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**Exempt from Filing Fee Pursuant to Government Code Section §6103**

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF VENTURA

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| **AERA ENERGY LLC,**<br><br>Petitioner and Plaintiff,<br><br>**v.**<br><br>**COUNTY OF VENTURA, a municipal corporation, and the COUNTY OF VENTURA BOARD OF SUPERVISORS; and DOES 1 through 25, inclusive,**<br><br>Respondents and Defendants,<br><br>**CLIMATE FIRST: REPLACING OIL & GAS; VOICES IN SOLIDARITY AGAINST OIL IN NEIGHBORHOODS; and SIERRA CLUB,**<br><br>Intervenors. | Case No. 56-2020-00546180-CU-WM-VTA<br><br>(Related to Case Nos. 56-2020-00546174-CUWM-VTA; 56-2020-00546187-CU-TT-VTA; 56-2020-00546189-CU-WM-VTA; 56-2020-00546193-CU-WM-VTA; 56-2020-00546196-CU-WM-VTA; 56-2020-00546198-CU-WM-VTA; 56-2020-00548181-CU-WM-VTA; 56-2021-00550558-CU-WM-VTA; 56-2020-00548077-CU-WM-VTA; 56-2020-00547988-CU-WM-VTA.)<br><br>**AMICUS CURIAE BRIEF OF THE ATTORNEY GENERAL IN SUPPORT OF RESPONDENTS AND DEFENDANTS**<br><br>Dept: 40<br>Judge: Hon. Mark S. Borrell<br>Action Filed: October 15, 2020<br>Trial Date: November 1-2, 2022 |

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## INTRODUCTION AND STATEMENT OF INTEREST

The Attorney General submits this amicus brief to address whether state law preempts three oil and gas regulations adopted by the County of Ventura ("County") in its 2040 General Plan Update. The three oil and gas regulations that are the focus of this amicus brief: 1) establish a setback or buffer distance between new discretionary oil and gas wells and residences and schools; 2) limit the use of venting and flaring, techniques that allow oil and gas operators to release excess fracked gas into ambient air, from new discretionary oil and gas wells when feasible; and 3) require the transportation of crude oil and toxic oil and gas wastewater by pipeline instead of by tanker trucks from new discretionary oil and gas wells when feasible. In adopting these oil and gas regulations, the County lawfully exercised its police power authority to protect its residents from the well-known public health, safety, and environmental harms associated with oil and gas development. These harms are especially pernicious for county residents who live in close proximity to oil and gas activity and who are disproportionately people of color and low-income residents.

As the chief law enforcement officer of the State of California, the Attorney General has a strong interest in enforcing state laws designed to protect the environment and natural resources of California. (Cal. Const., art. V, § 13; Gov. Code, §§ 12519, 12600-12612; *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 14-15.) The Attorney General wields unique and independent power to safeguard the state's natural resources from pollution, impairment, or destruction in furtherance of the public interest. (Gov. Code, §§ 12600-12612.)

The Attorney General also provides legal opinions interpreting the laws and regulations of the state. (Gov. Code, § 12519.) Courts afford "great respect" and "great weight" to these opinions. (See *Natkin v. California Unemployment Insurance Appeals Bd.* (2013) 219 Cal.App.4th 997, 1006-1007.) The Attorney General has a strong interest in ensuring that his legal opinions are interpreted and applied correctly. The parties in this lawsuit have relied on an Attorney General Opinion, 59 Ops.Cal.Atty.Gen. 461 (1976), in their respective merits briefs and have presented competing interpretations of the preemptive effect of state laws on local regulation of oil and gas activity. This amicus brief will set forth the proper construction and application of

that Opinion, which will assist the Court with resolving Petitioners' claims that state law preempts the County's oil and gas regulations.[1]

## ARGUMENT

Ventura County lawfully exercised its police power to protect the general health and welfare of its residents, the local environment, and its natural resources when it adopted three oil and gas regulations, as part of its 2040 General Plan Update, that address the deleterious effects of oil and gas development near communities. The oil and gas regulations at issues are: 1) COS-7.2, which establishes setback distances of 1,500 feet between new discretionary oil wells and residential dwellings and 2,500 feet for schools; 2) COS-7.7, which requires the transportation of crude oil and oil and gas wastewater from new discretionary oil wells by pipeline instead of by tanker trucks; and 3) COS-7.8, which limits venting and flaring of excess fracked gas from new discretionary oil and gas wells, except in cases of an emergency or for testing purposes. (AR 088658, 088659.)

Petitioners broadly argue that the County is entirely precluded from regulating oil and gas development and that any local regulation of these development activities is preempted by various state laws. Petitioners' arguments are erroneous. The general principles of preemption, relevant case law, and in the record demonstrate that state law does not preempt COS-7.2, COS-7.7, and COS-7.8.

### I. Local Governments Have Broad Police Powers to Regulate Oil and Gas Activities Within Their Territory.

Local governments derive their authority to regulate land use matters, including oil and gas development, from their police power enshrined in Article XI, section 7, of the California Constitution: "A county or city may make and enforce within its limits all local police, sanitary, and other ordinances and regulations not in conflict with general laws." (Cal. Const., art. XI, § 7; see also *Berman v. Parker* (1954) 348 U.S. 26, 32-33; *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 782 [noting that counties can enact and enforce planning and land use regulations pursuant

[1] The Attorney General respectfully submits this brief as amicus curiae pursuant to the California Rules of Court, rule 8.200(c)(7). This brief is submitted in the Attorney General's independent capacity and not on behalf of a state officer or state agency.

to their police power to protect the health, safety, and welfare of residents].)

"This inherent local police power includes broad authority to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within a local jurisdiction's borders." (*City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.* (2013) 56 Cal.4th 729, 738 (*City of Riverside*); see also *Associated Home Builders, Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 600-601 [determining that a land use regulation lies within a county's police power when reasonably related to the public welfare]; Gov. Code, § 65804 [explaining that cities and counties have "maximum control" over zoning].) In particular, a county "ha[s] 'the unquestioned right to regulate the business of operating oil wells within its city limits, and to prohibit their operation within delineated areas and districts, if reason appears for doing so.'" (*Beverly Oil Co. v. City of Los Angeles* (1953) 40 Cal.2d 552, 558.) Thus, where local jurisdictions, such as the County, adopt regulations to protect their residents, the environment, and natural resources, the local jurisdictions properly exercise their police powers.

The only limitations on the exercise of local police powers are that local governments must exercise such powers within their own territorial limits and may not adopt regulations that conflict with state or federal law. (See *Candid Enterprises Inc. v. Grossmont Union High School Dist.* (1985) 39 Cal.3d 878, 885.) A conflict with state law exists when the local regulation "duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication." (*Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897 (*Sherwin-Williams*).) "The party claiming that general state law preempts a local ordinance has the burden of demonstrating preemption." (*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1149 (*Big Creek Lumber*).)

However, "preemption by state law is not lightly presumed." (*City of Riverside, supra*, 56 Cal.4th at p. 738.) As the Supreme Court has explained, "when local government regulates in an area over which it traditionally has exercised control, such as the location of particular land uses, California courts will presume, absent a clear indication of preemptive intent from the Legislature, that such regulation is *not* preempted by state statute." (*Big Creek Lumber Co., supra*, 38 Cal.4th at p. 1149 [emphasis added]; see also *Cal. Grocers Assn. v. City of Los Angeles*

(2011) 52 Cal. 4th 177, 197-198 (*Cal. Grocers Assn.*) [the presumption against preemption is "particularly heavy" where the subject matter is "traditionally regulated by . . . local governments under their police powers"].) In addition, both in the land use context and elsewhere, courts are "'reluctant' to infer preemptive intent where there are significant local interests that may differ from one locality to another." (*Wheeler v. App. Div. of Super. Ct. of Los Angeles County* (2021) 72 Cal.App.5th 824, 834.)

## II. An Attorney General Opinion Similarly Concludes That Local Governments Maintain Authority to Regulate Oil and Gas Drilling Sites Within Their Jurisdictions.

Petitioners rely on an Attorney General Opinion, 59 Ops.Cal.Atty.Gen. 461 (1976) (AG Opinion or Opinion), to support their argument that local regulations of oil and gas activities are field-preempted. (See Petitioners' Brief at p. 25.) As explained in detail below, Petitioners misread the Opinion.

The Attorney General issued the Opinion in response to questions from a former Oil and Gas Supervisor regarding state law preemption of local regulations in the oil and gas context. (59 Ops.Cal.Atty.Gen. at p. 461.) The Opinion acknowledged that "the drilling and production of energy resources represent[] an endeavor of commercial activity that commands uniform regulation," and that the state's oil and gas regulations will "exclude local regulation in each instance where the Supervisor . . . approves or specifies plans of operation, methods, materials, procedures or equipment to be used by the operator or where activities are to be carried out under the direction of the Supervisor as a part of the Supervisor's regulation for purposes of conservation or protection of resources." (*Id.* at pp. 477-478.)

The Opinion carefully defined the extent of state law preemption, explaining that "most, if not all, subsurface regulation ha[s] been preempted by the Public Resources Code." (59 Ops.Cal.Atty.Gen. at p. 462.) However, "[w]ith regard to activities which are regulated by the Supervisor for purposes other than conservation and resource protection, such as environmental protection, we do not conclude that the Supervisor has occupied the field to the exclusion of the local governments." (*Id.* at p. 479.) Thus, the Public Resources Code does not generally preempt local regulation of oil and gas development that address "land use, environmental protection,

aesthetics, public safety, and fire and noise prevention." (*Ibid.*) Local regulations in those areas are deemed valid so long as the regulations do not "conflict with, frustrate the purposes of, or destroy the uniformity of" statewide regulation. (*Ibid.*)

More broadly, local governments may regulate phases of oil and gas activities that are not already subject to state law and regulation "so long as there is no conflict with state regulation concerning other phases of such activities" and the local measures are not unreasonable. (59 Ops.Cal.Atty.Gen. at p. 461.) Thus, local regulations that "impose [] non-conflicting condition[s]" are "entirely compatible" with state law. (*Id.* at p. 480.) Finally, the Opinion recognizes the authority of a local government to restrict the location of—or even entirely ban—oil and gas activities "in all or part of its territory." (*Ibid.*) Indeed, "[i]n the absence of preemption by state authorities, the power of cities and counties to regulate oil and gas and geothermal well operations is complete; the city or county has police power equal to that of the state so long as local regulations do not conflict with general laws." (*Id.* at p. 466.) In sum, the Opinion is clear that the Public Resources Code may preempt local regulation of discrete phases or methods of oil and gas development, but not the entire field of oil and gas development.

**III. State Law Does Not Preempt the County's Setback Regulation.**

Petitioners' main argument is that COS-7.2, the County's setback regulation which establishes setbacks of 1,500 and 2,500 feet between new discretionary oil wells and residences and schools respectively, is preempted because it "usurps the authority of the Oil and Gas Supervisor, in direct conflict with Public Resources Code sections 3106, 3609, and 3602.1." (Petitioners' Brief at pp. 25-26.) Petitioners contend that the setback regulation conflicts with sections 3106, 3602.1, and 3609 because the setback requirement in this policy will have an impact on oil and gas production and may interfere with "maximiz[ing] ultimate economic oil and gas production from the property being produced." (*Id.* at p. 27.) This contention is wrong.

The setback regulation is a valid exercise of the County's traditional police power to regulate land use and zoning in order to protect public health and the environment. (Respondents' Brief at pp. 16, 19.) The mere fact that the setback regulation may result in increased costs for oil and gas producers does not establish that the setback policy is preempted. Instead, Petitioners

must demonstrate that the policy is either: (1) "contradictory" and "inimical" to state law under principles of conflict preemption; or (2) an attempt to regulate in a "field" where the state legislature has demonstrated its intent to completely or partially occupy to the exclusion of local authorities. (See *Sherwin-Williams Co., supra*, 4 Cal.4th at pp. 897-898.) Petitioners fail to establish that the County's setback regulation is preempted under either of these standards.

**A. The County's Setback Regulation Does Not Conflict with Section 3106.**

The County's setback regulation is not "contradictory" or "inimical" to section 3106 because it does not "directly require[ ] what the state statute forbids or prohibit[ ] what the state enactment demands." (*T-Mobile West LLC v. City and County of San Francisco* (2019) 6 Cal.5th 1107, 1121; see also *City of Riverside, supra*, 56 Cal.4th at p. 743.) Section 3106 requires the Oil and Gas Supervisor to "supervise the drilling, operation, and maintenance, and abandonment of wells . . . so as to prevent, as far as possible, damage to life, health, property, and natural resources[,]" damage to underground oil and gas deposits, "loss of oil, gas, or reservoir energy," and "damage to underground and surface waters suitable for irrigation or domestic purposes." (Pub. Resources Code, § 3106, subd. (a).) The Oil and Gas Supervisor is also authorized to require monitoring of ground- and surface-water contamination from oil and gas facilities. (*Id.* § 3106, subd. (c).) In addition, section 3106 tasks the Supervisor with overseeing "the drilling, operation, maintenance, and abandonment of wells so as to permit the owners or operators of the wells to utilize all methods and practices known to the oil industry for the purpose of increasing the ultimate recovery of underground hydrocarbons and which, in the opinion of the supervisor, are suitable for this purpose in each proposed case." (*Id.* § 3106, subd. (b).)

Section 3106 does not mandate that oil and gas production must occur in all areas where oil and gas deposits are found. An oil and gas producer could reasonably comply with the County's setback regulation and section 3106 by drilling new discretionary oil and gas wells outside of the setback areas. (See *City of Riverside, supra*, 56 Cal.4th at pp. 754-755 [finding no inimical conflict between state and local law where a regulated entity could reasonably comply with both].) Section 3106 also does not prohibit buffers between new discretionary oil and gas wells and sensitive land uses. In fact, the Public Resources Code expressly recognizes local

jurisdictions' continued authority to regulate oil and gas activities through zoning and land use requirements. (Pub. Resources Code, § 3012.) Thus, there is no conflict between the requirements of the County's setback regulation and section 3106.

Further, and contrary to Petitioners' assertion (Petitioners' Brief at p. 27), the setback regulation does not prohibit "methods and practices" that are "known to the oil industry for the purpose of increasing the ultimate recovery of underground hydrocarbons." (Pub. Resources Code, § 3106, subd. (b).) The "well-known method and practice" to which Petitioners refer to is "locating wells so as to maximize ultimate economic oil and gas production from the property being produced." (Petitioners' Brief at p. 27.) But locating oil and gas wells to minimize producers' costs and increase producers' profit is not a method or practice under section 3106; rather, section 3106 specifically refers to the extraction "methods and practices known to the oil industry *for the purpose of increasing the ultimate recovery of underground hydrocarbons*." (Pub. Resources Code § 3106, subd. (b) [emphasis added].) It is unreasonable to interpret "methods and practices" under section 3106 as expansively as Petitioners suggest because such an interpretation would effectively render other sections of Public Resources Code—which specifically recognize local governments' authority to regulate, and even prohibit, oil and gas wells within their territories— meaningless. (Pub. Resources Code, §§ 3012, 3690; see *Arnett v. Dal Cielo* (1996) 14 Cal.4th 4, 22 ["Courts should give meaning to every word of a statute if possible, and should avoid a construction making any word surplusage."] [internal citations omitted].) Accordingly, the Court should reject Petitioners' construction of this phrase in section 3106.

### B. The County's Setback Regulation Does Not Conflict with Sections 3602.1 or 3609.

The County's setback regulation is also not "contradictory" or "inimical" to Public Resources Code sections 3602.1 or 3609. The objective of sections 3602.1 and 3609, and Chapter 3 of the Public Resources Code as whole, is to prevent the waste of natural resources through the proper spacing of wells. (See Pub. Resources Code, §§ 3600-3609 [Chapter 3, titled "Spacing of Wells and Community Leases"]; Cal. Code Regs., tit. 14, §§ 1721-1721.9 [implementing regulations for "Well Spacing Patterns"].) Where parcels contain hydrocarbons that are "too

heavy or viscous to produce by normal means," section 3602.1 authorizes the Oil and Gas Supervisor to "approve proposals to drill wells at whatever locations he deems advisable for the purpose of the proper development of such hydrocarbons by the application of pressure, heat or other means for the reduction of oil viscosity." (Pub. Resources Code, § 3602.1.) Pursuant to section 3609, the Oil and Gas Supervisor may adopt a well-spacing plan "in order to prevent waste and to increase the ultimate economic recovery of oil or gas." (*Id.* § 3609.)

Petitioners wrongly assert that sections 3602.1 and 3609 grant the Oil and Gas Supervisor the unfettered authority "to permit wells to be located in such a manner as to maximize ultimate oil and gas production." (Petitioners' Brief at p. 27.) It is local governments that determine where oil and gas development will take place in their jurisdiction through their zoning laws and in conditional use permits. (See Pub. Resources Code, § 3203.5 [requiring operator to provide "a copy of the local land use authorization that supports the installation of a well" when a notice of intention to drill is submitted].) Moreover, the setback regulation does not interfere with the statutory provisions governing the spacing of wells because these provisions apply only to parcels of land that have already been approved by the local jurisdiction for development of wells. (*Ibid*.) Thus, oil and gas producers can comply with both the County's setback regulation and sections 3602.1 and 3609 of the Public Resources Code. (See *City of Riverside*, *supra*, 56 Cal.4th at pp. 754-755.)

**C. State Law Does Not Field Preempt the County's Setback Regulation.**

Petitioners rely on *Great Western Shows, Inc. v. County of Los Angeles* (2002) 27 Cal.4th 853 and *Fiscal v. City and County of San Francisco* (2008) 158 Cal.App.4th 895, 914 to argue that COS-7.2 is invalid under principles of field preemption because it completely "bans" or "frustrates" activities that the Public Resources Code promotes. (See Petitioners' Brief at p. 28.) Once again, Petitioners miss the mark.

First, even if facilitating the maximum amount of oil and gas drilling were the only objective of the Public Resources Code, which it is not, the County's setback regulation does not completely ban or frustrate these activities. Oil and gas drilling in Ventura County will continue outside of the setback areas established under the setback regulation. In fact, oil and gas

producers will be able to extract oil and gas even within the setback areas because the setback regulation does not impact existing wells. (AR 002228.) As the County has explained, the setback regulation "would not prevent the completion of construction or use of facilities that are specifically authorized by an existing County permit." (*Ibid.*) Further, "[w]hile Policy COS-7.2 [the setback regulation] would put limitations on the placement of new discretionary oil and gas wells, it would not necessarily prohibit access to the oil and natural gas resources" within the setback areas. (AR 000106.) In such areas, "directional drilling (including horizontal drilling) techniques can be used" to access the oil and natural gas. (*Ibid.*) Consequently, far from being completely prohibited or frustrated, oil and gas drilling in Ventura County will continue, with limited interference, even after the adoption of the setback regulation.

Second, the setback regulation does not "stand[ ] as an obstacle to the accomplishment and execution of the full purposes and objectives of [the Legislature]." (*Bronco Wine Co. v. Jolly* (2004) 33 Cal.4th 943, 955 [quoting *Hines v. Davidowitz* (1941) 312 U.S. 52, 67].) On the contrary, the setback regulation affirmatively furthers several of the key purposes of the relevant statutory provisions. Section 3106, subdivision (a), expressly requires the Supervisor to prevent damage to "life, health, [and] property," "natural resources," and "underground and surface waters." (Pub. Resources Code, § 3106, subd. (a).)

The County's setback regulation also advances the statutory purpose of section 3011 of the Public Resources Code, which confirms the environmentally protective purposes of the statutory scheme as a whole. Under section 3011, one of the express goals of California's oil and gas legal framework is "protecting public health and safety and environmental quality, including reduction and mitigation of greenhouse gas emissions associated with the development of hydrocarbon and geothermal resources in a manner that meets the energy needs of the state." (Pub. Resources Code, § 3011, subd. (a).) That aligns with the County's objective in adopting COS-7.2, namely to "reduce emissions of criteria pollutants, toxic air contaminants, greenhouse-gas compounds, and decrease traffic safety risks." (AR 002229.) The County concluded that the setback regulation "would reduce the potential for sensitive receptors at residential dwellings and schools to be exposed to air pollutants including toxic air contaminants associated with new oil

and gas wells." (*Ibid.*)

Petitioners cite parts of the AG Opinion out of context in an attempt to support their field preemption argument against the setback regulation (see Petitioners' Brief at p. 26), but in doing so misrepresent the Opinion's analysis and conclusions. As the Opinion explains, the state "statutory and administrative provisions appear to occupy fully the underground phases of oil and gas activities." (59 Ops.Cal.Atty.Gen. at p. 478.) However, local regulations addressing the above-surface phases of oil and gas drilling in the areas of "land use, environmental protection, . . . , and public safety" are deemed valid so long as the regulations do not "conflict with, frustrate the purposes of, or destroy the uniformity of" statewide regulation. (*Id.* at p. 479.)

In addition, the Opinion specifically analyzed local setback provisions similar to the County's setback regulation, which Petitioners neglect to mention or discuss in their joint opening brief. The Opinion concluded that the local setback provisions appear to not be preempted by state law because: l) the setbacks did not contradict a specific well spacing variance or plan approved by the state; 2) were more stringent than the state requirements; and 3) did not frustrate the purpose of the state regulations. (59 Ops.Cal.Atty.Gen. at pp. 484, 485.)

For identical reasons, state law does not preempt the setbacks instituted by the County's setback regulation. The setback regulation does not contradict a specific well spacing variance or plan approved by the Oil and Gas Supervisor. The setback regulation also does not contradict the state's well spacing requirements, which dictate that a well located within 100 feet of a parcel boundary or public street, or 150 feet of another well, is a public nuisance. (See Pub. Resources Code, § 3600.) In fact, the County's 1,500-foot and 2,500-foot setback requirement are more stringent than the state well spacing provisions. Furthermore, the County's setbacks are aligned with the purpose of the state's regulatory requirements. Applying the reasoning and analysis of the AG Opinion, COS-7.2 is not field-preempted by the Public Resources Code.[2]

[2] On August 31, 2022, the California Legislature passed Senate Bill 1137 ("SB 1137") which establishes a statewide prohibition against the drilling, deepening, or redrilling of oil and gas wells within 3,200 feet of residences, schools, and other sensitive receptors as defined by the bill. (See Sen. Bill No. 1137 (2021-2022 Reg. Sess.) as enrolled Sept. 1, 2022 <https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB1137> [as of Sept. 12, 2022.].) If signed into law, SB 1137 will take effect on January 1, 2023 and will likely preempt less stringent oil and gas setbacks adopted by cities and counties.

## IV. State Law Does Not Preempt the County's Pipeline Regulation.

Petitioners assert that Public Resources Code sections 3106 and 3270 and the regulations implementing section 3270 (Cal. Code Regs., tit. 14, §§ 1774, 1774.1, 1774.2) create a uniform regulatory scheme that preempts COS-7.7, the County's pipeline regulation which mandates the transportation of crude oil and oil and gas wastewater by pipeline instead of by diesel-powered trucks. (See Petitioners' Brief at pp. 38-39.)[3] Petitioners are wrong. There is no field or conflict preemption of the County's pipeline regulation because the regulation concerns pipelines that are beyond the regulatory scope of the Public Resources Code and the California Geologic Energy Management Division (CalGEM), the state agency charged with overseeing oil and gas development.

Petitioners correctly note that the Public Resources Code grants CalGEM some authority over oil and gas pipelines; however, that authority is limited to production pipelines.[4] Section 3106 confers to the Oil and Gas Supervisor the responsibility of "supervis[ing] the drilling, operation, maintenance, and abandonment" of oil and gas wells and production facilities. (Pub. Resources Code, § 3106, subd. (a).) The Public Resources Code defines a "production facility" as "any equipment attendant to oil and gas production or injection operations including, . . . pipelines." (*Id.* § 3010.)

Section 3270 "prescribe[s] [the] minimum facility maintenance standards for all production facilities in the state." (Pub. Resources Code, § 3270, subd. (a).) The regulations implementing section 3270 govern the construction, maintenance, inspection, and testing of production pipelines. (See Cal. Code Regs., tit. 14, §§ 1774, 1774.1, 1774.2; see also Petitioners'

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[3] Petitioners also assert that federal laws (the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), and the Clean Water Act ("CWA") preempt COS-7.7, but Petitioners' characterization of these laws makes them inapplicable here because they would only apply in this context if there is an emergency or spill. (See Petitioners' Brief at pp. 37–38.) COS-7.7 expressly does not apply to emergencies or oil spill responses and cleanups.

[4] See California Geologic Energy Management Division and Fire Protection Office of the State Fire Marshal, *Memorandum of Agreement* (2014) ("MOA") p. 1 <https://www.conservation.ca.gov/calgem/for_operators/Documents/MOU-MOA/MOA_DOGGR%20and%20CALFIRE_2014.pdf> (as of Sept. 12, 2022).

Brief at p. 38.) These regulations define a pipeline as "a tube, usually cylindrical, . . . through which crude oil, liquid hydrocarbons, combustible gases, and/or produced water flows from one point to another *within . . . an oil or gas field*." (Cal. Code Regs., tit. 14, § 1760, subd. (q) [emphasis added].)

Thus, sections 3106 and 3270 and the regulations implementing section 3270 conspicuously grant CalGEM authority over oil and gas pipelines that are located within oil and gas fields and are "integrally associated with oil and gas production."[5] CalGEM's jurisdiction over oil and gas pipelines terminates at "the point of custody transfer" or lease automatic custody transfer (LACT) unit—the point at which crude oil is transferred to a "common carrier, pipeline company, refinery, or other third-party for purposes of sales, distribution or further processing."[6] In its comment letter on the County's environmental review of the general plan update, CalGEM readily acknowledged that its jurisdiction over oil and gas pipelines ends at the LACT unit. (AR 300002.) By law, pipelines conveying oil after the point of custody transfer or LACT unit are subject to the jurisdiction of the State Fire Marshal.[7] (See Gov. Code, § 51010 ["the State Fire Marshal shall exercise exclusive safety regulatory and enforcement authority over intrastate hazardous liquid pipelines"].)[8]

Because the County's pipeline regulation does not involve pipelines that fall under CalGEM's jurisdiction—i.e., pipelines that are located within oil and gas fields and associated with production—the regulation is not preempted by sections 3106 and 3270. (See *County of Butte v. Dept. of Water Resources* (2022) 13 Cal.5th 612, 660 [noting field preemption requires

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[5] MOA at 2.

[6] *Ibid*.

[7] See MOA at 2 (State Fire Marshal jurisdiction "begin[s] at the point of custody transfer"). Additionally, pursuant to a grant of authority under the Hazardous Materials Transportation Act ("HMTA"), and through certification by the United States Department of Transportation ("US DOT") and the Pipeline Hazardous Materials Safety Administration ("PHMSA"), the State Fire Marshal is delegated exclusively authority to regulate the safety of intrastate hazardous liquid pipelines, including those pipelines carrying crude oil. (49 U.S.C. §§ 60105-60106; California Hazardous Liquid Pipeline Safety Act; see also Office of the State Fire Marshal, accessed: https://osfm.fire.ca.gov/divisions/pipeline-safety-and-cupa/.)

[8] Under HMTA, PHMSA regulates the safety of interstate hazardous liquid pipelines. (See 49 U.S.C. § 5101 et seq.) COS-7.7 does not prohibit trucking of oil on federal highways or across state lines. (See Respondents and Defendants' Opening Brief at p. 35.)

"indication of congressional intent to occupy the field"]; *Valley Vista Servs., Inc. v. City of Monterey Park* (2004) 118 Cal.App.4th 881, 888 ["A contradiction is generally found only when the state and local acts "'are irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation'"].)

Instead, the pipeline regulation prescribes the use of pipelines to *transport* crude oil and wastewater *after* the point of custody transfer or LACT unit for sale, distribution, or further refining—all of which are activities that take place outside oil and gas fields and are not integral to oil and gas production. (AR 000108, 000623 [the pipeline regulation "would require oil wells to use pipelines to convey oil and produced water offsite (rather than trucking)"], 300008.) The County adopted the pipeline regulation to eliminate the risks to life, property, and the environment associated with trucking crude oil and wastewater. (AR 000108, 000623 [explaining the County's pipeline and venting and flaring regulations will "provide potential environmental benefits in the form of increased traffic safety, fewer toxic air contaminants, and reduced greenhouse gas emissions from avoided flaring and trucking"], 000633, 0002234.)

The Public Resources Code only preempts local regulations where state law and regulations specify the operation, methods, materials, procedures, or equipment to be used. (See 59 Ops.Cal.Atty.Gen. at pp. 461, 478.) Since the pipeline regulation involves pipelines that are located after the point of custody transfer or LACT unit and are not associated with oil and gas production, it is beyond the regulatory scope of the Public Resources Code and CalGEM. Accordingly, Petitioners' assertion that the County's pipeline regulation is field and conflict preempted by Public Resources Code sections 3106 and 3270 fail as a matter of law.

## V. State Law Does Not Preempt the County's Venting and Flaring Regulation.

Petitioners contend that COS-7.8, the County's venting and flaring policy that limits the use of these techniques for new discretionary oil and gas wells, is field-preempted by various state laws that delegate to the state and the local air pollution control district exclusive enforcement authority over emissions generated by oil and gas-producing wells. (Petitioners' Brief at pp. 30-37.) Petitioners argue that the Global Warming Solutions Act of 2006, the Mulford-Carrel Air Resources Act, and provisions of the Health and Safety and Public Resources

Codes impose a "uniform, statewide standard" for oil and gas well emissions, and implementation of the venting and flaring regulation unlawfully "deprives" the state of its regulatory authority. (*Id*. at p. 37.) They do not.

State law does not field preempt the County's venting and flaring regulation simply because the regulation has the incidental effect of advancing the statutory goals and objectives of state law. (See, e.g., *Cal. Grocers Assn. v. City of Los Angeles* (2011) 52 Cal.4th 177, 190 [explaining that state law generally does not preempt local regulations that share the same purpose or effect].) Instead, field preemption occurs "when the Legislature has expressly manifested its intent to 'fully occupy' the area, or when it has impliedly done so." (*Sherwin-Williams*, *supra*, 4 Cal.4th at p. 898; *accord Cal. Grocers Assn.*, *supra*, 52 Cal.4th at p. 190.) Field preemption by implication requires an examination of "the whole purpose and scope of the legislative scheme" to ascertain whether state law "reveals an intent to occupy a particular field to the exclusion of all local legislation." (52 Ops.Cal.Atty.Gen. 138, 139 (1969).) A valid field preemption analysis "does not focus on the number of statutes involved, but on whether the nature and extent of the coverage of a field is such that it could be said to display a patterned approach to the subject." (*People v. Nguyen* (2014) 222 Cal.App.4th 1168, 1175 [internal quotations omitted].)

Despite alleging that several state laws preempt COS-7.8, Petitioners have failed to meet their burden of demonstrating the general scheme of these laws demonstrates an express or implied intent by the Legislature to occupy the entire field of oil and gas emissions regulation and exclude local governments from exercising their police power to regulate emissions from such wells for the general welfare and health of their residents.

### A. State Law Does Not Expressly Preempt the County's Venting and Flaring Regulation.

The state laws Petitioners cite do not expressly preempt regulation of emissions from oil and gas wells because these laws are devoid of preemption clauses or any provisions proscribing local governments from regulating the field of hazardous air emissions from oil and gas wells. When the Legislature seeks to expressly preclude local governments from regulating particular

issues, it enacts statutory provisions doing just that.[9] If the Legislature intended to strip local governments of their police power authority to regulate emissions from oil and gas wells, it could have done so. But it did not.

### B. State Law Does Not Impliedly Preempt the County's Venting and Flaring Regulation.

Petitioners' arguments that the County's venting and flaring regulation is field-preempted by implication pursuant to the Global Warming Solutions Act of 2006, the Mulford-Carrel Air Resources Act, and provisions of the Health and Safety and Public Resources Codes are equally misplaced. "Preemption by implication of legislative intent may not be found when the Legislature has expressed its intent to permit local regulations. Similarly, it should not be found when the statutory scheme recognizes local regulation." (*People ex rel. Deukmejian v. County of Mendocino* (1984) 36 Cal.3d 476, 485 (*Deukmejian*).) Here, the state statutes cited by Petitioners are designed to work in concert with local regulations in order to successfully achieve their respective statutory goals and are therefore not preempted.

*1. Unreasonable Waste of Gas Laws [Pub. Resources Code, § 3300 et seq.]*

The Public Resource Code outlaws the "blowing, release, or escape of gas . . . [from] any land containing oil or gas, or both." (Pub. Resources Code, § 3300; see also *id*. § 3500 ["All person, firms, corporation, and associations are prohibited from willfully permitting natural gas wastefully to escape into the atmosphere."]; *People v. Associated Oil Co*. (1930) 211 Cal. 93, 102 [explaining "the public has a definite interest in their preservation [of oil and gas resources] from waste and destruction"].) State law establishes procedures CalGEM must follow when addressing

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[9] See, e.g., Gov. Code, § 53701 ("It is the intention of the Legislature to occupy the whole field of regulation of the registration or licensing of commercially manufactured firearms . . . and such provisions shall be exclusive of all local regulations, . . ."); Civ. Code, § 7106 ("It is the intention of the Legislature that this part shall occupy the field with regard to item pricing and shall preempt all local ordinances, rules, or regulations concerning item pricing."); Pub. Resources Code, § 42287, subd. (a) ("Accordingly, this chapter occupies the whole field of regulation of reusable grocery bags, single-use carryout bags, and recycled paper bags, as defined in this chapter, provided by a store, as defined in this chapter."); Health & Saf. Code, § 116409, subd. (b) ("It is the intent of the Legislature in enacting this article to preempt local government regulations, ordinances, and initiatives that prohibit or restrict the fluoridation of drinking water by public water systems with 10,000 or more service connections . . .").

operator complaints that an unreasonable waste of fracked gas has occurred or is imminent. (See Pub. Resources Code, §§ 3302-3314, 3350.)

Contrary to Petitioners' arguments, the County's venting and flaring regulation neither appropriates nor interferes with CalGEM's jurisdiction and authority to enforce state laws that address the unreasonable waste of fracked gas. (See Petitioners' Brief at pp. 36-37 [arguing COS-7.8 "usurps" CalGEM's authority to make determinations of unreasonable waste of gas].) Not only did the AG Opinion conclude the Public Resources Code does not fully occupy the field of oil and gas production, it determined that preemption by the Public Resources Code occurs under limited circumstances: where the state "approves or specifies plans of operation, methods, materials, procedures, or equipment . . . or where activities are to be carried out" by the state. (59 Ops.Cal.Atty.Gen. at pp. 478, 479.)

The County's venting and flaring regulation does not violate either of these conditions. Indeed, the venting and flaring regulation does not concern itself with the Public Resource Code's standard for unreasonable waste or adjudicating operator complaints of unreasonable waste. Instead, its sole objective is to safeguard the health and safety of county residents and the environment by prohibiting the release of excess fracked gas into ambient air from all new, discretionary oil and gas wells, regardless of whether the venting and flaring constitutes an unreasonable waste of gas or is the source of an operator complaint of imminent or ongoing waste. (AR 000108, 000623, 000633, 002233 [explaining the venting and flaring regulation "would avoid emissions of criteria air pollutants, toxic air contaminants, and greenhouse gases from flares used to dispose [of] gas"].)

To be sure, the regulation's restriction on non-exigent venting and flaring advances the state's goal to prevent unreasonable waste, but this alone does not trigger state law preemption. (See 59 Ops.Cal.Atty.Gen. at p. 479 [no state law preemption where local regulations adopt non-conflicting conditions that are "more stringent" than and supplemental to state law]; see, e.g., *Cal. Grocers Assn. v. City of Los Angeles* (2011) 52 Cal.4th at p. 190 [declining to uphold preemption where local regulations share the same purpose or effect as state law].)

Additionally, the venting and flaring regulation falls squarely within the zone of local

regulations where the need for statewide, uniform standards for matters pertaining to land use, environmental protection, and public safety is "outweighed" by the local interests that will be served through implementation of the local regulation. (59 Ops.Cal.Atty.Gen. at p. 479; see also *Great Western Shows, Inc. v. County of Los Angeles* (2002) 27 Cal.4th 853, 866-867 [explaining the Supreme Court is "reluctant to find [] a paramount state concern, and therefore implied [field] preemption, 'when there is a significant local interest to be served that may differ from one locality to another'"]; compare to Petitioners' Brief at p. 37.) As one of the top oil-and-gas-producing counties in the state, Ventura County has a unique and concrete interest in addressing hazardous emissions generated from oil and gas activity. (AR 001625.) Ventura County is a "serious" nonattainment area for the 2008 federal air quality standard for ozone and is also a nonattainment area for ozone and particulate matter under state air quality standards. (AR 001556.) Additionally, oil and gas emissions have a disparate effect on local air quality and on County residents living in close proximity to oil and gas production. (AR 000108, 000613-000614, 000619-000620, 000623, 000633, 002233.)

Peer-reviewed studies that analyzed the effects of oil and gas drilling in California found a significant association between nearby oil and gas production and adverse birth outcomes and another recently published study found elevated concentrations of fine particulate matter, ozone, carbon monoxide, and nitrogen dioxide (a precursor for ozone and particulate matter) near oil and gas wells.[10] CalGEM's scientific advisory panel for the Oil and Gas Public Health Rulemaking also determined "with a high level of certainty that the epidemiologic evidence indicates that close residential proximity to [oil and gas development] is associated with adverse perinatal and respiratory outcomes, for which the body of human health studies is most extensive in California

[10] See Gonzalez, *Oil and Gas Production and Spontaneous Preterm Birth in the San Joaquin Valley, CA* (June 5, 2020) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7423522/> [as of Sept. 12, 2022; Tran, *Residential Proximity to Oil and Gas Development and Birth Outcomes in California: A Retrospective Cohort Study of 2006-2015 Births* (June 3, 2020) <https://ehp.niehs.nih.gov/doi/full/10.1289/EHP5842> [as of Sept. 12, 2022]; Gonzalez, *Upstream Oil and Gas Production and Ambient Air pollution in California* (Feb. 1, 2022) <https://www.sciencedirect.com/science/article/pii/S0048969721053754> [as of Sept. 12, 2022].

and other locations."[11]

*2. The Global Warming Solutions Act of 2006 [Health & Saf. Code, § 38500 et seq.]*

Local governments play an important role in the successful implementation of the Global Warming Solutions Act. The principal objective of this Act is to "establish[] as state policy the achievement of a substantial reduction in the emission of gases contributing to global warming." (*Center for Biological Diversity v. Dept. of Fish & Wildlife* (2015) 62 Cal.4th 204, 215 [citing Health & Saf. Code, §§ 38500, 38501].) The law requires a statewide reduction of greenhouse gas (GHG) emissions—from all sectors of the state's economy—to 1990 levels by 2020 and mandates the state continue efforts to reduce GHG emissions beyond 2020.[12] (See Health & Saf. Code, §§ 38510, 38551, subd. (b).)

These goals likely cannot be accomplished without assistance from local governments. Indeed, the State has strongly encouraged local governments to exercise their broad jurisdiction and unique land use planning and permitting authorities to aid the state's effort to reduce GHG emissions. For example, the scoping plans prepared pursuant to the Global Warming Solutions Act recommend local governments adopt and apply the statewide per capita GHG reduction targets developed in their general plans and climate action plans.[13]

Additionally, the Global Warming Solutions Act was enacted to work "in concert with

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[11] California Geologic Energy Management Division, *Response to CalGEM Questions for the California Oil and Gas Public Health Rulemaking Scientific Advisory Panel* (Oct. 1, 2021), p. 1 <https://www.conservation.ca.gov/calgem/Documents/public-health/Public%20Health%20Panel%20Responses_FINAL%20ADA.pdf> [as of Sept. 12, 2022].

[12] Petitioners also claim that COS-7.8 alters oil and gas emission standards established by the Global Warming Solutions Act and interferes with the state's administration of the Cap-and-Trade program. (Petitioners' Brief at p. 32 [referring to emissions standards oil and gas exploration and production, well stimulation circulation tanks, and well casing vents].) These assertions are false. COS-7.8 does not alter any oil and gas standards required by the Global Warming Solutions Act, and operators can comply with both COS-7.8 and the standards identified by Petitioners without conflict.

[13] See Health & Saf. Code, § 38561, subd. (a) [requiring the state air agency to prepare scoping plans with measures and strategies for achieving GHG emission reduction targets]; California Air Resources Board, *California's 2017 Climate Change Scoping Plan* (Nov. 2017), p. 99 [In the most recent scoping plan, the state air agency recommended local jurisdictions strive for 6 metric tons CO2 equivalent per capita in GHG reductions by 2030 and no more than 2 metric tons of CO2 equivalent per capita by 2050.] <https://ww2.arb.ca.gov/sites/default/files/classic/cc/scopingplan/scoping_plan_2017.pdf> [as of Sept. 12, 2022].

other environmental protection laws," including those laws enacted by local governments. (*Cleveland Nat. Forest Foundation v. San Diego Assn. of Governments* (2017) 17 Cal.App.5th 413, 428; see also *People ex rel. Deukmejian v. County of Mendocino* (1984) 36 Cal.3d at p. 486 ["An ordinance 'is deemed to be 'a law' in [California]."] The Act includes an explicit savings clause, underscoring that it does not preempt local laws:

> Nothing in this division [encompassing the Global Warming Solutions Act] shall relieve any person, entity, or public agency of compliance with other applicable federal, state, or local law or regulations, including state air and water quality requirements, and other requirements for protecting public health or the environment.

(Health & Saf. Code, § 38592, subd. (b).) Because the Global Warming Solutions Act explicitly embraces local regulation and COS-7.8 furthers the purpose of the law, it does not preempt COS-7.8. (See, e.g., *IT Corp. v. Solano County Bd. of Supervisors* (1991) 1 Cal.4th 81, 93-94 [no preemption by implication where state law expressly permits local regulation]; *Casmalia Resources, Ltd. v. County of Santa Barbara* (1987) 195 Cal.App.3d 827, 837 [no preemption by implication where state law "indicates that reasonable local regulation will be tolerated"].)

*3. Mulford-Carrel Air Resources Act [Health & Saf. Code, § 39000 et seq.]*

Like the Global Warming Solutions Act, the Mulford-Carrel Act also relies on local regulations to achieve its legislative purpose. The law created the state's Air Resources Board (CARB) to regulate emissions affecting air quality (see Health & Saf. Code, §§ 39003, 39500), and directs CARB to lead an "intensive, coordinated state, regional, *and local* effort to protect and enhance the ambient air quality of the state."[14] (*Id.* § 39001 [italics added].)

Contradicting Petitioners' claims that local governments have no authority to regulate air pollution (see Petitioners' Brief at pp. 33-34), the Mulford-Carrel Act holds local governments

[14] Petitioners also insist COS-7.8 is preempted by the regulatory scheme—the adoption and enforcement of state implementation plans—established by the federal Clean Air Act (42 U.S.C. § 7401 *et seq.*), but this argument is similarly unavailing. State implementation plans only include rules and regulations "necessary to meet the requirements of the Clean Air Act," leaving states, regional, and municipal governments free to adopt more stringent or supplemental regulations to address statewide or local needs. (Health & Saf. Code, § 39602.) Additionally, the Clean Air Act expressly states it shall not "preclude or deny the right of any State or political subdivision thereof to adopt or enforce [] any standard or limitation respecting emissions of air pollutants." (42 U.S.C. § 7416.)

responsible for protecting human health and environment from air pollution and expressly permits local regulation of harmful air emissions. (See Health & Saf. Code, §§ 39002 ["The Legislature finds and declares *local and regional authorities* have primary responsibility for control of air pollution from all sources other than vehicular sources."] [emphasis added]; 41508 ["Except as otherwise specifically provided . . . any local or regional authority may establish additional, stricter standards than those set forth by law or by the state board for non-vehicular sources."]; 39037 [defining "local and regional authority" to mean "the governing body of any city, county, or district."].) Further, the Supreme Court has acknowledged that local governments are "authorized to establish additional, stricter standards than those set forth by state law" pursuant to sections 39002 and 41508 of the Health and Safety Code. (*People ex rel. Deukmejian v. County of Mendocino* (1984) 36 Cal.3d at pp. 486-487.)

Notably, while the Legislature decided to prohibit local and regional regulation of motor vehicles, it remained silent on local and regional regulation of oil and gas emissions and the venting and flaring from oil and gas wells.[15] This omission further undermines Petitioners' argument that the Mulford-Carrel Act preempts COS-7.8. (See, e.g., *IT Corp. v. Solano County Bd. of Supervisors* (1991) 1 Cal.4th 81, 94 [explaining that an implied preemption claim is "undermined" by language in state law denoting areas where local regulation is not permitted].)

*4. Air Pollution Control District Laws [Health and Saf. Code, §§ 40001, 40702, and 40728.5]*

Finally, Petitioners allege that provisions of the Health and Safety Code that govern air pollution control districts preempt the County's venting and flaring regulation. (See generally Health & Saf. Code, div. 26, pt. 3.) However, these statutes, individually and collectively, do not communicate an implicit aspiration to dislodge the authority of local governments to regulate harmful emissions from oil and gas wells by restricting venting and flaring. Subdivisions (d)(1) and (d)(2) of section 40001 and subdivision (a) of section 40728.5 set forth general standards and criteria that *air districts* must follow when adopting rules and regulations. (*Id.* §§ 40001, subds.

[15] See Health & Saf. Code, § 39002 ("The control of emissions from motor vehicles, except as otherwise provided in this division, shall be the responsibility of the state board.").

(d)(1), (d)(2); 40728.5, subd. (a).) And section 40702 merely mandates air districts to adopt rules and regulations and execute their powers and duties consistent with division 26 of the Health Safety Code and other statutory provisions. But the authority granted in section 40702 does not foreclose local governments from also promulgating regulations that support the statutory goal of reaching state and federal ambient air quality standards. (See Health & Saf. Code, § 40716, subd. (b) [providing that the rules, regulations, and responsibilities of air districts do not "constitute[] an infringement on the existing authority of counties and cities to plan or control land use, and nothing in this section provides or transfers new authority over such land use to [an air] district."].)

Indeed, section 40716 contradicts Petitioners' assertions that the venting and flaring regulation conflicts with the Ventura County Air Pollution Control District's rule regarding the handling of excess fracked gas, Rule 71.1. (See Petitioners' Brief at pp. 35-36.) Rule 71.1 is only evidence that the local air district is complying with its statutory mandate to enact pertinent rules and regulations necessary to carry out its responsibility, in conjunction with state and local efforts, to attain federal and state air quality standards.[16] (See Health & Saf. Code, §§ 40001, 40702, 40716.)

Moreover, the Health and Safety Code chapter addressing air districts, begins with a provision identical to the Mulford-Carrel Act:

> The Legislature finds and declares that local and regional authorities have the primary responsibility for control of air pollution from all sources, other than emissions from motor vehicles. The control of emissions from motor vehicles,

[16] Petitioners also cite several cases for the proposition that COS-7.8 is preempted by regulations promulgated by the Ventura County Air Pollution Control District, but these cases are wholly inapposite. In *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles* (2009) 175 Cal.App.4th 1396 and *Northern Cal. Psychiatric Society v. City of Berkeley* (1986) 178 Cal.App.3d 90 the state laws preempting local regulation dealt included express preemption provisions delineating the state's exclusive jurisdiction and authority to regulate the subject matter at issue. (See *Palmer/Sixth Street Properties, L.P., supra,* 175 Cal.App.4th at p. 1410-1412; *Northern Cal. Psychiatric Society, supra,* 178 Cal.App.3d at pp. 102-104). Those circumstances are not present in this case since the statutes cited by Petitioners do not include express preemption provisions forbidding local regulation of venting and flaring of oil and gas wells. In *Western Oil & Gas Assn. v. Monterey Bay Unified Air Pollution Control Dist.* (1989) 49 Cal.3d 408 and *Southern Cal. Gas Co. v. South Coast Air Quality Management Dist*. (2011) 200 Cal.App.4th 251, both cases acknowledge that local and regional authorities are the "primary enforcers" of the state's air quality standards. (See *Southern Cal. Gas. Co., supra,* 200 Cal.App.4th at p. 269; *Western Oil & Gas Assn., supra,* 49 Cal.3d at p. 418.)

> except as otherwise provided in this division, shall be the responsibility of the state board.

(Health & Saf. Code, § 40000.) As discussed in the preceding section, this language and the division of the Health and Safety Code encompassing statutes governing air districts reflect the Legislature's intent for state law to work in concert with local laws and regulations. In sum, Petitioners' arguments that state law field preempts the County's venting and flaring regulation are meritless.

## CONCLUSION

For the reasons explained above, this Court should find that COS-7.2 (setback regulation), COS-7.7 (pipeline regulation), and COS-7.8 (venting and flaring regulation) do not conflict with state laws and regulations and therefore are not preempted on that ground. They are instead valid exercises of the County's police powers.

Dated: September 14, 2022

Respectfully submitted,

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**PROOF OF SERVICE BY U.S. MAIL**

Case Name: ***Aera Energy LLC, et al. v. County of Ventura et al.***

Case No.: **56-2020-00546180-CU-WMVTA**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 1515 Clay Street, 20th Floor, P.O. Box 70550, Oakland, CA 94612-0550.

On September 14, 2022, I served the attached **Application for Leave to File Amicus Curiae Brief of the Attorney General** and **Amicus Curiae Brief of the Attorney General In Support of Respondents and Defendants** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Oakland, California, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on September 14, 2022, at Oakland, California.

| Najaree Hayfron | *<u>/s/ Najaree Hayfron</u>* |
|---|---|
| Declarant | Signature |