

**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
REMEDATION OBLIGATIONS, AND
FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

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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 Yíjiiin (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 Ání 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 Ání 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 Ání 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 Ání 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 Ání 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 § 38-3-1(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]hensoever 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 values⁸ and frustrate the State's mission to protect public lands for the use and enjoyment of future generations.⁹ With new research

⁷ *Phase I 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

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 sites²⁷ 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

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

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 soil⁴⁷ 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.

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.

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/2027RecommendVoll.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.

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 company⁷⁰ 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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