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HAND DELIVERED

Honorable Board of Supervisors
County of Santa Barbara
105 East Anapamu Street, Suite 407
Santa Barbara, CA 93101



Re: Board Hearing of August 26, 2008
Departmental Agenda Item No. 1 Re: Energy Crisis

Dear Honorable Supervisors:

This office represents the Western States Petroleum Association ("WSPA") regarding the above matter.

The Board of Supervisors Board Letter for its meeting of July 15, 2008 regarding the above item stated:

"It must be recognized that continuation of the escalation of oil and gas prices due to international oil supplies shortages may precipitate a federal effort to extract county oil resources that would not be in conformity with local environmental, esthetic and economic consideration."

The above statement in the Board Letter is by no means hyperbole. The federal government has broad powers to override state and local laws regarding the extraction of oil and natural gas resources. For example, the federal government has exclusive jurisdiction over oil and gas resources of the United States in the Outer Continental Shelf ("OCS"), which is commonly referred to as being beyond the three mile limit. But, the potential for federal regulation does not stop there. In fact, the federal government can at any time, with respect to State lands within the three mile limit, enact new legislation overriding any state or local law, whether or not an emergency situation exists.

But that's not all. The federal government, under its broad federal preemption powers, can override almost any state or local law. The preemption doctrine derives from the Supremacy Clause of the United States Constitution which provides that the: "Constitution and the laws of the United States... shall be the supreme law of the land... anything in the constitutions or laws of any State to the contrary notwithstanding." This means that any federal law, even a regulation of a federal agency, trumps any conflicting state law.

Preemption can be either express or implied. When Congress chooses to expressly preempt state law, the only question for the courts is whether the challenged state law is one that the federal law is intended to preempt. The United States Congress can expressly preempt just about any state or local restriction including all permitting and land use regulations, energy regulations, anti-oil tankering laws, CEQA, and air, water and waste regulations and laws.

Congress considered doing this in the Carter administration in a bill that would have created a new powerful, preemptive Federal Energy Mobilization Board¹. Upon Senate approval of the Legislation, President Carter said:

"This Board will have the power to cut through unnecessary procedural delays in order to ensure that priority energy projects will be expeditiously considered and constructed, while environmental values and state and local decision making are preserved."

While the Carter bill was not enacted, it does demonstrate the power of Congress under the Supremacy Clause of the United States Constitution to enact this type of legislation.

Other examples of federal preemption can be found in connection with nuclear power plants. Federal law preempts state regulation of the construction, operation and licensing of nuclear power plants, placing sole authority with the Nuclear Regulatory Commission ("NRC"). These preemption issues are particularly important in states such as Ohio and New Jersey, where community groups, regulators and state officials are concerned about the safety and continued operation of aging nuclear power plants. U.S. PIRG Reports, "Tying The Hands Of States: The Impact Of Federal Preemption On

¹ President Carter's Energy Mobilization Board was modeled on the War Production Board of World War II which was established in 1942 by executive order of President Franklin D. Roosevelt. The purpose of the War Production Board was to regulate the production and allocation of materials and fuel during World War II.

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State Problem-Solvers,” July, 2004. State officials can submit public comments to the NRC and otherwise weigh in on NRC decisions, but the authority to regulate or close a plant rests squarely with the NRC. Id.

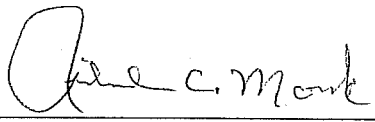
Federal preemption ties the hands of state legislators and regulators eager to solve problems facing their constituents. Id. Federal preemption hurts more than just the residents within a state’s borders. Id. Federal preemption suppresses the creativity of state problem solvers and shrinks the marketplace of ideas leaving society with the lowest common denominator solutions. Id.

Federal preemption battles are brewing on issues ranging from insurance regulation to energy efficiency requirements to regulation of toxic chemicals. Id. As a Congressional report last year detailed, the House and Senate voted 57 times in the previous 5 years to preempt state laws, including legislation to preempt state limits on air pollution, regulation of contaminated food, and regulation to block tougher state regulation of internet “spam.” California Progress Report, “Industry Looks To Federal Rules To Preempt State Regulation”, p. 1, www.californiaprogressreport.com/2007/09. Further, as predatory lending recently expanded across the country, states sought to enact laws to limit such abusive mortgage practices, only to see many of those laws blocked by federal courts based on the current administration’s claims that such state laws were preempted by federal law. Id.

Based upon the foregoing, the Federal Government could certainly declare an emergency because of the escalation of oil and gas prices due to international oil supply shortages and use its powers of federal preemption to override state and local jurisdiction’s regulations regarding the extraction of oil and natural gas resources.

Respectfully submitted,

HOLLISTER & BRACE

By: 
Richard C. Monk

RCM/dtc