STATE OF NEW MEXICO
ENERGY, MINERALS, AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION

IN THE MATTER OF PROPOSED AMENDMENTS TO 19.15.2, 19.15.5, 19.15.8, 19.15.9 AND 19.15.25 NMAC **CASE NO. 24683**

WESTERN ENVIRONMENTAL LAW CENTER, ET AL.

APPLICANTS.

THE NEW MEXICO OIL AND GAS ASSOCIATION AND INDEPENDENT PETROLEUM ASSOCIATION OF NEW MEXICO'S EXPEDITED JOINT MOTION TO REOPEN THE EVIDENTIARY RECORD

The New Mexico Oil and Gas Association ("NMOGA") and Independent Petroleum Association of New Mexico ("IPANM") (collectively, the "Industry Associations"), through their respective undersigned counsel, pursuant to 19.15.3.13(B) NMAC, respectfully move the Commission to reopen the evidentiary record in Case No. 24683 for the limited purpose of supplementing the record to consider the implications of House Bill 80 ("HB 80"),[1] and a new lawsuit filed by a Co-Applicant to this rulemaking against the State,[2] both of which were enacted and filed this week on March 9, 2026, and to allow limited supplemental briefing by the parties on their impact on the Proposed Rules.[3] In support thereof, the Industry Associations state as follows:

[1] H.B. 80, Oil and Gas Reclamation Fund Enhancement Act, 2026 Leg., Budget Sess. (N.M. Mar. 9, 2026).

[2] *Center for Biological Diversity, San Juan Citizens Alliance, and Tó Nizhóní Áni v. The State of New Mexico, New Mexico Energy Minerals and Natural Resources Department, and Acting Secretary Erin Taylor*, No. D-101-CV-2026-00649 (1st Jud. Dist. Ct. Mar. 9, 2026).

[3] 19.15.4.23(B) NMAC establishes the authority and procedural framework for obtaining a stay of an Oil Conservation Commission or Oil Conservation Division order, and confirms that such exceptional action is warranted when necessary "to prevent gross negative consequences to an affected party." NMOGA and IPANM seek analogous exceptional relief here, through this Expedited Joint Motion to Reopen the Evidentiary Record, in order to address significant developments that occurred within the past week—specifically, a major legislative action and a new lawsuit filed by a Co-Applicant in this rulemaking. These events have fundamentally altered the factual predicate upon which industry's regulatory analysis and its engagement with other parties have been based throughout the 16 post-hearing discussions and good faith negotiations held since the hearing concluded in November 2025. They also arise just one week before the closing document deadlines in this case. The Commission "is empowered to make and enforce rules, regulations and orders, and to do whatever may be reasonably necessary to carry out the purpose of this act, whether or not indicated or specified in any section hereof." NMSA 1978, § 70-2-11(A)–(B). Given the gravity of the developments that occurred the past week—and the complex legal and financial implications they impose on this

I. INTRODUCTION

1. New Mexico law requires that a rulemaking address all relevant factors and important aspects of the problem at hand. Agency action that entirely omits consideration of such factors is arbitrary and capricious. *Atlixco Coalition v. Maggiore*, 1998-NMCA-134, ¶ 24, 125 N.M. 793-94, 965 P.2d 370. The passage of HB 80 by the New Mexico Legislature and signature into law by New Mexico Governor Michelle Lujan-Grisham on March 9, 2026, is precisely such a factor—one that cannot be ignored.

2. The New Mexico Supreme Court requires an agency to utilize the most recent data when possible. The Court has consistently required the New Mexico State Corporation Commission and the New Mexico Public Utility Commission to utilize the most recent data available when determining rates. *Mountain States Tel. & Tel. Co. v. New Mexico State Corp. Comm'n*, 1977-NMSC-032, 90 N.M. 325, 563 P.2d 588;[4] *In re Petition of PNM Gas Services*, 2000-NMSC-012, 129 N.M. 1, 1 P.3d 383. The use of outdated data is only acceptable in the limited circumstances where more recent data has not been submitted. *In re Petition of PNM Gas Services*, ¶ 87.[5]

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rulemaking—industry requires additional time to analyze and respond. NMOGA and IPANM respectfully urge the Commission to reopen the record in this rulemaking and to grant all parties an additional 60–90 days, along with 25 additional pages, to incorporate the newly required financial and legal analysis into their closing briefs and redlines before filing with the Commission. In addition, in the event that either or both Industry Associations elect to intervene in the new lawsuit filed by the Co-Applicant to this rulemaking San Juan Citizens Alliance ("SJCA"), asserting new alleged factual assertions conflicting with the legal theories Applicants have asserted in this rulemaking, NMOGA and IPANM will provide this Commission with notice of that decision prior to making any related filings. NMOGA and IPANM received notice of SJCA's withdrawal as a party from this rulemaking just prior to submitting this motion to the Commission. However, SJCA's attempted withdrawal does not change the fact that they were a party to the rulemaking while the record was open, nor does it alter NMOGA and IPANM's position that the Commission must assess the factual allegations made by SJCA in the lawsuit filed in the First Judicial District. No. D-101-CV-2026-00649.

[4] The New Mexico Supreme Court held that when determining utility rates in an administrative proceeding, "Common sense requires that the latest available economic information should be utilized in order to ensure that the projected figures bear a meaningful relation to future as well as past and present fiscal realities." *Mountain States Tel.*, 1977-NMSC-032, ¶ 84. In M*ountain States Tel. & Tel. Co.*, the New Mexico Supreme Court instructed the New Mexico State Corporation Commission to utilize the latest available figures, stating that "[i]t would be unreasonable" for the Commission to ignore recent data. *See id.* at ¶ 83. The Court held the Commission must "take into consideration the most recent figures available" the next time it determines rates. *Id.* at ¶ 85.

[5] An administrative agency properly acts within its discretion when it relies upon "the most current comprehensive data analysis introduced by the parties." *In re Petition of PNM Gas Services*, 2000-NMSC-012, ¶ 88, 129 N.M. 1, 1 P.3d 383. In *In re Petition of PNM Gas Services*, it was acceptable for the New Mexico Public Utility Commission to

3. This rulemaking was framed from its inception as a response to New Mexico's "orphan well problem." Applicants, led by Western Environmental Law Center ("WELC"), and the New Mexico Oil Conservation Division ("OCD") justified the Proposed Rules—above all, the proposed $150,000 single-well financial assurance requirement Applicants propose for all wells, regardless of type or status—by repeated, prominent reference to the Legislative Finance Committee's ("LFC") June 2025 *Policy Spotlight: Orphaned Wells* ("LFC Report"), which identified between $200 million to $1.6 billion in unfunded state plugging liability. WELC Ex. 4 at 0119–0127. These figures appear throughout the record: in direct testimony, rebuttal testimony, cross-examination, and exhibits. It is the evidentiary backbone of Applicant and OCD's justification for the Proposed Rules and reflects the problem at hand as the "orphan well problem." *See e.g.*, NMOGA witness Dan Arthur's testimony that "Applicants and OCD rely heavily on the LFC Report's averages to justify their proposed increases." NMOGA Arthur Rebuttal Testimony, at 57:1358–58:1362.[6]

4. HB 80 eviscerates that backbone. The Legislature passed HB 80 specifically to resolve the orphan well funding gap identified in the LFC Report, directing approximately $1.23 billion in dedicated, non-reverting Oil and Gas Conservation Tax revenues to the Oil and Gas Reclamation Fund through FY2037. The bill's sponsor confirmed that HB 80 targets precisely the same liability range—between $400-$500 million and $1 billion or more—that Applicants and OCD cited to justify the Proposed Rules. According to the Applicants, the current statutory and regulatory framework, with blanket bonds capped at $250,000, left taxpayers exposed to massive unfunded plugging costs, and the burden must therefore be shifted to industry through dramatically higher

rely on older data only because the petitioner did not introduce current data and failed to show that the use of more recent data would produce a different rate of return. *Id.* at ¶ 87. The Supreme Court nonetheless instructed the Commission to attempt to rely on the most recent data available on remand. *Id.* at ¶ 88.

[6] *See generally* Direct Testimony of WELC's expert Mr. Alexander wherein he describes at length "An Overview of the Orphan Well Problem." WELC Ex. 3 at 0056–0060.

per-well bonding requirements.[7]

5. WELC's own witnesses acknowledge that "[t]here are other ways to do this than what we have proposed," including the funding of "a jumbo reclamation fund" by the Legislature, but "[a]bsent that, Applicants are left with the various forms and mechanisms of financial assurance allowed under the Oil and Gas Act." Rebuttal Testimony of Adam Peltz, WELC Ex. 82 at 1178:14–20. And though WELC predicted that the Legislature would fail to act, the Legislature acted—decisively and in exactly the form WELC described. *Id*. By WELC's own predicate logic, that legislative action fundamentally alters the necessity and proportionality of the Proposed Rules.

6. HB 80 was passed unanimously in both chambers of the Legislature as a direct response to New Mexico's "orphan well problem" by directing $1.23 billion in dedicated, non-revertible Conservation Tax revenue to the Oil and Gas Reclamation Fund through FY2037 to plug abandoned wells as follows:

Fiscal Year/Source	Amount to Reclamation Fund
Existing Fund Balance (April 2025)	$66.7 million
Federal IIJA Grants (received)	$55.5 million
Additional Federal IIJA Available	Up to $111.8 million
FY2028 (50% Conservation Tax)	$46.5 million
FY2029 (75% Conservation Tax)	$76.5 million
FY2030 (100% Conservation Tax)	$108.7 million
FY2031–FY2037 (100% Conservation Tax, est.)	~$760.9 million
TOTAL Through FY2037	**~$1.23 billion**[8]

See HB 80 Bill Analysis and Fiscal Impact Report ("FIR") Taxation and Revenue Department, dated February 2, 2026, and attached hereto as Attachment A; *see* HB 80 Agency Bill Analysis –

[7] *See* the Direct Testimony of WELC's expert Mr. Alexander wherein he states "All too often legislatures do not give the regulator the resources to staff adequately and thus compliance with existing regulations falls short with the regulator only attacking the biggest problems leaving an increasing accumulation of problem wells. All too often legislatures do not give regulators the funding to timely plug abandoned wells and the wells sit idle, at risk, until funds are available putting the public and environment at risk. All too often legislative representatives avoid passing laws pointed toward these issues. All too often regulators have been reticent to write and adopt effective regulations in an effort to avoid having small, financially incapable operators go out of business." WELC Ex. 3 at 0068:2–11.

[8] Assuming 0.6% year-over-year growth.

2026 Regular Session, dated Jan. 28, 2026, and attached hereto as Attachment B; *see* HB 80 LFC FIR, dated January 26, 2026, and attached hereto as Attachment C.

7. Therefore, the passage of HB 80 thoroughly undermines the factual and legal predicates upon which the Proposed Rules rest, and the Commission must now assess whether the rules as proposed are necessary and proportional in light of changed circumstances.

8. In fact, in the Legislature's financial impact analysis of HB 80, the Energy Minerals and Natural Resources Department ("EMNRD"), the OCD and the Commission's parent agency, specifically references the LFC Report and explicitly states that HB 80 directly addresses New Mexico's orphan well liability. The EMNRD even states that "OCD will need to expand its Orphan Well plugging program to make full use" of the funding provided for by HB 80. *See* the EMNRD Agency Bill Analysis for HB 80, dated January 27, 2026, attached hereto as Attachment D.

9. Finally, on the *same* day HB 80 was signed into law, Co-Applicant in this rulemaking, San Juan Citizen Alliance ("SJCA") filed a complaint against the state containing factual allegations that further undercut Applicants' position in this rulemaking (*see* Complaint to Enforce Defendants' Duties Under the New Mexico Oil and Gas Act to Prevent Waste and Enforce Plugging and Remediation Obligations, and for Declaratory Judgment and Injunctive Relief, dated March 9, 2026, and attached hereto as Attachment E and referred to herein as the "SJCA Complaint".)

10. Because the Legislature has materially altered the factual and legal predicates underlying the Proposed Rules, the Commission cannot proceed as though nothing has changed. The record must be reopened for the limited purposes of evaluating the impact of HB 80 and the new SJCA lawsuit against the State of New Mexico and EMNRD on this rulemaking, as additional financial analysis, testimony, and documentary evidence are now necessary to ensure a proper and well-reasoned decision on the Applicants' proposed rule changes. *See* 19.15.3.13(B) NMAC.

II. PROCEDURAL HISTORY AND BACKGROUND

11. On June 24, 2024, WELC filed its Application for Rulemaking in the above-captioned matter, assigned Case No. 24683.

12. After filing its application, WELC met with the OCD and ultimately adopted OCD's major proposals into its proposed rules attached to its Revised Application filed April 25, 2025, as modified by the Notice of Errata filed June 2, 2025 ("Proposed Rules").

13. On July 16, 2024, NMOGA filed its entry of appearance and notice of intervention. IPANM filed its entry of appearance and notice of intervention on July 2, 2024.

14. From October 20 through November 6, 2025, the Commission conducted a hearing in this rulemaking, OCC Case No. 24683.

15. At the hearing, both WELC and OCD framed the Proposed Rules as an answer to New Mexico's "orphan well problem" as described in the LFC Report and frequently bolstered their position by pointing to the state's underfunded Reclamation Fund.

16. On March 9, 2026, Governor Michelle Lujan-Grisham signed HB 80, the Oil and Gas Reclamation Fund Enhancement Act, into law, directing $1.23 billion in dedicated, non-reverting Oil and Gas Conservation Tax revenue to the Oil and Gas Reclamation Fund and financing the plugging and remediation of orphaned oil and gas wells in New Mexico.

17. Also on March 9, 2026, Co-Applicant SJCA filed the SJCA Complaint against the State of New Mexico, the EMNRD, and Acting Secretary Erin Taylor, containing factual allegations that further undermine Applicants' position that the above-captioned rulemaking is necessary to solve New Mexico's orphan well problem.

18. Because New Mexico law requires the Commission to consider all "relevant factors or important aspects of the problem at hand," *Atlixco*, ¶ 24, this motion requests that the Commission reopen the record in OCC Case No. 24683 for the limited purpose of supplementing the hearing

record to consider HB 80's passage and request a limited briefing by the parties on its impact on the Proposed Rules.

III. ARGUMENT

A. The Proposed Rules are Crafted to Address the Financial Shortfalls of a Pre-HB 80 World that no Longer Exists

19. WELC witness Mr. Morgan is asked in his direct testimony, "[w]hy not just rely on the Reclamation Fund to make up any shortfall, rather than amend the financial assurance requirements?" He answered, "[t]here's simply not enough money in the Reclamation Fund to cover the shortfall between existing financial assurance levels and the current and anticipated inventory of orphaned wells." WELC Ex. 15 at 0352:18–21. In framing New Mexico's orphan well problem in his direct testimony, WELC witness Mr. Peltz advances the same rationale for the necessity of the Proposed Rules, stating, "the approaching liability of an aging industry is orders of magnitude larger than the Reclamation Fund." WELC Ex. 30 at 0705:23–24. The record contains a plethora of examples of Applicants using the underfunded Reclamation Fund as justification for the Proposed Rules.[9] The passage of HB 80 moots this justification.

20. Indeed, the passage of HB 80 not only alters the problem at hand but was specifically advanced to *solve* it. HB 80's sponsor, Representative Murphy, expressly confirmed that HB 80 is designed to address the same liability range identified in the LFC Report.[10]

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[9] *See for example,* Mr. Purvis' testimony at hearing stating "the issue that I'm concerned about is the shortfall of the Reclamation Fund." Tr. 510:22–24 (Oct. 28, 2025). *See also* Mr. Powell's testimony at hearing stating "[i]f we're pursuing $150,000 bonds versus $6,000 bonds, that's going to help the reclamation fund I think considerably and plug more wells in the long term." Tr. 82:13–16 (Oct. 27, 2025). *And see* Mr. Tisdel's cross-examination of NMOGA witness Mr. Arthur wherein he inquires about the "massive gap between the amount available in the Reclamation Fund and the state's near-term plugging liability." Tr. 272:21–22 (Oct. 28, 2025).

[10] The June 2025 LFC Report estimated that the approximately 700 orphan wells on state and private lands for which the OCD currently has plugging authority will cost the state between $200 million and $400 million to plug and remediate. The LFC considers an additional 4,400 state and private wells "at risk," i.e., with a high likelihood of becoming orphaned due to inactivity or low production. The LFC estimated the current and near-future liability to the state for all 5,100 of those wells (700 orphaned plus 4,400 "at-risk") is $700 million to $1.6 billion in plugging and remediation costs. WELC Ex. 4 at 0119–0127. Notably, those estimates assume that 100% of the 4,400 of the "at risk" wells will become the responsibility of the State of New Mexico, contrary to industry's demonstrated plugging

21. Under the proposed WELC rules, the immediate compliance cost to the industry is significant: an estimated five times increase in total industry financial assurance obligations, from $118.4 million to $873 million—roughly a $750 million increase.[11]

22. Attachments A, B, and C contain fiscal data supporting HB 80 and confirm that HB 80 will make the Reclamation Fund a fully capitalized orphan well plugging mechanism in the near future; through FY2037, the Reclamation Fund is projected to receive $1.23 billion almost $1 billion of which is Conservation Tax revenue—more than double the increased financial assurances WELC projects.[12] *See supra* at ¶ 7.

23. Additionally, HB 80 provides a superior method for addressing the projected orphan well problem. Unlike the Applicants' proposed rules, which offer no certainty that increased financial assurance funds will ever be used for plugging orphaned wells or any indication of when such funds would become available, HB 80's increases to the Reclamation Fund are dedicated exclusively to plugging orphaned wells, collected monthly, and will begin flowing into the Reclamation Fund in FY2028.

24. HB 80 redirects dedicated Conservation Tax revenues to the Reclamation Fund (administered by EMNRD) to cover orphan well plugging costs on an ongoing basis. This directly addresses the LFC's unfunded liability finding that drove the $150,000 single well bond proposal.

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rates and performance.

[11] OCD Exhibit 29 shows 920 single well bonds, increasing to $150,000 under proposed rules, and 557 blanket bonds, increasing to $250,000, for a cumulative effect of **$214 million** increase as to required FA under existing rules for active wells. Regarding wells which will be double-bonded under Applicants' proposed rules: WELC Exhibit 52 reports 52% of Operators and 18% of the 55,440 total wells showing production or injection in 2024 will fall under the single-well high-risk portfolio requirement, being **$1.49 billion** in new financial assurance. WELC Exhibit 40 reports 2,200 wells qualifying for marginal single well bonding as low producing wells, totaling **$330 million**. Cumulatively, this results in financial assurance for active wells under Applicants' proposed rules changes of **$873 million**, using OCD well statistics of 43% state and fee well distribution within the state. [($214 million + $1.49 billion + $330 million)*0.43] = $873 million. This figure does not account for additional bonding for temporarily abandoned ("TA") wells, which increases to an average of $150,000 per TA well under Applicants' proposed changes.

[12] Currently, the percentage of the Oil Conservation Tax distributed into the Reclamation Fund is only 10.5% of net receipts from the Tax (if the price of oil is below $70/barrel) or up to 19.7% (if the price increases to more than $70/barrel), with the remainder of the Tax deposited into the General Fund. *See* Attachment A.

The evidentiary predicate for the bond requirement—that the state faces an unfunded gap of $633 million to $1.5 billion in plugging liability—is no longer accurate in light of the approximately $1.23 billion in dedicated public resources the Legislature has now committed to the Fund through FY2037, which assuming—against the evidentiary record—that every "at-risk" well becomes orphan—provides $35,000 per at-risk well in FY2028, increasing to over $200,000 per well by FY2030 as revenues rise incrementally.

25. Specifically, HB 80 directly addresses the funding gap identified by the LFC Report by statutorily redirecting a dramatically increased percentage of the Oil and Gas Conservation Tax into the Reclamation Fund as follows: 1) starting mid-2027, 50% of the Conservation Tax will flow to the Reclamation Fund (compared to the 10%-20% currently dedicated) and 2) by 2029, 100% of the tax is directed to the fund. The result is approximately $1 billion in the fund over the 10-year period. *See* Attachment B.

26. HB 80 redirects dedicated Conservation Tax revenues to the Reclamation Fund to cover orphan well plugging costs on an ongoing basis. This directly addresses the LFC's unfunded liability finding that drove the proposed $150,000 per-well bond under the Proposed Rules. The evidentiary predicate for the bond requirement—that the state faces an unfunded gap of upwards of $1 billion in plugging liability—is no longer accurate in light of the approximately $1.23 billion the Legislature has now committed to the Fund through FY2037, providing $35,000 per at-risk well in FY2028 to over $200,000 per well by FY2030. Attachments A-C.

27. In short, the Legislature has now enacted a statutory mechanism directly targeted at the precise funding shortfall the Proposed Rules were designed to cure through regulatory means. The underlying predicate for this rulemaking—the state will be stuck holding an unfunded multi-hundred-million-dollar bag[13]—has been materially changed by this new law. The Commission

[13] *See* Tr. 20:2-8 (Nov. 6, 2025) ("The petitioner in this case, WELC, says 'The rule is needed to make sure the oil and gas industry pays for its impact and to ensure the state is not left holding the bag on orphan wells.' WELC's

must therefore reopen the record to consider this fundamental shift.

B. <u>The Passage of HB 80 Requires that the Commission Reopen the Record</u>

28. Applicants' premise is that the Proposed Rules are a necessary response to the "orphan well problem." The Commission, therefore, cannot adopt the Proposed Rules while ignoring the Legislature's concurrent decision to fund this exact liability. If the Commission adopts the Proposed Rules without evaluating HB 80, its decision will be arbitrary and capricious because it would be willfully ignoring a major, contemporaneous legal development directly affecting the "problem at hand." Additionally, HB 80 raises disproportionality concerns that the proposed financial assurance rules are no longer reasonable or justified in light of HB 80's infusion of funding; New Mexico law requires the Commission likewise to address this fact. Therefore, the Commission must reopen the record for the limited purpose of supplementing the hearing record to consider HB 80's passage and request a limited briefing by the parties regarding HB 80's impact on the Proposed Rules.

1. HB 80's Passage is an Unequivocal "Important Aspect of the Problem at Hand" and Must Be Considered in this Rulemaking

29. An agency's decision "stands or falls on its express findings and reasoning" and must address "important aspects of the problem at hand." *Atlixco*, 1998-NMCA-134, ¶ 24. Indeed, agency action that "entirely omits consideration of relevant factors" will be held to be arbitrary and capricious. *Id.*

30. Here, the "problem at hand" has been identified by the proponents of the Proposed Rules as the "orphan well problem." And HB 80 is not only "relevant" to New Mexico's orphan well problem, but the Legislature passed it precisely to cure it. In fact, HB 80 so neatly addresses the problem at hand that the proponents of HB 80 and the proponents of this rulemaking both cite

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interest is not so much to protect the state, but to do everything they can to put the oil and gas industry out of business.")

extensively to the same primary source material: the LFC Report. Failure to consider HB 80—a bipartisan legislative enactment directly addressing the orphan well funding problem this rulemaking was designed to solve—is precisely the type of omission *Atlixco* prohibits.

31. *Atlixco* does not permit an agency to turn a blind eye to relevant evidence of this magnitude. HB 80 has cascading ramifications on the subject matter of the Proposed Rules, and the Commission must hear evidence on how this massive dedication of funds affects the reasonableness of the financial assurance amounts set out in the Proposed Rules. The Commission must also address whether the definitions, transfer screenings, compliance proposals, and myriad other regulatory mechanisms proposed are now justified or even rational in light of HB 80's enactment.

32. The New Mexico Supreme Court has confirmed that the omission of material evidence bearing directly on the problem at hand is independently sufficient grounds to invalidate an agency's action as arbitrary and capricious. *In re Rhino Environmental Services,* 2005-NMSC-024, 138 N.M. 133.[14] In that case, the New Mexico Supreme Court overturned an agency's decision—notwithstanding an otherwise procedurally compliant hearing—because the hearing officer refused to hear certain public testimony that the agency deemed "irrelevant" to the decision to grant, deny, or condition a permit. *Id.* The Court held that the agency may not unilaterally declare germane evidence irrelevant. The sufficiency of the Reclamation Fund is *more* than "an important aspect" of this rulemaking. It played a central role, having been mentioned over 130 times in the hearing transcript alone. Therefore, the Commission may not proceed as though HB 80 does not exist.

[14] Additional well-settled federal law is cited by the New Mexico Supreme Court describing the "problem at hand" doctrine. *See, e.g., Motor Vehicle Manufacturers Ass'n v. State Farm Mutual Automobile Insurance Co.,* 463 U.S. 29, 43 (1983), holding that an agency rule is arbitrary and capricious if the agency, among other things, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

33. Here, failure to address a massive change to the state's Reclamation Fund will leave a gaping hole in the logic of this rulemaking—a much larger hole than the one identified by the Supreme Court in *In re Rhino*. The New Mexico Supreme Court is clear: an agency's decision *will* be overturned if it chooses to purposefully disregard relevant evidence. The Commission can avoid this certainty by reopening the record and allowing the parties to address HB 80's impacts on this rulemaking.

2. The Passage of HB 80 is a Legislative Change in Circumstances That the Commission Must Address

34. The U.S. Supreme Court confirmed in *Ohio v. EPA*, 603 U.S. 279 (2024), that agencies cannot proceed as though nothing has changed when a contemporaneous legal development directly affects the assumptions underlying a rulemaking. In that case, the Supreme Court held that the EPA acted arbitrarily and capriciously by failing to account for the fact that multiple federal appellate courts had stayed EPA's disapprovals of State Implementation Plans when promulgating its Federal Implementation Plan ("FIP"),[15] which "rested on an assumption that all 23 upwind States would adopt emissions-reduction tools up to a 'uniform' level of 'costs' to the point of diminishing returns."[16] EPA's failure to account for upwind states dropping out undermined the foundational assumptions for its cost-effectiveness modeling.[17] The Court specifically found that "EPA's final rule was not reasonably explained, . . . and that it instead ignored 'an important aspect

[15] 603 U.S. at 280 ("Courts stayed 12 of the SIP disapprovals, which meant EPA could not apply its FIP to those States.").

[16] *Id.* at 293.

[17] *Id.* at 286 ("In making those estimations, too, EPA calibrated its modeling to each State's features, 'determin[ing] the relationship between changes in emissions and changes in ozone contributions on a state-by-state ... basis.'").

of the problem' before it,"[18] further rejecting EPA's reliance on severability to sidestep a change that undermined the factual premise underlying the agency's action.[19]

35. Here, as in *Ohio*, the legal landscape underlying this agency's decision has evolved in such a way that the Commission cannot proceed as though nothing has changed. HB 80 (enacted concurrently with Commission deliberations) directly addresses the funding gap underlying every major provision of the rulemaking. Just as in *Ohio v. EPA*, HB 80 has changed the foundational assumptions underlying this rulemaking. This case confirms that concurrent legal developments affecting the factual premises of a rulemaking are 'important aspects of the problem' that agencies cannot ignore and require a reasoned response.[20]

36. Relatedly, administrative law requires agencies to apply the operative statute and conform regulations to subsequent statutory amendments. *See Ziffrin, Inc. v. United States*, 318 U.S. 73, 78 (1943) (holding that even pending proceedings must recognize "a change of law" to avoid issuing orders contrary to legislation) The Tenth Circuit likewise holds that agencies "have an obligation to deal with newly acquired evidence in some reasonable fashion…or to reexamine their approaches if a significant factual predicate changes." *Zen Magnets, LLC v. Consumer Prod. Safety Comm'n*, 841 F.3d 1141, 1150 (10th Cir. 2016).

37. Well-established principles of administrative law provide that the Commission must recognize and contend with changes in the law that affect pending agency action. HB 80 calls into

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[18] *Id.* at 281 (citing *Motor Vehicle Manufacturers Ass'n*, 463 U.S. at 43 (1983)).

[19] *Id.* at 295 ("Put simply, EPA's response did not address the applicants' concern so much as sidestep it.").

[20] *See also Bd. of Cnty. Commissioners v. New Mexico Taxation & Revenue Dep't*, A1-CA-36305, 2019 WL 2743840, at *3 (N.M. Ct. App. May 24, 2019) (mem. op.) (describing administrative hearing reopened to consider and take notice of legislation enacted following close of record which affected material issue in dispute regarding valuation); *Automotive Parts & Accessories Ass'n v. Boyd*, 407 F.2d 330 (D.C. Cir. 1968) wherein the court held that when a new statute is enacted relevant to an ongoing rulemaking, the agency must consider any new statutory requirements before finalizing the rule. Specifically, following Congress's 1966 enactment of the National Traffic and Motor Vehicle Safety Act of 1966, the Department of Transportation was required to consider whether the new law imposed new requirements on its ongoing automotive safety standard rulemaking.

question the necessity and proportionality of the blanket $150,000 single-well bonding, regardless of well type or status, and other cost-driven triggers premised on state funding shortages and the liabilities associated with the same. A denial of this motion will amount to the Commission unlawfully proceeding "as though nothing has changed."

3. To Show a "Rational Connection" Between Facts and Choices Made, the Commission Must Consider HB 80's Impacts.

38. "An agency's action is arbitrary and capricious if it provides no rational connection between the facts found and the choices made." *Atlixco*, 1998-NMCA-134, ¶ 24 (citing the US Supreme Court in *Motor Vehicle Mfrs. v. State Farm*, 463 U.S. 29, 43 (1983)). The existence of HB 80 is now a fact.

39. HB 80 fundamentally alters the facts that the Commission had at hand before its passage. The evidentiary foundation for the Proposed Rules rests on the LFC's finding that the state faces $700 million to $1.6 billion in current and near-future orphan well plugging liability, and that the Reclamation Fund held only $66.7 million—a 'funding gap' of $633 million to $1.533 billion. WELC used this finding to justify every major provision of the Proposed Rules.

40. By way of example, as mentioned above, Mr. Morgan is asked in his direct testimony, "[w]hy not just rely on the Reclamation Fund to make up any shortfall, rather than amend the financial assurance requirements?" He answered, "[t]here's simply not enough money in the Reclamation Fund to cover the shortfall between existing financial assurance levels and the current and anticipated inventory of orphaned wells." WELC Ex. 15 at 0352:17–21. If the Commission were *today* to ask Mr. Morgan why the Reclamation Fund cannot simply make up the shortfall, his answer would be categorically different from his hearing testimony—but only a reopened record can establish what that answer is, and whether it is sufficient to sustain the rule. As another example, HB 80 directly addresses the insufficient staffing[21] and inefficiencies that previously

[21] *See* Tr. 136:23–25 (Oct. 23, 2025), where Mr. Diede described OCD's orphan well program as consisting of "[p]retty

plagued OCD's orphan well program by expanding OCD's operational mandate and funding base. Heightened industry bonding does neither: it does not add a single OCD employee, accelerate procurement, or increase plugging throughput. The Commission must therefore weigh whether the Proposed Rules properly address this drastic change in factual circumstances to be able to support its rulemaking as "rationally connected" to the facts.

41. Denial of this motion by the Commission and proceeding to adopt the Proposed Rules would result in the adoption of rules based on stale facts. It will therefore be impossible for the Commission to defend its adoption of the Proposed Rules as "rationally connected" to the facts, having never grappled with how HB 80 altered those facts.

4. HB 80's Passage Requires Reexamination of the Statutory "Reasonableness" Standard—Subject to De Novo Review

42. The Act requires that single-well financial assurance be set in amounts "sufficient to *reasonably* pay the cost of plugging the wells covered by the financial assurance." NMSA 1978, § 70-2-14(A) (emphasis added). The New Mexico Supreme Court "will review issues of law de novo" and "will reverse the agency's interpretation of a statute if it is unreasonable or unlawful." *N.M. AG v. N.M. Pub. Regulation Comm'n*, 2015-NMSC-032, ¶ 24, 359 P.3d 133; *see also Marbob Energy Corp. v. N.M. Oil Conservation Comm'n*, 2009-NMSC-013, 146 N.M. 24 (applying a *de novo* standard of review to a matter of statutory interpretation in front of the OCC).

43. Here, HB 80's passage fundamentally alters the analysis of what amounts of financial assurance proposed in this rulemaking are statutorily "reasonable" under the Act. Post-HB 80, the Section 70-2-14 "reasonably" standard must be interpreted in the context of the full legislative scheme, which now includes a dedicated $1.23 billion public funding mechanism targeting precisely the plugging costs WELC used to calibrate the $150,000 per well bond. WELC's own

much myself. I'm the only one who focuses on this, pretty much exclusively." *But see* the Legislature's financial impact analysis of HB 80, wherein EMNRD states that "OCD will need to expand its Orphan Well plugging program to make full use" of the funding provided for by HB 80. Attachment D.

witness, Peter Morgan, stated: "[t]he only relevant figure for determining the typical cost to plug and abandon a New Mexico well is the cost to OCD." Tr. 601:21–602:1, 542:11–13 (Oct. 21, 2025). Mr. Morgan explicitly links the Section 70-2-14 "reasonably" standard, which exclusively references OCD's own plugging cost. HB 80 now funds those costs through the Reclamation Fund in amounts upward of $1 billion.

44. Mr. Morgan suggests that the only relevant figure is the cost to OCD. However, HB 80 now funds those costs through a tax imposed exclusively on owners of interests in oil and gas wells. Therefore, a bond calibrated to OCD's cost no longer corresponds to an unfunded risk—instead, it duplicates a legislatively-funded mechanism. This Commission must consider and explain why both are necessary.

45. Finally, the Commission's determination of whether Section 70-2-14's "reasonably" standard supports a $150,000 per-well bond calibrated to OCD's plugging costs—when HB 80 now funds those costs through the Reclamation Fund—is a statutory interpretation question that will be reviewed *de novo*. Therefore, it is important for the Commission to reopen the record and answer these questions, so that a reviewing court does not reject the Proposed Rules as "unreasonable or unlawful." *N.M. Atty. Gen. v. N.M. Pub. Reg. Comm'n*, 2015-NMSC-032, ¶ 24.

5. The Commission's Own Rulemaking Standards Require a Consideration of HB 80's Passage

46. Importantly, the Commission's own regulations support the reopening of the record for the purposes of hearing evidence on HB 80's impacts on the Proposed Rules. Under NMSA 1978 § 70-2-12.2(C), the Commission's rulemaking will be set aside if found to be: 1) arbitrary, capricious, or an abuse of discretion; 2) not supported by substantial evidence in the record; or 3) otherwise not in accordance with law. A denial of this motion and the Commission's failure to hear evidence on HB 80's passage will create grounds for this rulemaking to be set aside under each of the three statutorily established bases.

47. First, as established in Section III.B.1, above, not considering HB 80, a Legislative action directly aimed at solving the "orphan well problem," will lead to this rulemaking being overturned as arbitrary and capricious for ignoring an "important aspect of the problem."

48. Second, as established under Sections III.A and III.B.3 above, *supra*, HB 80 fundamentally alters many of the core factual premises upon which this rulemaking was justified. Because an undetermined amount of the "substantial evidence" in the record is no longer factually accurate, a decision by the Commission to deny this motion would lay the groundwork for this rulemaking to be overturned as arbitrary and capricious.

49. Third, as described in Section III.B.4, above, a court can find that this rulemaking is "not in accordance with law" should the Commission fail to assess the Act's statutory "reasonableness" requirement in light of HB 80's impacts on that inquiry.

50. Even proponents of the Proposed Rules should prefer a defensible record that addresses HB 80 rather than inviting predictable challenges for ignoring an "important aspect of the problem."

C. The Concept that the Orphan Well Problem is Underfunded Was a Foundational Element of the Proposed Rules; Proponents Cannot Now Argue that the Reclamation Fund is Irrelevant

51. Applicants may contend that HB 80 is irrelevant because it addresses public plugging costs while the Proposed Rules address industry financial assurance. The Applicants' own record testimony forecloses that argument. It was WELC—not the Industry Associations—that placed the size of the Reclamation Fund at the center of this proceeding. As cited throughout this motion, WELC and OCD have inextricably linked the necessity of the Proposed Rules to the state's previously unfunded orphan well liability. WELC's direct testimony went so far as to expressly state that a "jumbo reclamation fund" is among "the other ways" that the orphan well problem could be addressed, but that they must rely on a financial assurance rulemaking because the

Legislature has failed to act in such a way. WELC Ex. 82 at 1178:14–20. A jumbo fund has now been created, and by WELC's own admission, this calls into question the very necessity of this rulemaking.

52. Having made the Reclamation Fund's inadequacy an indispensable pillar of their affirmative case, proponents cannot retreat and declare the Fund irrelevant when the Legislature acts to cure that inadequacy, nor should the Commission proceed without due consideration of the resulting change in factual circumstances. Such an approach was soundly rejected in *In re Rhino*—unilaterally deeming material evidence irrelevant to avoid confronting its implications.

53. WELC's expert, Mr. Morgan, testified that "the only relevant figure for determining the typical cost to plug and abandon a New Mexico well is the cost to OCD." Tr. 601:21–25. This binds WELC's framework to OCD plugging costs. HB 80 now funds those costs. An industry bond calibrated to that same OCD cost figure is no longer addressing an unfunded risk—it is requiring individual industry participants to double-fund a liability the Legislature has already funded with a tax on all industry participants. The Commission cannot adopt the Morgan framework to justify the bond amount while simultaneously ignoring HB 80's funding of the predicate cost.

D. Co-Applicant SJCA's Concurrent Judicial Admissions Confirm that the Fundamental Factual Predicates Underlying the Proposed Rules are Unsound

54. On March 9, 2026, the *same* day HB 80 was signed into law, directing $1.23 billion to the Reclamation Fund, Co-Applicant SJCA filed a complaint in the First Judicial District Court against the State of New Mexico, the EMNRD, and Acting Secretary Erin Taylor (attached hereto as Attachment E). That complaint alleges that the orphan well funding gap is caused not by inadequate bond levels, but by OCD's systematic failure to enforce the tools it already possesses. The complaint makes no mention of HB 80, despite being filed on the day of its enactment, and SJCA being a Co-Applicant in this rulemaking. The factual about-face contained in the SJCA Complaint, as endorsed by an Applicant to this rulemaking, confirms the necessity to reopen the

record.

1. The SJCA Complaint Confirms That Facts Related to "An Important Aspect of the Problem" Have Substantially Changed

55. The SJCA Complaint advances a causal theory of the orphan well funding problem that is contrary to the theory that Co-Applicant SJCA advanced in this rulemaking. In this proceeding, as a signatory to each of WELC's filings, SJCA maintains that the Reclamation Fund's inadequacy is caused by insufficient per-well bond amounts—the predicate justification for the proposed $150,000 single-well financial assurance requirement. In SJCA's Complaint, however, they allege under counsel's signature that the funding gap is caused by OCD's systematic failure to utilize existing enforcement mechanisms. SJCA alleges that OCD has not forfeited a single operator's financial assurance since 2018 despite plugging hundreds of wells at public expense; has failed to collect mandatory additional financial assurance from 61% of operators required to provide it, leaving more than $38 million in legally required assurance uncollected; and has brought only one indemnification action against a noncompliant operator in its history despite spending more than $45 million in public funds to plug operators' wells. *See* Attachment E. These factual allegations are drawn from OCD's own public records and data. *Id.*

56. The disparities between SCJA's representations in this rulemaking and the theories advanced under their new complaint are not just inconsistent policy considerations. Instead, they are mutually exclusive causal theories advanced simultaneously in two separate legal forums. If SJCA's judicial allegations are correct, that OCD's enforcement failures, not inadequate bond levels, are the primary driver of New Mexico's orphan well problem—then the evidentiary foundation of this rulemaking is fundamentally erroneous.

57. However, if the per-well bond advanced by SJCA and WELC is increased to $150,000, SJCA's judicial position establishes that the bond increase achieves *nothing* if OCD continues not to forfeit the bonds it already holds, does not to collect the additional inactive-well financial

assurance the statute already mandates, and does not to pursue indemnification from operators whose wells it plugs at public expense. The SJCA Complaint is, in effect, a Co-Applicant's own admission that the Proposed Rules do not solve the problem they purport to address.

58. The timing of the SJCA Complaint is not coincidental. It was filed on March 9, 2026, the same day HB 80 was signed into law. Yet the complaint makes no mention of HB 80 whatsoever. SJCA cannot have been unaware of HB 80 while also being a Co-Applicant in this rulemaking. This omission reflects a deliberate choice to advance simultaneously, in two different legal forums, contradictory positions about the cause of the same problem—while declining to acknowledge in either forum the other proceeding's implications.

59. Throughout this rulemaking, Applicants advanced the theory that the problem at hand, New Mexico's orphan well problem, can be solved by the increased financial assurance provisions of the Proposed Rules. However, the allegations in the SJCA Complaint undercut that position completely by implying that OCD has fumbled its orphan well enforcement responsibilities so badly that injunctive relief from a court is necessary to address the problem. The Commission should not move forward approving the Proposed Rules without addressing the extent to which Co-Applicants' new judicial allegations alter the necessity of the Proposed Rules.

2. The Commission Must Weigh the Concurrent Contradictory Positions Advanced by Co-Applicants

60. An agency action is arbitrary and capricious if the agency fails to examine the relevant and current evidence when issuing its order. *See Am. Petroleum Inst. v. United States Dep't of Interior*, 81 F.4th 1048, 1069 (10th Cir. 2023). "An agency's action is arbitrary and capricious if it provides no rational connection between the facts found and the choices made." *Atlixco*, 1998-NMCA-134, ¶ 24.

61. Leaving SJCA's juxtaposed causal theories unaddressed forecloses the Commission's ability to support a rational connection between the facts found and the regulatory choices made.

In other words, finding a rational connection between the facts found and the adoption of the Proposed Rules is not possible on a record whose causal theory has been simultaneously disavowed in a court of competent jurisdiction by one of the Applicants to this rulemaking proceeding, relying on OCD's own data. The SJCA Complaint constitutes newly acquired evidence of changed factual and legal circumstances bearing directly on whether the Proposed Rules are necessary, proportionate, and rationally connected to the problem at hand.

62. Due to post-hearing developments, there are two gaping voids in the "relevant and current evidence" before this Commission. One is HB 80's impacts on the necessity, proportionality, and effectiveness of the Proposed Rules. The other is the Co-Applicant's concurrent and antithetical court filing alleging that, based on OCD's own data, the orphan well funding gap is primarily attributable to enforcement challenges.

63. Together, these simultaneous developments, HB 80's enactment and SJCA's judicial admissions, gut the factual predicate on which the Proposed Rules rest and confirm that the Commission cannot proceed to final action without reopening the record.

IV. CONCLUSION

64. New Mexico law does not permit this Commission to adopt rules that ignore a material legislative development directly bearing on the problem the rules were designed to address. HB 80 is not a peripheral development: it is a $1.23 billion legislative response to the same orphan well funding shortfall that underpins every major provision of the Proposed Rules. Proceeding without examining its implications would render this rulemaking arbitrary and capricious, unsupported by substantial evidence, and potentially not in accordance with the Act's statutory standard of reasonableness.

65. For the foregoing reasons, NMOGA and IPANM respectfully request that the Commission:

A. Enter an Order reopening the record in Case No. 24683 for the limited purpose of

supplementing the evidentiary hearing record to consider:

i. The passage of HB 80, signed into law by Governor Michelle Lujan Grisham on Monday, March 9, 2026, to allow additional testimony and cross-examination limited to that subject since the current evidentiary record does not reflect HB 80's passage, its impact on the orphan well issue this rulemaking is designed to resolve, and how HB 80 is designed to fill the funding gap for orphan well liability to the State of New Mexico, the very same cost to OCD that Applicants' financial assurance proposals pending before this Commission require operators to secure; and

ii. WELC Rulemaking Co-Applicant SJCA's new lawsuit against the State of New Mexico, EMNRD, and Acting Secretary Erin Taylor, also filed on Monday, March 9, and which alleges it is OCD's failure to enforce the Oil and Gas Act is the true cause of the orphan well problem, in direct contradiction to SJCA's position in this rulemaking where it attributed the orphan well problem to insufficient funds in the Reclamation Fund (a deficiency that HB 80 has now addressed).

B. Provide and distribute public notice of the reopened hearing record in accordance with NMAC 19.15.3.9(A) & (B), in accordance with 19.15.3.13(B) NMAC; and

C. Extend the closing deadline on post-hearing submissions under the Hearing Officer's December 18, 2025, *Order on Joint Motion to Extend Time for Post-hearing Submittals* an additional 60-90 days and extend briefing limitations by 25 pages to allow the parties to fully address and brief the Commission as to the impact of HB 80 and the SJCA lawsuit on Applicants' Proposed Rules.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served to counsel of record by electronic mail this 13th day of March 2026, as follows:

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Bill Analysis and Fiscal Impact Report
Taxation and Revenue Department

February 2, 2026

Bill:
HENRC sub. for HB-80

Sponsor:
Representatives Mark B. Murphy, Debra M. Sariñana, Elaine Sena Cortez, Meredith A. Dixon, and Jonathan A. Henry

Short Title:
Oil & Gas Conservation Tax Act Changes

Description:
This bill amends Section 7-1-6.21 NMSA 1978 to change the distribution of net receipts of the oil and gas conservation tax (conservation tax) to the Oil and Gas Reclamation Fund (OGRF). The distribution currently depends on the tax rate imposed by Section 7-30-4 NMSA 1978. Currently if the price of oil goes below $70 a barrel, the conservation tax rate is 0.19% and the distribution to the OGRF is 10.53% with the remainder to the General Fund (GF). If the price of oil goes above $70 a barrel, the conservation tax rate is 0.24% and distribution to the OGRF is 19.7% with the remainder to the GF. This bill removes the link to the tax rate and instead calls for a distribution to the OGRF of: 50% in FY2028; 75% in FY2029; 100% in FY2030 to FY2037; and 50% in FY2038 and beyond. The bill adds that the oil and gas reclamation fund may be used to support statewide education on general energy and the sources and impacts of all energy-related emissions.

Effective Date, Applicability, and Contingency Language:
July 1, 2027

Taxation and Revenue Department Analyst:
Chen Xie and Lucinda Sydow

Estimated Revenue Impact*

FY26	FY27	FY28	FY29	FY30	Recurring or Non-Recurring	Fund(s) Affected
--	--	(46,500)	(76,500)	(108,700)	R	General Fund
--	--	46,500	76,500	108,700	R	OGRF

* In thousands of dollars. Parentheses ( ) indicate a revenue loss. ** Recurring (R) or Non-Recurring (NR).

Methodology for Estimated Revenue Impact:
[Section 1] The Taxation and Revenue Department (Tax & Rev) applied the proposed changes for the distribution of the conversation tax to the Consensus Revenue Estimates Group's (CREG) December 2025 forecast for conservation tax. The percentage distribution to the OGRF will be reduced to 50% for FY2038 and beyond, outside the forecast period. Based on the CREG's September 2025 long-term forecast, the estimated revenue gain starting in FY2038 for the OGRF will be $43 million with a corresponding loss to the GF of $43 million. But this will represent a drop of approximately $71 million from FY37 when the OGRF will have received a 100% distribution under this proposal.

Policy Issues:
[Sections 1-3] This proposal significantly increases the share of conservation tax revenues dedicated to the OGRF through FY2037. The phased increase in distributions to the OGRF presumably reflects an intent to address future and legacy reclamation liabilities. The fund supports the cost of plugging and remediating abandoned wells, thus conserving land for future use. Because this is a tax on oil and natural gas severance, creating the need for remediation, there is a relationship between the conservation tax and the proposed use

of the revenue. Instead of changing this OGRF fund distributions, better policy may be to allow the legislature to annually appropriate conservation tax revenue based on prioritization of all the state's needs.

Oil and gas revenues are highly volatile and a major contributor to the GF; this redirection may reduce the state's fiscal flexibility during economic downturns or periods of declining production. The conservation tax though is a small proportion of revenue to the GF. From the CREG's December 2025 forecast, the conservation tax is only 0.7% of recurring GF revenue.

This proposal simplifies the current distribution of this tax revenue. Currently, Tax & Rev must adjust both the rate of the conservation tax if the price of oil goes above or below $70 per barrel and then adjust the distribution percentages to the OGRF and the GF any time the tax rate changes. This proposal eliminates the system changes for the distribution under current statute but adds an administrative burden by implementing annual distribution changes over a period of a decade.

Technical Issues:
None.

Other Issues:
None.

Administrative & Compliance Impact:
[Section 1] Tax & Rev's Administrative Services Division (ASD) will update the general ledger and revenue reporting. It is anticipated this work will take approximately 100 hours split between two FTE of a pay band eight and a pay band 10 at a cost of approximately $6,800. Collaboration and input from the Department of Finance and Administration (DFA) is required as this will decrease General Fund revenue distributions.

Implementing this bill will have a low impact on Tax & Rev's Information Technology Division (ITD), approximately 150 hours or 1 month for an estimated $37,500 of contractual costs.

Estimated Additional Operating Budget Impact*

FY26	FY27	FY28	3 Year Total Cost	Recurring or Non-Recurring	Fund(s) or Agency Affected
--	$6.8	--	$6.8	NR	ASD – Staff workload
--	$37.5	--	$37.5	NR	ITD – Contractual costs

* In thousands of dollars. Parentheses ( ) indicate a cost saving. ** Recurring (R) or Non-Recurring (NR).

LFC Requester:	

AGENCY BILL ANALYSIS - 2026 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO
AgencyAnalysis.nmlegis.gov and email to **billanalysis@dfa.nm.gov**
(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION
{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: *1/28/2026*

Bill Number: *H80cs*

Check all that apply:
Original __ Correction __
Amendment __ Substitute x_

Sponsor: Rep. Murphy, Rep. Sariñana, Rep. Sena Cortez, Rep. Dixon

Agency Name and Code Number: DFA-341

Short Title: OIL & GAS CONSERVATION TAX ACT CHANGES

Person Writing Analysis: George Hypolite

Phone: (505) 490-2840 **Email:** george.hypolite@dfa.nm.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	**FY27**		

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY26	**FY27**	**FY28**	**FY29**	**FY30**		
		($46,400)	**($76,400)**	**($108,500)**	R	General Fund
		$46,400	**($76,400)**	**$108,500**	R	Oil and Gas Reclamation Fund

(Parenthesis ( ) indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected

Total						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

The House Energy, Environment, and Natural Resources Committee Substitute for House Bill 80 (HB80) proposes amendments to the Oil and Gas Reclamation Fund and the Oil and Gas Conservation Tax Act in New Mexico. Below is a detailed synopsis of the bill:

- Increase in Tax Distribution to the Oil and Gas Reclamation Fund: HB80 amends § 7-1-6.21, NMSA 1978, to increase the percentage of net receipts from the Oil and Gas Conservation Tax Act distributed to the Oil and Gas Reclamation Fund. The new distribution rates are:
    - 50% from July 1, 2027, to June 30, 2028.
    - 75% from July 1, 2028, to June 30, 2029.
    - 100% from July 1, 2029, to June 30, 2037.
    - 50% beginning July 1, 2037, and thereafter.

- Changes to the Oil and Gas Reclamation Fund: HB80 amends § 70-2-37, NMSA 1978, to make the Oil and Gas Reclamation Fund a non-reverting fund in the state treasury. The fund may consist of distributions, appropriations, gifts, grants, and donations.
    - The Energy, Minerals, and Natural Resources Department will administer the fund, and the money is appropriated to the department for use by the Oil Conservation Division in carrying out provisions of § 70-2-38, NMSA 1978.

- Expanded Use of the Fund: HB80 amends § 70-2-38, NMSA 1978, to allow expenditures from the fund for:
    - Employing personnel to survey abandoned wells, well sites, and associated production facilities.
    - Preparing plans for plugging abandoned wells and restoring/remediating well sites and associated production facilities.
    - Beginning July 1, 2028, supporting statewide education on energy and energy-related emissions, with funding capped at $250,000 annually.

- Responsibilities of the Oil Conservation Division: The division is tasked with reclaiming and properly plugging abandoned wells and restoring/remediating associated production facilities as funds become available.
    - The division may use the fund to plug wells and restore/remediate sites on federal

lands where no bonds benefit the state.

  - The division is authorized to sue operators for indemnification of costs incurred in plugging wells or restoring/remediating sites, with recovered funds deposited back into the reclamation fund.

- Annual Reporting: The director of the Oil Conservation Division must submit an annual report to the Secretary of Energy, Minerals, and Natural Resources, the Governor, and the Legislature detailing the use of the fund.

- Contracting and Sale of Equipment: Contracts for plugging, reclamation, and energy education must comply with the Procurement Code. Contractors hired to perform plugging or restoration/remediation are authorized to sell equipment and materials removed from the sites and deduct proceeds from the costs.

- Effective Date: The provisions of the act will take effect on July 1, 2027.

FISCAL IMPLICATIONS

- HB80, Section 1, increases the share of net receipts under the Oil and Gas Conservation Tax Act allocated to the Oil and Gas Reclamation Fund.

  - The distribution is set at 50% from July 1, 2027, through July 1, 2028; 75% from July 1, 2028, through July 1, 2029; 100% from July 1, 2029, through July 1, 2037; and then returns to 50% beginning July 1, 2037.

  - Based on the phased-in distribution rates and the latest consensus revenue estimates, HB80 is projected to reduce General Fund revenue by $46.4 million in FY28, $76.4 million in FY29, and $108.5 million in FY30, with corresponding increases to the Oil and Gas Reclamation Fund.

SIGNIFICANT ISSUES

While HB80 aims to address critical environmental issues related to oil and gas operations, its implementation may face challenges with funding sustainability, administrative capacity and legal disputes.

- Funding Allocation and Long-Term Sustainability: HB80 increases the percentage of tax revenue allocated to the Oil and Gas Reclamation Fund, reaching 100% from 2029 to 2037, but then reduces it to 50% starting in 2037.

  - This reduction could create long-term funding challenges for the fund, especially if the need for reclamation and remediation remains high after 2037.

- Legal Challenges and Indemnification: HB80 authorizes the Oil Conservation Division to sue operators for indemnification of costs incurred in plugging wells or remediating sites.

  - However, HB80 does not specify whether the fund can be used to cover litigation costs, which can be lengthy and costly. As a result, the Oil Conservation Division

will likely face economic and budgetary challenges in seeking indemnification for plugging wells or remediating sites.

- Additionally, if legal proceedings are successful but companies with indemnification obligations are insolvent, HB80 does not specify how litigation costs will be reimbursed.

PERFORMANCE IMPLICATIONS

N/A.

ADMINISTRATIVE IMPLICATIONS

HB80's administrative implications primarily concern the expanded responsibilities and oversight required for effective management of the Oil and Gas Reclamation Fund.

- Contractor Oversight: Contractors are allowed to sell equipment and materials removed from wells or sites and deduct the proceeds from their costs.
  - This provision does not establish a valuation or tracking measure and will likely create administrative difficulties for the Oil Conservation Division in tracking and accounting for equipment and materials costs removed from wells.
    - This will create administrative challenges in ensuring transparency and accountability in contractor operations, as well as potential disputes over the valuation of sold materials.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A.

TECHNICAL ISSUES

- Lack of Specificity in Reporting Requirements: While HB80 mandates annual reporting on the use of the fund, it does not specify the metrics or details that must be included in the report. This could lead to inconsistent reporting and make it difficult to assess the fund's effectiveness.

OTHER SUBSTANTIVE ISSUES

N/A.

ALTERNATIVES

N/A.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If HB80 is not enacted, the General Fund will avoid these revenue reductions, but the Oil and Gas Reclamation Fund will miss out on the related increases.

AMENDMENTS

N/A.

F I S C A L I M P A C T R E P O R T

BILL NUMBER: CS/House Bill 80/HENRC

SHORT TITLE: Oil and Gas Conservation Tax Act Changes

SPONSOR: HENRC

LAST UPDATE: 2/5/2026 **ORIGINAL DATE:** 1/26/2026 **ANALYST:** Faubion

REVENUE*
(dollars in thousands)

Type	FY26	FY27	FY28	FY29	FY30	Recurring or Nonrecurring	Fund Affected
Conservation Tax	$0	$0	**($46,500.0)**	**($76,500.0)**	**($108,700.0)**	Recurring	General Fund
Conservation Tax	$0	$0	**$46,500.0**	**$76,500.0**	**$108,700.0**	Recurring	Reclamation Fund

Parentheses indicate revenue decreases.
*Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

Agency/Program	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
TRD	No fiscal impact	$44.3	No fiscal impact	$44.3	Nonrecurring	General Fund
Total	No fiscal impact	$44.3	No fiscal impact	$44.3	Nonrecurring	General Fund

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency or Agencies Providing Analysis
Taxation and Revenue Department (TRD)

Agency or Agencies That Were Asked for Analysis but did not Respond
Energy, Minerals, and Natural Resources Department (EMNRD)
Department of Finance and Administration (DFA)

SUMMARY

Synopsis of HENRC Committee Substitute of House Bill 80

The House Energy and Natural Resources Committee substitute for House Bill 80 (HB80) increases and phases in the share of the oil and gas conservation tax receipts distributed to the oil and gas reclamation fund, setting the distribution at 50 percent beginning July 1, 2027; 75

percent beginning July 1, 2028; 100 percent from July 1, 2029 through June 30, 2037; and 50 percent beginning July 1, 2037. It defines the fund as a nonreverting fund in the state treasury administered by the Energy, Minerals and Natural Resources Department. The bill removes the prior statutory authorization for energy education expenditures and replaces it with authority to support statewide education on general energy and the sources and impacts of energy-related emissions, capped at $250 thousand annually. The effective date of this bill is July 1, 2027.

FISCAL IMPLICATIONS

By increasing the percentage of oil and gas conservation tax receipts distributed to the oil and gas reclamation fund, the bill reduces the share of those tax revenues that would otherwise be distributed to the general fund under existing distribution statutes. Currently, when the price of West Texas Intermediate is less than $70 per barrel, the tax is 0.19 percent and the reclamation fund receives 10.5 percent of the tax revenue and the remainder goes to the general fund. When the price is over $70 per barrel, the tax is 0.24 percent and the reclamation fund receives 19.7 percent of the revenue. This bill removes the link between the distribution percentage and the tax rate.

LFC used the December 2025 Consensus Revenue Estimating Group (CREG) forecast for the oil and gas conservation tax revenue to estimate the general fund and reclamation fund impacts of this bill. The Taxation and Revenue Department (TRD) used a similar estimation method:

> TRD applied the proposed changes for the distribution of the conversation tax to the CREG December 2025 forecast for conservation tax. The percentage distribution to the reclamation fund will be reduced to 50 percent for FY2038 and beyond, outside the forecast period. Based on the CREG's September 2025 long-term forecast, the estimated revenue gain starting in FY2038 for the reclamation fund will be $43 million with a corresponding loss to the GF of $43 million. But this will represent a drop of approximately $71 million from FY37 when the reclamation fund would have received a 100 percent distribution under this proposal.

The bill does not include a recurring appropriation, but diverts or "earmarks" revenue, representing a recurring loss from the general fund. LFC has concerns with including continuing distribution language in the statutory provisions for funds because earmarking reduces the ability of the Legislature to establish spending priorities.

SIGNIFICANT ISSUES

The Legislature established the oil and gas reclamation fund in 1977 as a nonreverting fund "for use by the oil conservation division in carrying out the provisions of the Oil and Gas Act." Among the currently enumerated purposes of the fund is ensuring the proper plugging and reclamation of "abandoned oil and gas wells and associated facilities" (Section 70-2-38 NMSA 1978). While the statute does not define "abandoned," the fund has historically been used primarily for plugging and reclamation of wells and associated infrastructure without a locatable or financially viable operator. The fund is primarily supported by a dedicated share of oil and gas conservation tax receipts, along with smaller amounts from forfeited financial assurance and salvage recoveries, and has historically been used to finance state-contracted plugging and site cleanup when the division has legal authority to act.

The Oil Conservation Division (OCD) carries out plugging operations by contracting with private firms after obtaining authority to plug specific wells, with work typically including wellbore plugging and, where required, subsequent remediation and reclamation of well sites and associated infrastructure. Plugging and reclamation now represent a significant share of the division's workload and contractual services spending, and costs vary widely depending on well depth, type, and site conditions, as well as whether surface remediation or infrastructure cleanup is required.

OCD has accumulated a substantial balance in the reclamation fund but has not expended funds at a pace that matches current inflows, largely because plugging activity is constrained by operational capacity rather than funding availability. As of April 2025, the reclamation fund balance was $66.7 million, having grown nearly tenfold between FY19 and FY24 due to high oil and gas prices and elevated conservation tax distributions, while direct expenditures from the fund declined in recent years. During this period, OCD relied primarily on federal Infrastructure Investment and Jobs Act (IIJA) grants to finance plugging activity instead of drawing down the state fund, despite continued revenue flowing into it from the conservation tax. Since 2022 New Mexico has received $55.5 million in federal IIJA grants for orphaned well identification and plugging and is eligible for up to an additional $111.8 million through formula and performance-based grants. Even with this influx of federal funding, OCD plugged approximately 360 wells between FY19 and FY24, spending $46.4 million over that period, and increased its annual plugging rate to just over 100 wells in FY24. At that rate, LFC estimates it would take close to a decade to address only the wells for which the state currently has plugging authority, indicating that available state and federal funds exceed the division's near-term capacity to deploy them through plugging and remediation activities.

TRD notes the following policy considerations:

> This proposal significantly increases the share of conservation tax revenues dedicated to the reclamation through FY2037. The phased increase in distributions to the reclamation fund presumably reflects an intent to address future and legacy reclamation liabilities. This fund supports the cost of plugging and remediating abandoned wells, thus conserving land for future use, and this is a tax on oil and natural gas severance, which creates the need for this remediation work. While there is a relationship between the conservation tax and the proposed use of the revenue, better policy may be to allow the legislature to annually appropriate conservation tax revenue based on prioritization of all the state's needs.
>
> Oil and gas revenues are highly volatile and a major contributor to the general fund; this redirection may reduce the state's fiscal flexibility during economic downturns or periods of declining production. The conservation tax though is a small proportion of revenue to the general fund. From the CREG's December 2025 forecast, the conservation tax is only 0.7 percent of recurring general fund revenue.
>
> This proposal simplifies the current distribution of this tax revenue. Currently, TRD must adjust both the rate of the conservation tax if the price of oil goes above or below $70 per barrel and then adjust the distribution percentages to the reclamation fund and the general fund any time the tax rate changes. This proposal eliminates the system changes for the distribution under current statute but adds administrative burden by implementing annual distribution changes over a period of a decade.

ADMINISTRATIVE IMPLICATIONS

TRD's Administrative Services Division (ASD) will update the general ledger and revenue reporting. It is anticipated this work will take approximately 100 hours split between two FTE of a pay band eight and a pay band 10 at a cost of approximately $6,800. Collaboration and input from the Department of Finance and Administration (DFA) is required as this will decrease general fund revenue distributions. Implementing this bill will have a low impact on TRD's Information Technology Division (ITD), approximately 150 hours or 1 month for an estimated $37,500 of contractual costs.

PERFORMANCE IMPLICATIONS

This bill could increase the plugging capacity of OCD.

OTHER SUBSTANTIVE ISSUES

Conservation Tax History (7-1-6.21)

- 1959: Oil conservation tax created at a rate of 0.14% on oil and gas products severed and sold. The revenue went to the oil conservation fund, which was used by the Oil Conservation Commission (OCC) to enforce the Oil and Gas Act (as is currently the function of OCD).
- 1975: The oil conservation tax rate was increased to 0.18%.
- 1977: The Legislature amended statute so most of the conservation tax revenue still went to the conservation fund, but 0.01% was deposited in the newly created oil and gas reclamation fund specifically for the OCC to plug and remediate abandoned well sites. The laws also tied the conservation tax rate to the balance in the reclamation fund; being 0.19% when the fund balance was under $1 million, and 0.18% when the balance was over $1 million.
- 1989: The Legislature changed the allocation of the conservation tax, increasing the share directed to the reclamation fund to 5.3%, with 87.7% going to the conservation fund, and 7% to the general fund.
- 1991: The Legislature repealed the conservation fund, instead sending all conservation tax not sent to the reclamation fund to the general fund; the percent directed to the reclamation fund remained the same, at 5.3%.
- 2010 (current law): The Legislature untethered the conservation tax rate from the balance of the reclamation fund and instead tied it to the price of oil. When the price of West Texas Intermediate is less than $70 per barrel, the tax is 0.19% and the reclamation fund receives 10.5% of the tax revenue and the remainder goes to the general fund. When the price is over $70 per barrel, the tax is 0.24% and the reclamation fund receives 19.7% of the revenue.

JF/dw

LFC Requester:	

AGENCY BILL ANALYSIS

SECTION I: GENERAL INFORMATION

Check all that apply:

Original ___ **Amendment** ___
Correction ___ **Substitute** X

Date 1/27/2026
Bill No: HB 80

Sponsor: Representative Murphy
Short Title: Changes to the Reclamation Fund

Agency Name & Code Number: EMNRD 521

Person Writing Benjamin Bajema
Phone: (505) 394-2581 **Email** Benjamin.bajema@emnrd.nm.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY27	**FY28**		
	$31,940 ~ $41, 610 (depends on price of oil)	Recurring	Oil Gas Reclamation

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY27	**FY28**	**FY29**		
	($31,940 ~ $41,610) (depends on price of oil)	($58,680 ~ $68,410) (depends on price of oil)	Recurring	Oil & Gas Reclamation Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY27	FY28	FY29	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	No Change	No Change	Est. +$27 Mil	Est. +$27 Mil	Recurring	Oil & Gas Reclamation Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act:

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

HB 80 increases the share of Oil Conservation Tax revenue deposited into the Oil and Gas Reclamation Fund. Under Section 7-30-4 NMSA 1978, 10.5% of the tax is distributed to the fund when the average price per barrel of West Texas Intermediate crude was below $70 in the previous quarter, and 19.7% is distributed when the price exceeded $70. The bill replaces this price-based formula with a phased schedule of fixed percentage distributions:

(1) **50%** between July 1, 2027 and July 1, 2028;
(2) **75%** between July 1, 2028 and July 1, 2029;
(3) **100%** between July 1, 2029 and July 1, 2037;
(4) **50%** beginning July 1, 2037 and thereafter.

HB 80 designates the Oil and Gas Reclamation Fund as a non-reverting fund and appropriates its balances to EMNRD for surveying abandoned wells and associated facilities, preparing plugging and remediation plans, and restoring improperly plugged or un-reclaimed sites.

The HB 80 HEENRC Committee Substitute also amends the "energy education" provision of Section 70-2-38 (A.2) NMSA 1978 to include "general energy", "the sources" and the "impacts of all energy-related emissions" and increases the annual appropriation to $250,000.

FISCAL IMPLICATIONS

HB 80 significantly increases the money distributed to the Oil and Gas Reclamation Fund starting in FY28. However, the estimated fiscal impact is heavily dependent on the forecasted revenue collected under the Oil Conservation Tax. For the purpose of this FIR, EMNRD relies on the LFC's December 2025 General Fund Consensus Revenue Estimate available here, on pages 20 and 21.

Based on this estimate, the fiscal implications are as follows, in millions of dollars:

	Oil Conserv Tax Revenue Est.	Existing Distribution if Oil under $70	Existing Distribution if Oil Over $70	Proposed Distribution	Fiscal Impact
FY26	$90.70	$9.55	$17.87	No Change	$0
FY27	$98.00	$10.32	$19.31	No Change	$0
FY28	$105.40	$11.09	$20.76	$52.70	$31.94 ~ $41.61
FY29	$106.10	$11.17	$20.90	$79.58	$58.68 ~ $68.41
FY30	$108.70	$11.44	$21.41	$108.70	$87.29 ~ $97.26

SIGNIFICANT ISSUES

New Mexico faces significant and growing financial liabilities for oil and gas well cleanup. While most wells are plugged by operators, OCD must intervene when wells are left inactive and unplugged without authorization. OCD currently has plugging authority for roughly 700 wells on state and private lands, and the state may need to assume responsibility for an additional 1,400 inactive wells for which authority has not yet been pursued. More than 3,000 additional wells are at risk of becoming orphaned. In total, the LFC estimates New Mexico's current and anticipated liability for well plugging and site remediation between $700 million and $1.6 billion (LFC Policy Spotlight: Orphaned Wells). This bill would take significant strides towards putting money aside for that forecasted liability by increasing the percentage of the revenue from the Oil Conservation

Tax towards a non-reverting Reclamation Fund.

PERFORMANCE IMPLICATIONS

The OCD will need to expand its Orphan Well plugging program to make full use of this proposed increase in funding to the reclamation fund, and accommodate increased demands for management of plugging and reclamation activities. OCD would likely request authority to modestly expand personnel expenditures from the fund in future years.

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The percentage of the Oil Conservation Tax distributed into the Oil and Gas Reclamation Fund will remain between 10.5% and 19.7% of the net receipts from the Oil and Gas Conservation Tax.

AMENDMENTS

FILED 1st JUDICIAL DISTRICT COURT
Santa Fe County
3/9/2026 9:35 AM
KATHLEEN VIGIL CLERK OF THE COURT
Dominique Z Garcia

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

CENTER FOR BIOLOGICAL DIVERSITY;
SAN JUAN CITIZENS ALLIANCE; and
TÓ NIZHÓNÍ ÁNÍ,

Plaintiffs,

vs.

Civil Action No. D-101-CV-2026-00649
Case assigned to Sanchez-Gagne, Maria

THE STATE OF NEW MEXICO;
NEW MEXICO ENERGY MINERALS AND NATURAL RESOURCES DEPARTMENT; and
ACTING SECRETARY ERIN TAYLOR,
in her official capacity,

Defendants.

COMPLAINT TO ENFORCE DEFENDANTS' DUTIES UNDER THE NEW MEXICO OIL AND GAS ACT TO PREVENT WASTE AND ENFORCE PLUGGING AND REMEDIATION OBLIGATIONS, AND FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Table of Contents

Plaintiffs, through undersigned counsel, bring this action for declaratory and injunctive relief, pursuant to the New Mexico Oil and Gas Act, NMSA 1978 §§ 70-2-1 – 70-2-39 (1977, as amended through 2019), the New Mexico Declaratory Judgment Act, NMSA 1978 §§ 44-6-1 – 44-6-15 (1975), the New Mexico Constitution, Art. VI, § 13, and the Court's inherent power in equity, against the State of New Mexico, the New Mexico Energy, Minerals and Natural Resources Department, and Acting Secretary Erin Taylor, in her official capacity. Defendants are responsible for enforcing the New Mexico Oil and Gas Act, including preventing waste, ensuring well operators properly plug and remediate inactive oil and gas extraction sites, and requiring operators to pay for this clean up, not the State and taxpayers. Plaintiffs are organizations with members who are harmed by Defendants' failure to perform these duties under the Oil and Gas Act.

Plaintiffs seek a declaratory judgment that Defendants are failing to fulfill their duties under the New Mexico Oil and Gas Act to prevent waste, to ensure that operators plug and remediate oil and gas wells and surrounding lands, to secure additional financial assurance from operators of inactive wells, to forfeit financial assurance from operators who fail to clean up their mess, and to take all mandatory enforcement measures against operators to offset the use of public funds for cleanup. Additionally, Plaintiffs seek an order enjoining Defendants to come into compliance with their statutory duties.

INTRODUCTION

1. This case concerns the ongoing harm and increasing threat to New Mexico's air, land and water, as well as the health and safety of tens of thousands of New Mexicans—the thousands of unplugged, inactive oil and gas wells and unremediated extraction sites littered across the state

that continue to emit toxic pollutants long past the time their productive lives are over and their legally mandated plugging and remediation deadlines have come and gone.

2. These dangers would be eliminated if Defendants fulfilled their statutory duties to compel operators of these inactive, unplugged wells to properly and promptly plug the wells and remediate the extraction sites. New Mexico law requires that operators conduct this cleanup at their expense, and the law requires that Defendants enforce those cleanup obligations. Instead, Defendants have allowed hundreds of oil and gas operators—more than half of the operators in New Mexico—to violate the law, leaving these well sites unplugged and unremediated, with Defendants left holding the bag to very slowly clean up the operators' mess using public funds, rather than making operators do it as required by law.

3. As the nation's third-largest gas producing state and second-largest oil producing state—in the world's largest oil producing nation—New Mexico currently has more than 70,000 oil and gas wells, concentrated in the San Juan Basin in northwest New Mexico and the Permian Basin in southeast New Mexico. All of these extraction sites will eventually need to be cleaned up. Many thousands of the wells are already non-producing and must legally be plugged and remediated now, with tens of thousands of additional wells only marginally producing and destined to become non-producing and in need of cleanup in the very near future.

4. Despite providing no value to anyone, Defendants allow these thousands of inactive unplugged wells to continue to spew toxic chemicals that are harmful to human health and pollute New Mexico's air, land and water. These wells emit dangerous air pollutants, contaminate scarce freshwater resources, leak climate-warming gases such as methane, release toxic pollutants onto the land, and create grave risks of explosions and blow-outs that exacerbate harm and add further injury to the environment and those in proximity to these extraction sites.

5. In addition to harming human and environmental health, inactive and unplugged wells are significant financial liabilities that have cost the public tens of millions of dollars in cleanup costs. This cost is projected to balloon into the billions of dollars in the near future.

6. The New Mexico Oil and Gas Act ("Oil and Gas Act" or "the Act"), if enforced, would mitigate these accelerating public health, environmental, and economic crises. Defendants have legal duties under the Act to prevent waste, secure financial assurance from operators for cleanup, ensure operators plug wells and remediate well sites, forfeit financial assurance when an operator evades its cleanup obligations, and take all mandatory enforcement measures to help recoup money the State has spent fulfilling a noncompliant operator's cleanup obligations. Indeed, the Act requires Defendants to ensure that each oil and gas operator properly plugs, abandons, restores, and remediates wells and surrounding lands as a condition of doing business in the state.[1]

7. However, instead of fulfilling their duties to enforce the Oil and Gas Act's mandatory cleanup obligations against operators, Defendants have allowed hundreds of operators to leave thousands of wells to sit idle and unplugged, with surrounding sites unremediated for years—or in many cases, decades—in violation of the law.

8. The longer a well is inactive, the less likely it is to ever return to production, and the more dangerous it becomes, with routine maintenance often increasingly neglected. Further, the higher the percentage of inactive wells an operator holds, the more likely it is that the operator will become insolvent. Companies routinely seek to maximize profit and delay cleanup obligations as long as possible until they can eventually offload depleted wells onto less capitalized, and

[1] In the interest of clarity and brevity, this suite of obligations is referred to as "plugging and remediation" or "cleanup obligations" throughout this pleading unless referencing specific statutory or regulatory language that uses different terms.

usually smaller, operators that are at increasing risk of bankruptcy and lack the means for proper cleanup.

9. Defendants are familiar with this industry practice.[2] Defendants know that the longer they wait to enforce the law, the less likely it will be that the operators will ever be made to fulfill their cleanup obligations, and the more likely these wells will be "orphaned," and become the responsibility of the State.[3]

10. Failing to enforce the law while operators can still be held accountable results in the State assuming enormous financial liabilities and substantially prolongs the time until plugging and cleanup occurs, thus increasing Plaintiffs' exposure to harm. When responsibility for cleanup falls to the State, it is often years—and can be decades—before wells are plugged and sites are remediated.

11. This is made worse by Defendants' unlawful practice of paying the costs of plugging and remediation for operators that default on their cleanup obligations without collecting the financial assurance meant to help cover the costs, and without taking other mandatory steps to recover costs. This practice subsidizes the continued functioning of operators with noncompliant wells who could still be held responsible—in violation of Defendants' legal duties—while reducing the funds and capacity available to address the backlog of orphan wells for which no responsible operators exist for enforcement purposes.

12. The harms to Plaintiffs, New Mexico residents and the environment caused by inactive, unplugged wells and unremediated extraction sites are ongoing and increase the longer these

[2] *See State of New Mexico, et al. v. Acacia Operating Co., et al.* (hereinafter "*Acacia* Complaint") No. D-101-CV-2025-03283, Compl. ¶¶ 1 – 5, and ¶¶ 82-104 (NM Dist. Ct. Dec. 23, 2025).
[3] The term "orphaned well" is not defined in either statute or rule in New Mexico, and Defendants use the term somewhat inconsistently, but it is commonly understood to mean inactive, unplugged wells with no responsible operator to plug them that have become the responsibility of the state or federal government.

sites are allowed to remain without being properly cleaned up. To use Defendant's own words, "[e]very day that these thousands of oil and gas wells idle unplugged, New Mexico residents suffer from health risks and bear the brunt of these environmental harms."[4]

13. Plaintiffs, harmed by the expansive, deteriorating oil and gas infrastructure that Defendants allow to illegally persist, bring this case to enforce Defendants' statutory duties to prevent waste and enforce well plugging and remediation obligations against operators.

PARTIES

I. PLAINTIFFS

14. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY ("the Center") is a national nonprofit environmental organization that works through science, law, and policy to protect the lands, water, air, and climate that all living species need to survive. The Center is incorporated in California and headquartered in Tucson, Arizona. The Center has more than 100,000 members, including more than 1,600 members in New Mexico, and maintains offices across the United States, including in New Mexico.

15. The Center's Climate Law Institute works to protect people, wildlife, and ecosystems from climate change and the fossil fuel industry's deleterious effects on water, air, land, public health, and cultural practices. The Climate Law Institute uses law, science, public education, and grassroots campaigns to curb pollution resulting from fossil fuel extraction and combustion that worsens climate change; pollutes our air, water, and land; and harms public health. The interests that the Center for Biological Diversity seeks to protect through this lawsuit are germane to its mission, goals, and purposes.

[4] *Acacia* Complaint, *supra* note 2, at ¶ 64.

16. The Center has members who live, work, recreate and practice their religion in New Mexico, including the Greater Carlsbad region of the state where the Permian Basin is located and the Greater Chaco region of the state where the San Juan Basin is located. These members are harmed by Defendants' failure to enforce oil and gas well plugging and remediation obligations because they live, work, recreate and practice their religion in places where Defendants have allowed operators to leave thousands of inactive, unplugged, and unremediated wells to pollute the air, land, and water, and harm human health and safety.

17. Additionally, Center members who are Indigenous are further harmed by inactive and marginal wells because the wells prevent them from subsisting, practicing their religion, and holding important traditional ceremonies in their centuries-old homelands. The Greater Chaco Landscape, which sits on the San Juan Basin, is an irreplaceable place of deep cultural heritage for Indigenous members. This sacred place is harmed by Defendants' violation of their legal duties, allowing thousands of inactive oil and gas wells to remain in situ, continuing to scar the landscape, contaminating the region's land, air, and water, and posing health and safety hazards to these individuals as they practice their traditional lifeways and religious ceremonies.

18. Plaintiff SAN JUAN CITIZENS ALLIANCE ("the Alliance") is a grassroots environmental organization dedicated to social, economic, and environmental justice in the San Juan Basin that organizes Basin residents to protect the water, air, land, rural character, and unique quality of life in the Basin while embracing the diversity of the region's people, economy, and ecology. San Juan Citizens Alliance is incorporated and headquartered in Durango, Colorado. The Alliance has more than 1,000 members and thousands of supporters in New Mexico and Colorado. San Juan Citizens Alliance has offices in Durango, Colorado, and Farmington, New Mexico, and undertakes substantial work in each of those states.

19. A healthy San Juan Basin is fundamental to the mission of San Juan Citizens Alliance, which has members who live and work in communities that have been home to oil and gas extraction in the Greater Chaco region for more than a century. The Alliance's members visit and recreate throughout the San Juan Basin, which is riddled with thousands of dangerous inactive oil and gas wells that damage members' health and safety as long as they remain unplugged and unremediated. The Alliance has made longstanding efforts to address the impacts of oil and gas development in the hopes of avoiding irreparable harm to the landscapes and communities of northwest New Mexico. Defendants' failure to fulfill their duty to hold oil and gas operators accountable for well plugging and remediation harms San Juan Citizens Alliance's members by contaminating the air, land, and water in the San Juan Basin where they live, work, and recreate.

20. Plaintiff TÓ NIZHÓNÍ ÁNÍ ("TNA") is a Diné-led non-profit organization from the Big Mountain community on Dził Yíjiin (Black Mesa, Arizona) that works to protect the aquifers, streams and lands of communities on and around the Navajo Nation in Arizona and New Mexico impacted by fossil fuel extraction and coal mining. Tó Nizhóní Áni is incorporated in the Navajo Nation and Arizona and is based in Black Mesa with an auxiliary office in Flagstaff, Arizona. The work of Tó Nizhóní Áni includes issues related to the damaging impacts of fossil fuel extraction on communities and their water sources throughout northeast Arizona and northwest New Mexico, including in portions of the Greater Chaco region and the San Juan Basin.

21. Tó Nizhóní Áni seeks to bring power to Indigenous communities suffering the environmental effects of extractive industry and industry waste, and to position the region for a just and equitable transition to renewable energy. Proper remediation and reclamation of historic fossil fuel sites, including inactive oil and gas wells, is integral to this mission because without it, these lands cannot support the communities that depend on them or become part of the just and

equitable economic transition to renewable energy that the organization pursues. Defendants' failure to fulfill their duty to enforce mandatory well plugging and remediation obligations harms Tó Nizhóní Áni and the communities for which it advocates by allowing thousands of inactive, unplugged wells and unremediated well sites to be left to degrade the land, air, water, and health of these communities, preventing the future Tó Nizhóní Áni strives to create.

22. Plaintiffs are harmed by Defendants' failure to enforce the Oil and Gas Act's plugging and remediation obligations against operators. Inactive, unplugged wells and unremediated well sites can cause myriad adverse impacts to the environment and its ecosystems, as well as to the health and safety of those living, recreating and practicing their religion near them. These impacts include contamination of land, air, and water from the spills and emissions of toxic pollutants from inactive wells that are susceptible to blowouts and mechanical failures, especially when operators cease routine maintenance.

23. In addition to direct harms to human health and the environment, Defendants' failure to enforce the plugging and remediation obligations against operators harms Plaintiffs' ability to live, work, recreate and practice religion in ecosystems that are deeply important to them. Plaintiffs are concerned about their health, physical safety, and the contamination of nearby air, land, and water caused by inactive, unplugged, and unremediated wells and extraction sites. They are exposed to various unreasonable risks by wells that operators and regulators have neglected, which are no longer structurally and mechanically sound or adequately monitored, as well as by extraction sites at which long necessary and legally mandated cleanup measures have not been taken.

24. For years Plaintiffs have engaged in advocacy to mitigate the harms the growing inactive and orphaned well crisis in New Mexico has on communities and the environment. These efforts

have included communicating with Defendants to share the experiences of frontline communities, identifying concrete proactive steps for Defendants to take, and demanding Defendants take enforcement action, very similar to the demands of this Complaint. Plaintiffs' requests have been largely ignored and the problem has worsened.

25. Plaintiffs' harms would be redressed if Defendants complied with their duties to prevent waste and enforce the Oil and Gas Act's well plugging and remediation requirements. Defendants' compliance with their statutory duties would reduce the harms and dangers posed to Plaintiffs and their environment in the San Juan and Permian Basins, as inactive, unplugged wells would finally be properly sealed off from the surrounding air, land, and water, and contamination present on unremediated extraction sites would finally be removed.

II. DEFENDANTS

26. Defendant STATE OF NEW MEXICO is a sovereign state of the United States and has authorized oil and gas development while failing to ensure that operators abide by their legal obligations to plug and remediate inactive, unplugged wells and corresponding well sites. By statute, the Attorney General of the State of New Mexico has the legal obligation to pursue legal enforcement action against oil and gas operators who fail to abide by the law.

27. Defendant NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT ("the Natural Resources Department") is the executive department responsible for oil and gas production oversight and regulation. The Natural Resources Department "protect[s] the environment and ensure[s] responsible reclamation of land and resources affected by mineral extraction."[5]

[5] NM Energy, Minerals and Natural Resources Dept., https://www.emnrd.nm.gov/ (last visited Feb. 18, 2026).

28. The Oil Conservation Division ("the Division" or "OCD"), of the Natural Resources Department was established pursuant to the New Mexico Oil and Gas Act, NMSA 1978 §§ 70-2-1, *et seq.* (1977, as amended through 2019). The Division has "jurisdiction and authority over all matters relating to the conservation of oil and gas," NMSA 1978 § 70-2-6(A), and must prevent waste and enforce the Oil and Gas Act, NMSA 1978 §§ 70-2-11, -12. According to the Division's website, it "regulates oil and gas activity in New Mexico" and "gathers well production data, permits new wells, enforces the division's rules and the state's oil and gas statutes, makes certain abandoned wells are properly plugged, and ensures the land is responsibly restored."[6]

29. Defendant NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT ACTING SECRETARY ERIN TAYLOR is sued in her official capacity. She is vested with the responsibility to execute the mission of the Natural Resources Department and shall take care that the laws be faithfully executed. She shall also implement the rules of the Natural Resources Department, pursuant to the laws of the State of New Mexico, including the New Mexico Oil and Gas Act.

JURISDICTION & VENUE

30. This Court has jurisdiction over the parties and subject matter jurisdiction under the New Mexico Constitution, Art. VI, § 13, the New Mexico Declaratory Judgment Act, NMSA 1978 §§ 44-6-1 – 44-6-15 (1975), and the New Mexico Oil and Gas Act, NMSA 1978 §§ 70-2-1 – 70-2-39 (1977, as amended through 2019).

31. Jurisdiction is also proper in this Court pursuant to NMSA 1978 § 38-3-1.1 (1998), because Plaintiffs seek a declaratory judgment and further relief regarding the actions of the State of New Mexico, including the executive and legislative branches.

[6] *About the Oil Conservation Division (OCD)*, NM Energy, Minerals and Natural Resources Dept., https://www.emnrd.nm.gov/ocd/ (last visited Feb. 18, 2026).

32. Venue is proper in Santa Fe County pursuant to NMSA 1978 § 38-3-l(G) (1998) because Defendants are located in Santa Fe County.

STATEMENT OF FACTS

I. DEFENDANTS HAVE MANDATORY DUTIES UNDER THE OIL AND GAS ACT TO COMPEL OPERATORS TO CLEAN UP INACTIVE EXTRACTION SITES AND TO PREVENT WASTE.

A. Defendants have a duty to enforce plugging and remediation obligations.

33. Pursuant to the Oil and Gas Act, "[t]he production or handling of crude petroleum oil or natural gas…in such manner or under such conditions or in such amounts as to constitute or result in waste is [] prohibited." NMSA 1978 § 70-2-2. Waste "includ[es] the loss or destruction [of oil or gas] without beneficial use, resulting from evaporation, seepage, leakage or fire." NMSA 1978 § 70-2-3(B); 19.15.2.7(W)(1)(b) NMAC.

34. The Division is "empowered, and it is its duty, to prevent waste prohibited by this act and to protect correlative rights, as in this [Oil and Gas] act provided. To that end, the Division is empowered to make and enforce rules, regulations and orders, and to do whatever may be reasonably necessary to carry out the purpose of this act, whether or not indicated or specified in any section hereof." NMSA 1978 § 70-2-11(A).

35. As a "condition precedent to drilling or producing the well," Defendants are required to secure financial assurance from every operator of an oil or gas well in New Mexico "running to the benefit of the state and conditioned that the well be plugged and abandoned in compliance with the rules of the oil conservation division." NMSA 1978 § 70-2-14(A).

36. The Division is tasked with making rules and orders to require "wells to be plugged in a way so as to confine the crude petroleum oil, natural gas or water in the strata in which it is

found and to prevent it from escaping into other strata" and to condition financial assurance on the performance of such rules. NMSA 1978 §70-2-12(B)(1).

37. The Division has a duty to enforce the Act's mandatory plugging and remediation obligations and has broad authority to do so. After notice and hearing, it can "order any well plugged and abandoned by the operator or surety or both in accordance with division rules" if "*any* of the requirements of the Oil and Gas Act or the rules promulgated pursuant to that act have not been complied with." NMSA 1978 § 70-2-14(B) (emphasis added). The Division can also seek compliance, penalties, and injunctive relief through civil actions. NMSA 1978 § 70-2-31(A)(2).

38. Moreover, "[w]henever it shall appear that any person is violating, or threatening to violate, any statute of this state with respect to the conservation of oil or gas, or both, or any provision of this act, or any rule, regulation or order made thereunder, the division through the attorney general shall bring suit against such person…". NMSA 1978 § 70-2-28.

39. If a well has not produced for more than twelve months or has been determined to no longer be of beneficial use, the well's operator has ninety days to either plug and remediate the well, to put it into "approved temporary abandonment" status, or to bring it back into production. *See* 19.15.25.8(B) NMAC. A well that has been inactive and unplugged for 15 months is presumptively "out of compliance" with Division rules. 19.15.5.9(B)(2) NMAC.

40. Defendants' rules mandate a specific course of enforcement action when an operator has failed to fulfill its plugging or remediation obligations:

> Upon the operator's failure to properly plug and abandon and restore and remediate the location of a well or wells a financial assurance covers, the division shall give notice to the operator and surety, if applicable, and hold a hearing as to whether the well or wells should be plugged and abandoned and the location restored and remediated in accordance with a division-approved plugging program. If it is determined at the hearing that the operator has failed to plug and

> abandon the well and restore and remediate the location as provided for in the financial assurance or division rules, the director shall issue an order directing the well to be plugged or abandoned and the location restored and remediated in a time certain.

19.15.8.13(A) NMAC.

41. The Division must maintain on its website and update daily an "Inactive Well List" that identifies every well, by operator, that has not produced for 15 months, has not been plugged, and is not in approved temporary abandonment or subject to an agreed compliance order. 19.15.5.9(B)(1) NMAC.

42. For years, there have been thousands of inactive wells on this list. Currently there are about 3,300 wells on this list belonging to approximately 340 operators; each of these wells is out of compliance with plugging and remediation obligations. Yet, records obtained from the Division's website and from public records requests indicate that in the past four years, Defendants have only initiated enforcement action against a small fraction of the operators and Defendants routinely fail to ensure that even these extremely limited attempts at enforcement actually result in compliance.

B. Defendants have a duty to secure additional financial assurance for inactive wells.

43. In addition to requiring operators to provide financial assurance conditioned on cleanup as a "condition precedent to drilling or producing the well," NMSA 1978 § 70-2-14(A), the Oil and Gas Act further mandates that the Division "shall require" additional financial assurance "on any well that has been held in a temporarily abandoned status for more than two years," NMSA 1978 § 70-2-14(A). "Temporarily abandoned status" simply refers to a well that is inactive. 19.15.2.7(T)(3) NMAC. Defendants' rules also require additional financial assurance for any well in approved temporary abandonment status. 19.15.8.9(D) NMAC.

44. Currently, according to data from the Division's online database, Defendants have failed to secure the mandatory additional financial assurance for more than half of the wells for which it is required. More specifically, approximately 1,900 wells owned by 200 operators on state and private land are subject to this mandatory additional financial assurance. Defendants have failed to secure the mandatory additional financial assurance for approximately 1,200 (63%) of these wells from 122 (61%) of the operators required to provide it.

C. Defendants have a duty to forfeit the financial assurance of operators that do not comply with plugging and remediation obligations.

45. The Oil and Gas Act directs that when a Division order directing an operator to plug a well "is not complied with in the time period set out in the order, the financial assurance shall be forfeited." NMSA 1978 § 70-2-14(B).

46. When any financial assurance is forfeited the "director of the oil conservation division shall give notice to the attorney general, who shall collect the forfeiture without delay." NMSA 1978 § 70-2-14(C). The forfeiture must then be deposited into the Oil and Gas Reclamation Fund. NMSA 1978 § 70-2-14(D).

47. The Division's rules further clarify that the financial assurance is to ensure "that the well be plugged and abandoned and the location restored and remediated," 19.15.8.9(A) NMAC, and that assurance is subject to forfeiture, "[u]pon the operator's failure to properly plug and abandon and restore and remediate the location of a well or wells a financial assurance covers." 19.15.8.13(A) NMAC.

48. Standard plugging and remediation procedures require an operator to "plug the well in a manner that permanently confines all oil, gas and water in the separate strata in which they are originally found" and to "level the location," "restore the location to a safe and clean condition," and "close all pits and below-grade tanks." 19.15.25.10 NMAC.

49. In addition to plugging the well after production ceases, remediation of the site must also take place subject to Division oversight and approval. This remediation ultimately requires the responsible party to restore the impacted surface areas to "the condition that existed prior to the release or their final land use" and replace and contour removed material "to achieve erosion control, long-term stability and preservation of surface water flow patterns." 19.15.29.13 NMAC.

50. There are thousands of unplugged wells and unremediated well sites, owned by hundreds of non-compliant operators; yet, based upon records obtained from the Division, Defendants have not forfeited the financial assurance of any operator since 2018, despite having plugged several hundred wells with public money in the same time period.

D. Defendants have a duty to use the "Reclamation Fund" according to law—as a last resort and paired with recouping cleanup costs from operators.

51. The Oil and Gas Reclamation Fund ("Reclamation Fund") was established in 1977, in part to serve as a funding pool of last resort to assist the Division with plugging wells when operators fail to do so. *See* NMSA 1978 §§ 70-2-37 and 38.

52. The Reclamation Fund is intended to be capitalized by a percentage of the conservation tax levied against oil and gas operators, NMSA 1978 § 7-1-6.21, forfeited financial assurance, NMSA 1978 § 70-2-14(D), and funds recovered in indemnification actions brought against operators, NMSA 1978 § 70-2-38(B).

53. The Division is authorized to make expenditures from the Oil and Gas Reclamation Fund for "employing the necessary personnel to survey abandoned wells, well sites and associated production facilities and preparing plans for administering and performing the plugging of abandoned wells that have not been plugged or that have been improperly plugged and for the

restoration and remediation of abandoned well sites and associated production facilities that have not been properly restored and remediated." NMSA 1978 § 70-2-38(A)(1).

54. The Oil and Gas Act specifically provides for use of the Reclamation Fund to "meet the additional expenses" when an operator's "financial assurance proves insufficient to cover the cost of plugging" their wells. NMSA 1978 § 70-2-14(E). In other words, the Act requires that the noncompliant operator's financial assurance be used to cover plugging and remediation costs and allows the Division to resort to expending resources from the Reclamation Fund to cover the shortfall. NMSA 1978 § 70-2-14(E).

55. Thus, when the Reclamation Fund is used to cover additional costs, Defendants are required to take action to recoup such additional costs from the noncompliant operator. Forfeited financial assurance must be deposited into the Reclamation Fund to help offset the cost to the Division of well plugging and site remediation on behalf of negligent operators. NMSA 1978 § 70-2-14(B). The Act also directs that "[w]hen the financial assurance proves insufficient … and funds must be expended from the oil and gas reclamation fund to meet the additional expenses," the Division "is authorized to bring suit against the operator in the district court of the county in which the well is located for indemnification for all costs incurred by the oil conservation division in plugging the well." NMSA 1978 § 70-2-14(E); *see also* NMSA 1978 § 70-2-38(B).

56. Moreover, Defendants must take action in court through the Attorney General whenever any person violates or threatens to violate the Oil and Gas Act, its implementing regulations, or order. NMSA 1978 § 70-2-28.

57. Defendants have spent more than $45 million in public funds—a combination of taxpayer money from the federal government and about $27 million from the Reclamation Fund—to plug operators' wells in the last five fiscal years but have not taken mandatory

enforcement actions to recoup any of those funds during the same period. Defendants have failed to secure additional financial assurance from many operators, failed to forfeit financial assurance for noncompliant wells, and otherwise failed to pursue legal action against operators to indemnify the State's costs for plugging and remediation work.

58. As a result of Defendants' failure to fulfill these duties under the law, thousands of inactive, unplugged wells and unremediated extraction sites are littered across New Mexico, harming Plaintiffs and the environment, and undermining public health and safety. These unplugged wells and unremediated extraction sites result in waste by leaking methane and spilling crude oil that pollute the state's land, air, and water instead of being put to beneficial use. NMSA 1978 § 70-2-3(B), 19.15.2.7(W)(1)(b) NMAC.

II. DEFENDANTS' FAILURE TO FULFILL THEIR STATUTORY DUTIES TO PREVENT WASTE AND ENFORCE CLEAN UP OBLIGATIONS HARMS NEW MEXICO'S AIR, LAND, WATER AND HUMAN HEALTH.

A. Inactive unplugged well sites harm human health and the environment.

59. Proper plugging and remediation provide public benefits by reducing emissions of pollutants—including hydrocarbons and methane—to improve local and regional air quality, prevent further contamination of surface water, groundwater, and soil, and restore wildlife habitat.[7] Inactive wells also diminish nearby property values[8] and frustrate the State's mission to protect public lands for the use and enjoyment of future generations.[9] With new research

[7] *Phase 1 Formula Grant for Orphaned Well Site Plugging, Remediation, and Restoration, Work Plan/Proposal* ("Phase I Work Plan") 11, NM Energy, Minerals and Natural Resources Dept./Oil Conservation Division (Dec. 31, 2023).
[8] Max Harleman, Jeremy G. Weber & Daniel Berkowitz, *Environmental Hazards and Local Investment: A Half-Century of Evidence from Abandoned Oil and Gas Wells*, 9 J. Ass'n Env't & Resource Econ. 721 (2022), https://www.journals.uchicago.edu/doi/full/10.1086/719383.
[9] Daniel Raimi et al., *Decommissioning orphaned and abandoned oil and gas wells: New estimates and cost drivers*, 55 Environmental science & technology 10224 (2021), https://pubs.acs.org/doi/10.1021/acs.est.1c02234.

increasingly shedding light on the adverse effects inactive and marginal wells have on the health of the communities and the environment around them, proper well plugging and site remediation is more urgent than ever.

60. The New Mexico Legislative Financial Committee recently outlined the importance of this process:

> Oil and gas wells, by design, tap into subsurface reservoirs that are often more than a mile deep. When active production ceases, the wells can become pathways for hazardous substances to escape, including gases like methane and hydrogen sulfide and fluids like produced water and residual hydrocarbons. Those leaking gases and fluids can contaminate groundwater, endanger nearby homes, and impede future development of oil and gas resources. Modern plugging involves using cement to seal off oil, gas, and water-bearing formations to prevent leaks to the surface or adjacent strata, while site remediation and reclamation involve removing contaminated soil and disposing of surface infrastructure.[10]

61. Indeed, according to the New Mexico Legislative Finance Committee, "wells must be plugged at the end of their productive lives to protect the environment, health and safety and future resource production."[11]

[10] *Policy Spotlight: Orphaned Wells* 4 ("*LFC Policy Spotlight*"), NM Legislative Finance Committee, (June 24, 2025), https://www.nmlegis.gov/Entity/LFC/Documents/Program_Evaluation_Reports/LFC%20Policy%20Spotlight%20-%20Orphaned%20Wells%20-%20Final.pdf.
[11] *Id*.

62. Inactive, unplugged wells and unremediated extraction sites pollute, emitting dangerous toxic gases.[12] Many of these toxic gases, such as benzene,[13] toluene,[14] ethylbenzene,[15] xylene,[16] hexane,[17] cyclohexane,[18] and heptane,[19] are Volatile Organic Compounds ("VOCs") that can cause a variety of health problems, including different types of cancer, and neurological, gastrointestinal, cardiovascular, and respiratory harms. VOC exposure can irritate the eyes, nose and throat, can cause difficulty breathing and nausea, and can damage the central nervous system, heart, stomach, intestines, lungs, brain, and other organs. VOCs contribute to respiratory and circulatory system damage, which can result in asthma, chronic obstructive pulmonary disease ("COPD"), heart attack, and stroke, and can lead to early death. Children, elderly, and sick people are especially vulnerable to these effects since their organs and immune systems are not as strong or developed.[20]

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[12] *See* Dominic C. DiGiulio et al., *Chemical characterization of natural gas leaking from abandoned oil and gas wells in Western Pennsylvania*, 8 ACS Omega 9443 (2023), https://pubs.acs.org/doi/10.1021/acsomega.3c00676; Charlie Barrett, *Environmental and economic risks from low-producing and inactive wells in New Mexico*, Earthworks (Dec. 14, 2023), https://earthworks.org/blog/environmental-and-economic-risks-from-low-producing-and-inactive-wells-in-new-mexico/; Mark Olalde & Nick Bowlin, *The rising cost of the oil industry's slow death*, ProPublica and Capital & Main (Feb. 22, 2024), https://www.propublica.org/article/the-rising-cost-of-the-oil-industrys-slow-death.

[13] *Benzene*, Agency for Toxic Substances and Disease Registry (Feb. 10, 2021), https://wwwn.cdc.gov/Tsp/substances/ToxSubstance.aspx?toxid=14.

[14] *Toluene*, Agency for Toxic Substances and Disease Registry (Feb. 10, 2021), https://wwwn.cdc.gov/Tsp/substances/ToxSubstance.aspx?toxid=29.

[15] *Ethylbenzene*, Agency for Toxic Substances and Disease Registry (Feb. 10, 2021), https://wwwn.cdc.gov/Tsp/substances/ToxSubstance.aspx?toxid=66.

[16] *Xylenes*, Agency for Toxic Substances and Disease Registry (Feb. 10, 2021), https://wwwn.cdc.gov/Tsp/substances/ToxSubstance.aspx?toxid=53.

[17] *n-Hexane*, Agency for Toxic Substances and Disease Registry (Feb. 10, 2021), https://wwwn.cdc.gov/Tsp/substances/ToxSubstance.aspx?toxid=68.

[18] *Cyclohexane*, The National Institute for Occupational Safety and Health (Oct. 30, 2019), https://www.cdc.gov/niosh/npg/npgd0163.html.

[19] *n-Heptane*, The National Institute for Occupational Safety and Health, (Oct. 30, 2019), https://www.cdc.gov/niosh/npg/npgd0312.html.

[20] Arianna Dondi et al., *Outdoor air pollution and childhood respiratory disease: the role of oxidative stress*, 24 International Journal of Molecular Sciences 4345 (2023), https://doi.org/10.3390/ijms24054345; *Research on Health Effects from Air Pollution*, U.S.

63. Benzene, toluene, ethylbenzene, and xylene ("BTEX") are hydrocarbons that can cause neurological impairment. Toluene is linked to mental disabilities and abnormal growth in children. Toluene is also linked to organ system damage in the kidney and liver, as well as immune and reproductive systems. Breathing very high levels of ethylbenzene can cause dizziness and throat and eye irritation. Breathing lower levels has resulted in hearing and kidney damage in animals. Exposure to xylene can irritate the eyes, nose, skin, and throat. Xylene can also cause headaches, dizziness, confusion, loss of muscle coordination, and in high doses, death.[21]

64. There is no safe level of exposure to benzene.[22] Benzene causes several diseases in the brain and nervous system, and is associated with cancers such as acute non-lymphocytic leukemia, acute myeloid leukemia, non-Hodgkin lymphoma, chronic lymphoid leukemia, multiple myeloma, chronic myeloid leukemia, acute myeloid leukemia in children, and lung cancer.[23] It also causes hematotoxicity and is immunosuppressive. Benzene is genotoxic, which means it can cause DNA damage and chromosomal changes. It is highly volatile, so most exposure is through inhalation. Inhaling benzene irritates airways and causes coughing, wheezing, and shortness of breath. Benzene exposure contributes to neurological symptoms like dizziness, memory loss, and Parkinson's disease. [24]

Environmental Protection Agency (June 11, 2025), https://www.epa.gov/air-research/research-health-effects-air-pollution.

[21] *See* Meysam Saeedi et al., *Interaction of benzene, toluene, ethylbenzene, and xylene with human's body: Insights into characteristics, sources and health risks*, 16 Journal of Hazardous Materials Advances 100459 (2024), https://www.sciencedirect.com/science/article/pii/S2772416624000603.; *Toluene*, *supra* note 14; *Ethylbenzene*, *supra* note 15; *Xylenes*, *supra* note 16.

[22] *Exposure to benzene: a major public health concern* 2, World Health Organization (2019), https://iris.who.int/bitstream/handle/10665/329481/WHO-CED-PHE-EPE-19.4.2-eng.pdf?sequence=1.

[23] *Id.* at 2-3; Mark A. D'Andrea & G. Kesava Reddy, *Health risks associated with benzene exposure in children: a systematic review*, 5 Global Pediatric Health 2333794X18789275 (2018), https://doi.org/10.1177/2333794X18789275.

[24] *See, e.g., Exposure to benzene: a major public health concern*, *supra* note 22, at 2.

65. Other health-harming gases that leak from inactive, unplugged wells include hydrogen sulfide and hexane. Exposure to hydrogen sulfide, a toxic, colorless gas, can cause irritation to the eyes and respiratory system, as well as apnea, coma, convulsions, dizziness, headache, weakness, irritability, insomnia, stomach upset, and neurological symptoms. [25] Hydrogen sulfide poses heightened risk to individuals with underlying conditions such as asthma, and is lethal to all people at high concentrations.[26] Hexane has been detected at inactive, unplugged well sites[27] and is a potent neurotoxin that can result in permanent damage to the peripheral nervous system, and lead to numbness and tingling in the extremities, muscle weakness, blurred vision, headaches, and fatigue.[28] Hexane is commonly inhaled and, if exposure is prolonged at high concentrations, can cause muscle weakness in the feet and lower legs, and lead to paralysis of the arms and legs.[29] Other likely effects of hexane exposure include respiratory and developmental harms.[30]

66. Many of the pollutants emitted from unplugged, inactive wells can travel significant distances and have been found at elevated levels many kilometers downwind of oil well sites.[31] For example, particulate matter with a diameter of 2.5 micrometers or less—often referred to as

[25] Khalil El Hachem & Mary Kang, *Methane and hydrogen sulfide emissions from abandoned, active, and marginally producing oil and gas wells in Ontario, Canada*, 823 Science of The Total Environment 153491 (2022), https://doi.org/10.1016/j.scitotenv.2022.153491.
[26] *See Public Health Statement for Hydrogen Sulfide*, Agency for Toxic Substances and Disease Registry (December 2016), https://www.atsdr.cdc.gov/ToxProfiles/tp114-c1-b.pdf.; *Hydrogen Sulfide*, The National Institute for Occupational Safety and Health, (Oct. 30, 2019), https://www.cdc.gov/niosh/npg/npgd0337.html; *Hydrogen Sulfide - ToxFAQs™* 1, Agency for Toxic Substances and Disease Registry (Oct. 2024), https://www.atsdr.cdc.gov/toxfaqs/tfacts114.pdf.
[27] *See* DiGiulio, *supra* note 12.
[28] *See Hexane*, U.S. Environmental Protection Agency (Jan. 2000), https://www.epa.gov/sites/default/files/2016-09/documents/hexane.pdf.
[29] *n-Hexane - ToxFAQs™* 1, Agency for Toxic Substances and Disease Registry (Apr. 15, 2025), https://www.atsdr.cdc.gov/toxfaqs/tfacts113.pdf.
[30] *Toxicological Profile for n-Hexane* 12, Agency for Toxic Substances & Disease Registry (Apr. 2025), https://www.atsdr.cdc.gov/ToxProfiles/tp113.pdf.
[31] David J.X. Gonzalez et al., *Upstream oil and gas production and ambient air pollution in California*, 806 Sci. Total Env't 1, 7 (2022), https://doi.org/10.1016/j.scitotenv.2021.150298.

PM2.5—has been found three kilometers downwind of oil wells.[32] Short-term exposure to PM2.5 is associated with mortality, increased hospital admissions for heart or lung problems, acute and chronic bronchitis, asthma attacks, emergency room visits, respiratory symptoms, and restricted activity days, while prolonged exposure to PM2.5 has been linked to premature death, particularly in people who have chronic heart or lung diseases, and reduced lung function growth in children.[33]

67. Unplugged, inactive wells also emit larger volumes of methane than plugged wells.[34]

68. According to Defendant State of New Mexico, in New Mexico, the average unplugged marginal well emits roughly 265 pounds of methane annually, while an average plugged well emits less than 0.2 pounds per year.[35]

69. Defendant New Mexico Energy, Minerals and Natural Resources Department highlighted that a mere 23 orphan wells in New Mexico were recently responsible for more than 101,000 pounds of methane released into the atmosphere annually.[36] This has the equivalent global

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[32] *Id*.
[33] *Inhalable Particulate Matter and Health (PM2.5 and PM10)*, California Air Resources Board, https://ww2.arb.ca.gov/resources/inhalable-particulate-matter-and-health (last visited Feb. 18, 2026); *Health and Environmental Effects of Particulate Matter*, U.S. Environmental Protection Agency, (May 23, 2025), https://www.epa.gov/pm-pollution/health-and-environmental-effects-particulate-matter-pm (last visited Feb. 18, 2026).
[34] *See Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990-2022*, 3-117, U.S. Environmental Protection Agency (2024) ("Wells that are plugged have much lower average emissions than wells that are unplugged (less than 1 kg CH4 per well per year, versus over 100 kg CH4 per well per year)."), https://www.epa.gov/system/files/documents/2024-04/us-ghg-inventory-2024-main-text_04-18-2024.pdf.; Eric D. Lebel et al., *Methane emissions from abandoned oil and gas wells in California*, 54 Environmental Science & Technology 14617 (2020), https://pubs.acs.org/doi/10.1021/acs.est.0c05279; James P. Williams, Amara Regehr & Mary Kang, *Methane emissions from abandoned oil and gas wells in Canada and the United States*, 55 Environmental Science & Technology 563 (2020), https://pubs.acs.org/doi/10.1021/acs.est.0c04265; Louise A. Klotz et al., *Sevenfold underestimation of methane emissions from non-producing oil and gas wells in Canada*, 59 Environmental Science & Technology 9008 (2025), https://pubs.acs.org/doi/10.1021/acs.est.4c05602.
[35] *Acacia* Complaint, *supra* note 2, at ¶ 43.
[36] *Orphan well clean up accelerating thanks to Bipartisan Infrastructure funding* 1, N.M. Energy Minerals and Natural Resources Dept. (Feb. 23, 2023), https://www.emnrd.nm.gov/officeofsecretary/wp-content/uploads/sites/2/orphan_wells_progress_report_02_2023.pdf.

warming potential of 1,283 metric tons of carbon dioxide, or an average car driven more than 3 million miles.[37]

70. As noted by Defendant State of New Mexico, "methane emissions from inactive wells also contribute substantially to climate change."[38] Over a 20-year period, methane has more than 80 times the heating power of carbon dioxide. Thus, even a small amount of methane emitted can significantly contribute to climate change. Methane is also explosive at high concentrations.[39]

71. Climate change has already caused more extreme heat, drought, and fires in New Mexico, and these impacts are projected to worsen in the coming decades. New Mexico is experiencing increasingly arid conditions, including decreased soil moisture, stressed vegetation, more severe droughts, and lower river flows.[40]

72. In addition to airborne pollutants, unplugged or improperly plugged and unremediated well sites can discharge toxic chemicals into the soil, surface water and groundwater.[41] Leakage

[37] *Greenhouse Gas Equivalencies Calculator*, U.S. Environmental Protection Agency, https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator (last visited Feb. 18. 2026).
[38] *Acacia* Complaint, *supra* note 2, at ¶ 44.
[39] *See, Methane: Answers to Frequently Asked Health Questions,* Ohio Bureau of Environmental Health (June 2012), https://semspub.epa.gov/work/05/437170.pdf.
[40] *E.g.*, Nelia Dunbar et al., *Climate Change in New Mexico Over the Next 50 Years: Impacts on Water Resources* 40, N.M. Bureau of Geology and Mineral Res. (2022), https://geoinfo.nmt.edu/publications/monographs/bulletins/downloads/164/B-164_web.pdf.
[41] Samuel W. Shaheen et al., *Anaerobic oxidation of methane from abandoned oil and gas wells leaking into aquifers*, 408 Geochimica et Cosmochimica Acta 1 (2025), https://www.sciencedirect.com/science/article/abs/pii/S0016703725004636?via%3Dihub; Woda, Joshua et al., *A geospatial analysis of water-quality threats from orphan wells in principal and secondary aquifers of the United States*, 976 Science of the Total Environment 179246 (2025), https://doi.org/10.1016/j.scitotenv.2025.179246; *See* Bowlin, Nick, *Toxic Wastewater From Oil Fields Keeps Pouring Out of the Ground. Oklahoma Regulators Failed to Stop It*, The Frontier and ProPublica (Oct. 29, 2025), https://www.readfrontier.org/stories/toxic-wastewater-from-oil-fields-keeps-pouring-out-of-the-ground-oklahoma-regulators-failed-to-stop-it/; Amanda Drane, *Zombie wells, part 2: How forsaken oil wells are causing environmental chaos across Texas* (July 3, 2023), https://www.houstonchronicle.com/business/energy/article/oil-wells-texas-ranchers-chaos-18073971.php

into groundwater, which provides over half of New Mexico's total water supply, [42] may lead to toxic chemical ingestion and health harm. Frack fluids and toxic liquid waste (referred to by the industry as "produced water") can also leak from inactive, unplugged wells. This toxic liquid waste can contain formaldehyde, arsenic, mercury, barium, chloride, lead, iron, selenium, sulphate, other heavy metals, and per- and polyfluoroalkyl substances (known as PFAS or "forever chemicals").[43]

73. Formaldehyde is a carcinogen and exposure affects nearly every tissue in the human body, causing lung damage, dermal allergies, asthma, and various neurological, reproductive, and genetic impairments.[44]

74. Barium often enters the environment because of releases of waste at inactive well sites.[45] This pollutant can cause gastrointestinal issues, nausea, vomiting, and is linked to increased blood pressure, arrhythmias, and even death at higher levels.[46]

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[42] *New Mexico 360 Groundwater Report*, New Mexico Groundwater Alliance, (Jan. 14, 2026), https://www.nmgroundwateralliance.org/report.

[43] Amarjit Rajbongshi & Subrata Borgohain Gogoi, *A review on oilfield produced water and its treatment technologies*, 9 Petroleum Research 640 (2024), https://doi.org/10.1016/j.ptlrs.2024.06.003; Matthew S. Varonka et al., *Per-and polyfluoroalkyl substances in waters associated with oil and gas development in the Denver Basin*, 16 Scientific Reports 5743 (2026), https://www.nature.com/articles/s41598-025-33394-9; Emily A. Chittick & Tanja Srebotnjak, *An analysis of chemicals and other constituents found in produced water from hydraulically fractured wells in California and the challenges for wastewater management*, 204 J. of Environmental Management 502 (2017), https://doi.org/10.1016/j.jenvman.2017.09.002.

[44] *See Report on Carcinogens, Formaldehyde,* National Toxicology Program, Department of Health and Human Services (December 21, 2021) https://ntp.niehs.nih.gov/sites/default/files/ntp/roc/content/profiles/formaldehyde.pdf; Gregg P. Macey et al., *Air concentrations of volatile compounds near oil and gas production: A community-based exploratory study*, 13 Env't. Health 1, 14 (2014), https://pmc.ncbi.nlm.nih.gov/articles/PMC4216869/pdf/12940_2014_Article_790.pdf.

[45] Rajbongshi & Borgohain Gogoi, *supra* note 43.

[46] *Barium - ToxFAQs™*, Agency for Toxic Substances and Disease Registry (June 2013) https://www.atsdr.cdc.gov/toxfaqs/tfacts24.pdf.

75. Arsenic found at well sites can contaminate groundwater and soil[47] and human exposure can result in health issues including different types of cancer, irritated lungs, vomiting, and skin irritation.[48]

76. Chloride is often released through oil and gas extraction and the production of brine. It can disrupt aquatic ecosystems and contaminate groundwater. This contamination can have broader effects on communities that rely on the water for drinking or agricultural uses.[49]

77. Radioactive byproducts of drilling can lead to anemia, cataracts, bone cancer, and death.[50] Numerous chemicals used in frack fluids are highly carcinogenic and can have endocrine-disrupting properties.[51] PFAS are known for their toxicity at extraordinarily low levels and have adverse health effects that include high blood pressure in pregnant women, low birth weight, increased risk of kidney, breast, and testicular cancers, decreased vaccine response, and increased cholesterol.[52]

78. These effects are not confined to the immediate well site. One peer-reviewed study found that living near oil and gas infrastructure—including inactive wells—was associated with

[47] Rajbongshi & Borgohain Gogoi, *supra* note 43.
[48] Arsenic - ToxFAQs™, Agency for Toxic Substances and Disease Registry (August 2007), https://www.atsdr.cdc.gov/toxfaqs/tfacts2.pdf.
[49] Paul F. Hudack et al., *Effects of brine injection wells, dry holes, and plugged oil/gas wells on chloride, bromide, and barium concentrations in the Gulf Coast Aquifer, southeast Texas, USA,* 26 Environment International 497 (2001), https://www.sciencedirect.com/science/article/abs/pii/S0160412001000332?via%3Dihub.
[50] I. Doyi, D.K. Essumang, S. Dampare & E.T. Glover, Reviews of Environmental Contamination and Toxicology. Reviews of Environmental Contamination and Toxicology, vol. 238, 107-119 (P. de Voogt, ed., 2016), https://doi.org/10.1007/398_2015_5005.
[51] Sara Makki, Elsa Maalouf & Alissar Yehya, *Review of the environmental and health risks of hydraulic fracturing fluids*, 11 *Heliyon* e40883 (2025), https://doi.org/10.1016/j.heliyon.2024.e40883.
[52] National Academies of Sciences, Engineering, and Medicine; Health and Medicine Division; Division on Earth and Life Studies; Board on Population Health and Public Health Practice; Board on Environmental Studies and Toxicology; Committee on the Guidance on PFAS Testing and Health Outcomes, *Guidance on PFAS Exposure, Testing, and Clinical Follow-Up*, Chp. 3 (July 28, 2022), https://www.ncbi.nlm.nih.gov/books/NBK584690/.

reduced lung function.[53] Additional studies have found associations between proximity to oil and gas sites and higher blood pressure and risk of hypertension,[54] drinking water contaminants and adverse health impacts,[55] decreased reproductive health,[56] and increased exposure to chemicals that cause acute lymphocytic leukemia.[57]

79. Defendants are aware of the dangers posed by inactive unplugged wells. According to the State, "[m]arginal and inactive oil and gas wells are capable of emitting toxic and hazardous gases…[that] present major health threats" and "[m]arginal and inactive wells also pose a major threat to public safety through the pollution of groundwater."[58]

80. Many of these inactive unplugged wells and unremediated sites are close to areas where Plaintiffs live, work, recreate, practice their religion, or otherwise use the land.

81. Defendants shirk their legal obligations under the Oil and Gas Act and allow operators to continue to harm Plaintiffs by polluting New Mexico's land, air, water, and environment, upon which Plaintiffs and all New Mexicans depend.

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[53] Jill E. Johnston et al., *Respiratory health, pulmonary function and local engagement in urban communities near oil development*, 197 Env't Rsch. 111088 (2021), https://www.sciencedirect.com/science/article/abs/pii/S0013935121003820.
[54] Jill E. Johnston et al., *Cardiovascular health and proximity to urban oil drilling in Los Angeles*, California, 34 J. Exposure Sci. & Env't Epidemiology 505, 508-09 (2023), https://doi.org/10.1038/s41370-023-00589-z.
[55] Elise G. Elliott et al., *A community-based evaluation of proximity to unconventional oil and gas wells, drinking water contaminants, and health symptoms in Ohio*, 167 Env't Rsch. 550, 550 (2018), https://doi.org/10.1016/j.envres.2018.08.022.
[56] Victoria D. Balise et al., *Systematic review of the association between oil and natural gas extraction processes and human reproduction*, 106 Fertility & Sterility 795, 795 (2016), https://www.sciencedirect.com/science/article/pii/S0015028216625293.
[57] *See generally* Lisa M. McKenzie et al., *Childhood hematologic cancer and residential proximity to oil and gas development*, 12 PLOS One 1, 2 (2017), https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0170423.
[58] *Acacia* Complaint, *supra* note 2, at ¶¶ 39–40.

B. Defendants have allowed operators to leave behind thousands of inactive and marginal wells that continue to pollute and harm New Mexicans.

82. Defendants have granted permits to drill for each of the more than 70,000 oil and gas wells currently in New Mexico. In every case, Defendants have a statutory duty to ensure that the operator plugs each well and remediates the surrounding land once production is complete.

83. Defendants' rules expressly limit the time that wells can be left inactive and unplugged to 15 months. 19.15.25.8 NMAC. Plugging and remediation obligations can only be further delayed through administrative mechanisms such as "approved temporary abandonment" status, 19.15.25.12 NMAC, and negotiated "compliance orders," *see* 19.15.5.9(B)(1) and 9.15.5.10(C)(3) NMAC.

84. The Division may approve "temporary abandonment" status and allow otherwise noncompliant wells to evade the consequences of the wells' violations for five years at a time after implementing certain minimal requirements. 19.15.25.12 NMAC. Defendants may allow an operator to put up to one third of its wells in this approved temporary abandonment status. 19.15.25.12 NMAC

85. Despite this considerable leeway, Defendants have identified approximately 3,300 wells that have been inactive for over 15 months that are not in "approved temporary abandonment" status or subject to a compliance order. These wells are the responsibility of more than 340 operators, out of a total of approximately 570 operators in the state. Defendants have not enforced cleanup obligations or financial assurance provisions against most of operators that own these wells.

86. According to the Division's data, more than 800 of these wells have been inactive and unplugged for over 10 years; more than 150 wells have been inactive and unplugged for over 20 years; and approximately 68 wells have been inactive and unplugged for over 30 years.

87. Further, thousands of additional wells—often referred to as marginal wells or stripper wells—currently produce such small volumes of crude oil or gas that they lack sufficient revenue streams to support necessary ongoing maintenance for the well, let alone the costs to properly plug and remediate the well site.[59]

88. According to the Legislative Finance Committee, there are more than 38,000 wells in New Mexico falling under this marginal production category that are likely to become inactive in the near future, starting the clock for Defendants to enforce important plugging and remediation obligations to prevent additional State liabilities.[60]

89. This includes more than 15,000 wells that produce less than roughly 2 barrels of oil equivalent per day. According to the Legislative Finance Committee, most wells plugged by industry in New Mexico produced no less than 2 barrels of oil equivalent per day in the period before being plugged, signifying this is a reasonable cutoff for determining well profitability.[61] Thus, these roughly 15,000 wells "pose a financial risk to the state because they may not generate sufficient revenues to fund their own end-of-life plugging and abandonment" and are at risk of becoming liabilities of the State and taxpayers.[62] Wells with this marginal level of production are effectively inactive and should be plugged and remediated immediately.

90. This pattern of production and the life cycle of a well is predictable, as is the likely cost to properly plug and remediate a well site. Both are well known within the oil and gas industry.

91. Urgent action must be taken to properly plug and remediate thousands of inactive and marginal wells to prevent skyrocketing financial liabilities, to protect the health and safety of Plaintiffs and the surrounding communities, and to safeguard New Mexico's land, air, and water.

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[59] *LFC Policy Spotlight*, *supra* note 10, at 20.
[60] *Id.*
[61] *Id.* at 21.
[62] *LFC Policy Spotlight*, *supra* note 10, at 20.

C. Instead of fulfilling their duties to enforce the law against operators, Defendants assume responsibility for inactive wells and unremediated well sites, requiring the State to pay the costs of cleanup.

92. Defendants' failure to enforce the law results in the State subsidizing cleanup for many noncompliant wells and operators through use of the Oil and Gas Reclamation Fund. The Reclamation Fund was created to serve as a funding pool of last resort to assist the Division when it is forced to plug wells or remediate sites for which operators are no longer present and for which the Division is unable to compel compliance. *See* NMSA 1978 § 70-2-38.

93. However, Defendants' failure to fulfill enforcement duties has resulted in resources being expended from the Reclamation Fund without ever being recouped, as Defendants take on noncompliant operators' legal obligations without completing mandatory enforcement actions or seeking indemnification.

94. For example, Defendants routinely fail to secure mandatory additional financial assurance for wells that sit inactive for longer than two years or are in approved temporary abandonment status, despite their statutory and regulatory duty to do so. NMSA 1978 § 70-2-14(A); 19.15.8.9(D) NMAC. This has resulted in, and will continue to result in, the State unnecessarily paying to plug and remediate wells, when those costs should be covered by money collected from noncompliant operators.

95. Further, despite spending tens of millions of dollars cleaning up the messes left behind by noncompliant operators, Defendants have not forfeited the financial assurance that *has* been posted by those noncompliant operators, as required by statute, to help offset the costs to the public of plugging and remediating those wells. NMSA 1978 § 70-2-14(B). This only further burdens the State and public with the costs of well cleanup that should be borne by industry.

96. Moreover, Defendants fail to take legal action against noncompliant operators, as required by law. NMSA 1978 § 70-2-28. Based upon public records requested by the Center for

Biological Diversity and conversations with Division staff, out of the more than 340 operators and roughly 3,300 unplugged inactive wells, Defendants have brought only one legal action to challenge operators seeking to offload the cost of cleaning up wells onto the State.[63]

97. Since 2018, Defendants have spent more than $45 million —and could spend $130 million more in the near future—to plug wells and perform duties that operators are required by law to perform.[64] Using Division data, the New Mexico Legislative Finance Committee estimates additional near-term liabilities could bring total State liability up to $1.6 billion dollars. This estimate only factors in the financial risk posed by the lowest-producing wells—wells producing less than 1 barrel of oil equivalent per day. It does not include tens of thousands more marginal wells with slightly higher production that are also at increasing risk of inactivity and being orphaned in the near future.

98. This problem is growing, with more wells becoming noncompliant and orphaned each year. The number of noncompliant inactive wells has increased by nearly 200 wells just since February 2025, an annual increase that outpaced the roughly 100 wells plugged by OCD during that period. As of June 2025, Defendants reported being responsible for plugging 1,000 orphaned wells. And currently, according to Defendants, at least 1,400 more should already be added to that number.[65]

99. The New Mexico Legislative Finance Committee gave the Division a failing grade for its performance in plugging orphaned wells, noting that the Division only plugged 42 wells in fiscal

[63] *See Acacia* Complaint, *supra* note 2.
[64] *LFC Policy Spotlight*, *supra* note 10, at 12, 16.
[65] *Id.* at 15.

year 25 (July '24 – June '25).[66] At this rate, it will take decades for the Division to plug the wells it is now responsible for.

100. Defendants' failure to enforce mandatory plugging and remediation obligations permits operators of inactive, unplugged wells and contaminated, unremediated well sites to continue to pollute. All the while, Defendants grant thousands of additional permits to drill new wells and allow operators of noncompliant wells to conduct further business in the state.

101. Ultimately, New Mexicans, including Plaintiffs, pay the price for Defendants' failure to enforce the law. Plaintiffs pay both with public resources diverted to pay the oil and gas industry's debts, and with the harm these thousands of inactive, unplugged wells cause to their safety, health, and environment.

102. The accelerating public health, environmental, and economic crises in the state would be substantially mitigated if Defendants fulfilled their duties to enforce operators' well plugging and remediation obligations in a timely manner and to secure operator funds for cleanup.

III. DEFENDANTS VIOLATE THEIR STATUTORY DUTIES TO ENFORCE CLEANUP OBLIGATIONS.

A. Defendants violate their legal obligation to require operators to plug and remediate wells and to prevent waste.

103. Each of the approximately 3,300 wells on the Division's Inactive Well List is "out of compliance" with well plugging and site remediation obligations. 19.15.5.9(B)(2) NMAC. Division data indicates more than 800 (i.e., nearly a quarter) of these wells have been inactive and unplugged for over 10 years, and many for much longer.

[66] *Legislating for Results: Policy and Performance Analysis* 169, Report to the Fifty-Seventh Legislature Second Session NM Legislative Finance Committee (Jan. 2026), https://www.nmlegis.gov/Entity/LFC/Documents/Session_Publications/Budget_Recommendations/2027RecommendVolI.pdf.

104. According to the New Mexico Legislative Finance Committee, nearly 60% of operators in the state, approximately 340 out of 570, have noncompliant inactive wells.[67]

105. These wells are all instances of "an operator's failure to properly plug and abandon and restore and remediate the location of a well or wells a financial assurance covers." *See* 19.15.8.13(A) NMAC.

106. The law requires that the Division "shall give notice to the operator and surety…and hold a hearing as to whether the well or wells should be plugged and abandoned and the location restored and remediated" for each of these wells, and, if so, "the director shall issue an order directing the well to be plugged or abandoned and the location restored and remediated in a time certain." 19.15.8.13(A) NMAC.

107. Defendants almost never follow this mandatory procedure.

108. For example, Cross Timbers Energy and Fulfer Oil & Cattle are among the operators against whom Defendants have not taken any enforcement action. As of January 24, 2026, Cross Timbers Energy has 44 inactive noncompliant wells and Fulfer Oil & Cattle has 18 inactive noncompliant wells. Each of these operators still has actively producing wells in New Mexico, suggesting they still have a revenue stream and the capital required to properly perform cleanup obligations.

109. As an initial step, the law requires the Division to send a "notice of violation" to an operator who has not properly plugged and abandoned a well. 19.15.8.13 NMAC

110. Based upon records obtained through public record requests, the Division has only issued 56 notices of violation since January 1, 2017. These 56 notices went to 48 operators.

[67] *LFC Policy Spotlight*, *supra* note 10, at 19.

Thus, with hundreds of operators non-compliant at any one time, in almost ten years, the Division has only issued a notice of violation to 48 of them.

111. Occasionally, Defendants enter into "agreed compliance orders" with operators. These compliance orders, also referred to as "stipulated final orders," allow an operator to avoid the consequences of plugging and remediation violations in exchange for the promise to reenter compliance by a certain date. *See* 19.15.5.9(B)(1) and 9.15.5.10(C)(3) NMAC.

112. The Division has entered into agreed compliance orders with only 32 operators since January of 2022, despite the fact that over 340 operators collectively have about 3,300 wells on the Inactive Well List.

113. Even in the rare instances when Defendants initiate enforcement action through notices of violation or compliance orders, Defendants frequently fail to follow through and secure compliance from the operators.

114. Examining records received from the Division through public records requests shows that more than half of the wells that were subject to a notice of violation are still on the non-complaint Inactive Well List. Indeed, 78% of the operators who received a notice of violation between January 2022 and September 2025 still have wells subject to the notice of violation on the noncompliant Inactive Well List.

115. Similarly, most of the operators that have entered into approved compliance orders with Defendants between January 2022 and September 2025 still have not brought all the wells subject to those orders into compliance.

116. By way of example, one operator, CCC Oil & Gas LLC (CCC), was issued a notice of violation by Defendants on August 12, 2021, for having all fourteen of its wells out of compliance; the notice gave CCC thirty days to return at least twelve of its wells to compliance.

Plaintiffs found no record of any follow up enforcement action and, as of January 2026, more than four years later, all fourteen of CCC's wells remain on the noncompliant Inactive Well List.

117. The longer a well remains inactive, the less likely its operator will be able to fulfill plugging and remediation obligations due to insolvency or other complications, and the more likely the cost of cleaning up the operator's mess will be shifted onto the State and paid for with public resources.[68]

118. 121 operators have *only* inactive wells, amounting to roughly 1000 inactive unplugged wells held by operators that are at an especially high risk of insolvency or are already insolvent.[69]

119. The economic reality of, and risk posed by, inactive wells is well known in the oil and gas industry and is frequently baked into industry business practices. Companies routinely seek to offload well plugging and site remediation liabilities onto other companies or the State before they must pay to clean up their mess.

120. Defendants have allowed many operators to transfer their noncompliant wells to third parties that have failed to bring those wells back into compliance, further circumventing cleanup obligations.

121. Timely enforcement of inactive well limits and well plugging requirements is essential to prevent companies from offloading these liabilities. Absent timely intervention, enforcement becomes substantially more burdensome, resource intensive, and less likely to result in plugging at the operator's expense.

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[68] *Phase I Work Plan*, *supra* note 7, at 2 ("It is OCD's experience that wells that have been inactive for extended periods of time are often held by operators have become insolvent or, at a minimum, incapable of complying with applicable regulatory requirements, including those related to production and well plugging.").
[69] *LFC Policy Spotlight*, *supra* note 10, at 19.

122. For example, a company and its officers using the names Acacia Resources, LLC and Acacia Operating Company, LLC has recently offloaded the plugging and remediation obligations for hundreds of wells to the State of New Mexico to be paid for by the public, following a number of well transfers through various business entities, and multiple bankruptcies. In this one instance, the New Mexico Attorney General is attempting to claw funding back from the company[70] but, based on responses to public record requests, this is the only time the State has ever attempted to do so.

123. By failing to follow their own rules to enforce mandatory cleanup obligations for marginal and inactive well sites, Defendants ignore the law and allow thousands of wells to remain illegally inactive, unplugged, and unremediated for years and sometimes decades, posing ongoing and unreasonable risks to Plaintiffs.

124. This lack of meaningful and timely enforcement irreversibly harms public health, ecosystems and the climate. These injurious effects only increase the longer a well remains unplugged.

B. Defendants violate their legal duty to secure additional financial assurance for inactive wells.

125. In addition to failing to ensure that operators properly plug and remediate their wells, Defendants fail to follow the Oil and Gas Act's mandate to secure additional financial assurance for wells that have not produced in two years or longer or that are in "approved temporary abandonment."

126. Defendants must secure additional financial assurance from operators for wells that have "been held in a temporarily abandoned status for more than two years…" NMSA 1978 § 70-2-14, "or for which the operator is seeking approved temporary abandonment," 19.15.8.9(D)

[70] *See Acacia* Complaint, *supra* note 2, at ¶ 6.

NMAC. A well in a "temporarily abandoned status" is simply a well that is inactive. 19.15.2.7(T)(3) NMAC.

127. This additional financial assurance serves as an important security to help deter operators from simply walking away from unprofitable wells, and to offset the public resources expended if they do and the State must clean up their mess.

128. According to the Division's data, approximately 1,900 wells on State and private land owned by approximately 200 operators are subject to the Oil and Gas Act's mandatory additional financial assurance provisions for inactive wells.

129. As of January 2026, 61% of those operators (approximately 122)—operating more than 1200 wells (roughly 63% of the wells for which it is required)—have failed to provide this mandatory additional financial assurance. That represents more than $38 million in unsecured financial assurance for high-risk wells.

130. Defendants' failure to fulfill their duties to ensure that the required additional financial assurance is furnished violates the Oil and Gas Act. It undermines important deterrents mandated by the legislature, encourages operators to ignore their legal obligations, and deprives the State of funds in the event it must plug these wells.

C. Defendants violate their legal duty to forfeit financial assurance from operators who have not complied with orders to plug and remediate well sites.

131. Defendants are legally required to forfeit an operator's financial assurance for any well on State or private land for which the operator has failed to comply with an order to plug or remediate. NMSA 1978 § 70-2-14(B). The Director is required to notify the attorney general who "shall collect the forfeiture without delay." NMSA 1978 § 70-2-14(C). The forfeited financial assurance is to be deposited into the Reclamation Fund. NMSA 1978 § 70-2-14(D).

132. According to the Division's responses to public records requests from the Center for Biological Diversity, in the last decade, Defendants have redeemed financial assurance just one time from one operator.

133. Looking at a shorter time period, in the last four years, at least 64 operators have not complied with an order to plug but Defendants have not forfeited those operators' financial assurances. Defendants' data indicates that they currently plan to plug and remediate 520 wells belonging to those operators.

134. Thus, Defendants continue to assume operators' costs for clean-up, without forfeiting financial assurance from operators to help cover these costs.[71]

135. Defendants' failure to forfeit financial assurance when operators fail to comply with plugging or remediation orders violates the Oil and Gas Act. It also removes important deterrents mandated by the legislature, encourages operators to ignore their legal obligations, and deprives the State of funds meant to be put into the Reclamation Fund to address the growing orphan well crisis.

136. As a result, these inactive, unplugged wells continue to waste natural resources, harm the health and safety of Plaintiffs, and pollute the air, land, and water near the places they live, work, recreate, and practice their religion.

D. Defendants violate their legal duty concerning the Oil and Gas Reclamation Fund.

137. The legislature created the Oil and Gas Reclamation Fund to be administered by the Division in order to "perform[] the plugging of abandoned wells that have not been plugged or that have been improperly plugged and for the restoration and remediation of abandoned well sites and associated production facilities that have not been properly restored and remediated."

[71] *LFC Policy Spotlight*, *supra* note 10, at 31-32.

NMSA 1978 § 70-2-38(A)(1). This fund may be used for well plugging and remediation on state, fee, or federal land. NMSA 1978 § 70-2-38(B).

138. In addition to a small percentage of the oil and gas conservation tax, NMSA 1978 § 7-1-6.21, contributions to the Reclamation Fund are supposed to come from the forfeited financial assurance of operators who fail to comply with plugging orders, NMSA 1978 § 70-2-14(D), and funds recovered in indemnification actions brought against operators to recoup public resources spent by the Division to plug wells, NMSA 1978 § 70-2-38(B).

139. The Oil and Gas Act specifies that the Reclamation Fund may be used, "[w]hen the financial assurance proves insufficient to cover the cost of plugging oil and gas wells…and funds must be expended …to meet the additional expenses." NMSA 1978 § 70-2-14(E).

140. Operators are responsible for plugging and remediation, and their financial assurance is required to be the first source to cover the costs of plugging and remediation when they fail to carry out that duty. *See* NMSA 1978 § 70-2-14(E). As Defendants recently explained, "money from the Reclamation Fund may be used to cover the shortfall between the actual plugging costs and any financial assurance collected."[72]

141. Where funds must be expended from the Reclamation Fund, the Division is expected to take action to cover those costs. The Division is specifically authorized "to bring suit against the operator … for indemnification of all costs incurred" by the Division in plugging and remediating extraction sites. NMSA 1978 § 70-2-14(E).

142. However, the Division uses the meager resources available in the Reclamation Fund to plug wells for operators for which the Division has not forfeited financial assurance or taken any other mandated enforcement action. As such, the Reclamation Fund becomes the source to pay

[72] *See Acacia* Complaint, *supra* note 2, at ¶ 62.

for plugging and remediation work for wells, rather than using operators' financial assurance to fulfill cleanup obligations, as the law requires.

143. For example, the Division is currently plugging wells owned by Ridgeway Arizona Oil Corporation (Ridgeway), an operator that also owns numerous active wells. In 2023, the Division agreed to plug 299 of the operator's noncompliant inactive wells while still allowing Ridgeway to operate in New Mexico. The Division is paying up front for the costs to plug the wells and has agreed to allow Ridgeway to reimburse the State with monthly payments of $30,000. According to the Legislative Finance Committee, the State paid $1.3 million to plug just six of Ridgeway's inactive wells in 2024, for an average cost of $210,000 per well. Plugging the remaining wells at this cost would amount to $60 million. Based on Ridgeway's current repayment schedule, it would take 170 years for the state to be made whole. Ridgeway's financial assurance covering those wells has not been forfeited or deposited into the Reclamation Fund.[73]

144. Defendants have only once brought legal action against an operator regarding plugging and remediation costs incurred by the State, and that action is situated in the context of various additional fraudulent practices by an operator and its officers.[74]

145. The Division plugs at most one hundred wells a year.

146. The Division has only undertaken site reclamation and remediation for five wells that it has plugged since 2013.[75]

147. At the current plugging and remediation rate—and assuming sufficient funding existed—it would take the Division more than 30 years to plug, and approximately 8,580 years

[73] *LFC Policy Spotlight*, *supra* note 10, at 17; *see also* Jerry Redfern, *It's Settled: New Mexico to Bankroll Plugging of Oil Wells for Texas Company*, Capital & Main (Dec. 21, 2023), https://capitalandmain.com/its-settled-new-mexico-to-bankroll-plugging-of-oil-wells-for-texas-company.
[74] *See Acacia* Complaint, *supra*, note 2.
[75] *LFC Policy Spotlight*, *supra* note 10, at 17.

to remediate, just the wells currently on the Inactive Well List. These timelines do not include the thousands of additional wells likely to become inactive and require plugging and remediation in the near future.

148. Defendants' data currently lists an additional 520 wells as "Reclamation Fund Approved," indicating that the money from the Reclamation Fund will be expended to plug and remediate these wells. These wells belong to 45 different operators. Defendants have not forfeited the financial assurance of any operator on that list.[76]

149. The Reclamation Fund had a balance of only $65 million at the end of Fiscal Year 2024.[77] The Division has already assumed between $200 million and $400 million in liabilities to plug and remediate wells that operators have left behind.

150. Near future liability could reach $1.6 billion.[78]

151. The lack of transparency and tracking of Division expenditures from the Reclamation Fund makes Defendants' violation of their statutory obligations all the more troubling. The Legislative Finance Committee noted the Division "does not publish a list of wells the state has plugged or is planning to plug and does not track them consistently in internal documents."[79] Although it recently began "compiling an internal list of wells the state has plugged or plans to plug," as a result of the requirements associated with federal grant funding for orphan wells, "the list is not publicly available and is frequently inconsistent with publicly available data."[80]

152. Defendants harm Plaintiffs by expending Reclamation Fund resources for well plugging and site remediation without taking mandatory enforcement measures to recoup the costs from

[76] *LFC Policy Spotlight*, *supra* note 10, at 32.
[77] *Id.* at 11.
[78] *Id*. at 1.
[79] *LFC Policy Spotlight*, *supra* note 10, at 16.
[80] *Id.*

operators. Defendants' perennial failure to collect financial assurance or seek indemnification to ensure funds are deposited back into the Reclamation Fund gives rise to truly orphaned wells, for which it is too late to hold an operator responsible. Leaving the Reclamation Fund depleted limits the wells that can be plugged, prolonging the time that such wells will pose serious risks to the environment, as well as human health and safety. In addition, the practice contributes to a looming fiscal crisis.

153. Defendants' failure to fulfill their duties incentivizes operators to avoid their obligations to plug and remediate well sites, ultimately leaving unplugged, noncompliant wells and contaminated well sites in place across New Mexico that continue to pollute long after they are legally required to be cleaned up.

CAUSES OF ACTION

COUNT I

Violation of NMSA 1978 §§ 70-2-2, 70-2-11: Defendants fail to fulfill their statutory duty to enforce plugging and remediation obligations.

1. Plaintiffs reallege and incorporate by reference all paragraphs above as if fully set forth herein.
2. Defendants have a duty to prevent waste, NMSA 1978 §§ 70-2-2 and 70-2-11, which includes "the loss or destruction [of crude oil or gas], without beneficial use, resulting from evaporation, seepage, leakage or fire," NMSA 1978 § 70-2-3(B).
3. Each oil and gas well operator in New Mexico is required to properly plug the wells and remediate the well sites it operates as a condition to doing business in the state. NMSA 1978 § 70-2-14(A).

4. After a well ceases production, operators must "plug the well in a manner that permanently confines all oil, gas and water in the separate strata in which they are originally found," "level the location," "restore the location to a safe and clean condition," and "close all pits and below-grade tanks." 19.15.25.10 NMAC.
5. Operators must either plug a well, put it into approved temporary abandonment status or bring the well back into production if it has not produced for fifteen months or longer. 19.15.25.8 NMAC.
6. There are approximately 3,300 wells on Defendants' Inactive Well List that have not produced for fifteen months or longer and are in violation of 19.15.25.8 NMAC. Each of these wells is not properly plugged and, as such, Defendants must issue a notice of violation, hold a hearing, and, if the operator is deemed out of compliance, order compliance by a date certain. 19.15.8.13 NMAC.
7. Defendants have failed to initiate this mandatory enforcement action against hundreds of operators of noncompliant wells on the Inactive Well List. Defendants' failure leaves thousands of wells to harm, and otherwise pose unreasonable risks to, Plaintiffs, the public and the environment. In the last four years, Defendants have only initiated enforcement action against a small fraction of noncompliant operators and even then, in most cases, Defendants fail to follow through and ensure compliance.
8. Defendants have a duty to enforce the Oil and Gas Act against operators, including bringing legal action against violating entities through the New Mexico Attorney General. NMSA 1978 § 70-2-28.
9. This failure to enforce mandatory cleanup obligations leads to ongoing, prohibited waste and a violation of the Division's duty to enforce the Oil and Gas Act.

10. Defendants' failure to fulfill their duties harms Plaintiffs' health, safety, and environment by leaving in place noncompliant inactive wells and contaminated well sites that the Oil and Gas Act requires to be properly cleaned up.

COUNT II

Violation of NMSA 1078 § 70-2-14(A): Defendants fail to secure additional financial assurance for inactive wells as required by the Oil and Gas Act.

1. Plaintiffs reallege and incorporate by reference all paragraphs above as if fully set forth herein.
2. Defendants must secure additional financial assurance for wells that are on state or private land and "that has been held in a temporarily abandoned status for more than two years," NMSA 1978 § 70-2-14(A). "Temporarily abandoned status" simply refers to a well that is inactive. 19.15.2.7(T)(3) NMAC. Defendants' rules also require additional financial assurance for any well in approved temporary abandonment status. 19.15.8.9(D) NMAC.
3. Defendants have not secured this additional financial assurance from roughly 61% (122 of about 200) of operators with approximately 63% (about 1,200) of the wells for which it is required, despite the legal mandate to do so. Securing this inactive well financial assurance is nondiscretionary and would provide more than $38 million dollars to assist Defendants in plugging noncompliant operators' wells.
4. Funding provided through additional inactive well financial assurance would be funding sourced from non-public sources.

5. Defendants' failure to secure this financial assurance increases the financial liability of the State and public by reducing the funding available to the State from non-public sources.
6. Defendants' failure to secure additional financial assurance incentivizes operators to neglect their plugging and remediation obligations and harms Plaintiffs and the public by neglecting to protect their public health and safety, as well as the air, land, and water in New Mexico from hazardous pollution from noncompliant inactive wells.

COUNT III

Violation of NMSA 1078 § 70-2-14(B): Defendants fail to forfeit financial assurance as required by the Oil and Gas Act.

1. Plaintiffs reallege and incorporate by reference all paragraphs above as if fully set forth herein.
2. Defendants must forfeit the financial assurance of an operator who does not comply with the order to plug a well or remediate a well site. This forfeiture is mandatory. NMSA 1978 § 70-2-14(B).
3. Defendants have not forfeited any operator's financial assurance in the period of 2018 to the present.
4. Looking at just the last four years, at least 64 operators have failed to comply with Defendants' orders to plug and remediate noncompliant inactive wells and their corresponding well sites.
5. Despite this, Defendants have not forfeited the financial assurance of any of these noncompliant operators.
6. In fact, Defendants have not forfeited a single financial assurance in at least 10 years, despite thousands of non-compliant inactive unplugged wells.

7. By failing to forfeit noncompliant operators' financial assurance, Defendants violate the Oil and Gas Act, encourage waste, and allow noncompliant wells and unremediated well sites to persist for prolonged periods of time, harming Plaintiffs' health, safety, and the environment.

COUNT IV

Violation of NMSA 1978 § 70-2-14(A)–(E): Defendants expend resources from the Oil and Gas Reclamation Fund without forfeiting financial assurance and enforcing plugging and remediation obligations against the responsible operators.

1. Plaintiffs reallege and incorporate by reference all paragraphs above as if fully set forth herein.
2. The Reclamation Fund was established to help the Division plug orphaned wells and remediate well sites left behind by noncompliant operators. NMSA 1978 § 70-2-38(A)–(B).
3. However, an operator's financial assurance is "conditioned [on a well being] plugged and abandoned in compliance with the rules of the oil conservation division," which includes the requirement that "the well location [be] restored and remediated," NMSA 1978 § 70-2-14(A); 19.15.8.9 NMAC.
4. When an operator on State or private land does not comply with an order to plug or remediate a well, Defendants must forfeit this financial assurance. NMSA 1978 § 70-2-14(B).
5. The Oil and Gas Act mandates that forfeited financial assurance be distributed into the Reclamation Fund, NMSA 1978 § 70-2-14(C)–(D), and the Division may sue for indemnification against an operator "[w]hen the financial assurance proves insufficient to cover the cost of plugging oil and gas wells…and funds must be expended from the oil and gas reclamation fund to meet the additional expenses." NMSA 1978 § 70-2-14(E).

6. Defendants have assumed and continue to assume operators' cleanup costs without enforcing operators' plugging and remediation obligations or forfeiting noncompliant operators' financial assurance.
7. Defendants expend resources from the Reclamation Fund to perform these cleanup obligations that are legally owed by operators, some of which are still actively operating and profiting in the state.
8. Defendants' use of funds from the Reclamation Fund to fulfill noncompliant operators' legal obligations without forfeiting such operators' financial assurances and otherwise taking mandatory steps to enforce plugging and remediation obligations violates the Oil and Gas Act and harms Plaintiffs by encouraging operators to leave inactive, unplugged wells and contaminated sites in situ for extended periods without proper clean up, continuing to harm human and environmental health.

PRAYER FOR RELIEF

Plaintiffs respectfully request the Court to enter a declaratory judgment, pursuant to the New Mexico Declaratory Judgment Act, NMSA 1978 §§ 44-6-1, et seq. (1975), concerning Defendants' failure to fulfill their statutory duties under the New Mexico Oil and Gas Act, NMSA 1978 §§ 70-2-1 – 70-2-39 (1977, as amended through 2019), to prevent waste and enforce well plugging and remediation obligations. Plaintiffs further request, pursuant to the Declaratory Judgment Act, NMSA 1978 § 44-6-13 (1975), and the Court's inherent power in equity, that the Court enter injunctive relief. Specifically, Plaintiffs seek a judgment:

1. Declaring that Defendants are out of compliance with their duties under the New Mexico Oil and Gas Act by permitting prohibited waste and failing to enforce mandatory plugging and remediation obligations;

2. Declaring that Defendants are out of compliance with their duties under the Oil and Gas Act by failing to secure additional financial assurance for wells that have been inactive for two years or longer;
3. Declaring that Defendants are out of compliance with their duties under the Oil and Gas Act by failing to forfeit the financial assurance of operators that do not follow orders by the Division to properly plug or remediate a well;
4. Declaring that Defendants are out of compliance with their duties under the Oil and Gas Act by assuming noncompliant operators' plugging and remediation obligations and expending funds from the Oil and Gas Reclamation Fund without forfeiting such operators' financial assurance and otherwise taking mandatory steps to enforce cleanup obligations against such operators;
5. Enjoining Defendants to enforce plugging and remediation obligations, as mandated in 19.15.8.13(A) NMAC, when an operator does not plug or remediate a well, as is the case for each well on the Inactive Wells List, including enjoining the Division to:
    a. give notice to the operator and surety of such violation,
    b. hold a hearing to determine if the well or wells should be plugged and abandoned and the location restored and remediated, and
    c. issue an order directing the well(s) to be plugged and abandoned and the surrounding area to be restored and remediated in a time certain;
6. Enjoining Defendants to comply with the mandatory financial assurance collection and forfeiture provisions of the Oil and Gas Act, including securing additional financial assurance for wells inactive for longer than two years, and forfeiting an

operator's financial assurance if the operator fails to comply with the Division's order to plug or remediate a well;

7. Enjoining Defendants from expending funds from the Oil and Gas Reclamation Fund to plug, abandon, restore, or remediate any well or well site without forfeiting the well operator's financial assurance and otherwise taking mandatory steps to enforce plugging, abandonment, restoration, and remediation obligations from the operator of such well;
8. Retaining jurisdiction to ensure that the Defendants promptly and fully comply with the remedies set forth herein; and
9. Granting any further and other relief the Court deems just and proper.

RESPECTFULLY SUBMITTED,

THE CENTER FOR BIOLOGICAL DIVERSITY

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