



**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

October 5, 2021

**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 *City of Hoboken v. Exxon Mobil Corp.*, Civil Action No. 20-cv-14243, 2021 U.S. Dist. LEXIS 169925 (D.N.J. Sept. 8, 2021) (Ex. A), as supplemental authority showing why there is no subject matter jurisdiction over this dispute, and why this case was thus properly remanded to state court.

*Hoboken* is a similar case to the one at bar, involving liability for the climate harms suffered by a local government. The *Hoboken* defendants raised the same bases for federal jurisdiction pressed by Defendants-Appellants here; and the *Hoboken* court rejected them all, joining the growing and substantial number of district courts to do so.

Of relevance to the Parties' supplemental briefing, *Hoboken* rejected the argument that *City of New York v. Chevron Corp.*, 993 F.3d 81 (2d Cir. 2021), supports federal jurisdiction. *See* Defendants-Appellants' Supp. Br. at 4-9. As Plaintiffs-Appellees argued and *Hoboken* holds, *City of New York* has no bearing on the propriety of removal because preemption does not create federal jurisdiction, 2021 U.S. Dist. LEXIS 169925, at \*13-18; *City of New York* addressed whether federal common law preempted state law claims on their merits and expressly distinguished the "parade" of decisions remanding similar cases to state courts. 993 F.3d at 93-94; Plaintiffs-Appellees' Supp. Br. at 4-6.

Respectfully submitted,  
/s/ Sean Powers  
Sean Powers  
EarthRights International

**Southeast Asia Office**  
PO Box 123  
Chiang Mai University  
Chiang Mai 50202 Thailand  
+66-81-531-1256  
infoasia@earthrights.org

**Amazon Office**  
Casilla Postal 45  
Barranco, Lima 4, Peru  
+51-1-447- 9076  
infoperu@earthrights.org

**US Office**  
1612 K Street, NW, Suite 800  
Washington, DC 20006  
Tel: +1 (202) 466-5188  
Fax: +1 (202) 466-5189  
infousa@earthrights.org

*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 215 words.

October 5, 2021

/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 Oct. 3, 2021) and, according to that program, is free of viruses.

October 5, 2021

/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 October 5, 2021, 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.

October 5, 2021

/s/ Sean Powers

**Sean Powers**