



VIA ELECTRONIC FILING

Cristopher M. Wolpert
Clerk of the Court
United States Court of Appeals for the Tenth Circuit
Byron White Court House
1823 Stout Street
Denver, CO 80257

March 31, 2020

Re: Rule 28(j) letter - *Boulder Cty. Commissioners, et al v. Suncor Energy et al*, No. 19-1330

Dear Mr. Wolpert,

Pursuant to Federal Rule of Appellate Procedure 28(j), Plaintiffs-Appellees submit *Mayor & City of Baltimore v. BP, P.L.C.* (“*Baltimore*”), No. 19-1644, ___ F.3d ___, 2020 U.S. App. LEXIS 7083 (4th Cir. Mar. 6, 2020) (Ex. A), as supplemental authority in support of their arguments that: (1) pursuant to 28 U.S.C. § 1447(d), this Court can only review the district court’s refusal to exercise federal jurisdiction under the federal officer statute; and (2) federal jurisdiction does not exist under that statute. *See* Plaintiffs-Appellees’ Br. (Pls.’ Br.) at 8-18.

Baltimore is a similar case, involving fossil fuel companies’ liability for the climate harms suffered by a local governmental entity. There, as here, the district court rejected all of the proffered bases for federal jurisdiction – including federal officer jurisdiction. The Fourth Circuit Court of Appeals affirmed that remand order, providing additional authority for two of Plaintiffs’ arguments.

First, *Baltimore* confirms Plaintiffs’ position that Section 1447(d) limits appellate review to the bases for removal specified in that statute: there, as here, the basis alleged is the federal officer statute. 2020 U.S. App. LEXIS 7083, at *10-11; *accord* Pls.’ Br. at 8-10. *Baltimore* rejected the argument that the same authorities that Defendants invoke here authorize plenary review. *Compare Baltimore*, 2020 U.S. App. LEXIS 7083, at *11-14 *with* Defendants’-Appellants’ Br. at 8-10 (citing *Yahama Motor Corp., U.S.A. v. Calhoun*, 516 U.S. 199 (1996) (addressing the scope of appellate review of interlocutory “orders” pursuant to 28 U.S.C. § 1292(b)); *Lu Junbong v. Boeing Co.*, 792 F.3d 805, 810-813 (7th Cir. 2015); & the Removal Clarification Act of 2011).

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Second, Baltimore confirms that the district court here correctly refused to exercise jurisdiction under the federal officer statute. *Baltimore* found that Defendant Exxon was not “acting under” federal officers for purposes of the federal officer statute when it developed fossil fuel on the Outer Continental Shelf (OCS) pursuant to lease agreements; and, even if it were, there was an insufficient nexus between work done on the OCS and the plaintiff’s claims. *Baltimore*, 2020 U.S. App. LEXIS 7083, at *24-31; *accord* Pls.’ Br. at 11-18.

Respectfully submitted,
/s/ Sean Powers
Sean Powers
EarthRights International
Counsel for Plaintiffs-Appellees

cc: All Counsel of Record (via ECF)

**CERTIFICATE OF COMPLIANCE
WITH TYPEFACE AND WORD-COUNT LIMITATIONS**

I, Sean Powers, counsel for appellees – Board of County Commissioners of Boulder County, Board of County Commissions of San Miguel County, and the City of Boulder – and a member of the Bar of this Court, certify, pursuant to Federal Rule of Appellate Procedure 28(j), that the body of the attached letter contains 345 words.

March 31, 2020

/s/ Sean Powers

Sean Powers

**CERTIFICATE OF DIGITAL SUBMISSION, ANTIVIRUS SCAN, AND PRIVACY
REDACTIONS**

I hereby certify, pursuant to the Tenth Circuit CM/ECF User's Manual that the attached Letter, as submitted in digital form via the Court's electronic-filing system, has been scanned for viruses using McAfee LiveSafe (Version 16.0, updated Mar. 1, 2010) and, according to that program, is free of viruses.

March 31, 2020

/s/ Sean Powers

Sean Powers

CERTIFICATE OF SERVICE

I, Sean Powers, counsel for appellees – Board of County Commissioners of Boulder County, Board of County Commissions of San Miguel County, and the City of Boulder – and a member of the Bar of this Court, certify, that, on March 31, 2020, the attached Letter was filed with the Clerk of the Court through the electronic-filing system. I further certify that all parties required to be served have been served.

March 31, 2019

/s/ Sean Powers

Sean Powers