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PROTECTING PEOPLE AND THE PLANET

December 13, 2019

Via ECF

Patricia S. Connor
Clerk of Court
U.S. Court of Appeals for the Fourth Circuit
1100 East Main Street, Suite 501
Richmond, Virginia 23219

Re: *Mayor and City Council of Baltimore v. BP P.L.C., et al.*, No. 19-1644
Plaintiff-Appellee's Response to Defendants-Appellants' Rule 28(j) Letter

Dear Ms. Connor,

Appellants inappropriately attempt to supplement the evidentiary record and have the Court make new factual findings. The Court should disregard the letter and exhibits. *See* Fed. R. App. P. 28(j) (limiting supplemental authority to materials that "come to a party's attention . . . after oral argument").

Regardless, Appellants' supplemental materials do not support federal-officer removal jurisdiction. Under the 1944 UPC, "the parties agreed that in consideration for Standard *curtailing* its production" to preserve the Navy's share of the field in case of national emergency, Standard was permitted to extract volumes pursuant to its ownership interest. *United States v. Standard Oil Co. of California*, 545 F.2d 624, 627–28 (9th Cir. 1976). The contract states that "Standard shall have the right to take delivery, and make such disposition, of the production allocated to it hereunder as it may desire." JA.255 at §7. Standard could have performed under the contract by doing nothing, leaving its share in the ground.

Nothing in the Naval Petroleum Reserves Production Act of 1976 ("Act"), or the 1986 GAO report says otherwise. Indeed, in the Act "Congress determined that the Navy *no longer needed to maintain a petroleum reserve* for a national emergency"; instead, the Act allowed Elk Hills to offer oil on the commercial market. *Chevron U.S.A., Inc. v. United States*, 110 Fed. Cl. 747, 754 (2013) (emphasis added); Defendants' Ex. B at 3; Doc 144 at 17. "The Department of Energy (DOE) operate[d] the field" after 1976, "but Chevron and the government share production, revenues, and expenses in proportion to their ownership shares." Defendants' Ex. B at 3. None of Defendants' activities was an effort "to assist, or to help carry out, the duties or tasks of [a] federal superior." *Watson v. Philip Morris Cos.*, 551 U.S. 142, 151–52 (2007).

Finally, nothing in these newly proffered materials suggests the government required Defendants to undertake its campaign of deception, or even extract fossil fuels. Standard's *reducing* its production from the Elk Hills reserve, even if arguably done to assist the Navy in preserving the strategic reserve, has no causal connection to the City's injuries.

Respectfully submitted,

/s/ Victor M. Sher
Victor M. Sher
Sher Edling LLP

Counsel for Plaintiff-Appellee

cc: All Counsel of Record (via ECF)