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Colorado Energy Companies Sued for Climate Change Impacts

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This week, Boulder made good on its threat to file a lawsuit seeking potentially billions of dollars from energy producers based on the effects of climate change.

The city and county of Boulder, along with San Miguel County, sued Suncor Energy, Inc. and ExxonMobil Corporation in state district court for nuisance, trespass, and deceptive trade practices. The suit claims that Suncor and Exxon are responsible for past and future costs associated with climate impacts such as wildfires, droughts, floods, reduced snowpack, road damage, insects, diseases, declining employee productivity, and higher air conditioning bills as a result of producing and selling oil and gas products.

The Colorado communities joined New York City and several California counties in pursuing state common law claims against energy producers. To date, the disputes in these other jurisdictions have centered on whether federal or state court is the proper venue for hearing such claims, with one California federal court keeping the litigation, and another saying it should go back to state court. The consequences of this issue alone are critical in light of the federal Clean Air Act, well-established doctrines of preemption, and the lack of success with similar lawsuits in federal court.

In addition to nuisance claims, this week's 105-page complaint claims that Suncor and ExxonMobil intentionally misled Colorado residents about the effects of fossil fuels on the global climate, thereby violating the state's consumer protection laws. This is the first lawsuit of its kind in Colorado, and likely will be controversial given the state's historic commitment to responsible energy production.

To preempt public criticism, the County Commissioners posted a lengthy justification of their decision to file suit. This justification strongly implies that Suncor and Exxon may not be the only defendants ultimately caught in the Colorado climate change litigation. The Commissioners noted that, by limiting their lawsuit to two companies, "[t]he communities are not suggesting that Suncor and Exxon are the only ones responsible for climate change." This leaves the door open to other producers with ties to Colorado being named in the action.

If you have any questions about the status of these cases, please contact Chris Chrisman.

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