to exist, and to govern, in a few subject areas in which there are “uniquely federal interests,” *Boyle*, 487 U.S. at 504. *See generally* Henry J. Friendly, *In Praise of Erie—and the New Federal Common Law*, 39 N.Y.U. L. Rev. 383 (1964). Such uniquely federal interests will require the application of federal common law where, for example, the issue is one that by its nature, is “within national legislative power” and there is “a demonstrated need for a federal rule of decision” with respect to that issue. *AEP*, 564 U.S. at 421 (citation omitted). Federal common law therefore applies, in the post-*Erie* era, in those discrete areas in which application of state law would be inappropriate and would contravene federal interests. *Boyle*, 487 U.S. at 504-07. The decision that federal common law applies to a particular issue thus inherently reflects a determination that state law does *not* apply. *Nat’l Audubon Soc’y v. Dep’t of Water*, 869 F.2d 1196, 1204 (9th Cir. 1988); *see also City of Milwaukee v. Illinois & Michigan*, 451 U.S. 304, 312 n.7 (1981) (“*Milwaukee II*”) (“[I]f federal common law exists, it is because state law cannot be used.”).

1 15. In *Kivalina*, the Ninth Circuit, quoting the Supreme Court’s decision in *AEP*, reiter-
2 ated that federal common law applies to ““subjects within the national legislative power where Con-
3 gress has so directed or where the basic scheme of the Constitution so demands.”” 696 F.3d at 855
4 (quoting *AEP*, 564 U.S. at 421) (further citation and internal quotation marks omitted). Although
5 Congress thus sometimes affirmatively directs the application of federal common law, the *Kivalina*
6 court noted that, “[m]ore often, federal common law develops when courts must consider *federal*
7 questions that are not answered by statutes.” *Id.* (emphasis added). Given that claims asserting inju-
8 ries from global warming have an intrinsic interstate and transnational character, the Ninth Circuit
9 held that such claims inherently raise federal questions and fall within the settled rule that federal
10 common law governs “the general subject of environmental law and specifically includes ambient or
11 interstate air and water pollution.” *Id.* at 855; *see also id.* (“federal common law can apply to trans-
12 boundary pollution suits” such as the plaintiff’s); *AEP*, 564 U.S. at 421 (“Environmental protection is
13 undoubtedly an area within national legislative power, [and] one in which federal courts may fill in
14 statutory interstices.”). Thus, while the Ninth Circuit had previously expressed skepticism that fed-
15 eral common law, as opposed to state law, would govern a localized claim for air pollution arising
16 from a specific source within a single state, *see Nat’l Audubon Soc’y*, 869 F.2d at 1203-04, the court
17 in *Kivalina* found that claims arising from injuries allegedly caused by *global* warming implicate in-
18 terstate and, indeed, international aspects that inherently invoke uniquely federal interests and respon-
19 sibilities. *See Kivalina*, 696 F.3d at 856-57; *see also Massachusetts v. EPA*, 549 U.S. 497, 498
20 (2007) (“The sovereign prerogatives to force reductions in greenhouse gas emissions, to negotiate
21 emissions treaties with developing countries, and (in some circumstances) to exercise the police
22 power to reduce motor-vehicle emissions are now lodged in the Federal Government.”); *United*
23 *States v. Solvents Recovery Serv.*, 496 F. Supp. 1127, 1134 (D. Conn. 1980) (describing Supreme
24 Court jurisprudence recognizing “the strong federal interest in controlling certain types of pollution
25 and protecting the environment”).

26 16. Although *Kivalina* did not expressly address the viability of the plaintiff’s purported
27 alternative common law claims resting on state law (which the district court dismissed without preju-
28 dice), the *Kivalina* court’s finding that federal common law applied to the municipality’s global

1 warming claims means that state law *cannot* be applied to such claims. The conclusion that federal
2 common law governs an issue rests, not on a discretionary choice between federal law and state law,
3 but on a determination that the issue is so distinctively federal in nature that application of state law
4 to the issue would risk impairing uniquely federal interests. *Boyle*, 487 U.S. at 506-07; *see also, e.g.,*
5 *Caltex Plastics, Inc. v. Lockheed Martin Corp.*, 824 F.3d 1156, 1159-60 (9th Cir. 2016) (liability of
6 defense contractor to third party under government contract for weapons systems implicated
7 “uniquely federal interests” in national security that would be impaired if disparate state-law rules
8 were applied); *Nat’l Audubon Soc’y*, 869 F.3d at 1204 (“[I]t is inconsistent to argue ‘that both federal
9 and state nuisance law apply to this case. If state law can be applied, there is no need for federal
10 common law; if federal common law exists, *it is because state law cannot be used.*’”) (emphasis
11 added).

12 17. Accordingly, the Ninth Circuit’s holding in *Kivalina* that federal common law governs
13 global warming-related tort claims such as Plaintiff’s here necessarily means that state law cannot
14 govern such claims. Although Plaintiff purports to style its nuisance and other common law claims
15 as arising under state law, the question of whether a particular common law claim is controlled by
16 federal common law rather than state law is itself a question of law that is governed by federal law as
17 set forth in *Erie* and its progeny. While Plaintiff contends that its claims arise under California law,
18 the question of which state, if any, may apply its law to address global climate-change issues is a
19 question that is itself a matter of federal law, given the paramount federal interest in avoiding con-
20 flicts of law in connection with ambient air and water. Moreover, the law is well settled that, in de-
21 termining whether a case arises under federal law and is properly removable, the Plaintiff’s proffered
22 position on a question of law is not entitled to any deference but is instead subject to independent and
23 *de novo* review by the court. *See, e.g., United States v. California*, 932 F.2d 1346, 1349 (9th Cir.
24 1991) (“The issue of whether state or federal [common] law governs is a question of law and is re-
25 viewable *de novo*.”); *Flagstaff Med. Ctr., Inc. v. Sullivan*, 962 F.2d 879, 884, 889-91 (9th Cir. 1992)
26 (same); *see also Provincial Gov’t of Marinduque v. Placer Dome, Inc.*, 582 F.3d 1083, 1086-87 (9th
27 Cir. 2009) (applying *de novo* review to removal based on federal common law).

28

1 18. The extent to which the global warming-related tort claims in this case and in *Kivalina*
2 would impair uniquely federal interests is confirmed by comparing these inherently interstate and
3 transnational claims to the more localized pollution claims that the Ninth Circuit in *National Audu-*
4 *bon* held were governed by state law. In *National Audubon*, the claims at issue involved a challenge
5 to the Los Angeles Department of Water and Power’s diversion of “four freshwater streams that
6 would otherwise flow into Mono Lake.” 869 F.2d at 1198. This discrete conduct in California alleg-
7 edly exposed part of Mono Lake’s lake bed, increased the lake’s “salinity and ion concentration,” and
8 led to “air pollution in the form of alkali dust storms from the newly exposed lake bed.” *Id.* at 1198-
9 99. The Ninth Circuit held that the allegation that some of the dust reached Nevada was not enough
10 to show that the case involved the sort of “interstate dispute previously recognized as requiring reso-
11 lution under federal law,” such that it was “inappropriate for state law to control.” *Id.* at 1204.
12 Given their essentially localized nature, the claims involved only a “domestic dispute” that did not fit
13 within the interstate paradigms that the Supreme Court had to that point recognized as properly gov-
14 erned by federal common law. *Id.* at 1205; *cf. Int’l Paper Co. v. Ouellette*, 479 U.S. 481, 497-98
15 (1987) (holding that New York law applied to pollution claims arising from discharges from a
16 lakeside New York business, even though those effluents flowed to Vermont side of the lake and
17 caused injury there).

18 19. In light of the federal nature of the issues raised by global warming, as described in
19 *AEP* and in *Massachusetts v. EPA*, the *Kivalina* court correctly reached a different conclusion with
20 respect to global warming-related tort claims such as those presented here. Because (as Plaintiff con-
21 cedes, Compl. ¶ 74) global warming occurs only as the result of the undifferentiated accumulated
22 emissions of all emitters in the world over an extended period of time, any judgment as to the reason-
23 ableness of particular emissions, or as to their causal contribution to the overall phenomenon of
24 global warming, inherently requires an evaluation at an interstate and, indeed, transnational level.
25 Thus, even assuming that state tort law may properly address local source emissions within that spe-
26 cific state, the imposition of tort liability for allegedly unreasonably contributing to *global* warming
27 would require an over-arching consideration of *all* of the emissions traceable to sales of Defendants’
28

1 products in each of the states, and, in fact, in the more than 180 nations of the world. Given the Fed-
2 eral Government’s exclusive authority over foreign affairs and foreign commerce, and its preeminent
3 authority over interstate commerce, tort claims concerning global warming directly implicate
4 uniquely federal interests, and a patchwork of 50 state’s common law rules cannot properly be ap-
5 plied to such claims without impairing those interests. Indeed, the Supreme Court expressly held in
6 *AEP* that in cases like this, “borrowing the law of a particular State would be inappropriate.” 564
7 U.S. at 422. Such global warming-related tort claims, to the extent they exist, are therefore governed
8 by federal common law. *Kivalina*, 696 F.3d at 855-56.

9 20. Under the principles set forth above, Plaintiff’s claims, to the extent they exist at all,
10 are governed by federal common law. The gravamen of Plaintiff’s claims is that “production and use
11 of Defendants’ fossil fuel products plays a direct and substantial role in the emissions of greenhouse
12 gas pollution.” Compl. ¶ 2; *see, e.g., id.* ¶¶ 53-54, 58, 75, 78, 181, 207, 220, 254, 261. Plaintiff’s
13 Complaint alleges that Defendants are responsible for “more than one in every five tons of carbon di-
14 oxide and methane emitted worldwide,” *id.* ¶ 14, and that “greenhouse gas pollution is the dominant
15 factor in each of the independent causes of [global] sea level rise,” *id.* ¶ 58; *see also id.* ¶ 78. As evi-
16 dent from the term “global warming” itself, both the causes and the injuries Plaintiff identifies are not
17 constrained to particular sources, cities, counties, or even states, but rather implicate inherently na-
18 tional and international interests, including treaty obligations and federal and international regulatory
19 schemes. *See id.* ¶ 3 n.5 (describing other sources of emissions); ¶ 7 (only “20.3%” of CO₂ emissions
20 allegedly caused by Defendants); ¶ 78 (CO₂ emissions cause “*global* sea level rise”) (emphasis
21 added); *see, e.g., Massachusetts*, 549 U.S. at 509, 523-24 (describing Senate rejection of the Kyoto
22 Protocol because emissions-reduction targets did not apply to “heavily polluting nations such as
23 China and India,” and EPA’s determination that predicted magnitude of future Chinese and Indian
24 emissions “offset any marginal domestic decrease”); *AEP*, 564 U.S. at 427-29 (describing regulatory
25 scheme of the Clean Air Act and role of the EPA); *see also* The White House, Statement by President
26 Trump on the Paris Climate Accord (June 1, 2017), *available at* <https://www.whitehouse.gov/the-press-office/2017/06/01/statement-president-trump-paris-climate-accord> (announcing United States
27
28

1 withdrawal from Paris Climate Accord based on financial burdens, energy restrictions, and failure to
2 impose proportionate restrictions on Chinese emissions).

3 21. Indeed, the Complaint itself demonstrates that the unbounded nature of greenhouse
4 gas emissions, diversity of sources, and magnitude of the attendant consequences have catalyzed
5 myriad federal and international efforts to understand and address such emissions. *See, e.g.*, Compl.
6 ¶ 112. The paramount federal interest in addressing the worldwide effect of greenhouse gas emis-
7 sions is manifested in the regulatory scheme set forth in the Clean Air Act as construed in *Massachu-*
8 *setts v. EPA*. *See AEP*, 564 U.S. at 427-29. Federal legislation regarding greenhouse gas emissions
9 reflects the understanding that “[t]he appropriate amount of regulation in any particular greenhouse
10 gas-producing sector cannot be prescribed in a vacuum: as with other questions of national or interna-
11 tional policy, informed assessment of competing interests is required. Along with the environmental
12 benefit potentially achievable, our Nation’s energy needs and the possibility of economic disruption
13 must weigh in the balance.” *Id.* at 427. As a “question[] of national or international policy,” the
14 question of how to address greenhouse gas emissions that underlies the requested relief at the heart of
15 Plaintiff’s claims implicates inherently federal concerns and is therefore governed by federal com-
16 mon law. *See id.*; *see also Milwaukee II*, 451 U.S. at 312 n.7 (“[I]f federal common law exists, it is
17 because state law cannot be used.”). Because common law claims that rest on injuries allegedly
18 caused by global warming implicate uniquely federal interests, such claims (to the extent they exist at
19 all) must necessarily be governed by federal common law. This Court therefore has original jurisdic-
20 tion over this action.

21 **IV. THE ACTION IS REMOVABLE BECAUSE IT RAISES DISPUTED AND**
22 **SUBSTANTIAL FEDERAL ISSUES.**

23 22. “Except as otherwise expressly provided by Act of Congress, any civil action brought
24 in a State court of which the district courts of the United States have original jurisdiction, may be re-
25 moved . . . to the district court of the United States for the district and division embracing the place
26 where such action is pending.” 28 U.S.C. § 1441(a). Federal district courts, in turn, “have original
27 jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”
28 28 U.S.C. § 1331. The Supreme Court has held that suits apparently alleging only state-law causes of

1 action nevertheless “arise under” federal law if the “state-law claim[s] necessarily raise a stated fed-
2 eral issue, actually disputed and substantial, which a federal forum may entertain without disturbing
3 any congressionally approved balance of federal and state judicial responsibilities.” *Grable*, 545 U.S.
4 at 314. Applying this test “calls for a common-sense accommodation of judgment to the kaleido-
5 scopic situations that present a federal issue.” *Id.* at 313.

6 23. Plaintiff’s Complaint attempts to undermine and supplant federal regulation of green-
7 house gas emissions and hold a national industry responsible for the alleged consequences of rising
8 ocean levels allegedly caused by global climate change. There is no question that Plaintiff’s claims
9 raise a “federal issue, actually disputed and substantial,” for which federal jurisdiction would not up-
10 set “any congressionally approved balance of federal and state judicial responsibilities.”

11 24. The issues of greenhouse gas emissions, global warming, and sea level rising are not
12 unique to the County of San Mateo, the State of California, or even the United States. Yet what the
13 Complaint attempts to do is to supplant decades of national energy, economic development, and fed-
14 eral environmental protection and regulatory policies by prompting a California state court to take
15 control over an entire industry and its interstate commercial activities, and impose massive damages
16 contrary to the federal regulatory scheme.

17 25. Collectively as well as individually, Plaintiff’s causes of action depend on the resolu-
18 tion of disputed and substantial federal questions in light of complex national considerations. For ex-
19 ample, the Complaint’s first, second, and fifth causes of action all seek relief for an alleged nuisance.
20 Indeed, “the scope and limitations of a complex federal regulatory framework are at stake in this
21 case. And disposition of whether that framework may give rise to state law claims as an initial matter
22 will ultimately have implications for the federal docket one way or the other.” *Bd. of Comm’rs of Se.*
23 *La. Flood Protection Auth. v. Tenn. Gas Pipeline Co.*, 850 F.3d 714, 723 (5th Cir. 2017) (cert. petition
24 pending) (“*Flood Protection Authority*”).

25 26. Under federal law, federal agencies must “assess both the costs and benefits of [an]
26 intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or
27 adopt a regulation only upon a reasoned determination that the benefits of the intended regulation jus-
28 tify its costs.” Executive Order 12866, 58 Fed. Reg. 190. In 2010, an interagency working group

1 published *Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866*,
2 which was designed “to allow agencies to incorporate the social benefits of reducing carbon dioxide
3 (CO₂) emissions into cost-benefit analyses of regulatory actions that have small, or ‘marginal,’ im-
4 pacts on cumulative global emissions.” The interagency working group published updates in 2013,
5 2015, and 2016. These measures were used by EPA in formulating various regulations regarding
6 emission of greenhouse gases. *See, e.g.*, Final Carbon Pollution Standards for New, Modified and
7 Reconstructed Power Plants, 80 Fed. Reg. 64662, 64751 (Oct. 23, 2015) (supporting its final rule by
8 explaining that “the costs . . . are less than the central estimates of the social cost of carbon” as calcu-
9 lated by the interagency working group). Under California law, were it to apply, nuisance claims re-
10 quire a plaintiff to prove that the defendant’s conduct is “unreasonable”: in other words, “the gravity
11 of the harm [must] outweigh[] the social utility of the defendant’s conduct.” *San Diego Gas & Elec.*
12 *Co. v. Superior Ct.*, 13 Cal. 4th 893, 938 (1996). Plaintiff alleges that Defendants, through their na-
13 tional and, indeed, global activities, “have created, contributed to, and assisted in creating, a condi-
14 tion in San Mateo County, and permitted that condition to persist, which constitutes a nuisance by,
15 *inter alia*, increasing local sea level, increasing the frequency and intensity of flooding, and increas-
16 ing the frequency and intensity and frequency of storms and storm-related damage to the County and
17 its residents.” Compl. ¶ 180; *see also id.* ¶¶ 194, 231. Plaintiff alleges that “[t]he seriousness of ris-
18 ing sea levels and increased weather volatility and flooding is extremely grave, and outweighs the so-
19 cial utility of Defendants’ conduct.” *Id.* ¶¶ 184, 196, 235. Plaintiff’s product liability claims require
20 a similar risk-utility balancing. *See Barker v. Lull Eng’g Co., Inc.*, 20 Cal. 3d 413, 427 (1978).

21 27. But Congress has directed a number of federal agencies to regulate Defendants’ con-
22 duct, and in doing so to conduct the same analysis of benefits and impacts that Plaintiff would have
23 the state court undertake in analyzing Plaintiff’s claims. The benefits and harms of Defendants’ con-
24 duct are broadly distributed throughout the Nation, to all residents as well as all state and government
25 entities. Given this diffuse and broad impact, Congress has acted through a variety of federal stat-
26 utes—primarily but not exclusively, the Clean Air Act—to strike the balance between energy extrac-
27 tion and production and environmental protections. *See Clean Air Act*, 42 U.S.C. § 7401(c) (Con-

28

1 gressional statement that the goal of the Clean Air Act is “to encourage or otherwise promote reason-
2 able Federal, State, and local governmental actions . . . for pollution prevention”); *see also, e.g.*, En-
3 ergy Reorganization Act of 1974, 42 U.S.C. § 5801 (Congressional purpose to “develop, and increase
4 the efficiency and reliability of use of, all energy sources” while “restoring, protecting, and enhancing
5 environmental quality”); Mining and Minerals Policy Act, 30 U.S.C. § 1201 (Congressional purpose
6 to encourage “economic development of domestic mineral resources” balanced with “environmental
7 needs”); Surface Mining Control and Reclamation Act, 30 U.S.C. § 1201 (Congressional findings
8 that coal mining operations are “essential to the national interest” but must be balanced by “coopera-
9 tive effort[s] . . . to prevent or mitigate adverse environmental effects”).

10 28. The question of whether the federal agencies charged by Congress to balance energy
11 and environmental needs for the entire Nation have struck that balance in an appropriate way is “in-
12 herently federal in character” and gives rise to federal question jurisdiction. *Buckman Co. v. Plain-*
13 *tiffs’ Legal Comm.*, 531 U.S. 341, 347(2001); *see also Pet Quarters, Inc. v. Depository Trust &*
14 *Clearing Corp.*, 559 F.3d 772, 779 (8th Cir. 2009) (affirming federal question jurisdiction where
15 claims implicated federal agency’s acts implementing federal law); *Bennett v. Southwest Airlines Co.*,
16 484 F.3d 907, 909 (7th Cir. 2007) (federal removal under *Grable* appropriate where claims were “a
17 collateral attack on the validity of” agency action under a highly reticulated regulatory scheme). Ad-
18 judicating these claims in federal court, including whether private rights of action are even cogniza-
19 ble, is appropriate because the relief sought by Plaintiff would necessarily alter the regulatory regime
20 designed by Congress, impacting residents of the Nation far outside the state court’s jurisdiction.
21 *See, e.g., Grable*, 545 U.S. at 312 (claims that turn on substantial federal questions “justify resort to
22 the experience, solicitude, and hope of uniformity that a federal forum offers on federal issues”);
23 *West Virginia ex rel. McGraw v. Eli Lilly & Co.*, 476 F. Supp. 2d 230, 234 (E.D.N.Y. 2007) (removal
24 under *Grable* is appropriate where state common law claims implicate “an intricate federal regulatory
25 scheme . . . requiring some degree of national uniformity in interpretation”).

26 29. The Complaint also calls into question Federal Government decisions to contract with
27 defendants for the extraction, development, and sale of fossil fuel resources on federal lands. Such
28

1 national policy decisions have expanded fossil fuel production and use, and produced billions of dol-
2 lars in revenue to the federal treasury. Available, affordable energy is fundamental to economic
3 growth and prosperity generally, as well as to national security and other issues that have long been
4 the domain of the Federal Government. Yet, Plaintiff’s claims require a determination that the com-
5 plained-of conduct—the lawful activity of placing fossil fuels into the stream of interstate and foreign
6 commerce—is unreasonable, and that determination raises a policy question that, under the Constitu-
7 tion and the applicable statutes, treaties, and regulations, is a federal question. *See In re Nat’l Sec.*
8 *Agency Telecommc’ns*, 483 F. Supp. 2d 934, 943 (N.D. Cal. 2007) (holding that removal jurisdiction
9 existed over case that implicated state-secrets privilege because “the privilege is ‘not only a contested
10 federal issue, but a substantial one,’ for which there is ‘a serious federal interest in claiming the ad-
11 vantages thought to be inherent in a federal forum’” (quoting *Grable*, 545 U.S. at 313)). The cost-
12 benefit analysis required by the claims asserted in the Complaint would thus necessarily entail a usur-
13 pation by the state court of the federal regulatory structure of an essential, national industry. “The
14 validity of [Plaintiff’s] claims would require that conduct subject to an extensive federal permitting
15 scheme is in fact subject to implicit restraints that are created by state law.” *Flood Control Authority*,
16 850 F.3d at 724; *see also Bader Farms, Inc. v. Monsanto Co.*, No. 16-cv-299, 2017 WL 633815, at
17 *3 (E.D. Mo. Feb. 16, 2017) (“Count VII is in a way a collateral attack on the validity of APHIS’s
18 decision to deregulate the new seeds”); *Bennett*, 484 F.3d at 909 (holding that federal removal is
19 proper under *Grable* “when the state proceeding amounted to a collateral attack on a federal agency’s
20 action”).

21 30. Plaintiff’s claims also necessarily implicate substantial federal questions by seeking to
22 hold Defendants liable for compensatory and punitive damages, as well as injunctive relief, based on
23 allegations that Defendants have waged a “campaign to obscure the science of climate change” and
24 “disseminat[ed] and funded the dissemination of information intended to mislead elected officials and
25 regulators,” which Plaintiff alleges defrauded and interfered with federal decision-making, thereby
26 “delay[ing] efforts to curb these emissions.” Compl. ¶ 150; *see also id.* ¶¶ 203-27, 239-67.

27 31. To show causation, Plaintiff must establish that federal regulators were misled *and*
28 would have adopted different energy and climate policies absent the alleged misrepresentations.

1 Such a liability determination would require a court to construe federal regulatory decision-making
2 standards, and determine how federal regulators would have applied those standards under counter-
3 factual circumstances. *See id.* ¶ 129 (“GCC and its cohorts staved off greenhouse gas regulation in
4 the U.S., as indicated by U.S. Undersecretary of State Paula Dobriansky’s talking points compiled
5 before a 2001 meeting with GCC representations.”); *see also Flood Protection Authority*, 850 F.3d at
6 723 (finding necessary and disputed federal issue in plaintiffs’ state-law tort claims because they
7 could not “be resolved without a determination whether multiple federal statutes create a duty of care
8 that does not otherwise exist under state law”).

9 32. Additionally, Plaintiff alleges that Defendants failed to comply with their duties under
10 the Toxic Substances Control Act, 55 U.S.C. § 1601 *et seq.*: “Although greenhouse gases are human
11 health hazards (because they have serious consequences in terms of global food production, disease
12 virulence, and sanitation infrastructure, among other impacts), neither Imperial, Exxon, nor any other
13 Defendant has ever filed a disclosure with the U.S. Environmental Protection Agency pursuant to the
14 Toxic Substances Control Act.” Compl. ¶ 96; *see also Boyeson v. S. Carolina Elec. & Gas Co.*, No.
15 15-cv-4920, 2016 WL 1578950, at *5 (D.S.C. Apr. 20, 2016) (“While Plaintiffs’ allegations of negli-
16 gence appear on their face to not reference federal law, federal issues are cognizable as the source for
17 the duty of care resulting from SCE&G’s operation and management of water levels at the Lake Mur-
18 ray Dam, and not from the alleged failure to warn.”).

19 33. Plaintiff’s Complaint, which seeks to hold Defendants liable for “billions of dollars” in
20 damages (Compl. ¶ 196) and requests equitable relief requiring Defendants to “abate the nuisance[]”
21 of rising sea levels (*id.*, Prayer for Relief)—despite Defendants’ uncontested compliance with state
22 and federal law—necessarily implicates numerous other disputed and substantial federal issues. Be-
23 yond the strictly jurisdictional character of the points addressed above and herein, it is notable that
24 this litigation places at issue multiple significant federal issues, including but not limited to:
25 (1) whether Defendants can be held liable consistent with the First Amendment for purportedly
26 “championing . . . anti-regulation and anti-science campaigns” that Plaintiff alleges deceived federal
27 agencies (Compl. ¶ 9); (2) whether a state court may hold Defendants liable for conduct that was
28

1 global in scale (production of fossil fuels), that allegedly produced effects that are global in scale (in-
2 creased CO₂ levels and rising sea levels), and on that basis, order Defendants to modify their conduct
3 on a global scale (abating rising sea levels), consistent with the constitutional principles limiting the
4 jurisdictional and geographic reach of state law and guaranteeing due process; (3) whether fossil fuel
5 *producers* may be held liable, consistent with the Due Process Clause, for climate change when it is
6 the combustion of fossil fuels—including by Plaintiff and the People of the State of California them-
7 selves—that leads to the release of greenhouse gases into the atmosphere; (4) whether a state may im-
8 pose liability under state common law when the Supreme Court has held that the very same *federal*
9 common law claims are displaced by federal statute, and notwithstanding the commonsense principle
10 that “[i]f a federal common law cause of action has been extinguished by Congressional displace-
11 ment, it would be incongruous to allow it to be revived *in any form*,” *Kivalina*, 696 F.3d at 857 (em-
12 phasis added); (5) whether a state court may regulate and burden on a global scale the sale and use of
13 what federal policy has deemed an essential resource, consistent with the United States Constitution’s
14 Commerce Clause and foreign affairs doctrine, as well as other constitutional principles; (6) whether
15 a state court may review and assess the validity of acts of foreign states in enacting and enforcing
16 their own regulatory frameworks; and (7) whether a state court may determine the ability to sue based
17 on alleged damages to land, such as coastal property and interstate highways (*see* Compl. ¶¶ 182,
18 184, 196), which depends on the interpretation of federal laws relating to the ownership and control
19 of property.

20 34. Plaintiff’s Complaint also raises substantial federal issues because the asserted claims
21 intrude upon both foreign policy and carefully balanced regulatory considerations at the national
22 level, including the foreign affairs doctrine. Plaintiff seeks to govern extraterritorial conduct and en-
23 croach on the foreign policy prerogative of the Federal Government’s executive branch as to climate
24 change treaties. “There is, of course, no question that at some point an exercise of state power that
25 touches on foreign relations must yield to the National Government’s policy, given the ‘concern for
26 uniformity in this country’s dealings with foreign nations’ that animated the Constitution’s allocation
27 of the foreign relations power to the National Government in the first place.” *Am. Ins. Assoc. v. Gar-*
28 *amendi*, 539 U.S. 396, 413 (2003). Yet, this is the precise nature of Plaintiff’s action brought in state

1 court. *See United States v. Belmont*, 301 U.S. 324, 331 (1937) (“The external powers of the United
2 States are to be exercised without regard to state laws or policies... [I]n respect of our foreign rela-
3 tions generally, state lines disappear.”); *Hines v. Davidowitz*, 312 U.S. 52, 63 (1941) (“Our system of
4 government . . . requires that federal power in the field affecting foreign relations be left entirely free
5 from local interference.”).

6 35. Through its action, Plaintiff seeks to regulate greenhouse gas emissions worldwide, far
7 beyond the borders of the United States. This is premised in part, according to Plaintiff, on Defend-
8 ants’ purported campaign to undermine national and international efforts, like the Kyoto Protocol, to
9 rein in greenhouse gas emissions. Compl. ¶¶ 114, 128-29. Plaintiff alleges that its injuries are
10 caused by global weather phenomena, such as increases in the Earth’s ambient temperatures, ocean
11 temperature, sea level, and extreme storm events, and that Defendants are a substantial contributing
12 factor to such climate change as a result of their collective operations on a worldwide basis, which
13 Plaintiff claims accounts for one-fifth of total global greenhouse gas emissions. *Id.* ¶¶ 14, 164-65.
14 But “[n]o State can rewrite our foreign policy to conform to its own domestic policies. Power over
15 external affairs is not shared by the States; it is vested in the national government exclusively. It need
16 not be so exercised as to conform to State laws or State policies, whether they be expressed in consti-
17 tutions, statutes, or judicial decrees.” *United States v. Pink*, 315 U.S. 203, 233-34 (1942). States
18 have no authority to impose remedial schemes or regulations to address what are matters of foreign
19 affairs. *Ginergy v. City of Glendale*, 831 F.3d 1222, 1228-29 (9th Cir. 2016) (“It is well established
20 that the federal government holds the exclusive authority to administer foreign affairs.”).

21 **V. THE ACTION IS REMOVABLE BECAUSE IT IS COMPLETELY PREEMPTED BY**
22 **FEDERAL LAW**

23 36. This Court also has original jurisdiction over this lawsuit because Plaintiff requests
24 relief that would alter or amend the rules regarding nationwide—and even worldwide—regulation of
25 greenhouse gas emissions. This action is completely preempted by federal law.

26 37. The Supreme Court has held that a federal court will have jurisdiction over an action
27 alleging only state-law claims where “the extraordinary pre-emptive power [of federal law] converts
28

1 an ordinary state common law complaint into one stating a federal claim for purposes of the well-
2 pleaded complaint rule.” *Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 65 (1987).

3 38. A state cause of action is preempted under this “complete preemption” doctrine where
4 a federal statutory scheme “provide[s] the exclusive cause of action for the claim asserted and also
5 set[s] forth procedures and remedies governing that cause of action.” *Beneficial Nat’l Bank v. Ander-*
6 *son*, 539 U.S. 1, 8 (2003). It also requires a determination that the state-law cause of action falls
7 within the scope of the federal cause of action, including where it “duplicates, supplements, or sup-
8 plants” that cause of action. *Aetna Health Inc. v. Davila*, 542 U.S. 200, 209 (2004).

9 39. Both requirements for complete preemption are present here. Among other things,
10 Plaintiff’s Complaint seeks an “abatement” of a nuisance it alleges Defendants have caused—namely,
11 a rise in sea levels, an increase in the frequency and intensity of flooding, and an increase in the in-
12 tensity and frequency of storms and storm-related damages. As such, it seeks regulation of green-
13 house gas emissions far beyond the borders of California and even the borders of the United States.
14 This can be accomplished only by a nationwide and global reduction in the emission of greenhouse
15 gases. Even assuming that such relief can be ordered against Defendants for their production and sale
16 of fossil fuels, which are then combusted by others at a rate Plaintiff claims causes the alleged inju-
17 ries, this claim must be decided in federal court because Congress has created a cause of action by
18 which a party can seek the creation or modification of nationwide emission standards by petitioning
19 the EPA. That federal cause of action was designed to provide the exclusive means by which a party
20 can seek nationwide emission regulations. Because Plaintiff’s state causes of action would “dupli-
21 cate[], supplement[], or supplant[]” that exclusive federal cause of action, they are completely
22 preempted. “If a federal common law cause of action has been extinguished by Congressional dis-
23 placement, it would be incongruous to allow it to be revived in any form.” *Kivalina*, 696 F.3d at 857.

24 **A. The Clean Air Act Provides the Exclusive Cause of Action for Challenging EPA**
25 **Rulemakings.**

26 40. The Clean Air Act permits private parties, as well as state and municipal governments,
27 to challenge EPA rulemakings (or the absence of such) and to petition the EPA to undertake new
28 rulemakings. *See Massachusetts*, 549 U.S. at 516-17. In addition, Congress created an independent

1 scientific review committee, to include at least one person representing State air pollution control
2 agencies, with a statutory role in the rulemaking process. *See* 42 U.S.C. § 7409(d)(2)(A).

3 41. With regard to new rulemakings, the Clean Air Act provides that “any person may pe-
4 tition the Administrator to modify the list of hazardous air pollutants under this subsection by adding
5 or deleting a substance.” 42 U.S.C. § 7412(b)(3). “Within 18 months after receipt of a petition, the
6 Administrator shall either grant or deny the petition by publishing a written explanation of the rea-
7 sons for the Administrator’s decision.” *Id.* In the event of an unfavorable decision, “[a] petition for
8 review . . . may be filed only in the United States Court of Appeals for the District of Columbia.” 42
9 U.S.C. § 7607(b)(1). This petition for review “shall be filed within sixty days from the date notice of
10 such promulgation, approval, or action appears in the Federal Register.” *Id.*

11 42. Rulemakings (and petitions for rulemaking) regarding the regulation of nationwide
12 greenhouse gas emissions are subject to the federal statutory and regulatory scheme outlined in detail
13 by the Clean Air Act. *See Massachusetts*, 549 U.S. at 516-17.

14 43. Congress manifested a clear intent that the procedure outlined above regarding peti-
15 tions for EPA rulemaking be exclusive: “Action of the Administrator with respect to which review
16 could have been obtained . . . shall not be subject to judicial review in civil or criminal proceedings
17 for enforcement.” 42 U.S.C. § 7607(b)(2).

18 44. This congressionally provided statutory and regulatory scheme is thus the “exclusive”
19 means for seeking the nationwide regulation of greenhouse gas emissions and “set[s] forth procedures
20 and remedies” for that relief, *Beneficial Nat’l Bank*, 539 U.S. at 8, irrespective of the savings clauses
21 applicable to some other types of claims. Moreover, in addition to states’ ability to participate in the
22 comment process on federal regulations, Congress created a mechanism whereby states can contrib-
23 ute to the rulemaking process. *See* 42 U.S.C. § 7409(d)(2)(A).

24 **B. Plaintiff’s Asserted State-Law Causes of Action Duplicate, Supplement, and/or**
25 **Supplant the Federal Cause of Action.**

26 45. Plaintiff asks the Court to order Defendants to “abate the nuisance caused by sea level
27 rise in the County’s jurisdiction.” Compl. ¶ 12; *see also id.*, Prayer for Relief (requesting “[e]quitable
28 relief to abate the nuisances complained of herein”).

1 46. According to Plaintiff’s own allegations, the alleged nuisances can be abated only by a
2 global—or at the very least national—reduction in greenhouse gas emissions. *See* Compl. ¶ 74 (“[I]t
3 is not possible to determine the source of any particular individual molecule of CO₂ in the atmos-
4 phere attributable to anthropogenic sources because such greenhouse gas molecules do not bear
5 markers that permit tracing them to their source, and because greenhouse gases quickly diffuse and
6 comingle in the atmosphere.”); *id.* ¶ 75 (describing “global” greenhouse gas emissions relating to fos-
7 sil fuel products). Indeed, Plaintiff’s allegations purport to show that Defendants “undertook a mo-
8 mentous effort to evade *international* and *national* regulation of greenhouse gas emissions”—*not*
9 state or local regulations. *Id.* ¶ 140 (emphases added); *see also id.* ¶ 114 (“Defendants embarked on a
10 decades-long campaign designed to . . . undermine national and international efforts like the Kyoto
11 Protocol to rein in greenhouse gas emissions.”); *id.* ¶ 112 (acknowledging, *inter alia*, federal legisla-
12 tive efforts to regulate CO₂ and other greenhouse gases that allegedly “prompted Defendants to
13 change their tactics . . . to a public campaign aimed at evading regulation”); *id.* ¶¶ 125, 126(a), 128,
14 129 (describing alleged efforts to encourage the United States to reject the international Kyoto Proto-
15 col); *id.* ¶¶ 134-35 (describing Defendants’ alleged lobbying efforts against the federal American
16 Clean Energy and Security Act of 2009, which would have imposed a U.S. cap-and-trade program).

17 47. Plaintiff’s state-law tort claims are effectively an end-run around a petition for a rule-
18 making regarding greenhouse gas emissions because they seek to regulate nationwide emissions that
19 Plaintiff concedes conform to EPA’s emission standards. *See, e.g., San Diego Bldg. Trades Council*
20 *v. Garmon*, 359 U.S. 236, 247 (1959); *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 539 (1992). The
21 claims would require precisely the cost-benefit analysis of emissions that the EPA is charged with
22 undertaking and would directly interfere with the EPA’s determinations. *See supra* ¶ 26. Because
23 Congress has established a clear and detailed process by which a party can petition the EPA to estab-
24 lish stricter nationwide emissions standards, Plaintiff’s claims are completely preempted by the
25 Clean Air Act.

26 48. Because Congress has provided an exclusive statutory remedy for the regulation of
27 greenhouse gas emissions which provides federal procedures and remedies for that cause of action,
28

1 and because Plaintiff's claims fall within the scope of the federal cause of action, Plaintiff's claims
2 are completely preempted by federal law and this Court has federal-question jurisdiction.

3 **VI. THE ACTION IS REMOVABLE UNDER THE OUTER CONTINENTAL SHELF**
4 **LANDS ACT**

5 49. This Court also has original jurisdiction pursuant to the Outer Continental Shelf Lands
6 Act ("OCSLA"). 43 U.S.C. § 1349(b); *see Tenn. Gas Pipeline*, 87 F.3d at 155. This action "aris[es]
7 out of, or in connection with (A) any operation conducted on the outer Continental Shelf which in-
8 volves exploration, development, or production of the minerals, or the subsoil or seabed of the outer
9 Continental Shelf, or which involves rights to such minerals." 43 U.S.C. § 1349(b); *In re Deepwater*
10 *Horizon*, 745 F.3d 157, 163 (5th Cir. 2014) ("th[e] language [of § 1349(b)(1)] [i]s straightforward
11 and broad"). The outer continental shelf ("OCS") includes all submerged lands that belong to the
12 United States but are not part of any State. 43 U.S.C. §§ 1301, 1331.

13 50. The breadth of federal jurisdiction granted by OCSLA reflects the Act's "expansive
14 substantive reach." *See EP Operating Ltd. P'ship v. Placid Oil Co.*, 26 F.3d 563, 569 (5th Cir. 1994).
15 "OCSLA was passed . . . to establish federal ownership and control over the mineral wealth of the
16 OCS and to provide for the development of those natural resources." *Id.* at 566. "[T]he efficient ex-
17 ploitation of the minerals of the OCS . . . was . . . a primary purpose for OCSLA." *Amoco Prod. Co.*
18 *v. Sea Robin Pipeline Co.*, 844 F.2d 1202, 1210 (5th Cir. 1988). Indeed, OCSLA declares it "to be
19 the policy of the United States that . . . the outer Continental Shelf . . . should be made available for
20 expeditious and orderly development." 43 U.S.C. § 1332(3). It further provides that "since explora-
21 tion, development, and production of the minerals of the outer Continental Shelf will have significant
22 impacts on coastal and non-coastal areas of the coastal States . . . such States, and through such States,
23 affected local governments, are entitled to an opportunity to participate, *to the extent consistent with*
24 *the national interest*, in the policy and planning decisions made by the Federal Government relating
25 to exploration for, and development and production of, minerals of the outer Continental Shelf." *Id.*
26 § 1332(4) (emphasis added).

27 51. When enacting Section 1349(b)(1), "Congress intended for the judicial power of the
28 United States to be extended to the entire range of legal disputes that it knew would arise relating to

1 resource development on the [OCS].” *Laredo Offshore Constructors, Inc. v. Hunt Oil. Co.*, 754 F.2d
 2 1223, 1228 (5th Cir. 1985). Consistent with Congress’ intent, courts repeatedly have found OCSLA
 3 jurisdiction where resolution of the dispute foreseeably could affect the efficient exploitation of min-
 4 erals from the OCS.² *See, e.g., EP Operating*, 26 F.3d at 569-70; *United Offshore v. S. Deepwater*
 5 *Pipeline*, 899 F.2d 405, 407 (5th Cir. 1990).

6 52. OCSLA jurisdiction exists even if the Complaint pleads no substantive OCSLA
 7 claims. *See, e.g., In re Deepwater Horizon*, 745 F.3d at 163. The Court, moreover, may look beyond
 8 the facts alleged in the Complaint to determine that OCSLA jurisdiction exists. *See, e.g., Plains Gas*
 9 *Solutions, LLC v. Tenn. Gas Pipeline Co., LLC*, 46 F. Supp. 3d 701, 703 (S.D. Tex. 2014); *St. Joe*
 10 *Co. v. Transocean Offshore Deepwater Drilling Inc.*, 774 F. Supp. 2d 596, 2011 A.M.C. 2624, 2640
 11 (D. Del. 2011) (citing *Amoco Prod. Co. v. Sea Robin Pipeline Co.*, 844 F.2d 1202, 1205 (5th Cir.
 12 1998)).

13 53. Under OCSLA, the Department of Interior administers an extensive federal leasing
 14 program aiming to develop and exploit the oil and gas resources of the federal Continental Shelf. 43
 15 U.S.C. § 1334 *et seq.* Pursuant to this authority, the Interior Department “administers more than
 16 5,000 active oil and gas leases on nearly 27 million OCS acres. In FY 2015, production from these
 17 leases generated \$4.4 billion in leasing revenue . . . [and] provided more than 550 million barrels of
 18 oil and 1.35 trillion cubic feet of natural gas, accounting for about sixteen percent of the Nation’s oil
 19 production and about five percent of domestic natural gas production.” Statement of Abigail Ross
 20 Hopper, Director, Bureau of Ocean Energy Management, Before the House Committee on Natural
 21 Resources (Mar. 2, 2016), *available at* [https://www.boem.gov/FY2017-Budget-Testimony-03-01-](https://www.boem.gov/FY2017-Budget-Testimony-03-01-2016)
 22 2016. Certain Defendants here, of course, participate very substantially in the federal OCS leasing
 23 program. For example, from 1947 to 1995, Chevron U.S.A. Inc. produced 1.9 billion barrels of crude
 24 oil and 11 billion barrels of natural gas from the federal outer continental shelf in the Gulf of Mexico

25
 26 ² As stated in 43 U.S.C. § 1333(a)(1): “The Constitution and laws and civil and political jurisdic-
 27 tion of the United States are extended to the subsoil and seabed of the outer Continental Shelf and
 28 . . . to all artificial islands, and all installations and other devices permanently or temporarily attached
 . . . to the seabed . . . for the purpose of exploring for, developing, or producing resources therefrom .
 . . to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdic-
 tion located within a State”

1 alone. U.S. Dep't of Int., Minerals Mgmt. Serv., Gulf of Mex. Region, Prod. by Operator Ranked by
2 Vol. (1947–1995), *available at* [https://www.data.boem.gov/Produc-](https://www.data.boem.gov/Production/Files/Rank%20File%20Gas%201947%-20-%201995.pdf)
3 [tion/Files/Rank%20File%20Gas%201947%-20-%201995.pdf](https://www.data.boem.gov/Production/Files/Rank%20File%20Gas%201947%-20-%201995.pdf). In 2016, Chevron U.S.A. produced
4 over 49 million barrels of crude oil and 50 million barrels of natural gas from the outer continental
5 shelf on the Gulf of Mexico. U.S. Dep't of Int., Bureau of Safety & Env'tl. Enf't, Gulf of Mex. Re-
6 gion, Prod. by Operator Ranked by Vol. (2016), *available at* [https://www.data.boem.gov/Produc-](https://www.data.boem.gov/Production/Files/Rank%20File%20Gas%202016.pdf)
7 [tion/Files/Rank%20File%20Gas%202016.pdf](https://www.data.boem.gov/Production/Files/Rank%20File%20Gas%202016.pdf). Numerous other Defendants conduct, and have for
8 decades conducted, similar oil and gas operations on the federal OCS; indeed, Defendants and their
9 affiliated companies presently hold approximately 32.95% of all outer continental shelf leases. *See*
10 Bureau of Ocean Energy Management, Lease Owner Information, *available at*
11 <https://www.data.boem.gov/Leasing/LeaseOwner/Default.aspx>. For example, certain BP companies
12 and Exxon Mobil currently own lease interests in, and the BP companies operate, “one of the largest
13 deepwater producing fields in the Gulf of Mexico,” which is capable of producing up to 250,000 bar-
14 rels of oil per day. *See* Thunder Horse Field Fact Sheet (last visited Aug. 21, 2017), *available at*
15 http://www.bp.com/content/dam/bp-country/en_us/PDF/Thunder_Horse_Fact_Sheet_6_14_2013.pdf.
16 And as noted on the BP website, production from this and other OCS activities will continue into the
17 future. *Id.* (“BP intends to sustain its leading position as an active participant in all facets of the
18 Deepwater US Gulf of Mexico—as an explorer, developer, and operator.”). A substantial portion of
19 the national consumption of fossil fuel products stems from production on federal lands, as approved
20 by Congress and Executive Branch decision-makers.

21 54. The Complaint itself makes clear that a substantial part of Plaintiff's claims ““arise[]
22 out of, or in connection with,” Defendants' “operation[s] ‘conducted on the outer Continental Shelf’
23 that involve “the exploration and production of minerals.” *In re Deepwater Horizon*, 745 F.3d at
24 163. Plaintiff, in fact, challenges *all of* Defendants' “extraction . . . of coal, oil, and natural gas” ac-
25 tivities, *e.g.*, Compl. ¶¶ 3, 14, a substantial quantum of which arise from outer continental shelf oper-
26 ations, *see* Ranking Operator by Oil, Bureau of Ocean Energy Mgmt., *available at*
27 <https://www.data.boem.gov/Main/HtmlPage.aspx?page=rankOil> (documenting Chevron's oil and
28 natural gas production on the federal outer continental shelf from 1947 to 2017). Plaintiff alleges that

1 emissions have risen due to increased outer continental shelf extraction technologies. *See, e.g.*,
2 Compl. ¶¶ 143-44 (discussing arctic offshore drilling equipment and patents which may be relevant
3 to conduct near Alaskan outer continental shelf). And Plaintiff challenges energy projects that oc-
4 curred in Canadian waters. Compl. ¶¶ 105, 107. Defendants conduct similar activity in American
5 waters and many of the emissions Plaintiff challenges necessarily arise from the use of fossil fuels
6 extracted from the OCS.

7 55. The relief sought also arises out of and impacts OCS extraction and development.
8 *See, e.g.*, Compl., Prayer for Relief (seeking damages designed to cripple the energy industry and eq-
9 uitable relief that would no doubt rein in extraction, including that on the OCS). And “any dispute
10 that alters the progress of production activities on the OCS threatens to impair the total recovery of
11 the federally-owned minerals from the reservoir or reservoirs underlying the OCS. Congress in-
12 tended such a dispute to be within the grant of federal jurisdiction contained in § 1349.” *Amoco*
13 *Prod. Co.*, 844 F.2d at 1211.

14 **VII. THE ACTION IS REMOVABLE UNDER THE FEDERAL OFFICER REMOVAL** 15 **STATUTE**

16 56. The Federal Officer Removal statute allows removal of an action against “any officer
17 (or any person acting under that officer) of the United States or of any agency thereof . . . for or relat-
18 ing to any act under color of such office.” 28 U.S.C. § 1442(a)(1). “A party seeking removal under
19 section 1442 must demonstrate that (a) it is a ‘person’ within the meaning of the statute; (b) there is a
20 causal nexus between its actions, taken pursuant to a federal officer’s directions, and plaintiff’s
21 claims; and (c) it can assert a ‘colorable federal defense.’” *Durham*, 445 F.3d at 1251 (citations omit-
22 ted). All three elements are satisfied here for the Chevron Parties and many other Defendants, which
23 have engaged in activities pursuant to the directions of federal officers that, assuming the truth of
24 Plaintiff’s allegations, have a causal nexus to Plaintiff’s claims, and which have colorable federal de-
25 fenses to Plaintiff’s claims, including, for example, performing pursuant to government mandates and
26 contracts, performing functions for the U.S. military, and engaging in activities on federal lands pur-
27 suant to federal leases.

1 57. First, Defendants are “persons” within the meaning of the statute. The Complaint al-
2 leges that Defendants are corporations (Compl. ¶ 16), which the Ninth Circuit has held qualify as
3 “person[s]” under the statute. *See Leite*, 749 F.3d at 1122 n.4.

4 58. Second, assuming the truth of Plaintiff’s allegations, there is a causal nexus between
5 Defendants’ alleged actions, taken pursuant to a federal officer’s direction, and Plaintiff’s claims. In
6 *Leite*, the Ninth Circuit held removal proper where a military contractor, which was sued for failing
7 to warn about asbestos in military equipment, showed extensive evidence of federal control over its
8 activities. This included “detailed specifications governing the form and content of all warnings that
9 equipment manufacturers were required to provide,” which the Navy was directly involved in prepar-
10 ing and which could not be altered. 749 F.3d at 1123. Here, Plaintiff’s causation and damages alle-
11 gations depend on the activities of Defendants over the past decades—many of which were under-
12 taken at the direction of, and under close supervision and control by, federal officials.

13 59. To take only one example, the Chevron Parties and other Defendants have long ex-
14 plored for and produced minerals, oil and gas on federal lands pursuant to leases governed by the
15 Outer Continental Shelf Lands Act as described above. *E.g.*, Exs. B, C. In doing so, those Defend-
16 ants were “‘acting under’ a federal ‘official’” within the meaning of Section 1442(a)(1). *Watson v.*
17 *Philip Morris Cos., Inc.*, 551 U.S. 142, 153 (2007). Under OCSLA, the Interior Department is
18 charged with “manag[ing] access to, and . . . receiv[ing] a fair return for, the energy and mineral re-
19 sources of the Outer Continental Shelf.” Statement of Walter Cruickshank, Deputy Director, Bureau
20 of Ocean Energy Management, Before The Committee On Natural Resources, July, 6, 2016, *availa-*
21 *ble at* <https://www.boem.gov/Congressional-Testimony-Cruickshank-07062016/>. To fulfill this stat-
22 utory obligation, the Interior officials maintain and administer the OCS leasing program, under which
23 parties such as Defendants are required to conduct exploration, development and production activities
24 that, “in the absence of a contract with a private firm, the Government itself would have had to per-
25 form.” *Watson*, 551 U.S. at 154.

26 60. OCS leases obligate lessees like Defendants to “develop[] . . . the leased area” dili-
27 gently, including carrying out exploration, development and production activities approved by Inte-
28

rior Department officials for the express purpose of “maximiz[ing] the ultimate recovery of hydrocarbons from the leased area.” Ex. C § 10. Indeed, for decades Defendants’ OCSLA leases have instructed that “[t]he Lessee *shall comply* with all applicable regulations, orders, written instructions, and the terms and conditions set forth in this lease” and that “[a]fter due notice in writing, the Lessee *shall conduct* such OCS mining activities at such rates as the Lessor may require in order that the Leased Area or any part thereof may be properly and timely developed and produced in accordance with sound operating principles.” Ex. B § 10 (emphasis added). All drilling takes place “in accordance with an approved exploration plan (EP), development and production plan (DPP) or development operations coordination document (DOCD) [as well as] approval conditions”—all of which must undergo extensive review and approval by federal authorities, and all of which further had to conform to “diligence” and “sound conservation practices.” Ex. C §§ 9, 10. Federal officers further have reserved the rights to control the rates of mining (Ex. B § 10) and to obtain “prompt access” to facilities and records (Ex. B § 11, Ex. C § 12). The government also maintains certain controls over how the leased oil/gas/minerals are disposed of once they are removed from the ground, as by preconditioning the lease on a right of first refusal to purchase all materials “[i]n time of war or when the President of the United States shall so prescribe” (Ex. B § 14, Ex. C § 15(d)), and mandating that 20% of all crude and natural gas produced pursuant to drilling leases be offered “to small or independent refiners” (Ex. C § 15(c)). The Federal Treasury has reaped enormous financial benefits from those policy decisions in the form of statutory and regulatory royalty regimes that have resulted in billions of dollars of revenue to the Federal Government.

61. Certain Defendants have also engaged in the exploration and production of fossil fuels pursuant to agreements with federal agencies. For example, in June 1944, the Standard Oil Company (a Chevron predecessor) and the U.S. Navy entered into a contract “to govern the joint operation and production of the oil and gas deposits . . . of the Elk Hills Reserve,” a strategic petroleum reserve maintained by the Navy. *Chevron U.S.A., Inc. v. United States*, 116 Fed. Cl. 202, 205 (Fed. Cl. 2014). “The Elk Hills Naval Petroleum Reserve (NPR-1) . . . was originally established in 1912 to provide a source of liquid fuels for the armed forces during national emergencies.” GAO Fact Sheet, Naval Petroleum Reserves – Oil Sales Procedures and Prices at Elk Hills, April Through December

1 1986 (Jan. 1987) (“GAO Fact Sheet”), *available at* <http://www.gao.gov/assets/90/87497.pdf>. In re-
2 sponse to the OPEC oil embargo in 1973-74, the Naval Petroleum Reserves Production Act of 1976
3 (Public Law 94-258, April 5, 1976) was enacted, which “authorized and directed that NPR-1 be pro-
4 duced at the maximum efficient rate for 6 years.” *Id.* In 1977, Congress “transferred the Navy’s in-
5 terests and management obligations to [the Department of Energy],” and Chevron continued its inter-
6 est in the joint operation until 1997. *Id.* That contract governing Standard’s rights in the reserve
7 granted the Navy authority over how much would be produced from the joint operating area, and
8 when it would be produced. Indeed, the contract “afford[ed] Navy a means of acquiring complete
9 control over the development of the entire Reserve and the production of oil therefrom” (Ex. D at Re-
10 cital 6(d)(ii)), as well as “exclusive control over the exploration, prospecting, development, and oper-
11 ation of the Reserve” (*id.* § 3(a)). One of the goals of the contract was to “place the Reserve in a con-
12 dition of readiness whereby it will be able promptly to produce oil in substantial quantities whenever
13 the strategic situation of the United States in the future may so require.” *Id.* at Recital 6(d)(iii). Fi-
14 nally, the contract was meant to “result in securing the maximum ultimate recovery of oil, gas, natu-
15 ral gasoline and associated hydrocarbons from the Reserve.” *Id.* at Recital 6(d)(vi). “In accordance
16 with the [Naval Petroleum Reserves Production] [A]ct, the president . . . certifi[ed] that it [was] in the
17 national interest to continue production of NPR-1 at the maximum efficient rate through a second 3-
18 year period ending on April 5, 1988.” GAO Fact Sheet at 3.

19 62. Defendants also have supplied motor vehicle fuels under agreements with the federal
20 government, including the Armed Forces. For instance, CITGO Petroleum Corporation (“CITGO”)
21 was a party to fuel supply agreements with the Navy Exchange Service Command (“NEXCOM”),
22 which is a department of the Naval Supply Systems Command of the U.S. Navy. Among other
23 things, NEXCOM sells goods and services at a savings to active duty military, retirees, reservists, and
24 their families. Starting in approximately 1988 through approximately 2012, pursuant to its agree-
25 ments with NEXCOM, CITGO supplied CITGO branded gasoline and diesel fuel to NEXCOM for
26 service stations operated by NEXCOM on Navy bases located in a number of states across the coun-
27 try. The NEXCOM agreements contained detailed fuel specifications, and CITGO complied with
28 these government specifications in supplying the fuel to NEXCOM. CITGO also contracted with

1 NEXCOM to provide demolition, site preparation, design, construction, and related financing ser-
2 vices to build new gasoline service stations on Navy bases in the 1990s.

3 63. These and other federal activities are encompassed in Plaintiff's Complaint. *See supra*
4 ¶¶ 49-62. Plaintiff alleges that the drilling and mining operations Defendants performed led to the
5 sale of fossil fuels—including to the Federal Government—which led to the release of greenhouse
6 gases by end-users. Furthermore, the oil and gas Defendants extracted—which the Federal Govern-
7 ment (i) reserved the right to buy in total in the event of a time of war or whenever the President so
8 prescribed and (ii) has purchased from Defendants to fuel its military operations—is the very same
9 oil and gas that Plaintiff alleges is a defective product giving rise to strict liability. Accordingly,
10 Plaintiff seeks to hold Defendants liable for the very activities Defendants performed under the con-
11 trol of a federal official, and thus the nexus element has been satisfied.

12 64. Third, Defendants intend to raise numerous meritorious federal defenses, including
13 preemption, *see Goncalves By & Through Goncalves v. Rady Children's Hosp. San Diego*, No. 15-
14 55010, --- F.3d ---, 2017 WL 3273868, at *8 (9th Cir. Aug. 2, 2017), the government contractor de-
15 fense, *see Boyle v. United Techs. Corp.*, 487 U.S. 500 (1988); *Gertz v. Boeing*, 654 F.3d 852 (9th Cir.
16 2011), and others. In addition, Plaintiff's claims are barred by the United States Constitution, includ-
17 ing the Commerce and Due Process clauses, as well as the First Amendment and the foreign affairs
18 doctrine. These and other federal defenses are more than colorable. *See Willingham v. Morgan*, 395
19 U.S. 402, 407 (1969) (a defendant invoking section 1442(a)(1) "need not win his case before he can
20 have it removed"). Accordingly, removal under Section 1442 is proper.

21 **VIII. THE ACTION IS REMOVABLE BECAUSE THIS CASE ARISES FROM ACTS**
22 **ARISING FROM MULTIPLE FEDERAL ENCLAVES**

23 65. This Court also has original jurisdiction under the federal enclave doctrine. The Con-
24 stitution authorizes Congress to "exercise exclusive legislation in all cases whatsoever" over all
25 places purchased with the consent of a state "for the erection of forts, magazines, arsenals, dock-
26 yards, and other needful buildings." U.S. Const., art. I, § 8, cl. 17. "Federal courts have federal ques-
27 tion jurisdiction over tort claims that arise on 'federal enclaves.'" *Durham*, 445 F.3d at 1250; *see*
28 *also Totah v. Bies*, No. C 10-05956 CW, 2011 WL 1324471, at *2 (N.D. Cal. Apr. 6, 2011) (denying

1 motion to remand where defamation claim arose in the Presidio in San Francisco, a federal enclave).
2 The “key factor” in determining whether a federal court has federal enclave jurisdiction “is the loca-
3 tion of the plaintiff’s injury or where the specific cause of action arose.” *Sparling v. Doyle*, 2014 WL
4 2448926, at *3 (W.D. Tex. May 30, 2014); *see also Fung v. Abex Corp.*, 816 F. Supp. 569, 571 (N.D.
5 Cal. 1992) (“Failure to indicate the federal enclave status and location of the exposure will not shield
6 plaintiffs from the consequences of this federal enclave status.”); *Bd. of Comm’rs of Se. La. Flood*
7 *Protection Auth.-E. v. Tenn. Gas Pipeline Co., LLC*, 29 F. Supp. 3d 808, 831 (E.D. La. 2014) (noting
8 that defendants’ “conduct” or “the damage complained of” must occur on a federal enclave). Federal
9 jurisdiction is available if some of the events or damages alleged in the complaint occurred on a fed-
10 eral enclave. *See Durham*, 445 F.3d at 1250; *Bell v. Arvin Meritor, Inc.*, No. 12-00131-SC, 2012 WL
11 1110001, at *2 (N.D. Cal. Apr. 2, 2012) (finding federal enclave jurisdiction where “some of the[]
12 locations ... are federal enclaves”); *Totah*, 2011 WL 1324471, at *2 (holding that court can “exercise
13 supplemental jurisdiction over related claims” that did not arise on federal enclave).

14 66. Three requirements exist for land to be a federal enclave: (1) the United States must
15 have acquired the land from a state; (2) the state legislature must have consented to the jurisdiction of
16 the Federal Government; and (3) the United States must have accepted jurisdiction. *Wood v. Am.*
17 *Crescent Elevator Corp.*, No. 11-397, 2011 WL 1870218, at *2 (E.D. La. May 16, 2011).

18 67. Upon information and belief, the federal government owns federal enclaves in the area
19 at issue where Plaintiff’s “damage complained of” allegedly occurs. *Tenn. Gas Pipeline*, 29 F. Supp.
20 3d at 831. Indeed, Plaintiff broadly alleges injuries to huge swaths of the County, *see* Compl. ¶¶ 172-
21 75, and “[f]ailure to indicate the federal enclave status and location of the exposure will not shield
22 plaintiffs from the consequences of this federal enclave status,” *Fung*, 816 F. Supp. at 571. Addition-
23 ally, the “Vulnerability Analysis” on which Plaintiff bases its claims, which ostensibly “analy[zes]
24 [the] overall vulnerability to sea level rise” of the County and “formally identif[ies] actual risks to the
25 County . . . and the consequences associated with taking no action to prevent or mitigate the harms
26 associated with those expected impacts” (Compl. ¶ 171), expressly includes potential damage to fed-
27 eral lands. *See, e.g.*, County of San Mateo Sea Level Rise Vulnerability Assessment at 65 (Apr.

1 2017) (the “Assessment”). Moreover, upon information and belief, federal property along the coast-
2 line in San Mateo County, such as the Golden Gate National Recreation Area and Mori Point, qualify
3 as federal enclaves. As “[f]ederal enclaves include ‘numerous military bases, federal facilities, and
4 even some national forests and parks,’” federal jurisdiction exists over Plaintiff’s claims. *Azhocar v.*
5 *Coastal Marine Servs., Inc.*, No. 13-cv-155, 2013 WL 2177784, at *1 (S.D. Cal. May 20, 2013)
6 (quoting *Allison v. Boeing Laser Tech. Servs.*, 689 F.3d 1234, 1235 (10th Cir. 2012)).

7 68. On information and belief, Defendants maintain or maintained oil and gas operations
8 on military bases or other federal enclaves such that the Complaint, which bases the claims on the
9 “extracting, refining, processing, producing, promoting and[/or] marketing of fossil fuel products”
10 (Compl. ¶ 14), arises under federal law. *See, e.g., Humble Pipe Line Co. v. Waggoner*, 376 U.S. 369,
11 372 (1964) (noting that the United States exercises exclusive jurisdiction over oil and gas rights
12 within Barksdale Air Force Base in Louisiana); *see also Mississippi River Fuel Corp. v. Cocreham*,
13 390 F.2d 34, 35 (5th Cir. 1968) (on Barksdale AFB, “the reduction of fugitive oil and gas to posses-
14 sion and ownership[] takes place within the exclusive jurisdiction of the United States”). Indeed, as
15 of 2000, approximately 14% of the National Wildlife Refuge System “had oil or gas activities on
16 their land,” and these activities were spread across 22 different states. *See GAO, U.S. Fish and Wild-*
17 *life Service: Information on Oil and Gas Activities in the National Wildlife Refuge* (Oct. 30, 2001),
18 *available at* <http://www.gao.gov/new.items/d0264r.pdf>. Furthermore, Chevron and its predecessor
19 companies for many years engaged in production activities on the Elk Hills Reserve—a strategic oil
20 reserve maintained by the Naval Department—pursuant to a joint operating agreement with the Navy.
21 *See Chevron U.S.A.*, 116 Fed. Cl. at 205. Pursuant to that agreement, Standard Oil “operat[ed] the
22 lands of Navy and Standard in the Reserve.” Ex. D at 4.

23 69. In addition, the Complaint relies upon conduct occurring in the District of Columbia—
24 itself a federal enclave, *see, e.g., Collier v. District of Columbia*, 46 F. Supp. 3d 6 (D.D.C. 2014);
25 *Hobson v. Hansen*, 265 F. Supp. 902, 930 (D.D.C. 1967)—as a basis for Plaintiff’s claims. Indeed,
26 Plaintiff complains that Defendants’ supposedly wrongful conduct included a meeting between an
27 industry organization and federal government officials that purportedly contributed to the rejection of
28 the Kyoto Protocol (Compl. ¶ 129) and the “sen[ding of] letters to persuade members of Congress to

1 vote against the American Clean Energy and Security Act of 2009” (*id.* ¶ 134). The Complaint also
2 points to Defendants’ purported funding of “lobbyists” to influence legislation and legislative priori-
3 ties. Here, too, “some of the[] locations” giving rise to Plaintiff’s claims “are federal enclaves,” fur-
4 ther underscoring the presence of federal jurisdiction. *Bell*, 2012 WL 1110001, at *2. As the Ninth
5 Circuit contemplated in *Jacobson v. U.S. Postal Serv.*, 993 F.2d 649, 657 (9th Cir. 1992), free speech
6 placed at issue in a federal enclave falls under the jurisdiction of the federal courts. *Id.* (observing
7 that newspaper vendors were required to obtain permits pursuant to a federal statute to sell newspa-
8 pers in front of U.S. post office locations, which the Court deemed to be “within the federal en-
9clave”). Because Plaintiff claims that Defendants’ speech within the federal enclave of the District of
10 Columbia was, among other alleged causes, the basis of its injury, this Court is the only forum suited
11 to adjudicate the merits of this dispute.

12 **IX. THE ACTION IS REMOVABLE UNDER THE BANKRUPTCY REMOVAL**
13 **STATUTE**

14 70. The Bankruptcy Removal Statute allows removal of “any claim or cause of action in a
15 civil action other than a proceeding before the United States Tax Court or a civil action by a govern-
16 mental unit to enforce such governmental unit’s police or regulatory power, to the district court for
17 the district where such civil action is pending, if such district court has jurisdiction of such claim or
18 cause of action under section 1334 of this title.” 28 U.S.C. § 1452(a). Section 1334, in turn, provides
19 that “the district courts shall have original but not exclusive jurisdiction of all civil proceedings, aris-
20 ing under Title 11, or arising in or related to cases under title 11” of the United States Code. 28
21 U.S.C. § 1334(b). The Ninth Circuit has emphasized that “‘related to’ jurisdiction is very broad, in-
22 cluding nearly every matter directly or indirectly related to the bankruptcy.” *Sasson v. Sokoloff (In re*
23 *Sasson)*, 424 F.3d 864, 868 (9th Cir. 2005). An action is thus “related to” a bankruptcy case if it
24 “‘could conceivably have any effect on the estate being administered in bankruptcy.’” *PDG Arcos,*
25 *LLC*, 436 F. App’x at 742 (quoting *In re Feitz*, 852 F.2d 455, 457 (9th Cir. 1988)). Where a Chapter
26 11 plan has been confirmed, there must be a “close nexus” between the post-confirmation case and
27 the bankruptcy plan for related-to jurisdiction to exist. *In re Pegasus Gold Corp.*, 394 F.3d 1189,
28 1194 (9th Cir. 2005) (citing *In re Resorts Int’l, Inc.*, 372 F.3d 154, 166-67 (3d Cir. 2004)). “[A] close

1 nexus exists between a post-confirmation matter and a closed bankruptcy proceeding sufficient to
2 support jurisdiction when the matter ‘affect[s] the interpretation, implementation, consummation, ex-
3 ecution, or administration of the confirmed plan.’” *In re Wilshire Courtyard*, 729 F.3d 1279, 1289
4 (9th Cir. 2013) (quoting *Pegasus Gold*, 394 F.3d at 1194).

5 71. At least two of the Defendants in this case—Peabody Energy Corporation (“Peabody”)
6 and Arch Coal, Inc. (“Arch”) (Compl. ¶¶ 22, 24)—emerged from Chapter 11 bankruptcy in the
7 United States Bankruptcy Court for the Eastern District of Missouri (the “Bankruptcy Court”) less
8 than one year ago and are implementing their confirmed bankruptcy plans. Arch and its subsidiaries
9 filed for Chapter 11 bankruptcy protection on January 11, 2016, and their plan of reorganization was
10 confirmed on September 15, 2016 and became effective on October 5, 2016. *See generally In re*
11 *Arch Coal, Inc.*, Case No. 16-40120, Dkt. 1334 (Bankr. E.D. Mo. Sept. 15, 2016). The plan contin-
12 ues to be administered in the Bankruptcy Court. Upon information and belief, given that all of Plain-
13 tiff’s claims relate to conduct “between 1965 and 2015” (Compl. ¶ 7), prior to Arch’s bankruptcy fil-
14 ing, Arch contends that all of Plaintiff’s claims were discharged by the plan and that Plaintiff has vio-
15 lated the Bankruptcy Court’s order confirming the plan. In similar fashion, Plaintiff’s claims against
16 Peabody were discharged by its confirmed Chapter 11 plan. *See generally In re Peabody Energy*
17 *Corp.*, Case No. 16-42529, Dkt. 2763 (Bankr. E.D. Mo. Mar. 15, 2017). The Bankruptcy Courts in
18 both Chapter 11 cases have retained exclusive jurisdiction to hear and determine all such matters. As
19 a result, there is federal jurisdiction under 28 U.S.C. § 1334(b).

20 72. Plaintiff also alleges that it will have to “diver[t] . . . tax dollars away from other pub-
21 lic services to [address] sea level rise” and that it will incur “costs associated with addressing sea
22 level rise caused by Defendants” totaling “billions of dollars over the next several dec-
23 ades.” Compl. ¶¶ 197.c, 197.e, 236.c, 236.e. (emphasis added). Plaintiff alleges that “Defendants,
24 individually *and together*, have substantially and measurably contributed to Plaintiff’s sea level rise-
25 related injuries, *id.* ¶ 80, and seeks compensatory damages, punitive damages, disgorgement of prof-
26 its, costs of suit, and attorneys’ fees based on alleged conduct dating back to 1965. *See, e.g.*, Compl.
27 ¶¶ 187, 199, 213-14, 224-26, 244-46, 248, 251, 258, 264-65, 267; *see also id.*, Prayer for Relief. Ac-
28 cordingly, and without conceding that Plaintiff’s allegations have any substantive merit, Plaintiff’s

1 broad claims have the required “close nexus” with Peabody’s and Arch’s bankruptcy plans to support
 2 federal jurisdiction. *Wilshire Courtyard*, 729 F.3d at 1289; *see also In re Dow Corning Corp.*, 86
 3 F.3d 482, 493-94 (6th Cir. 1996).

4 73. Additionally, Plaintiff’s claims are predicated on historical activities of Defendants,
 5 including predecessor companies and companies that Defendants may have acquired or with which
 6 they may have merged, as well as numerous unnamed but now bankrupt entities. Because there are
 7 hundreds of non-joined necessary and indispensable parties, there are many other Title 11 cases that
 8 may be related.

9 74. Finally, Plaintiff’s action is not one to enforce its police or regulatory powers, but ra-
 10 ther one to protect its “pecuniary interest.” *City & Cnty. of San Francisco v. PG&E Corp.*, 433 F.3d
 11 1115, 1124 (9th Cir. 2006). As demonstrated by Plaintiff’s request for “billions of dollars” in com-
 12 pensatory damages, “punitive and exemplary damages,” and “equitable disgorgement of all profits
 13 Defendants obtained through their” alleged conduct (*see, e.g.*, Compl. ¶¶ 186, 196(e), 235(e)), Plain-
 14 tiff’s action is pecuniary. *See also id.* ¶¶ 184(c), 196(c), 235(c) (alleging the substantial “tax dollars”
 15 diverted to addressing sea level rise); *id.* ¶ 172 (alleging that “[m]inor storms alone could account for
 16 millions of dollars in property damages”).³ These allegations, along with the Complaint’s extensive
 17 allegations regarding private property (*see id.* ¶¶ 64, 170, 172, 175, 196(d), 220(e), 224, 235(b)-(d),
 18 264), make clear that Plaintiff’s action is brought to reap a financial windfall for discrete and identifi-
 19 able individuals or entities. *See PG&E Corp.*, 433 F.3d at 1125 n.11.

20 **X. THIS COURT HAS JURISDICTION AND REMOVAL IS PROPER**

21 75. Based on the foregoing allegations from the Complaint, this Court has original juris-
 22 diction over this action under 28 U.S.C. § 1331. Accordingly, removal of this action is proper under
 23 28 U.S.C. §§ 1334, 1441, 1442, 1452, and 1446, as well as 43 U.S.C. § 1349(b).

24
 25
 26 ³ The pecuniary nature of the case is further highlighted by the fact that Plaintiff has entered into a
 27 contingency-fee arrangement with a private law firm. As counsel for plaintiffs in a nearly identi-
 28 cal lawsuit admitted, “[t]axpayers are not being asked to bear the risks of this lawsuit.” Jenna
 Greene, The Recorder, “New Tactic in Climate Change Litigation Could Cost Energy Companies
 Billions. Or Not” (June 20, 2017), *available at* <http://www.therecorder.com/id=1202793545435/New-Tactic-in-Climate-Change-Litigation-Could-Cost-Energy-Companies-Billions-Or-Not?slreturn=20170703142614>.

