



## Looming Trade Deals Threaten our Climate and Colorado's Air and Water

Across Colorado, activists are fighting in the courts and at the ballot box to keep fossil fuels in the ground and protect their communities and climate from fracking, coal mining, and other dangerous extraction. But the Trans-Pacific Partnership (TPP) – a pending trade deal with 11 Pacific Rim countries – would empower multinational fossil fuel corporations to sue the U.S. over new environmental protections in private tribunals. As proposed, the Transatlantic Trade and Investment Partnership (TTIP), under negotiation with the EU, would only increase this threat to people and planet.

TransCanada, the corporation behind the Keystone XL pipeline, illustrated this threat in June 2016 by using NAFTA to sue the U.S. for \$15 billion in a private tribunal for the pipeline rejection.<sup>1</sup> We could see many more corporate challenges to our hard-fought protections if Congress were to pass the TPP and if broad corporate rights were to remain in TTIP.

### Extreme Rights for Fossil Fuel Corporations

The TPP and TTIP, as proposed, would empower thousands of multinational corporations, including major polluters, to follow TransCanada's example and sue the U.S. government in tribunals not accountable to any domestic legal system, in which corporate lawyers act as "judges."<sup>2</sup> There, the corporations could use the TPP's and TTIP's broad corporate rights to demand compensation for restrictions on dangerous fossil fuel projects, claiming interference with their expectations.

Fossil fuel corporations are increasingly using this private tribunal system – called "investor-state dispute settlement" (ISDS) – in existing trade and investment pacts to demand payment for environmental protections and to deter policymakers from enacting environmental policies. ISDS cases have targeted a fracking moratorium in Quebec, a court order to pay for oil pollution in Ecuador, and new restrictions on a coal-fired power plant in Germany. Indeed, half of the new cases launched in 2014 targeted policies affecting oil or gas extraction, mining, or power generation. The TPP and TTIP would dramatically expand this threat. For example, if approved by Congress, these deals would:

- Empower 45 of the 50 biggest climate-polluting corporations in history to use ISDS to challenge climate policies, and
- More than double the number of fossil fuel corporations able to challenge U.S. policies in unaccountable ISDS tribunals. Firms gaining this power would include Shell, which has leased more than 100,000 acres of public lands in Colorado for oil and gas extraction, and BP, which is fracking for coalbed methane in Colorado's San Juan Basin.

### A Tool to Defend Fracking

Activists in Colorado have long pushed to halt gas and oil fracking that threatens local communities' air, water, and health.<sup>3</sup> But in May 2016, after a challenge from the oil and gas industry, the Colorado Supreme Court struck down local fracking restrictions. Activists are now fighting back with ballot initiatives to reinstate local control over fracking.<sup>4</sup>

But the TPP, if passed, would add a new, powerful weapon to fossil fuel corporations' legal arsenal – the ability to bypass state and federal courts and challenge any future local fracking restrictions in private tribunals of corporate lawyers. A gas corporation named Lone Pine is already using one of these ISDS tribunals under NAFTA to challenge a fracking moratorium in Quebec.<sup>5</sup> The TPP would give this power to Australia and Japan-based firms fracking on Colorado's Niobrara Shale, allowing them to use threats of costly ISDS challenges as a tool to deter new fracking restrictions.

To make matters worse, under the TPP, the Department of Energy would be required to automatically approve gas exports to Japan, the world's largest gas importer, which would facilitate more gas production, and thus fracking, in Colorado.<sup>6</sup>

<sup>1</sup> *TransCanada Corporation & TransCanada PipeLines Limited v. The Government of the United States of America*, [Request for Arbitration](#), June 24, 2016.

<sup>2</sup> Citations and further details for all facts in this section can be found in Sierra Club's new report: Ben Beachy, "[Climate Roadblocks: Looming Trade Deals Threaten Efforts to Keep Fossil Fuels in the Ground](#)," The Sierra Club, March 2016.

<sup>3</sup> "[Hundreds Protest Federal Fracking Auction in Colorado](#)," Center for Biological Diversity, May 12, 2016.

<sup>4</sup> Tripp Baltz, "[Colorado Fracking Bans Voided, Foes Turn to Ballot](#)," *Bloomberg BNA*, May 6, 2016.

<sup>5</sup> *Lone Pine Resources Inc. v. The Government of Canada*, ICSID Case No.UNCT/15/2, [Notice of Arbitration](#), September 6, 2013.

<sup>6</sup> Ilana Solomon and Ben Beachy, "[A Dirty Deal: How The Trans-Pacific Partnership Threatens Our Climate](#)," The Sierra Club, December 2015.

## A Lifeline for Coal

Clean Power Plan regulations require Colorado to reduce climate pollution by 28 percent by 2030. The state already has taken steps toward this goal, such as retiring coal-fired power plants.<sup>7</sup> However, if the TPP or TTIP, as proposed, were to take effect, multinational corporations operating coal mines and plants in Colorado would be able to use the deal's private tribunal system to challenge any subsequent state efforts to reduce emissions. Here are two examples:

- Japan-based Marubeni Corporation retains an interest in the controversial King II coal mine in Hesperus. An environmental group is formally challenging plans to increase production at the mine. But the TPP would give Marubeni the power to counter such opposition by threatening to sue over new mine restrictions in private tribunals.<sup>8</sup>
- Engie, a France-based corporation that owns the Colorado Energy Nations Company coal plant in Golden, is using U.S. courts to fight pollution controls affecting its coal plants in other states. But TTIP would empower Engie to bypass U.S. courts and use unaccountable tribunals to demand compensation for new Colorado restrictions on coal.<sup>9</sup>

## A Right to Drill on Public Lands

Colorado activists are pushing the federal government to stop leasing our public lands to oil and gas corporations, which pay as little as \$1.50 per acre to extract more climate-polluting fuels.<sup>10</sup> But the TPP and TTIP, as proposed, would enable oil and gas corporations from Australia to the Netherlands, which already have leased more than 130,000 acres of federal lands in Colorado, to use private ISDS tribunals to challenge any new U.S. restrictions on oil and gas leasing.

## More Pollution from Large-Scale Beef Production

Greenhouse gas emissions from livestock are a major driver of climate disruption. U.S. climate emissions from beef production alone are equivalent to Spain's entire emissions.<sup>11</sup> Intensive cattle farming also poses local problems in Colorado, including the overuse of antibiotics, high water consumption, and water and air pollution.<sup>12</sup> Current, large-scale beef production in the U.S. is simply not sustainable. But the TPP would make the situation even worse. Under the deal, Japan, the largest market for U.S. beef exports, would reduce tariffs, or taxes, on beef from the U.S. – from 38.5 percent to 9 percent. This would encourage increased large-scale beef production in Colorado, where beef is already the largest agricultural export – bad news for the climate and Colorado's air and water.<sup>13</sup>

## Increased Climate-Disrupting Emissions

Though trade can significantly increase climate-disrupting emissions, the TPP text fails to even *mention* the words "climate change."<sup>14</sup> The omission is particularly alarming given the threats that climate change poses to Colorado's water supply, agricultural sector, and public health.<sup>15</sup> The TPP would increase greenhouse gas emissions by:

- Offshoring Manufacturing: The TPP would shift U.S. manufacturing to countries like Malaysia and Vietnam where production is two to six times as carbon-intensive as in the U.S. This also would increase shipping emissions.
- Escalating Tropical Deforestation: In TPP member Malaysia, new oil palm plantations are a major cause of climate emissions from deforestation. The TPP's elimination of tariffs on palm oil would encourage wider oil palm expansion.

## Let's Replace These Toxic Deals with Climate-Friendly Trade

Opposition to toxic trade deals like the TPP is broad and growing. It's time to create a new model of trade that protects communities and the environment, not the bottom lines of corporations. Join us at [www.sierraclub.org/trade](http://www.sierraclub.org/trade).

<sup>7</sup> "Clean Power Plan," Colorado Department of Public Health and Environment, accessed July 15, 2016.

<sup>8</sup> Jessica Pace, "Complaint Over King II Production Denied," *The Durango Herald*, June 8, 2016.

<sup>9</sup> Mary Anne Hitt, "Everything's Bigger in Texas - Including Air Pollution Problems," *Compass*, The Sierra Club, April 12, 2016.

<sup>10</sup> Jayni Foley Hein, "Oil Companies Are Drilling On Public Land For The Price Of A Cup Of Coffee. Here's Why That Should Change," *The Washington Post*, June 16, 2015. "Hundreds Protest Federal Fracking Auction in Colorado," Center for Biological Diversity, May 12, 2016.

<sup>11</sup> Beef emission factors for North America from: Pierre Gerber et al., "Tackling Climate Change Through Livestock," Food and Agriculture Organization of the United Nations, 2013, 25, Fig. 8. U.S. beef production from: "Cattle and Beef," Economic Research Service, U.S. Department of Agriculture, accessed July 15, 2016. Greenhouse gas emissions for Spain from: [Climate Analysis Indicator Tool](#), World Resources Institute, accessed July 15, 2016.

<sup>12</sup> Joey Bunch, "Colorado State Leads Effort To Develop Website To Curb Livestock Air Pollution," *The Denver Post*, January 7, 2012.

<sup>13</sup> Colorado beef data from: "Trans-Pacific Partnership: What's at Stake for Colorado Agriculture?" Foreign Agricultural Service, U.S. Department of Agriculture, accessed July 15, 2016. Japan's tariff schedule from: "Tariff Schedule of Japan," Office of the U.S. Trade Representative, accessed July 15, 2016.

<sup>14</sup> Citations and further details for all facts in this section can be found in Sierra Club's report: Ilana Solomon and Ben Beachy, "A Dirty Deal: How the Trans-Pacific Partnership Threatens our Climate," The Sierra Club, updated July 2016.

<sup>15</sup> Eric Gordon et al., "Colorado Climate Change: Vulnerability Study," University of Colorado Boulder and Colorado State University, January 2015.