GIBSON DUNN

Gibson, Dunn & Crutcher LLP

333 South Grand Avenue
Los Angeles, CA 90071-3197
Tel 213.229.7000
www.gibsondunn.com

Theodore J. Boutrous, Jr.
Direct: +1 213.229.7804
Fax: +1 213.229.6804
TBoutrous@gibsondunn.com

May 13, 2020

VIA ECF

Molly C. Dwyer
Clerk of Court
U.S. Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103-1526

Re: *City of Oakland, et al. v. BP P.L.C., et al.*, No. 18-16663

Dear Ms. Dwyer:

Defendant-Appellee Chevron writes in response to Plaintiffs-Appellants' April 24, 2020 letter regarding *Atlantic Richfield Co. v. Christian*, 2020 WL 1906542 (U.S. Apr. 20, 2020) ("*Christian*").

In *Christian*, the Supreme Court considered whether CERCLA stripped Montana state courts of jurisdiction over claims brought under Montana common law for property restoration at a Superfund site in Montana. *Id.* at *6. The defendant did not dispute that the claims had their source in Montana law, but argued that they fell within CERCLA's provision "that 'the United States district courts shall have exclusive original jurisdiction over all controversies arising under this chapter.'" *Id.* at *7. The Court disagreed, holding that the plaintiffs' claims did not "aris[e] under" CERCLA. *Id.* The court interpreted the term "arising under" consistently with the same language in 28 U.S.C. § 1331, and refused to give the statute broader jurisdiction-stripping effect absent a clearer statement from Congress. *Id.*

Christian concerned conduct, pollution, and harm that occurred entirely in a single State, and thus does not alter the line of Supreme Court authority holding that disputes arising from *transboundary* pollution (like the claims asserted here) arise under federal law and belong in federal court. *Am. Elec. Power Co., Inc. v. Connecticut*, 564 U.S. 410, 421 (2011) ("[T]he basic scheme of the Constitution" precludes the application of state law to interstate pollution claims); *Int'l Paper Co. v. Ouellette*, 479 U.S. 481, 488 (1987) ("[I]nterstate water pollution is a matter of federal, not state, law."); *Illinois v. City of Milwaukee*, 406 U.S. 91, 103 (1972) ("When we deal with air and water in their ambient or interstate aspects, there is a federal

common law."); *City of Milwaukee v. Illinois*, 451 U.S. 304, 313 (1981) ("*Milwaukee II*") (holding transboundary water pollution suits are governed by federal common law but were displaced by the Clean Water Act). Nor does *Christian* address a situation like the one here, in which a plaintiff attempts to plead its claims under law that could not apply. *Milwaukee II*, 451 U.S. at 313 n.7 (1981) ("[I]f federal common law exists, it is because state law cannot be used.").

Sincerely,

/s/ Theodore J. Boutrous, Jr.

Theodore J. Boutrous Jr.
GIBSON, DUNN & CRUTCHER LLP
Counsel for Defendant-Appellee
Chevron Corporation and Chevron U.S.A.

cc: All counsel of record (via ECF)