



## **Three Colorado Communities File Climate Lawsuit Against ExxonMobil, Suncor**

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Three Colorado local governments have filed a lawsuit against two oil and gas producers, demanding “companies pay their fair share of the costs associated with climate change impacts.”

The City of Boulder, Boulder County, and San Miguel County announced the lawsuit Tuesday at the Boulder County Courthouse against ExxonMobil and Suncor “for their reckless actions and damages.”

“[T]he Colorado communities of Boulder County, San Miguel County, and the City of Boulder filed a lawsuit against Suncor and ExxonMobil, two oil companies with significant responsibility for climate change,” the governments stated in a [joint release](#). “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.”

The three communities will receive legal work from attorneys at EarthRights International and the Niskanen Center, who will work on a pro bono basis, according to the announcement. Kevin Hannon of the Denver-based Hannon Law Firm and will also provide legal counsel on a 20 percent contingency basis. Salaried staff from the City of Boulder, Boulder County, and San Miguel County will work on the lawsuit, but the communities will not pay for additional outside counsel, they said.

The announcement focused on climate concerns affecting Colorado, noting the similarities to the lawsuits filed in California and New York City, but also the different challenges faced by a non-coastal area. While the City of Boulder, located within Boulder County, is located on the state’s Front Range, San Miguel County is located on the state’s Western slope, and includes the posh mountain ski resort, Telluride.

“Just like coastal communities, high-altitude mountains and plains communities are on the front lines of climate change. They are already experiencing trends in heat rise, drought, and more frequent wildfires. Colorado is one of the fastest warming states in the country,” the statement continued.

They argued that the City of Boulder, Boulder County, and San Miguel would need to “adapt to and mitigate the impacts of climate change” and that the adaptations estimated going to “local taxpayers will reach into the hundreds of millions of dollars or more.”

The communities acknowledged their lawsuit as part of a larger, nation-wide effort to pursue compensation from energy producers, saying they should pay “their fair share” for mitigation efforts.

“Companies like Suncor and ExxonMobil deceived the public and policymakers for decades about the truth so they could keep making billions of dollars. For the past year, local governments and legal advocates have gone to court to ask these companies to use their vast profits to pay their fair share of what it will cost a community to deal with the problem the companies created,” they wrote.

Reactions to the announcement called the lawsuit “baseless” and an opportunity for plaintiffs’ attorneys to earn a huge pay day—20 percent, in this particular lawsuit.

“Today in Colorado, we’re seeing another example of trial attorneys attempting to enrich themselves at the expense of manufacturers and manufacturing workers. These baseless lawsuits do nothing to improve the environment and are a waste of taxpayer resources,” said Lindsey de la Torre, Executive Director of the Manufacturers’ Accountability Project (MAP), a project of the National Association of Manufacturers, in a statement.

“While manufacturers are working toward meaningful solutions and are reducing emissions, cities are wasting time suing them for making products Americans rely on for their everyday lives,” de la Torre said.

“Coloradans won’t fall for this political stunt. This is not a serious way to address climate concerns,” said Dan Haley, President & CEO of the Colorado Oil and Gas Association, in a statement. “A number of courts, including the United States Supreme Court, already have dismissed prior cases making similar allegations, based on the fact Congress enacted the Clean Air Act to manage emissions that may impact our environment.

Haley said the lawsuit filed Tuesday has the same limitations.

“This lawsuit is similarly misguided. It improperly seeks to have judges, rather than the appropriate regulatory oversight agencies, decide how much carbon dioxide a company emits. Oil and natural gas operators should not be subject to liability for doing nothing more than engaging in the act of commerce while adhering to our already stringent state and federal laws,” Haley continued.

Colorado’s reputation as a leader in reducing emissions, Haley said, has produced demonstrable results.

“Our Colorado operators will continue to lead the way by producing our natural resources cleaner and better than anywhere else. Emissions on the Front Range have gone down in recent years while production has gone up,” Haley said. By switching to natural gas, he said, “U.S. carbon emissions are at a nearly 25-year low due to the increased use of cleaner burning and abundant natural gas for electric power generation.”

Jacque Montgomery, a spokeswoman for Gov. John Hickenlooper (D), told *Western Wire* there would be no comment on pending litigation, but that the office would be monitoring the lawsuit.

In March, Martha Rudolph, who directs Colorado’s Department of Public Health and Environment’s air and water quality programs, told *Western Wire* that litigation was probably not the best approach. At the time, Hickenlooper said he would defer to Rudolph.

“It is no surprise that tax and spend politicians in Boulder joined with their allies in California and New York City in search of deep pockets to pay for their costly radical leftwing boondoggles,” said William Perry Pendley, President of the Mountain States Legal Foundation.

Pendley told *Western Wire* that the plan to help taxpayers through costly litigation was likely to fail.

“[T]axpayers who think at least they will not have to pay for this pricey misadventure and might even get some tax relief if it is successful, should think again. This lawsuit could not be more frivolous and if the judges do what other judges have done, legal sanctions and hefty fines will be imposed,” Pendley continued. “Not only is there no science to support the fanciful complaint, the allegations fail to state a legal claim.”

Pendley called the “injuries” both “remote and speculative.” “Causation between the alleged inactions of the companies and the imagined harms is missing in its entirety and the demand that whimsical injuries be redressed (“Help us pay to paint our streets white,” one imagines) is laughable,” he said.

Competitive Enterprise Institute’s Chris Horner, an attorney specializing in government transparency and energy policy, told *Western Wire* that the aim is not to win the lawsuit, but to settle, hopefully for a large pot of money.

“This is the latest in a long-planned series of staggered actions, by different levels of governmental subdivision, designed not to win but to settle,” Horner said.

“This began with the nearly two-dozen state AGs’ pursuit in 2016 that quickly collapsed into a couple of abusive hand-wavers, once public records requests threatened the prospect of exposure,” he continued.

Horner said the campaign has been one of shifting objectives, as efforts failed.

“Then it moved to coastal cities who weighed in in the agreed order of battle that, documents produced in response to FOIA requests suggest, was laid out over two years ago when the AGs’ and cities’ contingency fee lawyers, abetted by donors providing entre’, recruited activist elected officials to join the scheme,” Horner detailed.

“The objective,” he said, “is threefold: to obtain vows of silence in the climate debate, vows of abstinence from supporting other voices, and contributions to a massive settlement fund.”

Ultimately, Horner said, the lawsuit pursuit needs to work just once. “They just needed one AG or one DA to subpoena private parties’ records for the activists’ use, to pressure one major company to agree to their terms. After which, at least under their theory which you now see in action, all others would find it exceedingly difficult to hold out.”

Walter Olson, a Senior Fellow at the Cato Institute, told *Western Wire* that besides pushing for settlement, an additional objective is implementing new regulation via the courts, rather than legislation or administrative rulemaking.

“This is following a familiar playbook of campaigns to pursue regulation by litigation. The push is to sign up local and state governments in actions demanding recoupment of government expenditures,” Olson said. “The theories are easy to come up with since government spends money on a lot of things and just about everything can be argued to contribute to causing just about everything else.”

The multi-state, multi-pronged approach is key, Olson said, given the differences between states on everything from recovery to discovery procedures.

“The strategy in these cases is typically to recruit as many plaintiffs as possible, with an emphasis on actions in different states. States have, e.g., different consumer laws to sue under that may allow different theories of recovery, or different procedures each of which may place the defendants at some particular kind of disadvantage,” Olson said.

The plaintiffs’ attorneys and outside litigation experts pitching the suit—like EarthRights International, the Hannon Law Firm, and the Niskanen Center—sweeten the deal by offering pro bono work, as in the case of EarthRights and Niskanen, or contingency fees upon successful litigation, such as 20 percent for the private firms listed.

“Typically the government plaintiffs are offered a deal of ‘no fee unless successful,’ just as in the ads on late-night TV,” Olson said.

If no legal sanction are applied, the plaintiffs won’t have to reimburse ExxonMobil or Suncor, leaving them with large legal fees.

“The only reason this can go on is that our system, unlike most countries’, lacks a loser-pays principle so even if Boulder County’s action is thrown out as legally groundless, the county will probably not have to reimburse its targets’ legal fees,” Olson continued.

Olson said that the approach in Colorado may be slightly different, given the reaction to the lawsuits filed in California and New York City that have been viewed simply as money-grabs.

“The first wave of these climate suits have gotten a reputation in the press as organized by law firms seeking contingency fees who intend to run the actions for maximum cash payout,” Olson said. “Involving EarthRights and a community like Boulder could be an effort to change this image by introducing more of an idealistic non-profit tone and maybe a suggestion that the goal

isn't just to squeeze money out in a settlement and then return to business as usual, which is basically what happened with the tobacco settlement," he concluded.

"I would have some respect for Boulder and the other cities suing the oil companies if they had sworn off the use of gasoline and diesel some years ago when they realized that petroleum products were causing global warming," said Myron Ebell, Director of the Center for Energy and Environment at CEI. "I'm sure Boulder could get along fine with police officers on bikes, fire trucks pulled by horses, and people burning their trash in barrels in the alley instead of it having picked up by garbage trucks."