



## **FREQUENTLY ASKED QUESTIONS: The Climate Change Lawsuit in Colorado**

In April 2018, the Colorado communities of Boulder County, San Miguel County, and the City of Boulder filed a lawsuit against ExxonMobil and Suncor Energy, two oil companies with significant responsibility for climate change. The communities have demanded that these companies pay their fair share of the costs associated with climate change impacts, so that the costs do not fall disproportionately on taxpayers.

### **Q: How does climate change impact these communities?**

**A: Rising temperatures threaten these communities' safety and way of life.** Since 1983, average temperatures in Colorado have risen more than 2° F and are continuing to warm.<sup>1</sup> Boulder County, San Miguel County, and the City of Boulder are already experiencing the impacts of climate change, including several alarming trends: more heat waves, more destructive wildfires, more severe droughts, and changing precipitation. Local residents can expect these trends to continue and will likely experience more severe infestations of mountain pine beetles and other insects, reduced snowpack, earlier spring runoff from snow in the mountains, greater rainfall intensity, and worse ground-level ozone.<sup>2</sup>

Climate change will affect fragile mountain ecosystems and hit at the heart of the local economy, damaging roads, forests, homes, the agricultural sector, the ski industry, and open space. Adapting to such a wide range of impacts requires local governments to undertake unprecedented levels of planning and spending.<sup>3</sup>

### **Q: What costs do the communities face in responding to climate change?**

**A: Over the next few decades, these communities will need to spend hundreds of millions of dollars—or more—to respond to climate change.**<sup>4</sup> For years, all three communities have taken action to reduce their own carbon footprints. All three have adopted ambitious CO<sub>2</sub> emission reduction targets, passed budgets for climate work, conducted greenhouse gas (GHG) inventories, and established incentive programs for residents.<sup>5</sup>

Despite these efforts, taxpayers already face the rising costs of adapting to a changing climate. Examples of recent costs include: (1) expert studies to assess climate vulnerabilities, (2) repairs to damaged roads and infrastructure, (3) wildfire prevention and rehabilitation programs, and (4) water efficiency improvements on irrigated agricultural land. Over the coming decades, the impacts of climate change will become increasingly severe and costly.<sup>6</sup>

**Q: Why sue these two companies?**

**A: Exxon and Suncor are two of the world's largest contributors to climate change and have worked closely together in Colorado.** Fossil fuel combustion accounted for nearly 80% of all GHG emissions between 1970 and 2010.<sup>7</sup> Exxon is the largest investor-owned fossil fuel producer in the world.<sup>8</sup> Suncor is one of the world's largest independent energy companies and is particularly active in Colorado. Suncor's U.S. operations are based in Denver, Colorado; the company supplies about 35 percent of the state's gasoline and diesel fuel demand.<sup>9</sup> The two companies work closely together in Colorado to market and sell fossil fuels. The two companies also jointly operate Syncrude Canada Ltd., the largest developer of Canada's tar sands. Syncrude's products are among the dirtiest in the world. Canadian tar sand operations produce higher concentrations of GHG emissions than almost any other fossil fuel.<sup>10</sup>

Between 1988 and 2015, Exxon and Suncor were responsible for more than 18 billion tons of CO<sub>2</sub> emissions.<sup>11</sup> Their future carbon footprint is likely to be enormous, as well: both plan to expand fossil fuel production through tar sands, fracking, and other means.<sup>12</sup>

**Q: What about local oil and gas companies?**

**A: The communities are not suggesting that Exxon and Suncor are the only ones responsible for climate change.** Given the seriousness of the climate crisis, the communities are using multiple approaches to address the threats that they face. For example, hydraulic fracturing—otherwise known as fracking—continues to raise a number of health and environmental issues in these communities and in Colorado more broadly. The lawsuit is an additional tool, not a substitute for local environmental protections against fracking.

**Q: Why not sue the federal government instead?**

**A: The purpose of this lawsuit is to ensure that these companies pay their fair share of the climate impacts for which they are responsible.** This is a question for the courts, not the federal government. The communities have not asked the court to stop or regulate the future production of fossil fuels in Colorado. The federal government also has a responsibility to prevent and mitigate climate change, of course, and these communities support efforts to ensure that the federal government appropriately uses its authority to address the climate crisis. For example, Boulder-based youth group Earth Guardians is a plaintiff in a different lawsuit against the federal government.<sup>13</sup> The new lawsuit complements, but does not replace, other efforts to address climate change.

**Q: What did Exxon and Suncor do that was outside normal business behavior?**

**A: For more than 50 years, these oil companies have known about the harm that their products would cause to communities, but have chosen to continue business as usual.** In 1968, industry scientists warned these companies that “significant temperature changes are almost certain to occur by the year 2000” due to rising GHGs, and that “the potential damage

to our environment could be severe.”<sup>14</sup> By the 1970s, Exxon and Suncor knew with high certainty that their products were dangerous and that inaction would cause dramatic, or even catastrophic, changes to the climate.<sup>15</sup> Exxon took measures to protect itself from climate change: for example, the company adapted its own facilities to protect from sea level rise.<sup>16</sup> Yet ExxonMobil and Suncor chose to conceal this knowledge from the public, in order to continue promoting and selling fossil fuels. And worse, they both participated in efforts to spread doubt about climate change and discredit the scientific voices that they knew were telling the truth.<sup>17</sup> This helped to delay the shift to a low-carbon economy by decades.

**Q: How long will this lawsuit take?**

**A: This is a complex lawsuit and could take years to resolve.** For this reason, the communities are not waiting to respond to climate change. The lawsuit is only one part of a larger strategy. But as the climate continues to change, local taxpayers are fronting the bill. The communities hope that this lawsuit will shift some of the costs back onto Exxon and Suncor.

**Q: What will this lawsuit cost the local taxpayers?**

**A: The local governments prioritize spending taxpayer dollars in a cost-conscious manner. There will only be nominal costs associated with the lawsuit.** Most of the legal work will come from attorneys associated with nonprofit organizations like EarthRights International who are working on a *pro bono* basis. These attorneys will be assisted by private law firms who will need to put in a substantial amount of work in order to win the case. The private firms have agreed to be paid only if they win the case, in which case they would receive up to 20 percent of the award. The local communities have devoted salaried staff time to work on the lawsuit, but will not be paying for outside counsel.

**Q: Have other lawsuits like this been successful?**

**A: Similar lawsuits are currently proceeding in California and New York, but this is the first such lawsuit in Colorado—or anywhere in the U.S. interior.** In the past year, [nine coastal communities](#) in California and New York filed climate lawsuits against fossil fuel companies. These other lawsuits are currently making their way through the courts. Each lawsuit is unique and will need to be examined on its individual merits. However, past public interest lawsuits—such as those against the tobacco industry in the 1990s—have successfully held powerful companies to account for harm caused to people’s health and environment.<sup>18</sup>

**Q: How do I stay informed about the lawsuit?**

This document was prepared in April 2018 using information from the plaintiffs’ legal complaint. To learn more about this lawsuit as it progresses, please visit the website of [EarthRights International](#). To learn more about the ways that these communities are responding to climate change, please visit the websites of [Boulder County](#), [San Miguel County](#), and the [City of Boulder](#).

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- <sup>1</sup> Western Water Assessment, Cooperative Institute for Research in Environmental Sciences (CIRES), University of Colorado Boulder, *Climate Change in Colorado: A Synthesis to Support Water Resource Management and Adaptation*, 2014, [http://www.colorado.edu/climate/co2014report/Climate\\_Change\\_CO\\_Report\\_2014\\_FINAL.pdf](http://www.colorado.edu/climate/co2014report/Climate_Change_CO_Report_2014_FINAL.pdf)
- <sup>2</sup> Please see the Complaint, Section III.A. See also, Resilient Analytics, *The Impacts of Climate Change: Projected Adaptation Costs for Boulder County, Colorado*, Apr. 2018, <https://assets.bouldercounty.org/wp-content/uploads/2018/04/resilient-analytics-report-impacts-of-climate-change-boulder-county-colorado.pdf>
- <sup>3</sup> Complaint, Section III.A. See also, Resilient Analytics, *id.*
- <sup>4</sup> Complaint, Section III.A. See also, Resilient Analytics, *id.*
- <sup>5</sup> Complaint, Section III.B.
- <sup>6</sup> Complaint, Section III.B.
- <sup>7</sup> Intergovernmental Panel on Climate Change, Fifth Assessment Report, Climate Change 2014: Synthesis Report, <http://www.ipcc.ch/report/ar5/syr>
- <sup>8</sup> Lauren Gensler, Forbes, “The World’s Largest Oil And Gas Companies 2017: Exxon Reigns Supreme, While Chevron Slips,” May 24, 2017, <https://www.forbes.com/sites/laurengensler/2017/05/24/the-worlds-largest-oil-and-gas-companies-2017-exxon-mobil-reigns-supreme-chevron-slips/#3494f4cb4f87>
- <sup>9</sup> Suncor Energy, <http://www.suncor.com> > About Us > History.
- <sup>10</sup> Complaint, Section II.
- <sup>11</sup> Complaint, Section I.B.
- <sup>12</sup> Complaint, Section I.B.
- <sup>13</sup> Our Children’s Trust, “Juliana v. U.S. – Climate Lawsuit,” <https://www.ourchildrenstrust.org/us/federal-lawsuit>
- <sup>14</sup> Eugene Robinson & R.C. Robbins, Stanford Research Institute, *Sources, Abundance, and Fate of Gaseous Atmospheric Pollutants*, 1968.
- <sup>15</sup> Complaint, Section III.C.
- <sup>16</sup> Amy Lieberman & Susanne Rust, Los Angeles Times, “Big Oil Braced for global warming while it fought regulations,” Dec. 31, 2015, <http://graphics.latimes.com/oil-operations>
- <sup>17</sup> Complaint, Section III.C.
- <sup>18</sup> Kristi Keck, CNN.com, “Big Tobacco: a history of its decline,” June 19, 2009, <http://edition.cnn.com/2009/POLITICS/06/19/tobacco.decline>