



# ***Chevron U.S.A. Inc. et al. v. County of Monterey et al.***

**Analysis of the decision in  
*Chevron U.S.A. Inc. v.  
County of Monterey et al.*  
on local oil and gas  
phase out efforts**

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## Introduction

In August 2023, the California Supreme Court issued a ruling in *Chevron U.S.A. Inc v. County of Monterey* (“*Chevron v. Monterey*”), a preemption challenge to a Monterey County (“County”) ordinance that: (1) phased out land uses in support of oil and gas wastewater disposal or impoundment; and (2) prohibited land uses supporting the drilling of new oil and gas wells. *Chevron v. Monterey* (2023) 15 Cal.5th 135. The Court found that this ordinance (“Measure Z”) conflicted with, and was therefore preempted by, California Public Resources Code § 3106(b) (“section 3106”), which states that the California Oil and Gas Supervisor (“Supervisor”) shall permit all methods and practices to increase the ultimate recovery of oil and gas that are suitable in “each proposed instance.” Cal. Pub. Res. Code § 3106(b).

The California Supreme Court reasoned that section 3106 preempted both of Measure Z’s challenged provisions because they limited the Supervisor’s authority to permit “all methods and practices” of oil and gas drilling, creating a conflict between Measure Z and the statute. Because the Court in *Chevron v. Monterey* invalidated a jurisdiction-wide prohibition on the drilling of new oil and gas wells, several groups have used the case to argue that ordinances phasing out oil and gas altogether within local jurisdictions’ boundaries must also be preempted, including Los Angeles City’s and County’s recent phase out ordinances. See, e.g., City of Los Angeles Ordinance No. 187709 (amending L.A. Mun. Code §§ 12.03, 12.20, 12.23, 12.24, 13.01).<sup>1</sup> Other entities have argued that the *Chevron v. Monterey* decision preempts local authority to

modify or condition oil and gas permits, as doing so could impermissibly regulate “methods and practices” of oil and gas extraction.<sup>2</sup>

This wave of threatened and actual litigation by the oil and gas industry against local ordinances has generated regulatory uncertainty and is likely to chill local governments not already subject to litigation in their efforts to rightfully exercise their land use authority. This memo concludes that legislative amendments to section 3106 or other provisions of the Public Resources Code could improve regulatory certainty, reduce the likelihood and potential costs of litigation, and prevent uneven application of the law amongst lower courts. Assembly Bill (AB) 3233, the full text of which was released on March 21, 2024, aims to achieve these goals by amending section 3106 to allow localities to regulate or ban particular methods and practices of oil and gas extraction. It would also clarify local land use powers already present under existing law, including local zoning authority to phase out land uses supporting oil and gas operations entirely.

## I. Background and Reasoning in *Chevron v. Monterey* and related authority

State law may preempt local law when it “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. “Local legislation is contradictory when it is inimical to state law.” *Id.* at 898. The California Supreme Court has noted that “[w]

1 See Petitioners’ Fourth Amended Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief, *Warren E&P, Inc. v. City of Los Angeles*, Case No. 23STCP00060, LA Sup. Ct., (filed Nov. 20, 2023) (trial date Aug. 1, 2024) (challenging Los Angeles’ ordinance phasing out oil and gas operations, arguing, *inter alia*, that “the Ordinance is preempted by Public Resources Code Section 3106 because, among other reasons, it bans new wells, maintenance, redrilling, deepening and sidetracking on existing wells and other methods and practices of oil operations at Warren’s existing drilling site within the City.”).

2 See, e.g., E&B Natural Resources Management Corporation Comments on Appeal for Approval of Plans for 2126 W. Adams Blvd. and 2125 W. 26th Place, Case No. ZA-1959-15227-O-PA6, p. 780 (Sept. 25, 2023) (“[t]he California Supreme Court has stated that the State Legislature has delegated exclusive authority to the State Oil and Gas Supervisor to determine what methods of oil production are appropriate in each case. However, the ZA’s Plan Approval modifies and adds conditions, thus unlawfully dictating the methods for E&B’s oil and gas production at the Murphy Site.”).

hen a local ordinance ‘does not prohibit what the statute commands or command what it prohibits,’ the ordinance is not ‘inimical to’ the statute.” *Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1149. However, *Chevron v. Monterey* clarified that state law may also preempt local law when local law prohibits what a statute “permits or authorizes.” *Chevron, supra*, 15 Cal.5th at 148-49 (citing *City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.* (2013) 56 Cal.4th 729, 763 (conc. opn. of Liu, J.)).

Measure Z, which was found preempted by section 3106, was a voter initiative that enacted restrictions covering two land uses supporting oil and gas operations within the unincorporated County.<sup>3</sup> First, Measure Z phased out “Land Uses in Support of Oil and Gas Wastewater Injection and Oil and Gas Wastewater Impoundment.”<sup>4</sup> These land uses included “the development, construction, installation, or use of any facility, appurtenance, or above-ground equipment, whether temporary or permanent, mobile or fixed, accessory or principal” supporting oil or gas wastewater storage, disposal, or impoundment.<sup>5</sup> Second, Measure Z prohibited “Land Uses in Support of Drilling New Oil and Gas Wells.”<sup>6</sup> Oil and gas wells were defined as any “wells drilled for the purpose of exploring for, recovering, or aiding in the recovery of, oil and gas.”<sup>7</sup>

In *Chevron v. Monterey*, the Court noted that section 3106 requires the Supervisor to exercise discretion in deciding which “methods and practices” of oil and gas exploration and extraction are appropriate on a case-by-case basis. Thus, because Measure

Z removed the drilling of new wells and wastewater injection techniques from the menu of methods and practices that the Supervisor could permit in the County, the Court found that Measure Z conflicted with the statute:

[S]ection 3106 directs the supervisor to make decisions about the use of all oil production methods — inclusive of those methods Measure Z identifies — Measure Z authorizes the County to make decisions regarding some of those methods. Thus, were any oil producer to ask the state to decide whether those methods are authorized for use in the County, Measure Z, by banning those methods, has made that decision for — and in lieu of — the supervisor; it has, in all cases, usurped the supervisor’s statutorily granted authority to decide whether those methods are “suitable ... in each proposed case.”

*Id.* at 145.<sup>8</sup> *Chevron v. Monterey’s* holding also rested on the Court’s finding that both provisions of Measure Z regulated particular aspects of oil and gas operations, and did not merely restrict “whether and where” operations may take place. *Id.* at 147. The Court distinguished from *Big Creek Lumber Co. v. County of Santa Cruz*, which upheld locational zoning restrictions on timber production despite similar preemptory language in a California statute, arguing that the local ordinances regulated “only *where* commercial logging could occur.” *Id.* (citing (2006) 38 Cal.4th 1139) (emphasis in original). In contrast to *Big Creek*, *Chevron v. Monterey* held that both of Measure Z’s provisions regulated the *conduct*

3 Protect Our Water: Ban Fracking and Limit Risky Oil Operations Initiative (“Measure Z”), full initiative text available [here](#). Challenges to a third provision of Measure Z—a ban on well stimulation treatments such as hydraulic fracturing—were denied by the trial court and not appealed. *Chevron v. Monterey, Chevron, supra*, 15 Cal.5th at p. 140.

4 Measure Z, *supra*, at p. 8.

5 *Id.*

6 *Id.* at p. 9.

7 *Id.*

8 While this reading of Public Resources Code section 3106 appears to afford significant discretion to the Supervisor in *whether* to approve particular methods and practices related to oil operations, oil and gas operators have argued that section 3106 instead requires the Supervisor to issue permits for oil and gas operations. They rely on the section’s language stating that “the [S]upervisor *shall 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.” Cal. Pub. Res. Code § 3106(b) (emphasis added).

of oil and gas operators by banning particular methods and practices of oil production. *Id.* While the Court conceded that the “ban on the drilling of all new wells, at first glance, appears to regulate where oil production can take place, i.e., nowhere in the County,” it nonetheless concluded that this provision was not merely an ordinary locational restriction because it was broadly defined to capture any oil production method that requires the drilling of new wells, such as steam injection. *Id.* This included the drilling of new wells necessary to continue existing operations, even where those operations were still permissible under the ordinance. *Id.* The Court also relied on Measure Z’s characterization of drilling new wells as “[r]isky [o]il [o]perations,” seemingly endorsing the appellate court’s view that Measure Z’s self-characterization as a locational land use measure was merely a pretext for regulating the conduct of oil and gas operators. *Id.* at 142, 147.

Despite *Chevron v. Monterey*’s broad formulation of “methods and practices” of oil and gas operations, the Court clarified that its holding should not be interpreted as limiting local governments’ traditional land use authority over where oil and gas production may occur:

Here, we do not decide, or express any opinion on, whether local entities may restrict or ban oil production within their boundaries based on proper zoning restrictions. As the Court of Appeal stated, ‘Our narrow holding does not in any respect call into question the well-recognized authority of local entities to regulate the location of oil drilling operations, a matter not addressed by section 3106 or Measure Z.’ [] ‘Nothing in this opinion should be construed to cast any doubt on the validity of local regulations requiring permits for oil drilling operations or restricting oil drilling operations to particular zoning districts’ because ‘[t]his case involves no such regulations.’ (Emphasis added).

*Id.* at 148. Thus, while *Chevron v. Monterey* found conflict preemption where a jurisdiction banned, *inter alia*, the drilling of new wells, the decision relies on the Court’s finding that this provision was not an exercise of traditional land use authority. The passage quoted above explicitly disclaims any intent to affirm or prohibit jurisdiction-wide bans on oil production “based on proper zoning restrictions,” ostensibly leaving space for the exercise of local land use authority. *Id.* Nonetheless, the oil and gas industry has continued to aggressively fight local efforts to restrict or limit oil and gas operations.

## II. Potential Legislative Amendments

Municipalities seeking to condition, prohibit, or otherwise restrict oil and gas operations within their jurisdictions have strong legal arguments favoring their authority to do so. However, the mere threat of resource-intensive litigation may chill the rightful exercise of local land use authority. Similarly, the lack of regulatory certainty created by *Chevron v. Monterey* may embolden members of the oil and gas industry to challenge even routine exercises of local authority, creating significant cost and delaying oil and gas regulation in jurisdictions throughout California.

These risks are not speculative. Shortly after *Chevron v. Monterey* was published, petitioners challenging Los Angeles’ recent phase out ordinance amended their complaint to include new claims seeking to apply the language in *Chevron v. Monterey*. *Warren E&P, Inc. v. City of Los Angeles*, Fourth Amended Petition, Case No. 23STCP0060, LA Sup. Ct., (filed Nov. 20, 2023) (“Warren E&P Petition”). Petitioners argue that the Los Angeles ordinance is, in their view, “more restrictive” than Measure Z and “unlawfully seize[s] the State’s authority by regulating the ‘method and practices’ of oil and gas operations within the City,” and “effectively ban[s] all methods and practices unless a health and safety exception applies.” *Id.* at p. 59. While this interpretation seemingly contradicts language

in *Chevron v. Monterey* purporting to reserve local authority to restrict the location of oil and gas operations, *Chevron v. Monterey's* broad language regarding what may constitute regulation over “methods and practices” (including the drilling of new wells) may risk confusion and uneven application by lower courts. These petitioners’ position also aligns with that taken by the petitioners in *Chevron v. Monterey*, who claimed that local governments cannot “fully prohibit all oil and gas operations within their borders without running afoul of the policies set forward by the State to encourage and promote oil and gas operations.” See *Chevron v. Monterey*, No. S271869, Petitioner Chevron’s Consolidated Answering Br. to Amicus Curiae (filed Nov. 18, 2022).

Moreover, other entities have argued, in comment letters, that *Chevron v. Monterey* must be interpreted to preempt local governments from even placing conditions on oil and gas permit issuance.<sup>9</sup> While this contradicts established practice even in jurisdictions that are supportive of oil and gas operations,<sup>10</sup> some may argue that certain local conditions—such as requirements for sound walls, air quality monitoring, vapor recovery systems, and maintenance requirements—regulate the “methods and practices” of oil and gas operations. See Warren E&P Petition at p. 59 (claiming that, under *Chevron v. Monterey*, maintenance requirements under the Los Angeles phase out ordinance are preempted by section 3106).

To minimize litigation risk for local governments,

meet the State’s climate goals, and encourage decisive action to protect public health, Assemblymember Dawn Addis has introduced AB 3233, which would amend section 3106 to clarify the concurrent regulatory roles of the State and local governments over oil and gas exploration and extraction. AB 3233 would also amend California Public Resources Code section 3011 to clarify that CalGEM has no legal obligation to issue permits for oil and gas operations, a claim made by some parties.<sup>11</sup>

AB 3233 would amend section 3106 to directly state that local governments may prohibit oil and gas operations in some or all of their jurisdictions.<sup>12</sup> As noted above, such an amendment would make explicit the best reading of the current Public Resources Code and address any statutory ambiguity that oil and gas operators have exploited to discourage local governments from exercising their existing land use authority over oil and gas operations. Moreover, AB 3233 would also add express language to the Public Resources Code regarding local governments’ authority to “impose regulations, limits, or prohibitions on oil and gas operations or development,” including those related to “the methods of oil and gas operations or development.” By acknowledging and clarifying the extent of local authority over oil and gas operations, these amendments could ameliorate any potential chilling effect on local government action and reduce the risk of litigation.

9 See, e.g., E&B Natural Resources Management Corporation Comments on Appeal for Approval of Plans for 2126 W. Adams Blvd. and 2125 W. 26th Place, Case No. ZA-1959-15227-O-PA6, p. 780 (Sept. 25, 2023)

10 See Kern County Zoning Ordinance, chapter 19.50, section 130, chapter 19.98, section 050 (“no well for use as an injection well and no well for the exploration for or development or production of oil, gas, or other hydrocarbon substances may be drilled, and no related accessory equipment, structure, facility or use may be installed” without an approved conditional use permit, in various parts of the county).

11 See, *supra*, note 8 and accompanying text; see *Ntuk v. California*, Case No. 23STCP00060, LA Sup. Ct., (filed Nov. 20, 2023) (arguing, in a whistleblower suit, that former Supervisor was pressured to illegally stop issuing new well drilling permits).

12 AB 3233, § 3 (“a local entity may, by ordinance, prohibit oil and gas operations or development in its jurisdiction or impose regulations, limits, or prohibitions on oil and gas operations or development that are more protective of public health, the climate, or the environment than those prescribed by a state law, regulation, or order. These limitations or prohibitions may include, but are not limited to, limitations or prohibitions related to the methods of oil and gas operations or development and the locations of oil and gas operations or development.”)



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