

**UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA**

STATE OF WEST VIRGINIA,	)	
<i>et al.</i>	)	
	)	
Petitioners,	)	
	)	
v.	)	Docket No. 15-1363
	)	
UNITED STATES ENVIROMENTAL	)	
PROTECTION AGENCY, and REGINA A.	)	
MCCARTHY, Administrator, United States	)	
Environmental Protection Agency	)	
	)	
Respondents.	)	

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**DECLARATION OF MAYOR SUZANNE JONES  
ON BEHALF OF THE CITY OF BOULDER, COLORADO**

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I, Suzanne Jones, declare as follows:

1. I am the Mayor of the City of Boulder, and I have first-hand knowledge of the facts set forth below.

**BACKGROUND**

2. The City of Boulder (hereafter the “City”) is the home rule municipality that is the county seat and the most populous municipality of Boulder County and the 11th most populous municipality in Colorado.
3. The City is home of the main campus of the University of Colorado, the state's largest university, and is home to a high concentration of climate scientists working at 13 different federal labs on related topics. More than a dozen of these scientists from the

National Center for Atmospheric Research, the National Oceanic and Atmospheric Administration, and the University of Colorado, contributed to the 2013 Intergovernmental Panel on Climate Change Fifth Assessment Report.

4. The City has a long history of innovative initiatives related to sustainability and climate change and to assisting other communities as an innovation partner.

#### **CLIMATE-RELATED THREATS TO THE BOULDER REGION**

5. According to the National Climatic Data Center, the frequency of billion-dollar extreme weather events from severe storms, flooding, droughts and wildfires has increased dramatically in recent years, trending from an average of less than three events per year in the 1980s to an average of nearly ten events per year from 2010 to 2014.
6. Global climate change is one of the most significant threats facing local communities and will affect Boulder's ability to deliver services including fire protection and other emergency services, flood control and public works projects, and health care and social services for vulnerable populations.
7. A 2015 report by the University of Colorado Boulder and Colorado State University to the Colorado Energy office states that Colorado's climate has warmed in recent decades, and climate models unanimously project this warming trend will continue into the future. Although the actual pace of warming is dependent on the rate of worldwide greenhouse gas emissions, climate change has impacted and will continue to impact Colorado's resources in a variety of ways, including more rapid snowmelt, longer and more severe droughts, and longer growing seasons.
8. The City has seen several significant impacts from climate change. These include increased risk of wildfires, devastating flooding, and loss of snowpack for water storage.

9. Since 1989, Boulder County has experienced four major wildland fires, the last of which was the Fourmile Canyon fire in 2010. The Fourmile Canyon fire destroyed over 6,000 acres of forest and 168 homes. The City's principal water treatment facility is in the region affected by the fire and was placed at risk.
10. In September 2013, the City experienced a flood that caused damages estimated as high as \$150 million. In our region, four people died, 1,202 people were airlifted from their homes, and 345 homes were destroyed. Over a period of eight days, Boulder received an unprecedented 17.15 inches of rain. To put this into context, Boulder's annual average precipitation is just 19.14 inches. In September, Boulder normally averages just 1.61 inches of rain.
11. This disaster was so widespread and devastating that the Boulder County Board of Commissioners declared a county-wide disaster, the Governor declared the flood a state disaster, and the President declared the flood a national disaster.
12. Perhaps the most significant long-term impact of climate change to Boulder is the potential for impacts to water supply. Increased temperatures will require larger amounts of water to sustain outdoor uses such as agriculture and urban tree canopies. Approximately 89% of the water consumption in Colorado is associated with agriculture so even a modest increase in agricultural water needs will have a significant impact on overall water demands in the state.
13. Like most water users in Colorado, Boulder's water supply infrastructure depends on the accumulation of snowpack in the Rocky Mountains during winter months followed by a predictable melting and runoff into storage reservoirs throughout the rest of the year. A significant shift from snow to rain or in the timing of runoff would result in a shortfall in

water supply because reservoirs are not sized to hold water supply that historically was held in the snowpack.

14. Although virtually any aspect of Boulder's economy could be affected by changes in the climate, specific industries that rely on natural resources—agriculture, tourism and recreation, and mining and extraction—are particularly vulnerable. Reduced snowpack is an obvious sensitivity in the ski sector, but also important are earlier melt as well as seasonal shifts in temperature, which can exacerbate wildfire potential, negatively affect plants and wildlife, and increase public exposure to vector-borne diseases.
15. While Boulder's vulnerabilities to climate related risks are not entirely unique, Boulder was selected as one of 100 global cities to participate in the Rockefeller 100 Resilient Cities initiative to design replicable methodologies that will enable communities to quickly assess risks, identify opportunities, and implement a short- and long-term vision.

#### **BOULDER'S EFFORTS TO ADDRESS IMPACTS FROM CLIMATE CHANGE**

16. I and the City of Boulder understand that restraining global warming to an increase of no more than 2 degrees Celsius over the pre-industrial average will require changes in how the world produces and uses energy to power its cities and factories, heats and cools buildings, as well as move people and goods in airplanes, trains, cars, ships and trucks.
17. Since 2006, Boulder City Council has maintained climate change as one of its top three priorities for action. This support has resulted in staffing resources and a commitment to engage in policy reform at the local, regional and state level.
18. In 2002, Boulder became one of the first cities in the nation to support the Kyoto Protocol when the Boulder City Council passed Resolution 906. This commitment

established the goal of reducing the city's greenhouse gas emissions to 7% below 1990 levels by 2012.

19. In November 2006, Boulder voters approved Ballot Issue No. 202, the Climate Action Plan Tax, the nation's first "Carbon Tax." The tax has allowed the community to develop innovative, nationally acclaimed programs that help the community reduce energy use and greenhouse gas emissions—programs like EnergySmart, curbside composting, and expansion of Boulder's bike trail system.
20. Since its inception, the carbon tax has funded more than \$8 million in incentives to Boulder residents and businesses through an extensive suite of services and regulations. Much of the first generation of carbon tax funded efforts have focused on conservation and efficiency efforts, particularly in the built environment where electricity and natural gas make up almost 80% of emissions.
21. In 2010, Boulder collaborated with Boulder County, Denver, and Garfield County to apply for and receive \$25 million in federal Better Buildings funding to roll out energy advising programs for residents and businesses. Since 2010, more than 7,500 City of Boulder housing units and 2,300 businesses have participated in energy upgrades resulting in over \$20M in energy related private investments and significant reductions in emissions from building energy use.
22. Energy-related activities represent more than 95% of Boulder's emissions, encompassing three energy related emissions sources: electricity (coal and natural gas), natural gas for heating and other processes/uses, and petroleum. For those efforts, we look forward to the increasing availability of electricity from renewable sources under

Colorado's Renewable Portfolio Standards, one of the most stringent in the country. We also recognize more must be done.

23. These City programs and community action permitted Boulder to avoid 147,000 metric tons of emissions between 2005 and 2012, despite significant economic growth.

24. Boulder added more than 2,600 jobs and \$529 Million in revenue in the 2005 to 2012 timeframe. A 2014 *NerdWallet* study ranked Boulder No. 1 in the country for economic growth. The study analyzed U.S. Census Bureau data for more than 500 of the largest American cities. In addition, Boulder was recently ranked #1 in the U.S. for workforce education levels in the poll of "Best Places for Business" by *Forbes*.

25. While efficiency and conservation efforts remain effective, it is essential that communities shift dependency away from fossil fuels and change the energy source.

26. Like most communities, the majority of Boulder's emissions come from burning fossil fuels to produce electricity.

27. Through the approval of multiple ballot measures between 2010 and 2013, Boulder voters directed the City to explore different options that could deliver safe, reliable, local and clean energy to the community.

28. Boulder is currently evaluating the legal, technical and financial feasibility of creating a locally owned electric utility through municipalization.

29. Boulder's municipalization effort is guided by an energy localization framework that is defined by three primary goals: Democratization, Decentralization and Decarbonization.

30. As such, local clean energy generation is a cornerstone of Boulder's long-term strategy. The City owns and operates eight hydroelectric facilities with the combined capacity of 15 megawatts. Boulder also has one of the highest levels of installed solar per capita in

the country, with more than 1,900 solar installations on Boulder homes and businesses with a current combined capacity of over 16 megawatts.

31. In response to increasing natural disasters in the region, including the flooding in Boulder, the Colorado Legislature passed HB13-1293 during its 2013 session, which declared that “climate change presents serious, diverse, and ongoing issues for the state’s people, economy, and environment.” Among other provisions, the bill required the governor to submit an annual report to a number of committees within the legislature “on climate change issues generally, the current climate action plan...and the specific ways in which climate change affects the state.”
32. While Boulder is committed to reducing emissions, it is equally important to Boulder to ensure its resilience from climate-related impacts. Through its ongoing work with the Rockefeller Foundation and the Western Adaptation Alliance, Boulder continues to prioritize the critical linkages between mitigation and resilience building.
33. Boulder has established six near-term priorities for building resilience including efforts to:
  - Complete flood infrastructure design and implementation based on the experience of our recent 100 year+ flood event.
  - Update the design and infrastructure related to storm water, wastewater and drinking water, particularly in high flood/fire risk zones.
  - Increase fire hazard mitigation treatments, particularly in high vulnerability zones.
  - Continue to diversify transportation options to increase mobility and access, particularly for lower income residents.

- Expand “localized” energy such as distributed generation and micro-grid development to decrease vulnerability and increase stability and reliability of critical power systems during extreme weather or other disruption events starting first with critical community services such as public safety, public health, and basic governance functions.
- Identify cross-cutting opportunities between essential functions that prioritize resilience planning.

31. Recognizing that many other cities will continue to face similar challenges, Boulder is harmonizing its climate mitigation and adaptation strategies to grow technological, financial and social innovations that can be useful to others. For Boulder, growing mitigation and resilience efforts is a core theme in our future economic development strategy.

## **BOULDER’S SUPPORT FOR THE CLEAN POWER PLAN AND OPPOSITION TO STAYING THE RULE**

34. On Aug. 3, 2015, President Obama unveiled the final Clean Power Plan, setting the first-ever national limits on carbon pollution from power plants — the nation’s largest source of these emissions, making clear that it is no longer acceptable to put unlimited amounts of climate pollution into our air.
35. The Clean Power Plan will reduce carbon emissions from power plants — and in doing so create new opportunities to continue development of the strong, vibrant clean energy economy that is creating prosperity, including in Boulder and other cities.
36. The third National Climate Assessment shows that cities will continue to bear the brunt of environmental, public health, and safety impacts associated with climate change;

therefore, Boulder has a significant interest in the outcome of the legal issues related to the Clean Power Plan—particularly in ensuring that EPA has the authority to promulgate flexible, nationwide standards to reduce carbon pollution, such as the Clean Power Plan standards under Section 111(d).

37. The Clean Power Plan and related actions will provide broad benefits and critical support to communities—in particular vulnerable communities like Boulder—across the nation by reducing carbon pollution from power plants and allowing communities to focus on efforts to build local resilience.
38. A stay of the Clean Power Plan could hamper the ability of the United States to argue for international reductions in emissions at the 2015 United Nations Conference of Parties in Paris and undermine efforts to implement commitments made at those talks. Allowing the rule to take effect shows the world that the United States is committed to leading global efforts to address climate change.
39. For this reason, the City has joined other cities and counties that are part of the Local Climate Leaders Circle, a group of local elected officials that will be in Paris for the climate negotiations, in sending a letter to EPA expressing opposition to requests for administrative stays of the Clean Power Plan. A copy of that letter is attached to this declaration as Exhibit A.
40. Because of the urgent threats to the City and our region posed by climate change, the City stands in strong opposition to any requests that the EPA's Clean Power Plan rule be stayed during the period of litigation.

Under penalty of perjury under the laws of the United States, I hereby declare that the foregoing facts are true and correct.

A handwritten signature in black ink, appearing to read "Suzanne Jones". The signature is written in a cursive style with a large initial "S" and a prominent "J".

By: \_\_\_\_\_

Suzanne Jones

Mayor

## EXHIBIT A

*Mayor Matt Appelbaum,*  
Boulder, CO

*Mayor Ralph Becker*  
Salt Lake City, UT

*Mayor Frank Cownie*  
Des Moines, IA

*Mayor George Heartwell*  
Grand Rapids, MI

*Mayor Jeri Muoio*  
West Palm Beach, FL

*Council Member Pam O'Connor*  
Santa Monica, CA

*Mayor Bill Peduto*  
Pittsburgh, PA

*Council Chair Larry Phillips*  
King County, WA

*Mayor Mary Casillas Salas*  
Chula Vista, CA

*Mayor Libby Schaaf*  
Oakland, CA

November 5, 2015

Administrator Gina McCarthy  
US Environmental Protection Agency  
Washington, DC

Administrator McCarthy:

As members of the Local Climate Leaders Circle, a group of mayors and elected officials traveling to Paris to press for necessary climate action at this year's UNFCCC Conference of Parties, we wish to express our deep concern over the current and growing threat that climate change poses to not only our own communities, but to those across the United States. We also wish to express our strong support for the EPA's Clean Power Plan and our desire to see it implemented without delay.

Cities are on the frontlines of climate change. It is cities and city leadership that most directly deal with the negative impacts of drought, flooding, wildfires, heatwaves, and other extreme weather events - impacts which science says will only be exacerbated by a warming world. Over time, climate change is expected to cause increased and lasting harm to public safety, local economies, and the critical natural resources upon which our communities depend. Data reported by the National Centers for Environmental Information show 88 extreme weather events over the past decade that resulted in damages over \$1 billion. Over the last four years, extreme weather has cost our country \$227 billion in economic losses. It is cities that most often bear the brunt of these costs and face the challenges of recovering and rebuilding from them.

Cities are also centers of climate change innovation. Hundreds of our fellow mayors and city leaders from around the country are working to develop practical, local solutions to address climate change – both to reduce emissions of harmful greenhouse gases and to protect our citizens and our communities from their effects. In many cases, cities have put in place plans that are more ambitious than those being considered at the state or national level. To succeed in reaching these goals, we also rely on leadership and strong policy signals from Washington, DC.

## EXHIBIT A

This is why we applaud the positive leadership demonstrated by the Administration's Climate Action Plan and the strong step taken by EPA in issuing its final Clean Power Plan. Successful, nationwide implementation of EPA's plan to limit carbon pollution from power plants is the most important action our country can take at the moment to achieve the United States' greenhouse gas emissions reduction targets, announced in March 2015. Combined with steps the Administration is taking to limit other sources of greenhouse gas emissions, including fuel economy standards, energy efficiency standards for appliances and equipment, and incentives promoting renewable energy, the Clean Power Plan is a critical step towards building a clean energy-driven economy that can power our cities and prevent the worst impacts of climate change from threatening our communities.

The Clean Power Plan also provides the foundation for U.S. credibility and leadership on the global response to climate change. This December, leaders from around the world will gather in Paris to forge a collective response to climate change in a new international agreement. The members of the Local Climate Leaders Circle, along with our fellow mayors from cities around the world, will also be in Paris to advocate for an aggressive outcome, one that moves toward the trajectory the science calls for to protect our communities and further supports action at the local level. We are well aware that the severity of the challenges that cities such as Atlanta and Salt Lake City and West Palm Beach will face in the future could well be determined by what happens in Paris this fall.

We believe that any delay in implementing the Clean Power Plan will considerably undermine the ability of the U.S. to negotiate with other countries for a meaningful agreement in Paris. In fact, opponents of the Clean Power Plan have explicitly acknowledged this nexus as among their primary motivations to push for a stay of the rule in advance of Paris – i.e. to derail the talks and prevent an agreement from being achieved.

The United States is in a strong negotiating position this year, because it is backed by Administration accomplishments in adopting carbon reducing policies, of which the Clean Power Plan is a cornerstone. Indeed, the announcement of the Clean Power Plan has already contributed to breakthrough agreements between the U.S. and China resulting in unprecedented commitments to action from the Chinese government and unprecedented cooperation between the world's two largest emitters of carbon pollution. Among these breakthroughs are new commitments by Chinese cities to begin cutting emissions as many as ten years ahead of their national government, announced during a conference hosted by the Mayor of Los Angeles earlier this fall. It has taken five years of planning in the international process to get to this critical moment when a successful outcome is achievable. Strong U.S. leadership and a credible U.S. contribution are prerequisites for such a successful outcome. If we miss this window of opportunity, it may well take another five years to set the stage – time which the science makes clear we simply do not have if we hope to avert the worst impacts of climate change.

We believe, as the President stated when announcing the Clean Power Plan, that “there is such a thing as being too late.” Were the Clean Power Plan to merely appear to the international community to be jeopardized, such as by a stay, the United States position would be significantly weakened. Without a strong United States position, other nations could pull back, including but not limited to China. A stay of the Clean Power Plan would cause significant and irreparable harm to the U.S. position, thus hampering the likelihood that the international process will reach an adequate agreement. As a result, U.S. cities and towns will face increased risks associated with the severity and the costs of future climate change impacts.

EXHIBIT A

For the sake of our communities and our country, we strongly support the actions the Administration is taking to ensure the United States does its part to reduce greenhouse gas emissions, including the Clean Power Plan, and strongly oppose efforts to stay, delay or block those actions, particularly at this critical moment.

Sincerely,



Mayor Matt Appelbaum  
Boulder, CO



Mayor Ralph Becker  
Salt Lake City, UT



Mayor Frank Cownie  
Des Moines, IA



Mayor George Heartwell  
Grand Rapids, MI



Mayor Jeri Muoio  
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Council Member Pam O'Connor  
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