

IN THE  
**Supreme Court of the United States**

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SUNCOR ENERGY (U.S.A.) INC., *et al.*,

*Petitioners,*

*v.*

COUNTY COMMISSIONERS OF  
BOULDER COUNTY, *et al.*,

*Respondents.*

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ON WRIT OF CERTIORARI TO THE  
SUPREME COURT OF COLORADO

---

**BRIEF FOR *AMICI CURIAE* COLORADO  
RANCHERS KATHRYN BEDELL, ANDY BREITER,  
MIKE CALICRATE, JAY FETCHER, KATHLEEN  
SULLIVAN KELLEY, DEIRDRE MACNAB, AND  
CALEB VALDEZ IN SUPPORT OF RESPONDENTS**

---

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**INTEREST OF *AMICI CURIAE***

*Amici* are Colorado ranchers who wish to illustrate for the Court the harms that climate change has caused to their businesses, their communities, and the land they care for deeply. For them this is not an abstract issue, but a lived reality that disrupts their lives and threatens their livelihoods.<sup>1</sup>

- After previous losses from drought, Kelley had to sell all the cattle off her third-generation ranch after the Lee wildfire destroyed most of the ranch and most of its water sources in 2025.
- Bedell is currently pasturing her cattle on grass intended for winter hay, and buying feed, because her usual pastures are ruined by drought. She expects that she will need to sell her whole herd this fall, because buying hay for 6-7 months is too expensive, especially at prices driven up by drought.
- Valdez is short of drinking water for his cattle this year, and the cattle are unable to graze on some of their usual pastures.

Understanding that it would be impractical for them to bring their own action for damages, *amici* believe that allowing local government actions to go forward is their most feasible and appropriate hope for some redress, because of the ways in which their needs are bound up

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1. No counsel for a party authored this brief in whole or in part, and no person, other than *amici* and their counsel, made a monetary contribution to the preparation or submission of this brief.

with the solvency of their counties and municipalities. They fear that if municipal government keeps absorbing the increasing costs imposed by heat, drought, fires, and flooding, it will not be able to provide the services on which they depend to continue ranching.

Finally, *amici* – a majority of whom reside and ranch in the counties that joined the *amicus* brief submitted by Associated Governments of Northwest Colorado, *et al.*, in support of Petitioners – wish to inform the Court that the Northwest Colorado brief does not speak for them. The ranchers’ brief originated when one of *amici* ranchers was outraged to learn that her tax dollars were being spent on a brief opposing redress for local government expenses.

*Amici* are widely respected figures in their communities with many years of ranching experience among them. Each has personally experienced various of the climate harms described *infra*.

### **Amici Curiae**

- Dr. Kathryn Bedell is a retired large animal veterinarian, who has been ranching for 32 years in Mesa, Delta, Montrose, and Grand Counties. She serves on the Colorado State Agriculture Commission and as Executive Director of the Southwest Grassfed Livestock Alliance.
- Andy Breiter ranches in Boulder County and is CEO of a regenerative meat company that works with animals to heal land.
- Mike Calicrate is a native of Evergreen, Colorado, who has been ranching and farming in Kansas since

1975. He founded and runs an online and retail store for quality meats in Colorado Springs and operates a regional food hub, helping to collect and distribute locally produced food. He has served on several boards, currently for the Socially Responsible Agriculture Project.

- Jay Fetcher has been ranching in Routt County in northwest Colorado for 75 years, running one of the region's premier cow and calf operations. In 1995 he founded the Colorado Cattleman's Agricultural Land Trust, which has brought nearly one million acres under protection. He serves on the Board of Conservation Colorado.
- Kathleen Sullivan Kelley is a third-generation rancher in Rio Blanco County. Kathleen and her husband Reed took over the family ranch in 1986. She has served as Vice President and interim President of Rocky Mountain Farmers Union, Founder and Vice President of the Ranchers-Cattlemen Legal Fund, and Co-Vice Chair of the National Commission on Small Farms.
- Deirdre Macnab runs several hundred cattle in Rio Blanco County, with grazing permits on B.L.M. and Forest Service lands. She serves on the boards of a number of Colorado non-profits.
- Caleb Valdez runs 300 breeding pairs of cattle and calves in Montezuma County, primarily on leased lands, and operates his own business selling beef directly to consumers.

## INTRODUCTION AND SUMMARY OF ARGUMENT

*Amici* seek to make more alive for the Court the heartbreak that underlies this case. For Colorado ranchers, climate change is not an abstract possibility, but a lived reality that is threatening the economic viability of a way of life that has been central to communities for generations. Ranchers are contending with pastures parched by years of drought and record-breaking temperatures and disappearing water sources, compounded by increasingly frequent and destructive wildfires and other climate-related catastrophic events. As they increasingly need to purchase feed, hay, and even water, more and more smaller ranchers, unable to make a living, are driven away from ranching. Beyond the personal tragedy for ranchers who feel a deep attachment to ranches that have been in their families for generations, the decline of ranching is felt not only in Colorado's economy (and – as beef prices rise – in the nation's economy), but also in a loss of community in rural areas and care for the land that ranching helps to preserve.

The costs of climate change are reflected in the budgets of the County and City of Boulder and San Miguel County, who need to spend millions to fight wildfires and repair damage afterward, upgrade drainage systems to lessen chances of flooding, repair roads and bridges damaged by flooding and extreme heat. If it can be shown that Petitioners' decades-long campaign of deception about the consequences of burning fossil fuels is responsible in part for those increased costs, then Petitioners should pay for that part, rather than letting the costs fall on taxpayers. While it may not be feasible for ranchers to



be compensated directly for their losses, keeping local government afloat can help to keep them afloat as well. Otherwise, as climate-related costs continue to rise, it will become less possible for local government to provide the services that still enable ranchers to keep going. Who then will maintain and rebuild the roads on which ranchers transport their cattle, hay, and supplies? Who will replace electric lines or fencing damaged by fire or flood? Who will maintain the grasslands that ranchers lease from local government?

No one disputes that regulation of greenhouse gases (“GHGs”) is – or should be – the province of the federal government. But state common law tort suits for deceptive marketing have routinely been allowed in areas subject to much more pervasive federal regulation than any relevant to this case. *E.g. Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 528–29 (1992) (tobacco industry deception). And the proposition cited by *Amici* Associated Governments of Northwest Colorado, *et al.* (hereinafter “Northwest”) that lawsuits for damages can be tantamount to regulation has been found applicable only in narrow circumstances not obtaining here. *See infra* Pt. III.

## ARGUMENT

### **I. CLIMATE CHANGE THREATENS THE VIABILITY OF RANCHING, WITH CASCADING CONSEQUENCES.**

Colorado ranchers are living through the impacts of anthropogenic climate change that scientists have warned about for years. Loss of grasslands and surface water for cattle and increasing wildfires and storms

are threatening their livelihoods and their way of life. Rangeland researchers expect climate change to be “[t]he *biggest* challenge confronting ranchers and rangeland livestock producers” in the coming decades.<sup>2</sup>

Ranchers are on the front lines of climate challenges that are imposing increasing risks to everyone. Statewide annual temperatures have increased by 2.3°F since 1980, with significant further increases expected by 2050.<sup>3</sup> All ten of the hottest years on record have occurred since 2005.<sup>4</sup> The entire southwestern U.S. has been in a “megadrought” since 2000; in 2018 and 2020, more than half of the Four Corners region – Arizona, Utah, Colorado, and New Mexico – was in either “*severe*” or “*exceptional*” drought.<sup>5</sup> Since 2000 the Colorado River Basin has been experiencing its driest period in 1,200 years.<sup>6</sup> On June 4 of this year Colorado declared a statewide Drought

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2. Jerry Holechek, *et al.*, *Climate Change, Rangelands, and Sustainability of Ranching in the Western United States*, 12 SUSTAINABILITY (2020), at 17 (emphasis added), <https://nccmsh.nmsu.edu/documents/climate-change-and-rangeland-sustainability.pdf/>.

3. Colorado Dep’t of Local Affairs, *Colorado Resiliency Framework 2025*, at 18, <https://drive.google.com/file/d/1N7x3Yc0xFQpXbAGS1uKR692PeGo6dtC6/>.

4. City of Boulder, Climate Initiatives Dep’t, *Boulder’s Climate Action* (March 2026), <https://storymaps.arcgis.com/stories/297d401cdb3247aea65cffb0d8d2c09e/>.

5. Emily Williams, *et al.*, *Anthropogenic Climate Change Negatively Impacts Vegetation and Forage Conditions in the Greater Four Corners Region*, 11 EARTH’S FUTURE (2023), at 1, <https://agupubs.onlinelibrary.wiley.com/doi/epdf/10.1029/2022EF002943/>.

6. Colorado Dep’t of Local Affairs, *Resiliency Framework*, *supra* n. 3, at 21.

Emergency.<sup>7</sup> The North Central Climate Adaptation Science Center attributes reduced surface and ground water availability in the Southwest to climate change with its highest level of confidence.<sup>8</sup>

Higher temperatures, prolonged drought, earlier snow melt, desiccated vegetation, higher winds, and forests filled with trees dying from insect infestations that explode in warmer weather lead to increasingly frequent and wide-spreading wildfires.<sup>9</sup> The twenty largest and most destructive wildfires in recorded Colorado history have all happened since 2001.<sup>10</sup> The 2021 Marshall Fire – whose scale is generally attributed to parched conditions, extreme heat, and high winds due to climate change – caused more than \$2 billion in damage in Boulder County.<sup>11</sup> Scientific studies have concluded that the dramatic

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7. Colorado Dep’t of Agriculture, *Drought* (2026), <https://ag.colorado.gov/home/drought/>.

8. North Central Climate Adaptation Science Center, *Colorado – Agriculture and Land Use* (undated), <https://nccasc.colorado.edu/NCA5/colorado-agriculture-and-land-use/>.

9. *E.g.* LeRoy Westerling, *et al.*, *Warming and Earlier Spring Increase Western U.S. Forest Wildfire Activity*, 313 *SCIENCE* 940 (2006), <https://www.science.org/doi/10.1126/science.1128834/>.

10. Colorado Dep’t of Local Affairs, *Resiliency Framework*, *supra* n. 3, at 19.

11. CBSCOLORADO, *Marshall Fire Damage Estimate Now Tops \$2 Billion* (Oct. 27, 2022), <https://www.cbsnews.com/colorado/news/marshall-fire-damage-estimate-2-billion/>;

Rose Andreatta, *Marshall Fire December 2021*, CLIMATE SIGNALS (Dec. 2021), <https://www.climatesignals.org/events/marshall-fire-december-2021/>.

increase in wildfires in the western U.S. since the mid-1980s has been driven largely by climate change.<sup>12</sup>

Climate change is also increasing the frequency and severity of extreme weather events. Because warmer air holds more moisture, there is more water to rain out when the saturation point is reached, making flash floods more common, even as average conditions become drier.<sup>13</sup> Burn scars left by increasingly frequent wildfires reduce the land's capacity to absorb rainfall, further increasing the likelihood of flooding.<sup>14</sup> Hailstorms are becoming more destructive, as warmer air causes stronger updrafts, allowing hailstones to get larger as they are suspended longer at the high, cold atmospheric levels where they form.<sup>15</sup> Hailstones have caused more than \$5 billion in damage in Colorado in the last ten years.<sup>16</sup>

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12. *E.g.* Westerling, *et al.*, *Warming*, *supra* note 9.

13. Sonia Fernandez, *Farmers and Ranchers in the Southwestern U.S. Face Challenges Due to Human-Induced Atmospheric Warming*, *The Current*, U.C. Santa Barbara (Dec. 11, 2023), <https://news.ucsb.edu/2023/021269/farmers-and-ranchers-southwestern-us-face-challenges-due-human-induced-atmospheric/>.

14. Andrea Teres-Martinez, *Colorado Mountains Could See Flash Floods Amid Thunderstorms, Showers This Week*, *ASPEN TIMES* (July 20, 2026), <https://www.aspentimes.com/news/colorado-mountains-flash-floods-thunderstorms-monsoon-season/>.

15. Bob Henson, *Hailstorms and Climate Change: What to Expect*, *YALE CLIMATE CONNECTIONS* (March 17, 2022), <https://yaleclimateconnections.org/2022/03/hailstorms-and-climate-change-what-to-expect/>.

16. Colorado Dep't of Local Affairs, *Resiliency Framework*, *supra* n. 3, at 23.

### **A. Climate Change Burdens Ranchers Enormously.**

Colorado ranching has always been economically precarious – ranchers need to negotiate a landscape of variable weather and rugged terrain with little margin – but dried up water sources, parched pastures, and catastrophic destruction from fires and storms are currently pushing ranchers to the brink. Revenues are declining, as pastures can support fewer cattle, cattle size diminishes under adverse conditions, and prices for cattle are driven down by drought-necessitated mass sell-offs. Meanwhile, expenses rise, as ranchers increasingly need to purchase feed, transport water, and repair fencing, building, and equipment damaged by fire, flooding, and hail.

#### **Lack of water for cattle and hay.**

Declining precipitation and warming temperatures are reducing snowpack, accelerating spring snowmelt, and increasing evaporation, leaving less water available during the crucial summer months for ranchers to water their livestock and to grow hay to feed their animals in winter.<sup>17</sup> *Amici* have faced shortages of water for years on the lands on which they run cattle. This year the rivers on which ranchers on the Western Slope depend are lower

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17. See, e.g., Shannon Mullane & Tracy Ross, *Ready for Your Next Steak? These Colorado Ranchers Are Battling Drought to Get It on Your Plate*, HIGH PLAINS PUBLIC RADIO (June 23, 2026), <https://www.hpvr.org/hpvr-news/2026-06-23/ready-for-your-next-steak-these-colorado-ranchers-are-battling-drought-to-get-it-on-your-plate/>.

than ranchers have ever seen, and water in the smaller creeks and springs is “just not there.”<sup>18</sup>

### **Degraded rangelands.**

Perhaps the foremost impact of climate change on ranching is in the rangelands on which ranchers graze their cattle. Lowered precipitation reduces growth of the grasses on which cattle feed.<sup>19</sup> And while greater variability in precipitation associated with climate change also leads to some wetter than normal years, wet years do not compensate for dry years in terms of grass productivity.<sup>20</sup> The impact of drought is exacerbated by increasing heat, as increased water evaporation accelerates the drying out of vegetation.<sup>21</sup> And as drought and heat reduce the quantity of available forage, forage quality is also diminished in many areas by elevated atmospheric carbon dioxide, which favors the growth of woody shrubs over that of native grasses, so that woody plants crowd out nutritious grasses in formerly productive grazing areas.<sup>22</sup> In recent years, over half of

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18. *Id.*; Ali Longwell, *How Is Drought Impacting Western Slope Communities, Industries?*, Summit Daily (June 9, 2026), <https://www.summitdaily.com/news/colorado-drought-human-impact-western-slope/>.

19. Emily Kachergis, *et al.*, *Increasing Flexibility in Rangeland Management During Drought*, 5 *Ecosphere* (2014), at 3, <https://esajournals.onlinelibrary.wiley.com/doi/epdf/10.1890/ES13-00402.1/>.

20. *E.g.* Holechek, *et al.*, *Climate Change*, *supra* note 2, at 8.

21. Williams, *et al.*, *Anthropogenic Climate Change*, *supra* note 5, at 1, 15.

22. Holechek, *et al.*, *Climate Change*, *supra* note 2, at 8-10.

the pastureland of the Four Corners region was rated as in poor or very poor condition.<sup>23</sup>

Grazing areas can take years to recover from drought.<sup>24</sup> Even worse than immediate forage shortages, drought has led to longer-term degradation of grasslands throughout the Southwest.<sup>25</sup> Some ranchers interviewed in an Arizona study reported permanent damage to their pastures as a result of droughts.<sup>26</sup> Rangeland grazing capacity at a study site in New Mexico declined 43% between 1967 and 2018; annual forage yields from 2000-2018 were *one third* of the 90-year average.<sup>27</sup>

Conditions are only getting worse. The 2025-26 record-hot “winter that wasn’t” brought a historically low snowpack, followed by early melting after a March heat wave, resulting in Colorado’s current drought emergency.<sup>28</sup> Drought severity is projected to continue to intensify across the U.S. West, reducing further the

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23. Williams, *et al.*, *Anthropogenic Climate Change*, *supra* note 5, at 2.

24. Associated Press, *Cattle in Colorado Benefit from Healthier Pastures*, (Nov. 12, 2020), <https://www.drovers.com/news/cattle-colorado-benefit-healthier-pastures/>.

25. Williams, *et al.*, *Anthropogenic Climate Change*, *supra* note 5, at 14.

26. Hallie Eakin & Julie Conley, *Climate Variability and the Vulnerability of Ranching in Southeastern Arizona: A Pilot Study*, 21 *Climate Research* 271, 272 (2002), <https://www.int-res.com/articles/cr2002/21/c021p271.pdf/>.

27. Holechek, *et al.*, *Climate Change*, *supra* note 2, at 8, 10.

28. Longwell, *How Is Drought Impacting*, *supra* note 18.

number of cattle that can be supported on rangeland.<sup>29</sup> While this year's drought is considered unprecedented,<sup>30</sup> a new climate attribution study found that if warming continues at its current rate, a drought as severe could occur every third year by 2050, and nine out of every ten years by the end of the century.<sup>31</sup>

### **Wildfires.**

Ranchers face increasing exposure to wildfires. From 2013-2022 Colorado averaged 268 fires per year on B.L.M. land alone, with an average of over 30,000 acres burned annually.<sup>32</sup> Much of the 139,000 acres burned in the 2020 Pine Gulch Fire burned was ranchland.<sup>33</sup>

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29. Emily Donaldson, *et al.*, *Understanding How Ranchers Adaptively Manage for Drought in Northeastern Colorado*, 98 RANGELAND ECOLOGY & MGMT. 83, 84 (2025), <https://www.sciencedirect.com/science/article/abs/pii/S1550742424001568/>.

30. Mullane & Ross, *Ready*, *supra* note 17.

31. Bob Berwyn, *Global Warming Unmakes Winter in the US West*, INSIDE CLIMATE NEWS (July 22, 2026), <https://insideclimatenews.org/news/22072026/us-west-snow-drought/>.

32. BLM, *2024 Briefing Book: Colorado*, at 7, [https://www.blm.gov/sites/default/files/docs/2024-09/2024\\_Colorado\\_Briefing\\_Book.pdf](https://www.blm.gov/sites/default/files/docs/2024-09/2024_Colorado_Briefing_Book.pdf).

33. Dennis Webb, *First Fire, Then Floods: Landowners Deal with Disasters' Lingering Impacts*, DAILY SENTINEL (updated Nov. 28, 2022), [https://www.gjsentinel.com/news/western\\_colorado/first-fire-then-floods-landowners-deal-with-disasters-lingering-impacts/article\\_6467f974-3359-11ec-8f61-479d9b4cc349.html](https://www.gjsentinel.com/news/western_colorado/first-fire-then-floods-landowners-deal-with-disasters-lingering-impacts/article_6467f974-3359-11ec-8f61-479d9b4cc349.html).



The losses can be devastating for those affected. Grazing lands can be left unusable for years.<sup>34</sup> Ranchers incur high costs to replace fire-damaged fencing, ranch buildings, and water infrastructure.<sup>35</sup> Cattle die from burns and smoke, and others suffer serious, often permanent, injuries.<sup>36</sup> Because cattle are typically dispersed over large grazing areas, it can be difficult to find and evacuate them quickly enough to save them from rapidly advancing fires.<sup>37</sup>

### **Extreme precipitation.**

Climate-change-driven flooding and large hail can cause similar damage to ranch infrastructure<sup>38</sup> and

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34. U. California Agriculture & Natural Resources Fire Network, *Livestock and Rangeland Recovery* (2026), <https://ucanr.edu/program/uc-anr-fire-network/livestock-and-rangeland-recovery/>.

35. Tracy Ross, *et al.*, *Wildfires Burning Across Colorado Are Forcing Ranchers to Triage Their Herds*, COLORADO SUN (July 8, 2026), <https://coloradosun.com/2026/07/08/colorado-wildfires-ranchers-cattle-livestock-aspen-acres/>.

*Id.*

36. *E.g. id.*; Webb, *First Fire*, *supra* note 33.

37. Shelby Lofton, *Utah Wildfires Take Heavy Toll on Livestock*, KSL (July 5, 2026), <https://www.ksl.com/article/51593111/utah-wildfires-take-heavy-toll-on-livestock/>; *see also* Mullane & Ross, *Ready*, *supra* n. 17.

38. Norman Dalsted, *et al.*, *Flood Damage Losses to Agricultural Crops in Colorado*, PRODUCTION & FARM MGMT. REPORT, DEP'T OF AGRICULTURAL AND RESOURCE ECONOMICS (Nov. 2013), at 2, <https://webdoc.agsci.colostate.edu/DARE/PFMR/PFMR%2013-04.pdf>.

as with fires, stress from flooding can lead to reduced livestock productivity and even death.<sup>39</sup> Grazing lands get flooded, and hay and corn crops needed for cattle feed get ruined by mold.<sup>40</sup> After extreme rainstorms in September 2013, more than 28,000 acres of crops – mostly hay and corn – and about 39,000 acres of pasture and rangeland were flooded.<sup>41</sup> Further expenses arise from damage to roads, which can make it more difficult and expensive to transport feed and other necessities;<sup>42</sup> cattle may need to be temporarily relocated; harvests may be delayed.<sup>43</sup>

Hailstorms too can destroy entire fields of crops and cause costly damage to physical equipment.<sup>44</sup> Many farmers and ranchers interviewed in eastern Colorado opined that the agricultural impacts of hail

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39. CBS News, *Farmers Urgently Await Improvements to Roads, Bridges* (Sept. 19, 2013), <https://www.cbsnews.com/colorado/news/farmers-urgently-await-improvements-to-roads-bridges/>.

40. Keith Coffman, *Colorado Floodwaters Menace State's \$41 Billion Agriculture Sector*, Reuters (updated Sept. 20, 2013), <https://www.reuters.com/article/business/environment/colorado-floodwaters-menace-states-41-billion-agriculture-sector-idUSBRE98J09J/>; Dalstead, at 2.

41. Dalsted, *et al.*, *Flood Damage*, *supra* n. 38.

42. CBS News, *Farmers Urgently Await*, *supra* note 39.

43. Dalsted, *et al.*, *Flood Damage*, *supra* n. 38, at 3.

44. Samuel Childs, *et al.*, *Agricultural Perspectives on Hailstorm Severity, Vulnerability, and Risk Messaging in Eastern Colorado*, 12 WEATHER, CLIMATE, & SOCIETY 897, 897, 903-05, 907 (2020), <https://journals.ametsoc.org/view/journals/wcas/12/4/WCAS-D-20-0015.1.pdf/>.

were insufficiently recognized.<sup>45</sup> Almost half of those interviewed had filed insurance claims for hail damage within the preceding two years.<sup>46</sup>

### **Heat stress.**

Cattle also directly suffer adverse effects from increasing temperatures. To digest fibrous plants, cattle need to ferment them in their rumen (a stomach compartment). The fermentation process generates heat, making cattle susceptible to heat stress when conditions prevent them from dissipating that heat.<sup>47</sup> Heat stress can cause metabolic disorders, depressed immune function, reduced growth, chronic inflammation, lameness from hoof damage, and poor fertility.<sup>48</sup> Acute heat stress can

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45. *Id.* at 907.

46. *Id.* at 901.

47. See, e.g., D.T. Beatty, *et al.*, *Do Changes in Feed Intake or Ambient Temperature Cause Changes in Cattle Rumen Temperature Relative to Core Temperature?*, 33 J. THERMAL BIOLOGY 12 (2008), <https://www.sciencedirect.com/science/article/abs/pii/S0306456507000915>. Cattle are particularly susceptible to heat stress when heat is combined with humidity, but even under Colorado's typically drier conditions, high temperatures can be sufficient to induce heat stress. See John Yost, *Managing Heat Stress of Beef Animals*, OHIO BEEF CATTLE LETTER (June 26, 2024), Fig. 1, <https://u.osu.edu/beef/2024/06/26/managing-heat-stress-of-beef-animals/>.

48. Won-Seob Kim, *et al.*, *Heat Stress Effects on Physiological and Blood Parameters, and Behavior in Early Fattening Stage of Beef Steers*, 13 ANIMALS (2023), at 1, <https://pmc.ncbi.nlm.nih.gov/articles/PMC10093666/pdf/animals-13-01130.pdf>; Christine Navarre, *Impacts of Heat Stress in Cattle*, LSU AGCENTER (May 11, 2020), <https://www.lsuagcenter.com/articles/page1589212080415/>.

lead to death.<sup>49</sup> *Amici* have heard reports of literally thousands of heat stress deaths in a single incident.<sup>50</sup>

**B. Climate Change Is Increasingly Making Ranching Unviable, Especially For Small Family Ranches.**

The compounding effects of increasing temperatures, drought, wildfires, extreme precipitation events, and resulting grassland degradation threaten the viability of the entire ranching enterprise. Degraded pastures and less available surface water mean fewer cattle can be supported. And the remaining cattle tend to gain less weight, making them less valuable for beef, and to give birth to fewer and lighter calves.<sup>51</sup> In the words of researchers, “traditional ranching could become financially unsound across large areas if climate change is not adequately addressed.”<sup>52</sup>

Severe drought forces ranchers into what has been termed a “drought trap” – difficult choices between

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49. *Id.*

50. See also Roxana Hegeman, *Heat Stress Blamed for Thousands of Cattle Deaths in Kansas*, *ECONOMY* (June 17, 2022), <https://www.pbs.org/newshour/economy/heat-stress-blamed-for-thousands-of-cattle-deaths-in-kansas/>.

51. E.g. Aaron Saliman & Margiana Petersen-Rockney, *Rancher Experiences and Perceptions of Climate Change in the Western United States*, 84 *RANGELAND ECOLOGY & MANAGEMENT* 75, 79 (2002), <https://www.sciencedirect.com/science/article/pii/S1550742422000665/>.

52. Holechek, *et al.*, *Climate Change*, *supra* note 2, at 1.

incurring expenses they cannot afford or reducing their herds below a profitable size.<sup>53</sup>

Many ranchers do not have enough financial margin to purchase supplemental feed, or to pay to transport water without incurring debt,<sup>54</sup> especially since the same drought conditions drive up prices for hay, grain, and water, and reduce their own hay production.<sup>55</sup> Smaller operations in particular have little financial margin to weather increased costs and other climate-induced setbacks.<sup>56</sup>

Reducing herd size tends to be ranchers' last resort, but since the 1990s drought conditions have forced many ranchers to liquidate all or most of their herds, restocking them when conditions improve.<sup>57</sup> But that too is costly. As

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53. Donaldson, *et al.*, *Understanding*, *supra* n. 29, at 83-84.

54. *See, e.g.*, Holechek, *et al.*, *Climate Change*, *supra* note 2, at 10; Eakin & Conley, *Climate Variability*, *supra* n. 26, at 275.

55. Saliman & Petersen-Rockney, *Rancher Experiences*, *supra* note 51, at 79; Tom Hesse, *Colorado Producers Look to Cut Losses and Stay Afloat, In Extreme Drought*, COLORADO PUBLIC RADIO NEWS (July 15, 2026), <https://www.cpr.org/2026/07/15/colorado-drought-farmers-struggle/>.

56. *See* Katherine Lacy, *et al.*, *Most Small Family Farms Are at High Financial Risk Based on Operating Profit Margin*, USDA ECONOMIC RESEARCH SVC. (Jan. 23, 2024) (noting that most smaller family farms are at high financial risk), <https://www.ers.usda.gov/data-products/charts-of-note/108317/>. Though the report speaks of family “farms,” the statistics it relies on treat farms and ranches together. *See* Christine Whitt, *et al.*, *America’s Farms and Ranches at a Glance 2023*, USDA ECONOMIC RESEARCH SVC. (Dec. 12, 2023), <https://www.ers.usda.gov/publications/108073/>.

57. Holechek, *et al.*, *Climate Change*, *supra* note 2, at 13.

drought forces ranchers across a region to destock, the increased supply brings down the prices for their cattle.<sup>58</sup> The prices they get are often not high enough for them to recoup their costs to raise the cattle.<sup>59</sup>

Reduced herd size can mean that ranching income will not be sufficient to keep a ranch in business,<sup>60</sup> but restocking is difficult. In the converse of reduced returns for cattle during sell-offs, when conditions improve enough for ranchers to restock, increased demand raises the price they need to pay.<sup>61</sup> Ranchers on Colorado's Western Slope report being unable to restock for years – or ever – after being forced to downsize in the 2002 drought.<sup>62</sup> Moreover, importing new cattle imposes further financial risk because of the possibility of disease infection and lower productivity from livestock placed in an unfamiliar environment.<sup>63</sup>

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58. *Id.*

59. Tom Hesse, *Colorado Producers*, *supra* note 55.

60. See Jennifer Brown, *Colorado Ranches Are Trying to Survive*, COLORADO SUN (June 26, 2022) (with reduced margins, it takes far more cattle to yield a profit than it did a few decades ago), <https://coloradosun.com/2022/06/26/colorado-ranches-survival-ranchlands/>.

61. Holechek, *et al.*, *Climate Change*, *supra* note 2, at 13.

62. Mullane & Ross, *Ready*, *supra* n. 17; Dan Boyce, *As Drought Deepens, A Colorado Ranching Family Prays for Rain*, COLORADO PUBLIC RADIO NEWS (June 10, 2026), <https://www.cpr.org/2026/06/10/as-drought-deepens-a-colorado-ranching-family-prays-for-rain/>.

63. Holechek, *et al.*, *Climate Change*, *supra* note 2, at 13.

This year's severe drought is again forcing many ranchers to sell off stock. An official at the Colorado Department of Agriculture said that every rancher she had talked to this year is significantly reducing their herd size or considering doing so.<sup>64</sup> Many ranchers worry that their operations may not be able to survive significant reductions,<sup>65</sup> a prospect described as “heartbreaking” by one rancher whose family had been ranching for a century.<sup>66</sup>

**C. Climate Change Is Leading To The End Of Many Ranches, To The Detriment Of Their Communities.**

Faced with continually rising costs from unprecedented climate conditions, increasing numbers of ranchers are making the difficult decision to leave ranching. In just five years, from 2017 to 2022, the number of beef cattle ranches and farms in Colorado dropped by almost 15%,<sup>67</sup> and total acreage ranched dropped by more than 10%.<sup>68</sup>

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64. Quoted in Longwell, *How Is Drought Impacting*, *supra* note 18.

65. *See, e.g.*, Boyce, *As Drought Deepens*, *supra* note 62.

66. *Id.*

67. *See* USDA, *2022 Census of Agriculture: Colorado State & County Data* (Feb. 2024), at 72 T.69 (4110 ranches in 2017, 3498 in 2022), [https://www.nass.usda.gov/Publications/AgCensus/2022/Full\\_Report/Volume\\_1%2C\\_Chapter\\_2\\_County\\_Level/Colorado/cov1.pdf/](https://www.nass.usda.gov/Publications/AgCensus/2022/Full_Report/Volume_1%2C_Chapter_2_County_Level/Colorado/cov1.pdf/).

68. *Cf. id.* at 39 T.48 (13.561 million acres in 2022), and USDA, *2017 Census of Agriculture: Colorado State & County Data* (Apr. 2019), at 43 T.48 (15.089 million acres in 2017) [https://www.nass.usda.gov/Publications/AgCensus/2017/Full\\_Report/Volume\\_1%2C\\_Chapter\\_2\\_County\\_Level/Colorado/cov1.pdf/](https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1%2C_Chapter_2_County_Level/Colorado/cov1.pdf/).

The next five-year agricultural census will doubtless show that the trend is continuing, if not accelerating.<sup>69</sup> Similar trends are occurring throughout the Southwest.<sup>70</sup>

The decline in ranch numbers comes entirely from smaller ranches. The Colorado Department of Agriculture Census tracks cattle operations by size, sorting them into tiers, based on number of cattle sold annually. The number of operations in each of the seven tiers of operations selling fewer than 1,000 head declined significantly from 2017 to 2022, while the number of operations in each of the larger tiers actually rose.<sup>71</sup>

The downward trend for ranching threatens significant losses of many kinds for Colorado, not least of which are economic. The ranching industry – and agriculture in general – plays an important role in Colorado’s economy.

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[usda.gov/Publications/AgCensus/2017/Full\\_Report/Volume\\_1,\\_Chapter\\_1\\_State\\_Level/Colorado/cov1.pdf/](https://usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1,_Chapter_1_State_Level/Colorado/cov1.pdf/).

69. See, e.g., Mullane & Ross, *Ready?*, *supra* n. 17 (younger generation reluctant to go into family ranching and farming businesses because of “seemingly inescapable drought” and other factors); Mark Brunson & Lynn Huntsinger, *Ranching as a Conservation Strategy: Can Old Ranchers Save the New West?*, 61 RANGELAND ECOLOGY & MANAGEMENT 137, 138 (2008) (“maintenance of a ranch as an economic enterprise is becoming less and less possible”), <https://www.sciencedirect.com/science/article/abs/pii/S1550742408500303/>.

70. In Arizona, for example, the number of cattle operations has declined by about 25% over the past 30 years, and more ranchers are considering selling off private lands. Eakin & Conley, *Climate Variability*, *supra* n. 26, at 271-72.

71. USDA, *2022 Census*, *supra* note 67, at 17 T.13.



Farms and ranches constitute Colorado’s second largest economic sector;<sup>72</sup> generating about \$47 billion of economic activity annually,<sup>73</sup> directly employing over 195,000 people,<sup>74</sup> and supporting many other businesses. One third of Colorado’s counties are considered dependent on agriculture or “agriculturally important.”<sup>75</sup> In 30% of Colorado’s counties agribusiness provides more than 20% of jobs; 15 Colorado counties receive more than 15% of their income from agribusiness.<sup>76</sup> Cattle and calves are by far Colorado’s leading agricultural commodity in sales value;<sup>77</sup> in 2023 livestock and livestock products accounted for \$6.5 billion of Colorado’s \$9.2 billion of cash farm receipts.<sup>78</sup>

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72. Colorado Water Conservation Board, *Stream Management Plans & Agriculture* (undated), <https://www.coloradosmp.org/smpps-agriculture/>.

73. Colorado Legislative Council Staff, *A Snapshot of Colorado Agriculture* (March 2024), at 1, <https://content.leg.colorado.gov/publications/snapshot-colorado-agriculture/>.

74. *Id.*

75. Environment Colorado Research & Policy Ctr., *Losing Ground: Colorado’s Vanishing Agricultural Landscape* (March 2006), at 4, [https://publicinterestnetwork.org/wp-content/uploads/2012/02/Losing\\_Ground.pdf/](https://publicinterestnetwork.org/wp-content/uploads/2012/02/Losing_Ground.pdf/).

76. *Id.* Ranching and other agriculture play a significant economic role in *amici* Northwest counties as well: in 2022 agricultural products accounted for more than \$90 million in sales in Mesa County, \$87.9 million in Montrose County, and \$79 million in Delta County, for example. Legislative Council Staff, *A Snapshot*, *supra* note 73, at 3 Fig. 1.

77. Colorado Dep’t of Agriculture, *Cultivating Colorado* (2025-26 ed.), at 7, <https://spl.cde.state.co.us/artemis/agserials/ag192internet/ag192202526internet.pdf/>.

78. *Id.* at 6.

The economic impact is felt throughout the country. As drought increases costs for ranchers through much of the rangelands of the Western U.S., a decreased supply of livestock leads to soaring prices for beef. The nation's cattle inventory is the lowest it has been since 1951,<sup>79</sup> a decline the USDA attributes in large part to the impact of drought on pasture and range conditions.<sup>80</sup> Consequently, beef and veal prices have been rising for years, increasing 11.8% in just the past year (June 2025-June 2026), compared to a rise of only 3.0% for groceries overall.<sup>81</sup>

The losses that follow the decline of ranching are not just financial, but to a way of life that has been passed down and prized for generations for significant non-market values, including community cohesion, cultural heritage, and ecological value.<sup>82</sup>

Ranches – and especially small, multi-generation family ranches – serve as anchors of many rural

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79. Taryn Phaneuf, *Beef Prices Heat Up Again in June*, NERDWALLET (updated July 14, 2026), <https://www.nerdwallet.com/finance/learn/why-is-beef-so-expensive/>.

80. Laporchia Collins, *U.S. Beef Cow Inventory Settling at Progressively Lower Levels, Drought Contributing to Most Recent Declines*, USDA ECONOMIC RESEARCH SVC. (April 20, 2023), <https://ers.usda.gov/data-products/charts-of-note/106369/>.

81. Taryn Phaneuf, *Beef Prices*, *supra* note 79.

82. Benjamin Rashford, *et al.*, *Toward a More Comprehensive Valuation of Western Rangelands*, U. WYOMING EXTENSION (Feb. 2013), <http://www.pinedaleonline.com/pdfs/valuwesternrangelands.pdf>.

communities.<sup>83</sup> A USDA study of a ranching community in northern New Mexico concluded: “Livestock ownership and ranch life are powerful forces that bind families and communities.”<sup>84</sup> In a remote ranching area in southwest Montana, interviewed residents – ranchers and non-ranchers alike – felt that “[l]ocal community identity . . . was tied to the presence of *family ranching*.”<sup>85</sup> Residents feared that when wealthy absentee landowners replace small family ranchers, they also replace community-minded approaches to land use, and “the fabric of the community is lost.”<sup>86</sup> They anticipated that the potential loss of family ranching would mean the loss of a distinctive local character, characterized by toughness, “moxie,” and a deep, intertwined connection to past and future generations of family, land, and community.<sup>87</sup>

The ranching way of life is valued for imbuing responsibility and dependability – animals need to be cared for every day regardless of weather, holidays or weekends; a selfless “help first” neighborliness; a deep work ethic; self-reliance; and love and understanding of

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83. Williams, *et al.*, *Anthropogenic Climate Change*, *supra* note 5, at 1;

84. Carol Raish & Alice McSweeney, *Economic, Social, and Cultural Aspects of Livestock Ranching*, USDA (Sept. 2003), at 1, [https://www.fs.usda.gov/rm/pubs/rmrs\\_gtr113.pdf/](https://www.fs.usda.gov/rm/pubs/rmrs_gtr113.pdf/).

85. Daniel Murphy, *et al.*, *Rethinking Climate Change Adaptation and Place Through A Situated Pathways Framework*, 167 *Landscape and Urban Planning* 441, 446 (2017) (emphasis in original), <https://par.nsf.gov/servlets/purl/10039943/>.

86. *Id.* at 447.

87. *Id.* at 446.

the land, and knowledge of how to care for it.<sup>88</sup> Interviewed New Mexico ranchers “consider the ranching way of life vital to maintaining their cultural heritage and traditional values,” and the way to pass on to future generations “a strong sense of responsibility to land, livestock, family, and community, with land often viewed as part of the family, not as something to sell.”<sup>89</sup> Ranchers and farmers take pride in providing food for people through their hard work, and when climate change takes that away, “there’s a hole in your psyche.”<sup>90</sup>

Finally, ranches also contribute to environmental conservation. Ranches have been found to be “more significant for protecting native biotic communities than even nature preserves,” because ranches tend to be on watered sites with better soils and have fewer visitors.<sup>91</sup> Grazing helps to reduce fire risk, suppress non-native shrub invasion, and even protect biodiversity in vernal pools.<sup>92</sup> There is also evidence that responsible, moderate grazing can help restore degraded soil, improve grass growth, and sequester carbon and nitrogen in the soil,

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88. Sid Goodloe, *Ranching in Reality: A Perspective on the Future From An Old Cowboy*, ON LAND (July 14, 2022), <https://onland.westernlandowners.org/2022/western-words/ranching-in-reality-a-perspective-on-the-future-from-an-old-cowboy/>.

89. Raish & McSweeney, *Economic, Social, and Cultural Aspects*, *supra* note 84.

90. Quoted in Childs, *et al.*, *Agricultural Perspectives*, *supra* note 44, at 906.

91. Brunson & Huntsinger, *Ranching*, *supra* note 69, at 139.

92. *Id.*

reducing GHGs in the atmosphere.<sup>93</sup> Globally, the United Nations recognizes that custodians of rangelands bolster soil and water conservation and provide habitats for biodiversity.<sup>94</sup> Family ranches, in particular, passed down through generations, contribute by passing on local ecological knowledge and deep attachment to the land.<sup>95</sup>

## **II. CLIMATE CHANGE IMPOSES LARGE COSTS ON LOCAL GOVERNMENTS, MAKING IT HARDER FOR THEM TO PROVIDE SERVICES ON WHICH RANCHERS DEPEND.**

Ranchers depend on the fiscal capacity of county and municipal government to provide infrastructure and essential services. But, in addition to its other devastating impacts, climate change is imposing huge – and growing – fiscal burdens on Boulder and San Miguel, as it is throughout the state. If county governments are unable to win compensation for their increasing costs, vital support for ranchers will be threatened.

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93. Dennis O'Brien, *Grazing of Cattle Pastures Can Improve Soil Quality*, USDA AGRIC. RESEARCH SERV. (March 3, 2011), <https://www.ars.usda.gov/news-events/news/research-news/2011/grazing-of-cattle-pastures-can-improve-soil-quality/>.

94. U.N. Convention to Combat Desertification, *Rangelands and Pastoralists*, <https://www.unccd.int/land-and-life/rangelands-and-pastoralists/overview/>.

95. Kimberly Kirner, *The Cultural Heritage of Family Ranches*, 37 RANGELANDS 85 (2015), <https://www.sciencedirect.com/science/article/abs/pii/S0190052815000164/>.

### **A. Ranchers Depend On Local Government Services.**

Counties and municipalities provide many of the public services that make ranching viable, most essentially maintaining transportation infrastructure and responding to and assisting recovery from wildfire, flooding, and winter storm emergencies.

Boulder County leases 7,439 acres to ranchers for livestock grazing;<sup>96</sup> the City of Boulder leases 13,539 acres for grazing and another 2755 for hay production.<sup>97</sup> (County and City support of ranchers is not a one-way street. The City estimates that the ranchers and farmers who lease their lands do the work of fifteen full-time staff members, saving the department more than \$1 million each year.<sup>98</sup> Ranchers also graze cattle on targeted City land to mitigate fire risk.<sup>99</sup>)

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96. Boulder County, *Agriculture Statistics, Acres & Overview* (2026), <https://bouldercounty.gov/open-space/management/agriculture/statistics-and-acres/>.

97. City of Boulder Open Space & Mountain Parks, *Agricultural Resources Management Plan* (July 2017), at 33, Fig. 1, <https://bouldercolorado.gov/media/658/download?inline/>.

98. City of Boulder, *OSMP Agriculture Program* (2026), <https://bouldercolorado.gov/services/osmp-agriculture-program/>.

99. City of Boulder, *Natural Partners in Wildfire Prevention: Boulder Expands Targeted Grazing Program* (June 9, 2026), <https://bouldercolorado.gov/news/natural-partners-wildfire-prevention-boulder-expands-targeted-grazing-program/>.

County governments are also responsible for:

- Constructing and maintaining thousands of miles<sup>100</sup> of local roads, Colo. Rev. Stat. § 43-2-111, that connect ranches with grazing allotments, hay fields, livestock markets, feed suppliers, veterinary services, and processing facilities.
- Leading responses to wildfires, Colo. Rev. Stat. § 30-10-513, and to flooding and other weather emergencies, as well as leading preparedness, mitigation, and recovery efforts. § 24-33.5-707.<sup>101</sup>
- Controlling noxious weed invasions, Colo. Rev. Stat. § 35-5.5-105, that degrade rangeland health, reducing forage production.
- Assisting the state Department of Agriculture in controlling livestock disease outbreaks. Colo. Rev. Stat. § 35-50-105.
- Partnering<sup>102</sup> with Colorado State University's Extension Program to advise ranchers on agricultural and business practices. § 30-25-106.<sup>103</sup>

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100. Colorado Dep't of Transportation, Local Road Statistics by County (2023), [https://dtdapps.coloradodot.info/staticdata/downloads/Reports/RoadwayReports/County/HUTFMileage\\_2023\\_County.pdf/](https://dtdapps.coloradodot.info/staticdata/downloads/Reports/RoadwayReports/County/HUTFMileage_2023_County.pdf/).

101. *See also* Colorado Technical Assistance Program, *Emergency Management Resources*, [https://www.coloradoltap.org/ltap/Emergency\\_Management\\_Resources.asp/](https://www.coloradoltap.org/ltap/Emergency_Management_Resources.asp/).

102. *See, e.g.*, Fremont County, Colorado, *CSU Extension* (2026), <https://fremontcountyco.gov/csu-extension/csu-extension/>.

103. *See also* CSU Extension, *Agriculture* (2026), <https://extension.colostate.edu/topic/agriculture/>.

Most of all, ranchers depend on local government to help them survive the impacts of climate change described *infra* I.A. It is local government that needs to maintain grazing land leased to ranchers, to restore roads that are flooded or buckling from heat, to replace electric lines and fences, to extinguish wildfires and clean up afterward. Ranching cannot endure if local government is too financially strained to answer the call.

**B. Climate Change Is Imposing Huge Costs On Boulder And San Miguel Counties, Threatening Their Capacity To Continue To Provide Needed Services.**

Boulder has had to spend hundreds of millions of dollars fighting wildfires, repairing transportation infrastructure, restoring watersheds and damaged forests, improving drainage and flood control systems, rebuilding agricultural facilities, reducing wildfire hazards, strengthening emergency management, climate monitoring, and strengthening preparedness and resiliency.

Climate-driven disasters mean big expenses for Boulder. Recovery costs from historic flooding in September 2013 were estimated at over \$600 million for Boulder County and the City of Boulder together.<sup>104</sup> Four years after the flood, Boulder County alone was still

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104. CBS News Colorado, *County Only at Halfway Point of Recovery From Historic Floods* (Sept. 11, 2017), <https://www.cbsnews.com/colorado/news/boulder-county-flood-recovery/>.



budgeting \$52.8 million for recovery,<sup>105</sup> about 12.5% of its total budget,<sup>106</sup> down from \$63.6 million the preceding year.<sup>107</sup> San Miguel County is currently facing costs for recovery after flooding and landslides in Telluride.<sup>108</sup> A year after the Marshall Fire of December 2022, at least \$182.9 million in taxpayer dollars were reported to have been spent on recovery, with more to come, though most of that was federal and state spending.<sup>109</sup>

Ongoing challenges of climate change necessitate heavy further spending. Boulder County's wildfire mitigation program<sup>110</sup> budgeted more than \$12 million in 2026 to reduce fire risk in forests and grasslands, protect

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105. Boulder County, *Budget Summary 2017*, at 1, <https://assets.bouldercounty.gov/wp-content/uploads/2017/02/2017-budget-summary.pdf/>.

106. *Id.* at 2 (total budget expenditures of \$422.5 million).

107. *Id.* at 1 (2017 flood recovery expenditures represented more than \$11.7 million decrease from previous year).

108. Erin Spillane, *Saturday Update: It's Still Messy*, TELLURIDE TIMES (July 18, 2026), [https://www.telluridenews.com/news/article\\_28b83b17-44bd-4ac6-8c11-200dfc9236bc.html/](https://www.telluridenews.com/news/article_28b83b17-44bd-4ac6-8c11-200dfc9236bc.html/).

109. Zack Newman, *At Least \$182.9 Million in Taxpayer Money Has Been Spent on the Marshall Fire Recovery Effort So Far*, 9NEWS (Dec. 19, 2022), <https://www.9news.com/article/news/investigations/marshall-fire-recovery-spending/73-c3ee3f79-ef2d-4308-9d6c-d8f74139ff9c/>.

110. Boulder County, *Boulder County's Wildfire Mitigation Tax 2023: Year One Annual Report*, at 1, <https://assets.bouldercounty.gov/wp-content/uploads/2024/07/Wildfire-Mitigation-Tax-2023-Annual-Report.pdf/>.

drinking water supplies, and foster community resiliency.<sup>111</sup> A separate emergency services fund is providing almost \$18 million in 2026 for wildfire control, search and rescue operations, and operation of fire departments in mountain and rural areas.<sup>112</sup> An older sustainability sales tax funds over \$14 million in 2026 for projects to mitigate the impacts of climate change.<sup>113</sup> Further programs addressing climate change are administered by the Public Works Resource Conservation Division and the Parks and Open Space Department.<sup>114</sup> Altogether the County budgets over \$105 million for Conservation and Sustainability.<sup>115</sup> This does not include the more than \$63 million in the County's budget to maintain and improve transportation infrastructure and storm drainage,<sup>116</sup> much of which is necessitated by the toll of extreme heat

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111. Boulder County, *Wildfire Mitigation Sales Tax Fund (150): Annual Budget 2026*, <https://stories.opengov.com/bouldercountyco/95350322-289b-41ec-adc8-a673c580e6d2/published/bQTE2M7gf/>.

112. Boulder County, *Emergency Services Sales Tax Fund (151): Annual Budget 2026*, <https://stories.opengov.com/bouldercountyco/95350322-289b-41ec-adc8-a673c580e6d2/published/bQTE2M7gf/>.

113. Boulder County, *Sustainability Sales Tax Fund (136): Annual Budget 2026*, <https://stories.opengov.com/bouldercountyco/95350322-289b-41ec-adc8-a673c580e6d2/published/bQTE2M7gf/>.

114. Boulder County, CO, *2026 Budget Summary*, [https://stories.opengov.com/bouldercountyco/published/nYo3M\\_OA1/](https://stories.opengov.com/bouldercountyco/published/nYo3M_OA1/).

115. *Id.*

116. *Id.*

and weather events.<sup>117</sup> The City of Boulder has initiated a similar climate program, expected to provide \$6.5 million per year for wildfire resilience projects, development of renewable energy, and energy efficiency upgrades.<sup>118</sup> The City's 2026 budget allocates over \$18 million to improve stormwater and flood management infrastructure.<sup>119</sup> In anticipation of worsening drought, the City is also spending on measures to protect source water quality and conserve water supplies.<sup>120</sup>

Climate-related costs for Boulder, San Miguel County, and their taxpayers are expected only to escalate in the future. Already this year the 90-day response, suppression, and recovery costs for Colorado's four biggest wildfires

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117. See, e.g., EPA, *Climate Change and Roads* (2021) (climate change is expected to increase costs of road maintenance, due to more buckling at higher temperatures and washouts of unpaved roads from intense precipitation), <https://19january2021snapshot.epa.gov/sites/static/files/2015-06/documents/roads.pdf>; Yaning Qiao, et al., *Impacts of Future Climate Change on Flexible Road Pavement Economics*, 80 SUSTAINABLE CITIES AND SOCIETY (2022) (engineering study projects maintenance costs for primary roads to increase 210-350% by 2100 due to higher temperatures), <https://www.sciencedirect.com/science/article/pii/S2210670722001032>.

118. City of Boulder, *Funding City Climate Work* (2022), <https://bouldercolorado.gov/projects/funding-city-climate-work/>.

119. City of Boulder, *Capital Improvement Program* (updated Nov. 6, 2025), <https://stories.opengov.com/cityofboulderco/36b2e65e-af4a-4cb8-9aea-236d617062d6/KTAIb0l0W/>.

120. City of Boulder Climate Initiatives Dep't, *Boulder's Climate Action* (March 2026), <https://storymaps.arcgis.com/stories/297d401cdb3247aea65cffb0d8d2c09e/>.

are projected at \$266 million,<sup>121</sup> putting Boulder and San Miguel on notice of what to expect in the years to come. A 2018 study commissioned by Boulder County arrived at a conservative estimate of \$96 to \$157 million for mitigating “only some of the potential effects of climate change” through 2050.<sup>122</sup> Anticipated expenses included wildfire response and mitigation, human health costs, road damage from higher temperatures and extreme precipitation, improvements in bridge safety required by increased flow rates, remediation of forest damage in light of increased mountain pine beetle infestation, improvements to urban drainage to prevent flooding, and additional water supplies to mitigate drought.<sup>123</sup> A more recent study projected \$33 to \$37 billion in additional costs directly attributable to climate change statewide, principally from health impacts and added costs and upgrades to road, bridge, and stormwater drainage infrastructure.<sup>124</sup>

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121. Christa Swanson, *Drought Task Force Says Colorado Wildfires Cost Taxpayers \$266 Million*, CBS NEWS (July 25, 2026), <https://www.cbsnews.com/colorado/news/drought-task-force-colorado-wildfires-266-million/>.

122. Paul Chinowsky, *The Impact of Climate Change: Projected Adaptation Costs for Boulder County, Colorado*, RESILIENT ANALYTICS (April 2018), at 3 <https://assets.bouldercounty.gov/wp-content/uploads/2018/04/resilient-analytics-report-impacts-of-climate-change-boulder-county-colorado.pdf/>.

123. *Id. passim*.

124. Pegah Jalali, *Colorado Climate Damages & Adaptation Costs Report*, COLORADO FISCAL INST. (2026), at 3, <https://coloradofiscal.org/wp-content/uploads/2026/01/2026-Colorado-Climate-Damages-Adaptation-Costs-Report.pdf/>.

So far Boulder has weathered increasing costs primarily by increasing burdens on its taxpayers, rather than by cutting services, but that approach cannot be sustained indefinitely as the costs of climate change continue to rise.

### **III. BOULDER’S JUSTIFIED REQUEST FOR COMPENSATION DOES NOT UNFAIRLY BURDEN, REGULATE, OR IMPOSE POLICIES ON OTHER JURISDICTIONS.**

Respondents are entitled to compensation for all past and reasonably anticipated future increased expenditures that can be proved attributable to Petitioners’ conduct. Compensation to local government is also the most feasible redress for the climate-related injuries suffered by ranchers, as the injuries to ranchers are likely too disparate (e.g., different pasture conditions in different areas, fires here, floods there) to be “capable of classwide resolution.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Compensation to Respondents will at least allow ranchers to continue to receive enough support that their enterprises might survive.

The arguments of Northwest – against the interests of their own citizens – provide no reason to conclude otherwise. Those arguments amount to little more than that not granting Petitioners impunity for their misrepresentations would hurt Northwest economies and that Respondents somehow seek to imperiously impose their policy preferences on other counties. Northwest Br. *passim*.

Needless to say, any incidental impact on Northwest economies is irrelevant to whether Boulder is entitled to seek damages under state law for actual and devastating harms to its citizens and its fisc. Under Northwest's theory, potential harm to the economies of North Carolina and Kentucky should have forestalled common law fraud claims against tobacco companies for concealing the harms of smoking. That has never been the law. *See, e.g., Cipollone*, 505 U.S. at 528–29 (never considering any such obstacle).

But even if the impact on Northwest economies were somehow legally cognizable, Northwest fails to explain why the speculative possibility that this litigation might someday cause multi-billion-dollar companies to diminish their operations in Northwest counties, Northwest Br. 6, should count for more than the actual devastating harms, detailed *infra* Pt. I, to Respondent counties – and indeed the entire state, including the counties whose interests Northwest purports to represent.

Northwest distorts the burdens at issue in this case. Because Boulder County and Northwest counties have different economic interests, *id.* at 6, 9, Northwest argues, the burdens of successful litigation in this case would fall on Northwest, while Boulder would “bear virtually none.” *Id.* at 6. Boulder County supposedly seeks to act as “Colorado’s energy overload”; Northwest goes on to assert, without apparent irony, that Boulder seeks to use tort law to restructure Colorado’s economy “according to its own preferences while externalizing the resulting costs onto other communities.” *Id.* at 15. In reality, of course, it is Petitioners who are externalizing the costs of drought, wildfires, and more. If anyone is acting as “overlord,”

it is Petitioners – they are the decisionmakers. Boulder cannot insulate itself from the impacts of their deliberate actions. Tort liability is the classic way of adjusting such inequitable bearing of burdens:

If the person contemplating an action will reap the benefits but will not pay the costs, we have no assurance that the socially correct decision will be made. The solution to this problem is to force the decisionmaker to absorb the costs as well as the benefits of a given action.

*Dobson v. Camden*, 705 F.2d 759, 765 (5th Cir. 1983) (citing Guido Calabresi, *The Costs of Accidents: A Legal and Economic Analysis* (1970)).

Northwest’s “overlord” characterization follows Petitioners in seeking to recast this case as one in which local governments seek to regulate GHG emissions. It is not. The gravamen of the tortious conduct complained of is Petitioners’ decades-long campaign to deceive the public, regulators and the government about the consequences of those emissions.

According to Petitioners, any harms to Respondents from Petitioners’ deceptive marketing of fossil fuels occurs *via GHG emissions*, and so this lawsuit really aims at emissions, which are exclusively the province of federal law. Pet. Br. 39. But the harms of tobacco companies’ deceptions concerning the hazards of their products similarly occur only via people actually buying cigarettes and smoking. It does not follow that seeking damages for those deceptions amounts to regulation of smoking. Accordingly, this Court does not consider federal tobacco

law to preempt claims for damages brought under state common law for fraud and misrepresentation. Such claims can proceed, even in a field occupied by federal law, because they are predicated not on specific duties respecting smoking and health, but on a “more general” duty “not to deceive.” *Cipollone*, 505 U.S. 504 at 528–29. Similarly, Boulder’s claims here are predicated not on specific duties respecting emissions – or even fossil fuel extraction – but on a more general duty not to deceive. In fact, the Clean Air Act specifically has been found not to preempt damages claims for deceiving consumers about polluting emissions, because those claims were brought under traditional state tort law. *Fenner v. Gen. Motors, LLC*, 113 F.4th 585, 601-02 (6th Cir. 2024) (regarding automobile manufacturers). Petitioners’ argument would rule out not only damages awards for tobacco industry deception, but similar claims against a host of other industries – such as pharmaceuticals or telecommunications – subject to much more comprehensive regulation than any found here. That is not the law, nor should it be.

Northwest’s argument, Northwest Br. 9-12, that Boulder seeks through litigation to regulate in an area occupied by federal law is meritless. The proposition that “regulation can be . . . effectively exerted through an award of damages,” *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 247 (1959), is applicable only very narrowly, and not at all here. *Garmon* concerned a “complex and interrelated federal scheme of law, remedy, and administration,” *id.* at 243, explicitly designed by Congress. *Id.* at 242. And even then, “where the regulated conduct touched interests . . . deeply rooted in local feeling and responsibility,” the Court could not, “in the absence of compelling congressional direction . . . infer that Congress



had deprived the State of the power to act.” *Id.* at 244. Here there is no federal administration scheme and no federal remedy, much less compelling congressional direction; there is little more than a nebulous appropriateness of federal regulation to the area of law in question. And the interest in not being deceived about catastrophic consequences is surely deeply rooted in local feeling. Moreover, *Garmon* has been found “clearly not applicable” to the Clean Air Act, which “makes ‘the States and the Federal Government partners in the struggle against air pollution.’” *In re Volkswagen “Clean Diesel” Mktg., Sales Pracs., & Prods. Liab. Litig.*, 959 F.3d 1201, 1224 (9th Cir. 2020) (quoting *Gen. Motors Corp. v. United States*, 496 U.S. 530, 532 (1990)).

*BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996) provides no support for Northwest’s argument either. While the Court held that a jurisdiction “may not impose economic sanctions [whether through legislation or litigation] . . . with the intent of changing the tortfeasors’ lawful conduct in other” jurisdictions, *id.* at 572, it found that principle to apply only where those sanctions are not “supported by the [jurisdiction’s] interest in protecting its own consumers and its own economy.” *Id.* Boulder’s lawsuit is very much supported by its interest in protecting its consumers and its economy.

## CONCLUSION

If the petition is not dismissed, then, because it has been plausibly alleged that Respondents have incurred heavy costs in part due to Petitioners’ deceptive conduct, compensation to Respondents is the most feasible way to ensure that their citizens receive the support they

need to endure harms arising in part from Petitioners' deceptive conduct, and compensating Respondents would not unfairly burden or make policy for other jurisdictions, the judgment of the Colorado Supreme Court should be affirmed.

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