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12 LLC; ENSIGN UNITED STATES DRILLING
13 (CALIFORNIA) INC.; MAUREEN WRUCK; GAZELLE
14 TRANSPORTATION, LLC; PETER ORRADRE;
15 MARTIN ORRADRE; JAMES ORRADRE; THOMAS
16 ORRADRE; JOHN ORRADRE; STEPHEN MAURICE
17 BOYUM; and SAN ARDO UNION ELEMENTARY
18 SCHOOL DISTRICT

19 [Additional Counsel listed on subsequent page]

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA

21 FOR THE COUNTY OF MONTEREY

22 CHEVRON U.S.A. INC., a Pennsylvania
23 corporation; KEY ENERGY SERVICES, LLC, a
24 Texas limited liability company; ENSIGN
25 UNITED STATES DRILLING (CALIFORNIA)
26 INC., a California corporation; MAUREEN
27 WRUCK, an individual; GAZELLE
28 TRANSPORTATION LLC, a Delaware limited
liability company; PETER ORRADRE, as
Trustee to the 2002 Peter Orradre Revocable
Trust and the 1994 Foletta Children's Trust;
MARTIN ORRADRE, as Trustee to the 2008
Martin Orradre Revocable Trust; JAMES
ORRADRE, as Trustee to the 2004 James
Orradre Revocable Trust;
THOMAS ORRADRE, as Trustee to the 2004
Thomas Orradre Revocable Trust; JOHN
ORRADRE, as Trustee to the 2000 John Orradre
Revocable Trust; STEPHEN MAURICE
BOYUM, as Trustee to the Boyum Family Trust;
and SAN ARDO UNION ELEMENTARY
SCHOOL DISTRICT, a California public school
district,

CASE NO. 16-CV-3978

**FIRST AMENDED VERIFIED PETITION
FOR WRIT OF MANDAMUS [CCP
SECTION 1085 OR 1094.5] AND
COMPLAINT FOR DAMAGES AND
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

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Petitioners and Plaintiffs,

v.

COUNTY OF MONTEREY, a municipal
corporation; and DOES 1 through 25, inclusive,

Respondents and Defendants.

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11 LLC; ENSIGN UNITED STATES DRILLING
12 (CALIFORNIA) INC.; MAUREEN WRUCK; GAZELLE
13 TRANSPORTATION, LLC; and SAN ARDO UNION
14 ELEMENTARY SCHOOL DISTRICT
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1 Petitioners and Plaintiffs CHEVRON U.S.A. INC. ("Chevron"); KEY ENERGY SERVICES,
2 LLC; ENSIGN UNITED STATES DRILLING (CALIFORNIA) INC.; MAUREEN WRUCK;
3 GAZELLE TRANSPORTATION, LLC (collectively, "Business Partners"); PETER ORRADRE, AS
4 TRUSTEE TO THE 2002 PETER ORRADRE REVOCABLE TRUST AND THE 1994 FOLETTA
5 CHILDREN'S TRUST; MARTIN ORRADRE, AS TRUSTEE TO THE 2008 MARTIN ORRADRE
6 REVOCABLE TRUST; JAMES ORRADRE, AS TRUSTEE TO THE 2004 JAMES ORRADRE
7 REVOCABLE TRUST; THOMAS ORRADRE, AS TRUSTEE TO THE 2004 THOMAS
8 ORRADRE REVOCABLE TRUST; JOHN ORRADRE, AS TRUSTEE TO THE 2000 JOHN
9 ORRADRE REVOCABLE TRUST; STEPHEN MAURICE BOYUM, AS TRUSTEE TO THE
10 BOYUM FAMILY TRUST (collectively "Royalty Owners"); and SAN ARDO UNION
11 ELEMENTARY SCHOOL DISTRICT (the "School District") (collectively "Plaintiffs") hereby
12 petition this Court for a writ of mandamus pursuant to Code of Civil Procedure Section 1085 (or
13 alternatively under Section 1094.5), directed to Respondent and Defendant COUNTY OF
14 MONTEREY ("County"), and hereby bring the within Complaint for Declaratory Relief and
15 Damages. By this verified pleading, Plaintiffs hereby allege as follows:

16 I.

17 INTRODUCTION

18 1. This action challenges the initiative adopted in the County of Monterey, formally
19 titled "Initiative to Prohibit Fracking and Oil and Natural Gas Well Stimulation Treatments,
20 Prohibit Oil and Natural Gas Wastewater Injection and Impoundment, and Limit New Oil and
21 Natural Gas Operations in Unincorporated Monterey County" ("Measure Z"). Plaintiffs are
22 informed and believe that Measure Z was passed by the voters of Monterey County on November
23 8, 2016 and will be effective as a matter of law on December 23, 2016. Measure Z amended the
24 Monterey County General Plan, Monterey County Local Coastal Program, and Fort Ord Master
25 Plan.

26 2. In the Petition for Writ of Mandamus, Plaintiffs seek a writ of mandamus
27 compelling the County to vacate and rescind the amendments adopted by Measure Z because they
28 are preempted by federal and state law, and are arbitrary, irrational, vague and discretionary.

1 operator of the San Ardo Oil Field, which is affected by Measure Z. As such, Chevron has a
2 beneficial interest in the issuance of the writ of mandamus and complaint sought herein.

3 6. Plaintiff and Petitioner Key Energy Services, LLC (“Key Energy”) is a Texas
4 limited liability company, and does business in the County of Monterey, California. Key Energy
5 currently operates well servicing for Chevron at the San Ardo Oil Field, which is affected by
6 Measure Z. As such, Key Energy has a beneficial interest in the issuance of the writ of mandamus
7 and complaint sought herein.

8 7. Petitioner and Plaintiff Ensign United States Drilling (California), Inc. (“Ensign”) is
9 a California corporation, and does business in the County of Monterey, California. Ensign
10 currently operates drilling services for Chevron at the San Ardo Oil Field, which is affected by
11 Measure Z. As such, Ensign has a beneficial interest in the issuance of the writ of mandamus and
12 complaint sought herein.

13 8. Petitioner and Plaintiff Maureen Wruck is a California resident who is a partner in a
14 limited liability company that does business in the County of Monterey, California. Maureen
15 Wruck’s income is dependent on her business as a consultant and project manager for Chevron’s
16 projects at the San Ardo Oil Field, which is affected by Measure Z. As such, Maureen Wruck has a
17 beneficial interest in the issuance of the writ of mandamus and complaint sought herein.

18 9. Petitioner and Plaintiff Gazelle Transportation, LLC (“Gazelle”) is a Delaware
19 limited liability company, and does business in the County of Monterey, California. Gazelle
20 currently operates transportation services for Chevron at the San Ardo Oil Field, which is affected
21 by Measure Z. As such, Gazelle has a beneficial interest in the issuance of the writ of mandate and
22 complaint sought herein.

23 10. Petitioner and Plaintiff Peter Orradre, as Trustee to the 2002 Peter Orradre
24 Revocable Trust and the 1994 Foletta Children’s Trust (“Peter Orradre”), is a California citizen and
25 resident. As trustee, Peter Orradre owns the mineral rights to a parcel of land in the San Ardo Oil
26 Field. Peter Orradre’s mineral rights at the San Ardo Oil Field have been leased to Chevron, which
27 is affected by Measure Z. Peter Orradre thus has a beneficial interest in the issuance of the writ of
28 mandamus and complaint sought herein.

1 11. Petitioner and Plaintiff Martin Orradre, as Trustee to the 2008 Martin Orradre
2 Revocable Trust (“Martin Orradre”), is a California citizen and resident. As trustee, Martin Orradre
3 owns the mineral rights to a parcel of land in the San Ardo Oil Field. Martin Orradre’s mineral
4 rights at the San Ardo Oil Field have been leased to Chevron, which is affected by Measure Z.
5 Martin Orradre thus has a beneficial interest in the issuance of the writ of mandamus and complaint
6 sought herein.

7 12. Petitioner and Plaintiff James Orradre, as Trustee to the 2004 James Orradre
8 Revocable Trust (“James Orradre”), is a California citizen and resident. As trustee, James Orradre
9 owns the mineral rights to a parcel of land in the San Ardo Oil Field. James Orradre’s mineral
10 rights at the San Ardo Oil Field have been leased to Chevron, which is affected by Measure Z.
11 James Orradre thus has a beneficial interest in the issuance of the writ of mandamus and complaint
12 sought herein.

13 13. Petitioner and Plaintiff Thomas Orradre, as Trustee to the 2004 Thomas Orradre
14 Revocable Trust (“Thomas Orradre”) is a California citizen and resident. As trustee, Thomas
15 Orradre owns the mineral rights to a parcel of land in the San Ardo Oil Field. Thomas Orradre’s
16 mineral rights at the San Ardo Oil Field have been leased to Chevron, which is affected by Measure
17 Z. Thomas Orradre thus has a beneficial interest in the issuance of the writ of mandate and
18 complaint sought herein.

19 14. Petitioner and Plaintiff John Orradre, as Trustee to the 2000 John Orradre Revocable
20 Trust (“John Orradre”) is a California citizen and resident. As trustee, John Orradre owns the
21 mineral rights to a parcel of land in the San Ardo Oil Field. John Orradre’s mineral rights at the
22 San Ardo Oil Field have been leased to Chevron, which is affected by Measure Z. John Orradre
23 thus has a beneficial interest in the issuance of the writ of mandate and complaint sought herein.

24 15. Petitioner and Plaintiff Stephen Maurice Boyum, as Trustee to the Boyum Family
25 Trust (“Stephen Boyum”), is a California citizen and resident. As trustee, Stephen Boyum owns the
26 mineral rights to a parcel of land in the San Ardo Oil Field. Stephen Boyum’s mineral rights at the
27 San Ardo Oil Field have been leased to Chevron, which is affected by Measure Z. Stephen Boyum
28 thus has a beneficial interest in the issuance of the writ of mandamus and complaint sought herein.

1 chest,” which functions like an expanding bubble that allows the steam to increase its contact with
2 the heavy oil below. Steam flooding has been used at the San Ardo Oil Field since the 1960s.

3 27. In 2006, Chevron began a major capital improvement project at the San Ardo Oil
4 Field seeking to boost production at the San Ardo Oil Field. At that time, oil production was
5 declining due to limited capacity for disposing of the produced water generated from the field.
6 “Produced water” is an industry term to describe water that is extracted from the earth along with
7 the oil. An oil well at the San Ardo field typically extracts 10 to 20 times more produced water
8 than oil. In order to boost production, Chevron had to remove the excess water from the Lombardi
9 Sands formation. Dewatering reduces the formation pressure, thereby allowing the injected steam
10 to contact the remaining heavy oil for production and to expand the area of steam-enhanced
11 production.

12 28. In 2006, Chevron obtained an administrative permit from the County for
13 construction of a reverse osmosis (“RO”) facility and a waste discharge requirement order from the
14 Regional Water Quality Control Board, Central Coast Region, which allows Chevron to treat up to
15 45,000 barrels per day of produced water, which is approximately one-quarter of the volume of
16 produced water from the field. Approximately 75% of the water entering the RO facility is purified
17 through the RO process, then released to a set of constructed wetlands, and finally sent to recharge
18 basins that allow the purified water to percolate into the Salinas River groundwater system. The
19 remaining 25% of water processed at the RO facility is concentrated brine that is injected into the
20 Aurignac formation, which is below the Lombardi formation that is the current focus of oil
21 production. Based in part on these improvements, Chevron has increased total production from
22 roughly 1.1 million barrels of oil equivalent (“BOE”) per year in 2006 to over 4 million BOE per
23 year as of 2015. As a result of its operations at the RO facility, Chevron also provides roughly
24 1,600 acre-feet per year of purified water to the County for beneficial use.

25 **B. The County’s Adoption of Measure Z**

26 29. Measure Z is a ballot initiative that was submitted to the Monterey County Registrar
27 of Voters in February 2016.

1 30. After certification of the signatures supporting the initiative, the Registrar submitted
2 Measure Z to the County Board of Supervisors in June 2016. In June 2016, the Board voted to
3 place the initiative on the November 8, 2016 ballot as Measure Z.

4 31. On November 8, 2016, Measure Z passed with roughly 56% of the vote. The
5 Monterey County registrar of voters certified the vote on December 2, 2016. Plaintiffs are
6 informed and believe that, pursuant to section 9122 of the California Elections Code, the vote was
7 declared final and Measure Z adopted by the County Board of Supervisors on December 13, 2016.
8 Measure Z is set to take effect ten days following this certification, on December 23, 2016.

9 32. Measure Z includes a provision that permits a party to seek an exemption from the
10 Measure on the grounds that it constitutes an unconstitutional taking. Chevron intends to submit an
11 application for a full exemption from the Board of Supervisors and will amend the Petition and
12 Complaint to include additional claims regarding the validity and constitutionality of the law as it is
13 applied to Chevron in the event that the Board of Supervisors issues an adverse determination.

14 33. Although Proponents of Measure Z advertise the measure as a ban on hydraulic
15 fracturing (*i.e.*, “fracking,” which is a well stimulation treatment to enhance oil recovery that is not
16 used by Chevron in Monterey County), the Measure’s impacts are much broader than a ban on
17 hydraulic fracturing. Measure Z amends the Monterey County General Plan, local coastal Land
18 Use Plans, and the Fort Ord Master Plan to prohibit (1) land uses in support of well stimulation
19 treatments; (2) land uses in support of oil and gas wastewater injection and impoundment; and (3)
20 the drilling of new oil and gas wells.

21 **1. Prohibition on Land Uses in Support of Well Stimulation Treatments**

22 34. Measure Z prohibits “[t]he development, construction, installation, or use of any
23 facility, appurtenance, or above-ground equipment, whether temporary or permanent, mobile or
24 fixed, accessory or principal, in support of well stimulation treatments.” “Well stimulation
25 treatments” are defined as “any treatment of a well designed to enhance oil and gas production or
26 recovery by increasing the permeability of the formation.” “Well stimulation treatments” include
27 hydraulic fracturing treatments and acid well stimulation treatments but specifically exclude steam
28 flooding, water flooding, cyclic steaming, and routine well maintenance activities.

1 **2. Prohibition on Land Uses in Support of Wastewater Injection and Impoundment**

2 35. Measure Z prohibits “[t]he development, construction, installation, or use of any
3 facility, appurtenance, or above-ground equipment, whether temporary or permanent, mobile or
4 fixed, accessory or principal, in support of oil and gas wastewater injection or oil and gas
5 wastewater impoundment.” This prohibition is subject to a five-year phase-out period. Non-
6 conforming uses are to be discontinued within five years of the date on which Measure Z becomes
7 effective pursuant to state law. However, otherwise prohibited operations may be extended on a
8 case-by-case basis if the Planning Commission determines that (a) the applicant had a vested right
9 to operate using wastewater injection/impoundment when Measure Z became effective and (b) five
10 years is not a reasonable amortization period based on a showing of substantial evidence. Any
11 extension cannot exceed 10 years and the total phase-out period cannot exceed 15 years. An
12 extension will only be granted “for the minimum length of time necessary to provide a reasonable
13 amortization period pursuant to state law.”

14 **3. Prohibition on Drilling New Oil and Gas Wells**

15 36. Measure Z generally prohibits “[t]he drilling of new oil and gas wells.” “Oil and gas
16 wells” are defined as “wells drilled for the purpose of exploring for, recovering, or aiding in the
17 recovery of, oil and gas.” Given the typical, exponential decline in production wells, it is estimated
18 that the prohibition on new wells, by itself, will result in a base decline in production by at least
19 20% per year throughout the remaining life of the San Ardo field. This will cause Chevron’s
20 production to decrease by roughly 800,000 barrels of oil in the first year alone. Because Chevron is
21 no longer permitted to drill new wells, the steam chest also risks rapid decline and eventual
22 collapse, which will decimate production. Once the steam chest collapses, Chevron will not have
23 any cost-effective way to reconstruct the steam chest.

24 **C. The County is Preempted from Interfering with the Drilling and Operations of Oil Wells**

25 37. Measure Z expressly and impliedly contradicts and enters an area fully occupied by
26 comprehensive state and federal laws regulating oil drilling operations, underground injection,
27 produced water impoundment, and well stimulation. Measure Z is thereby preempted and void.
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1 38. The Legislature has expressly delegated to DOGGR the authority to “supervise the
2 drilling, operation, maintenance, and abandonment of wells.” (Pub. Resources Code, § 3106,
3 subd. (a).) In exercising this power, the Legislature has directed that DOGGR must “permit the
4 owners or operators of the wells to utilize all methods and practices known to the oil industry for
5 the purpose of increasing the ultimate recovery of underground hydrocarbons and which, in the
6 opinion of the supervisor, are suitable for this purpose in each proposed case.” (*Id.*, subd. (b).) The
7 Legislature also stated that to “further the elimination of waste by increasing the recovery of
8 underground hydrocarbons, it is hereby declared as a policy of the state that the grant in an oil and
9 gas lease . . . to explore for and remove all hydrocarbons from any lands in the state . . . is deemed
10 to allow the lessee . . . [to] inject[] air, gas, water or other fluids in productive strata [and to] appl[y]
11 pressure heat or other means for the reduction of viscosity of the hydrocarbons.” (*Ibid.*) The
12 Legislature has underlined its intent by obligating DOGGR “to encourage the wise development of
13 oil and gas resources.” (*Id.*, subd. (d).)

14 39. Through contracts with the owners of certain mineral rights within the San Ardo oil
15 field, its fee ownership of certain land within the San Ardo Oil Field, and the 1949 Use Permit,
16 Chevron has been granted the right to explore for and remove all hydrocarbons within its leased and
17 owned areas of the San Ardo Oil Field.

18 40. Measure Z seeks to regulate oil production operations by circumscribing whether
19 and how Chevron may conduct those operations through the entire County, including the San Ardo
20 Oil Field.

21 41. DOGGR has been exclusively empowered to regulate operations of oil fields,
22 including approval and operation of new wells in existing fields. DOGGR has established a
23 comprehensive system of regulations governing the operation of new wells. Measure Z directly
24 contradicts this detailed system of permitting and approvals. Measure Z’s prohibition on drilling
25 any new wells in existing oil fields prevents Chevron from drilling new wells needed to combat
26 natural declines in production and to facilitate the use of steam injection—both activities within the
27 scope of DOGGR’s regulatory authority. (Pub. Resources Code, § 3106, subd. (b).)

1 42. Measure Z’s prohibition on “land uses” that support hydraulic fracturing activities
2 and wastewater injection and impoundment, rather than the activities themselves, is pretextual.
3 There is no legitimate distinction between the “land uses” prohibited by Measure Z and “land uses”
4 that support activities that would continue to be authorized by the County. Thus, the prohibition on
5 “land uses” is a prohibition on the underlying activities themselves, the regulation of which is
6 preempted by federal and state law.

7 43. DOGGR has been exclusively empowered to regulate underground injection
8 pursuant to a delegation of primacy by the U.S. Environmental Protection Agency under the federal
9 Safe Drinking Water Act. (See 40 C.F.R. § 147.250.) DOGGR has extensive regulations under its
10 Underground Injection Control program, including the requirement that prior to any subsurface
11 injection or disposal, an operator must obtain approval from DOGGR. (Cal. Code Regs., tit. 14,
12 § 1724.6.)

13 44. By prohibiting the underground injection of steam to enhance oil recovery and
14 produced water for disposal (despite the approved injection permits from DOGGR), Measure Z is
15 preempted by federal and state law, which delegated exclusive enforcement authority to DOGGR
16 throughout California.

17 45. The provisions of Measure Z that phase out produced water impoundment also
18 intrude on an area of law exclusively within the purview of the State Water Resources Control
19 Board (“State Board”) and its authorized regional boards. (Cal. Water Code, §§ 13260, 13300 &
20 13301.) As shown by State Board Resolution No. 92-49, the regulation of waste discharges was
21 delegated to state authorities “to achieve a unified and effective water quality control program in
22 the state.” More specifically, produced water impoundments are permitted only when the regional
23 board determines the discharge will not adversely affect the surrounding waters. To that end, the
24 Legislature adopted Senate Bill 83 in 2015, which requires the state board to prepare a status report
25 every six months on the regulation of oil field produced water impoundments. By attempting to
26 prohibit water impoundments specifically permitted by state authorities, Measure Z directly
27 contradicts and undermines comprehensive state regulations on produced water impoundment.
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1 46. Measure Z is also preempted by Senate Bill 4 (Chapter 313, Statutes of 2013) (“SB
2 4”). SB 4 explicitly directed DOGGR to promulgate extensive regulations governing well
3 stimulation treatments in California. These regulations went into effect on July 1, 2015.

4 **D. Chevron Has a Vested Right to Continue Drilling in the San Ardo Oil Field**

5 47. Chevron or its predecessors have operated a lawful oil drilling business continuously
6 at the San Ardo Oil Field since 1949.

7 48. The San Ardo Oil Field is zoned for “Heavy Industry” and Monterey County allows
8 for the removal of oil and gas within this zoning classification subject to a use permit. (Monterey
9 County Code § 21.28.060, subd. (FF).) Chevron currently operates pursuant to a blanket use permit
10 issued for the San Ardo Oil Field in 1949, which allows the holder to “drill for and/or remove oil,
11 gas, or other hydrocarbon substances” in an area covered by maps attached thereto.

12 49. Chevron has vested rights under the 1949 use permit to drill for and remove oil from
13 its property. Such a vested right prevents Monterey County from prohibiting activities authorized
14 by the permit on the basis of later changes to its land use laws.

15 50. Measure Z would have the effect not only of shutting down a business that has
16 mutually benefited the County for nearly seven decades, but also of terminating the right to produce
17 oil—an extraordinarily valuable resource that reduces the need for California to rely on foreign oil
18 resources.

19 51. To the extent that Chevron’s 1949 use permit could be deemed inconsistent and
20 subordinate to the amendments to Monterey County’s General Plan added by Measure Z (which it
21 should not), Chevron’s operations must be deemed a legal nonconforming use. “Any use of land,
22 structure or land and structure which was legally established but is nonconforming to subsequently
23 adopted land use regulations is a legal nonconforming use.” (Monterey County Code § 21.68.010.)

24 52. Chevron has clearly exhibited an intent to continue to drill new wells and utilize
25 steam flooding within all of its leased areas within the San Ardo Oil Field. The continued
26 development of these areas is a progression of the extractive activity into all areas of the property.
27 The County is thereby prevented from prohibiting activities by Chevron to extract all oil from its
28

1 property within the San Ardo Oil Field authorized by the 1949 use permit on the basis of later
2 changes in its land use laws.

3 **E. Measure Z Constitutes a Taking of Private Property Without Prior Compensation**

4 53. The County must pay just compensation for the implementation of Measure Z
5 because it is a regulatory taking under the United States and California Constitutions. The federal
6 and state Constitutions prohibit the government from taking private property “without just
7 compensation.” (U.S. Const., 5th & 14th Amendments; Cal. Const. art. I, § 19.)

8 54. The County must pay just compensation for a taking that is the result of a ballot
9 measure adopted by voters.

10 55. The mere enactment of Measure Z constitutes a taking because, by itself, it has the
11 effect of substantially impairing the property rights of Chevron and the Royalty Owners and
12 substantially eliminating the value of the San Ardo Oil Field, if Measure Z is allowed to remain in
13 effect.

14 56. The County may not deprive Chevron and the Royalty Owners of the beneficial or
15 productive use of the San Ardo Oil Field without just compensation. In enacting the Measure, the
16 County violated Article 1, section 19 of the California Constitution and the Fifth Amendment of the
17 U.S. Constitution, as incorporated to the States by the Fourteenth Amendment, which prohibits the
18 taking or damaging of private property for public use without prior, just compensation.

19 57. Measure Z will prevent the continued operation of the oil and gas wells at the San
20 Ardo Oil Field after a period of five years. Truncating the life span of the oil field dramatically
21 reduces its economic value. Measure Z also immediately prohibits drilling new wells. If the
22 County prevents the drilling of additional wells, the yield from the current wells will continually
23 decrease until oil and gas production at the San Ardo Oil Field will no longer be economically
24 viable. As such, the County’s actions will have the direct result of substantially diminishing
25 Chevron’s and the Royalty Owners’ reasonable investment-backed expectations in the San Ardo
26 Oil Field.

27 58. To date, Chevron and the Royalty Owners have not received any compensation from
28 the County on account of the above taking of, or damage to, the property rights within the San Ardo

1 Oil Field as a result of Measure Z. The County failed to ascertain the just compensation due to
2 Chevron and the Royalty Owners prior to implementation of Measure Z.

3 **1. Measure Z Eliminates All Economically Beneficial or Productive Use of the San**
4 **Ardo Oil Field**

5 59. Measure Z eliminates all economically beneficial or productive use of San Ardo by
6 Chevron and the Royalty Owners. Because Measure Z prohibits (1) land uses in support of
7 wastewater injection and impoundment; and (2) drilling new wells, the Measure substantially
8 eliminates any opportunity to conduct oil and gas operations within the San Ardo Oil Field. The
9 effect of this Measure is to deny Chevron and the Royalty Owners all economically viable use of
10 the property.

11 60. Measure Z's prohibition on wastewater injection and impoundment will result in the
12 cessation of all oil and gas operations currently in place, as Chevron's operations rely entirely on
13 these operations. Chevron currently uses steamflood operations, which are prohibited under
14 Measure Z's prohibition of the injection of produced water. Chevron also uses the above-ground
15 release of purified water and the underground injection of concentrated brine from its reverse-
16 osmosis facility, which are similarly prohibited under Measure Z. The Measure provides that these
17 uses are subject to a "phase-out" period, which is between five and fifteen years. Even with the
18 phase-out period, the impending prohibition will prevent any investment of capital and resources
19 into the San Ardo Oil Field. Even assuming that injection and impoundment activities can continue
20 for fifteen years from the effective date of Measure Z, this truncated lifespan of the field is
21 inadequate to justify the level of capital investment necessary to maintain an oil field of this size.
22 Further, the ban on new wells truncates the lifespan of the field. Under Measure Z, Chevron may
23 only operate its existing wells during the phase-out period. Chevron's operations depend on its
24 current operation of drilling new wells each year. Without the addition of new wells, Chevron will
25 not be able to operate the San Ardo Oil Field at its previous capacity.

26 61. The San Ardo Oil Field has been used exclusively as an oil field since the first
27 permit was issued in 1949. The Royalty Owners, who own mineral rights within the San Ardo
28 field, will be irreparably harmed because their most valuable rights to the property are for the

1 extraction of minerals beneath the surface. Measure Z extinguishes the Royalty Owners' interest in
2 the mineral rights to this property.

3 62. Chevron's operations at the San Ardo Oil Field exist for the purpose of extracting
4 oil. Almost all of Chevron's property interest at the San Ardo Oil Field is a leasehold interest to
5 extract oil. Thus, Measure Z effectively eliminates Chevron's property interest.

6 **2. Measure Z Interferes with Chevron's and the Royalty Owners' Distinct**
7 **Investment-Backed Expectations**

8 63. Measure Z will result in the prohibition of all current oil and gas operations at the
9 San Ardo Oil Field because of Measure Z's prohibition on all wastewater injection and
10 impoundment. This will result in a complete loss of the current economic uses of the San Ardo Oil
11 Field.

12 64. Measure Z's provision regarding the "phase-out" period for wastewater injection and
13 impoundment is an unreasonable amortization period. Measure Z states that all non-conforming
14 uses must be phased out within five to fifteen years. This amount of time is unreasonable, as it
15 interferes with Chevron's investment-backed expectations that the oil field would remain in
16 operation until Chevron extracted all oil from its property pursuant to the 1949 use permit.

17 65. Measure Z will result in the unwarranted denial of drilling permit applications,
18 which will prevent Chevron from being able to continue drilling wells. Additional wells are
19 essential for Chevron to maintain a viable level of extraction of oil and gas from the San Ardo Oil
20 Field.

21 66. Additional wells are needed to access remaining oil reserves within the San Ardo Oil
22 Field. Without the ability to drill such wells, oil reserves will be lost forever, along with any profit
23 that Chevron could make from its investment in said wells and the royalties that would otherwise be
24 paid to the Royalty Owners' for their mineral interests.

25 67. The continued operations and additional drilling at the San Ardo Oil Field is not
26 inherently dangerous, and does not cause harm or a nuisance to local communities.

27 68. Ramifications to the entire community will be felt as a result of the interference with
28 Chevron's operations at the San Ardo Oil Field. For instance, the School District will likely be

1 required to close as a result of its inability to issue the necessary bonds to repair its infrastructure.
2 Local community services will also lose substantial amounts of tax revenue generated as a result of
3 oil operations at the San Ardo Oil Field. The San Ardo Oil Field also provides a substantial
4 numbers of jobs in the County and supports many local businesses. Measure Z would devastate the
5 income stream to the local government entities and would remove a core part of the economy in
6 Monterey County.

7 69. The economic value of the San Ardo Oil Field has diminished substantially as a
8 result of the prohibitions and the regulations imposed by Measure Z. The diminution in value
9 caused by the Measure has essentially appropriated the property for public use.

10 70. Measure Z has interfered with Chevron and the Royalty Owners' reasonable and
11 distinct investment-backed expectations. Chevron has a vested right in continued drilling activities
12 at the San Ardo Oil Field. Further, Measure Z has interfered with the Royalty Owners' investment-
13 backed expectations, and they are unable to allow the land to be used in its best and most
14 productive use. The Royalty Owners own mineral interests in the property, which have been
15 substantially impaired in value as a result of Measure Z. Chevron's only purpose in its presence at
16 the San Ardo Oil Field is the extraction of oil, which has been eliminated as a result of Measure Z.

17 71. Measure Z has the effect of destroying Chevron's ability to continue the existing and
18 traditional use of the San Ardo Oil Field, which has been the drilling and extraction of oil and gas.
19 Therefore, the Measure has interfered with the "primary expectations" of Chevron and the Royalty
20 Owners.

21 **3. Measure Z Prevents Chevron and the Royalty Owners from Obtaining a**
22 **Reasonable Return on Their Investments in the Property**

23 72. Measure Z does not allow Chevron or the Royalty Owners to profit from or obtain a
24 reasonable return on their investments in the San Ardo Oil Field.

25 73. Measure Z provides no benefits or rights to Chevron or the Royalty Owners that
26 could mitigate the financial burdens that it imposes. The enactment of Measure Z makes it
27 impossible for Chevron to profitably engage in its business, or for Royalty Owners to obtain value
28 from their mineral interests.

1 74. Measure Z's provisions regarding the "phase-out" period for wastewater injection
2 and impoundment provide an unreasonable amortization period. Measure Z states that all non-
3 conforming uses must be phased out within five to fifteen years. This amount of time is
4 unreasonable, as Chevron and the Royalty Owners cannot obtain a reasonable return on its
5 investments in the property within this amount of time.

6 75. Measure Z prevents the Chevron and the Royalty Owners from putting the San Ardo
7 Oil Field to its highest and best use. The continued extraction of oil from the San Ardo Oil Field
8 serves a high societal need in that it reduces national dependence on foreign oil; increases the
9 supply of oil and gas in the Southern California region; avoids the increased cost and pollution
10 resulting from the overseas import of oil and gas for domestic consumption; and provides economic
11 benefits to industries and employees in the region who are involved in the extraction,
12 transportation, refining, and processing of the oil and gas extracted from the San Ardo Oil Field.

13 76. Measure Z has the effect of extinguishing a fundamental attribute of the property
14 rights of Chevron and the Royalty Owners in the San Ardo Oil Field. The right to drill additional
15 wells and to conduct injection, impoundment and stimulation activities, as necessary, is a critical
16 and fundamental attribute of ownership in these lands, in particular to the mineral rights owned by
17 the Royalty Owners and leased by Chevron.

18 **F. Plaintiffs Have Been Deprived of Due Process**

19 77. Measure Z constitutes a violation of the substantive due process rights of Chevron
20 and the Royalty Owners.

21 78. Under the California Constitution, a person may not be deprived of life, liberty, or
22 property without due process of law. (Cal. Const., art. I, § 7, subd. (a).) Similarly, the federal
23 Constitution provides that "no State shall ... deprive any person of life, liberty, or property, without
24 due process of law." (U.S. Const., amend. XIV, § 1.) The federal provision guarantees certain
25 substantive rights in addition to due process.

26 79. Measure Z is arbitrary and unreasonable and has no substantial relation to the public
27 health, safety, morals, or general welfare.
28

1 80. Measure Z infringes the property rights of Chevron and the Royalty Owners in an
2 arbitrary and irrational manner by effectively prohibiting all oil and gas operations within Monterey
3 County, despite successful operations at the San Ardo Oil Field for nearly 70 years.

4 81. There is no legitimate interest in eliminating oil and gas operations. Measure Z
5 contains no statement of why such operations will no longer be permitted in Monterey County.
6 There is no legitimate interest in entirely eliminating an industry that is already regulated and
7 permitted by various government entities.

8 82. The stated purpose of Measure Z is to “protect Monterey County’s water,
9 agricultural lands, air quality, scenic vistas, and quality of life,” but Measure Z makes no showing
10 of how any oil extraction operations have compromised or damaged the County’s “water,
11 agricultural lands, air quality, scenic vistas, and quality of life.”

12 83. The California Constitution requires that the water resources of the State be put to
13 beneficial use to the fullest extent of which they are capable and that waste or unreasonable use of
14 water must be prevented. (Cal. Const., art. X, § 2.) Measure Z prevents the use of water resources
15 to the fullest extent and creates a waste of water.

16 84. Measure Z is also unconstitutionally vague. Measure Z fails to give a person of
17 ordinary intelligence fair notice that his contemplated conduct is prohibited under the law. Measure
18 Z will result in arbitrary and discriminatory enforcement because it lacks explicit standards to those
19 who apply them.

20 85. For example, Measure Z does not define what wells would be considered “new,”
21 thereby justifying arbitrary and discriminatory enforcement as to whether the prohibition on new
22 wells includes the expansion of wells already in place. Measure Z likewise does not define what
23 wells would be considered “abandoned,” thereby justifying arbitrary and discriminatory
24 enforcement as to whether the prohibition includes wells that have been idled.

25 86. As another example, Measure Z’s definitions of “oil and gas wastewater injection,”
26 “oil and gas wastewater impoundment,” and “oil and gas wastewater” are vague because they do
27 not reasonably identify which operations are prohibited within the County.
28

V.

FIRST CAUSE OF ACTION

(By All Plaintiffs for Petition for Writ of Traditional Mandamus Under Code of Civil Procedure Section 1085 or Alternatively under Section 1094.5)

87. Plaintiffs reallege and incorporate herein by reference Paragraphs 1 through 86 above.

88. Plaintiffs seek a writ of traditional mandamus pursuant to Code of Civil Procedure Section 1085, or alternatively Section 1094.5. The adoption of Measure Z is preempted because the County is preempted from intruding upon the state's exclusive jurisdiction over certain parts of oil and gas regulations.

89. The State of California, through DOGGR, has exclusive jurisdiction over the drilling, operation, maintenance, and abandonment of wells. Measure Z seeks to regulate oil production operations by circumscribing how Chevron may conduct those operations through the entire County, including the San Ardo Oil Field.

90. Measure Z's ban on the drilling of new oil wells is preempted by federal and state law, providing that DOGGR has exclusive jurisdiction to regulate the drilling and operation of new wells. The provisions of Measure Z prohibit construction and operation of all new wells in the County, in direct contravention of state law.

91. The provisions of Measure Z that phase out produced water impoundment and disposal intrude on areas of law exclusively within the purview of the State Water Resources Control Board and its authorized regional boards.

92. Measure Z is preempted by federal and state law, providing that DOGGR has exclusive jurisdiction to regulate underground injection and produced water impoundment pursuant to delegation of primacy by the U.S. Environmental Protection Agency under the federal Safe Drinking Water Act.

93. Measure Z is preempted by Senate Bill 4. SB 4 explicitly directed DOGGR to promulgate extensive regulations governing well stimulation treatments in California.

1 113. At the time of the County's acts alleged herein, the Royalty Owners were the owners
2 of mineral rights in land within the San Ardo Oil Field. Chevron had leasehold interests in the
3 extraction of oil and gas within the San Ardo Oil Field.

4 114. For many years prior to the County's acts alleged herein, Chevron had a vested right
5 to continue drilling operations within the San Ardo Oil Field as a matter of right.

6 115. The enactment of Measure Z eliminates substantially all economically viable use of
7 the San Ardo Oil Field for the benefit of the public without prior compensation to Chevron or the
8 Royalty Owners. The enactment of Measure Z also substantially impairs the property rights of
9 Chevron and the Royalty Owners in the San Ardo Oil Field for the benefit of the public without
10 prior compensation to Chevron or the Royalty Owners. In taking such action, the County violates
11 Article 1, section 19 of the California Constitution, which prohibits the taking or damaging of
12 private property for public use without prior, just compensation. Further, the County violates the
13 takings clause of the Fifth Amendment of the U.S. Constitution, as incorporated by the Fourteenth,
14 which prohibits the taking of private property for public use without prior, just compensation

15 116. As a direct result of the County's actions as alleged herein, the enactment of
16 Measure Z will interfere with the reasonable investment-backed expectations of Chevron and the
17 Royalty Owners.

18 117. To date, Chevron and the Royalty Owners have not received any compensation from
19 the County on account of the above alleged taking of, or damage to, their property rights within the
20 San Ardo Oil Field.

21 118. As a direct and proximate result of the County's violation of Article 1, section 19 of
22 the California Constitution and the takings clause of the Fifth Amendment of the U.S. Constitution,
23 as alleged above, Chevron and the Royalty Owners have been and will be damaged from the
24 interference with their reasonable investment-backed expectations in the San Ardo Oil Field, and
25 will suffer further damages in an amount to be determined at trial.
26
27
28

IX.

FIFTH CAUSE OF ACTION

(By Chevron and the Royalty Owners for Declaratory Relief for Violation of Article I, Section 7 of the California Constitution and Violation of the Fourteenth Amendment to the United States Constitution (Due Process))

119. Plaintiffs reallege and incorporate herein by reference Paragraphs 1 through 86 above.

120. The enactment of Measure Z was arbitrary and discriminatory, and not reasonably related to any legitimate governmental purpose. The purpose of Measure Z is to prohibit all oil and gas operations in Monterey County, despite its successful operation there for nearly 70 years. For these reasons, the enactment of Measure Z violates the due process rights of Chevron and the Royalty Owners under Article 1, section 7 of the California Constitution as well as the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

121. A bona fide and actual controversy exists between Chevron, the Royalty Owners and the County in that Chevron and the Royalty Owners allege, and the County denies, that the enactment of Measure Z violated Article 1, section 7 of the California Constitution and the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

122. Chevron and the Royalty Owners desire a judicial determination of the validity of Measure Z to save itself from the harm caused by the enactment of the Measure, which prohibits Chevron from continuing its oil and gas operations at the San Ardo Oil Field. The enactment of Measure Z results in substantial hardship to Chevron and the Royalty Owners.

123. A judicial determination of the invalidity of Measure Z is necessary and appropriate to avoid the deprivation of state and federal constitutional rights that results from applying Measure Z to Chevron and the Royalty Owners.

124. Measure Z is void for vagueness under the United States and California Constitutions because it fails to afford a person of ordinary intelligence warning of what conduct is prohibited or to afford a specific enough standard for its enforcement.

1 125. A judicial determination of the invalidity of Measure Z on the ground of vagueness
2 is necessary and appropriate to avoid substantial harm through the arbitrary and discriminatory
3 enforcement of the Measure.

4 126. A judicial determination is also necessary to determine which actions are prohibited
5 under Measure Z.

6 **X.**

7 **WHEREFORE, Plaintiffs pray for judgment as follows:**¹

- 8 1. For a writ of mandamus directing the County to vacate amendments imposed by
9 Measure Z;
- 10 2. For a declaration that Measure Z violates Chevron's vested rights;
- 11 3. For a declaration that Measure Z violates provisions of the California Constitution
12 and the United States Constitution;
- 13 4. For just compensation, according to proof, for permanent taking of property;
- 14 5. For just compensation, according to proof, for temporary taking of property;
- 15 6. For an award of damages against the County according to proof;
- 16 7. For a declaration that Measure Z is void on the grounds of vagueness;
- 17 8. For a preliminary and permanent injunction enjoining the County from enforcing
18 Measure Z against Plaintiffs;
- 19 9. For reasonable attorneys' fees incurred in this matter pursuant to Sections 1021.5 or
20 1036 of the California Code of Civil Procedure and other pertinent law;
- 21
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1 10. For Plaintiffs' costs of suit incurred herein; and

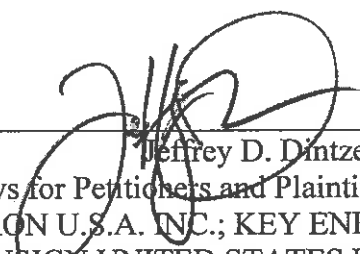
2 11. For such other and further relief as the Court deems just and proper.

3 DATED: January 12, 2017

Respectfully submitted,

4 GIBSON, DUNN & CRUTCHER LLP

5
6 By: _____



Jeffrey D. Dintzer

Attorneys for Petitioners and Plaintiffs

8 CHEVRON U.S.A. INC.; KEY ENERGY SERVICES,
9 LLC; ENSIGN UNITED STATES DRILLING
10 (CALIFORNIA) INC.; MAUREEN WRUCK;
11 GAZELLE TRANSPORTATION, LLC; PETER
ORRADRE; MARTIN ORRADRE; JAMES
ORRADRE; THOMAS ORRADRE; JOHN
ORRADRE; STEPHEN MAURICE BOYUM; and SAN
12 ARDO UNION ELEMENTARY SCHOOL DISTRICT

13 100824369_1.DOC

VERIFICATION

I, Kevin McNally, am Land Management Officer for Plaintiff and Petitioner CHEVRON U.S.A. INC. ("Chevron"). I have read the foregoing FIRST AMENDED VERIFIED PETITION FOR WRIT OF MANDAMUS [CCP SECTION 1085 OR 1094.5] AND COMPLAINT FOR DAMAGES AND DECLARATORY RELIEF ("PETITION") and am familiar with its contents. The matters stated in it are true of my own knowledge, except as to those matters that are stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that this Verification was executed by me on January 12, 2017, at Bakersfield, California, and that the foregoing is true and correct.



Kevin McNally

1 **PROOF OF SERVICE**

2 I, Sandra Diaz, hereby declare as follows:

3 I am employed in the County of Los Angeles, State of California; I am over the age of
4 eighteen years and am not a party to this action; my business address is located at 333 South Grand
5 Avenue, Los Angeles, California 90071. In said County and State, on January 12, 2017, I served a
6 true and correct copy of the following documents:

7 **FIRST AMENDED VERIFIED PETITION FOR WRIT OF MANDAMUS [CCP SECTION
8 1085 OR 1094.5] AND COMPLAINT FOR DAMAGES AND DECLARATORY RELIEF**

9 on the following persons:

10 Gene Tanaka, Esq.
11 Best Best & Krieger
12 2001 North Main Street, Suite 390
13 Walnut Creek, CA 94596
14 gene.tanaka@bbklaw.com
15 Attorneys for Defendant COUNTY OF
16 MONTEREY

17 Charles McKee, Esq.
18 County Counsel
19 County of Monterey
20 168 West Alisal Street, 3rd Floor
21 Salinas, CA 93901-2439
22 mckeej@co.monterey.ca.us
23 Attorneys for Defendant COUNTY OF
24 MONTEREY

25 by the methods indicated:

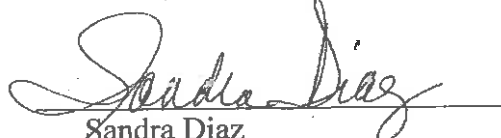
26 **BY PERSONAL SERVICE:** I placed a true copy in a sealed envelope addressed to
27 each person[s] named at the address[es] shown on the attached service list and gave
28 same to a messenger for personal delivery before 5:00 p.m. on the above-mentioned
date.

1 **BY OVERNIGHT MAIL:** I placed a true copy in a sealed envelope addressed as
2 indicated below on attached service list, on the above-mentioned date. I am familiar
3 with the firm's practice of collection and processing correspondence for delivery by
4 UPS. Pursuant to that practice, envelopes placed for collection at designated locations
5 during designated hours are delivered to UPS with a fully completed airbill, under which
6 all delivery charges are paid by Gibson, Dunn & Crutcher LLP, that same day in the
7 ordinary course of business.

8 **BY ELECTRONIC MAIL:** Based on an agreement of the parties to accept electronic
9 service, I caused the documents to be sent to the persons at the electronic service
10 addresses listed above.

11 I declare under penalty of perjury under the laws of the State of California that the foregoing
12 is true and correct and that the foregoing document(s) were printed on recycled paper.

13 Executed at Los Angeles, California, on January 12, 2017.

14 
15 Sandra Diaz