

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

**MARIO ATENCIO; PAUL AND MARY ANN ATENCIO;  
DANIEL TSO; SAMUEL SAGE;  
CHEYENNE ANTONIO; KENDRA PINTO;  
JULIA BERNAL; JONATHAN ALONZO;  
PASTOR DAVID ROGERS;  
YOUTH UNITED FOR CLIMATE CRISIS  
ACTION (YUCCA); PUEBLO ACTION ALLIANCE;  
INDIGENOUS LIFEWAYS; THE CENTER FOR  
BIOLOGICAL DIVERSITY; AND  
WILDEARTH GUARDIANS.**

**Plaintiffs,**

**vs.**

**Civil Action No.**

**THE STATE OF NEW MEXICO;  
THE NEW MEXICO LEGISLATURE;  
GOVERNOR MICHELLE LUJAN GRISHAM;  
NEW MEXICO ENVIRONMENT DEPARTMENT;  
SECRETARY JAMES KENNEY in his official capacity;  
ENERGY MINERALS NATURAL RESOURCES DEPARTMENT;  
SECRETARY SARAH COTTRELL PROPST,  
in her official capacity; ENVIRONMENTAL IMPROVEMENT  
BOARD; and the OIL CONSERVATION COMMISSION.**

**Defendants.**

**COMPLAINT TO ENFORCE CONSTITUTIONAL RIGHTS FOR A HEALTHFUL AND  
BEAUTIFUL ENVIRONMENT AND PROTECTION OF NATURAL RESOURCES  
FROM DESPOILMENT DUE TO OIL AND GAS POLLUTION, AND  
TO ENFORCE THE RIGHTS OF FRONTLINE COMMUNITIES, INDIGENOUS  
PEOPLES, AND YOUTH TO LIFE, LIBERTY, PROPERTY, SAFETY, HAPPINESS,  
AND EQUAL PROTECTION IN THE FACE OF THE STATE'S PERMITTING OF OIL  
AND GAS PRODUCTION AND POLLUTION, AND FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

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Plaintiffs, through undersigned counsel, bring this action for declaratory and injunctive relief, pursuant to Article XX, § 21 and Article II, §§ 4 and 18, of the New Mexico Constitution, the New Mexico Declaratory Judgment Act, NMSA 1978 §§ 44-6-1 – 44-6-15 (1975), the New Mexico Civil Rights Act, NMSA 1978 §§ 41-4A-1 – 41- 4A-13 (2021), and the Court's inherent power in equity, against the State of New Mexico, the Legislature of the State of New Mexico, the Governor of the State of New Mexico, and the New Mexico executive agencies, officials and rule-making bodies that are responsible for New Mexico's oil and gas production system. Plaintiffs are "frontline" community members (i.e., people living near oil and gas production sites), Indigenous peoples, youth, and environmental organizations, all of whom are being injured by the State's long-standing permitting of oil and gas production and pollution without establishing a constitutionally compliant statutory, regulatory and enforcement framework that protects New Mexico's air, water, and other natural resources, as well as the lives and liberties of the frontline, Indigenous, and youth plaintiffs.

Plaintiffs seek a declaratory judgment that Defendants are failing to meet their constitutional duties to control the despoilment of the air, water, environment and natural resources of New Mexico from the impacts of oil and gas pollution. Plaintiffs also seek a declaratory judgment that Defendants authorize oil and gas production and pollution in a manner that violates their New Mexico constitutional rights to life, liberty, property, safety, happiness and equal protection under the law. Plaintiffs seek an order enjoining Defendants to come into compliance with their constitutional duties, and to cease authorizing new oil and gas production until Defendants have established and implemented a statutory, regulatory and enforcement framework in a manner consistent with their constitutional duty to protect New Mexico's natural resources, beautiful and healthful environment, freshwater resources, clean air, land, public

health, wildlife, and a life-sustaining climate, and as well as Plaintiffs' rights to life, liberty, property, safety, happiness, and equal protection.

## **INTRODUCTION**

1. Article XX, § 21 of the New Mexico Constitution guarantees New Mexicans a healthful and beautiful environment and mandates that the State control pollution to avoid despoiling its air, water, and other natural resources.

2. Yet, the State has authorized oil and gas production and pollution while failing to control the concomitant emissions and contamination, resulting in a pollution crisis.

3. Plaintiffs and other New Mexicans who live in the southeast and northwest regions of New Mexico, areas known as the Permian Basin (or "Greater Carlsbad") and San Juan Basin (or "Greater Chaco Landscape"), respectively, live in some of the most polluted areas in the country because of the massive oil and gas extraction and production permitted by the State.

4. Despite its constitutional duty to protect New Mexico's air, water, environment and other natural resources, the State continues to authorize and promote oil and gas production, without establishing and implementing a statutory, regulatory and enforcement scheme that ensures the protection of New Mexico's beautiful and healthful environment.

5. Instead, the State exempts the oil and gas industry from environmental protection statutes and regulations and fails to enforce the pollution control measures that are in place.

6. The State agencies that permit oil and gas extraction and production – the New Mexico Environment Department and the New Mexico Natural Resources Department – continue to grant permits for oil and gas extraction without regard to New Mexico's constitutional requirement to protect the air, land, water, and a beautiful and healthful environment, and without regard to the health and welfare of New Mexicans, including

Plaintiffs. And the rulemaking bodies – the Environmental Improvement Board and the Oil Conservation Commission – promulgate rules that fail to protect the environment and violate the rights of Plaintiffs.

7. The State’s authorization of oil and gas production and pollution, while failing to protect New Mexico’s environment and natural resources, has resulted in extremely poor air quality, thousands of unmonitored spills of toxic liquid waste and oil, thousands of leaking abandoned wells across the state, the contamination and depletion of precious freshwater resources, the destruction of ecosystems that sustain plants and wildlife, and the devastation of Indigenous ancestral landscapes, sacred places and traditional cultural resources. New Mexico’s authorization of oil and gas production also produces massive greenhouse gas emissions, contributing to the climate crisis.

8. Plaintiffs and many other New Mexicans face grave harms to their health, safety and longevity caused by the Defendants’ authorization of oil and gas development and production without an adequate system for controlling the pollution and despoilment of natural resources from such activities.

9. Frontline community members, Indigenous peoples, and youth, the people most harmed by the State’s authorization of oil and gas production and pollution, along with environmental justice and conservation organizations with members who are harmed by the State’s failure to control oil and gas pollution, bring this case to enforce the State’s constitutional duty to control pollution and assert their rights to life, liberty, property, safety, happiness and equal protection under the law.

## **PARTIES**

### **I. Plaintiffs**

10. Plaintiffs are frontline community members, Indigenous peoples, youth, and environmental organizations that advocate for environmental justice for frontline community members, Indigenous peoples, and youth, and for conservation.

11. Frontline community members are people who live near oil and gas production sites.

12. Plaintiffs include the following groups:

A. Diné Family Plaintiffs

B. Pueblo Family Plaintiffs

C. Permian Family Plaintiffs

D. Organizational Plaintiffs who work for environmental justice and conservation and have members, staff and / or board members who are frontline, Indigenous, and / or youth.

#### **A. Diné Family Plaintiffs**

1) Paul, Mary Ann and Mario Atencio

13. The Atencios are a traditional Diné family and live on their ancestral lands in Torreon and Counselor, New Mexico in Sandoval County, on the Greater Chaco Landscape.

14. The Atencios have been harmed by Defendants' authorization of oil and gas development adjacent to and around their homes and family lands.

15. Mary Ann Atencio's family land in Torreon, where Mario grew up and where Mary Ann and Paul still live today, is along Pipeline Road, so named because it has an 18-inch high-pressure pipeline running through it. Sometimes the Atencios hear a loud crashing rumble

from the pipeline, and they have been told by the pipeline company that it is from cleaning the line. The Atencios receive no advance notice of when pipeline “cleaning” will occur. Nor have the Atencios ever been told what the “cleaning” process is or where the pollutants cleared from the pipeline are disposed. The Atencios can hear and smell the hissing sound of gaseous fumes being released into the air from the “cleaning” process. Children in their family and clan live next to the place where these releases from the “cleaning” occur.

16. The Atencios do not have gas heating available to them in their home; they use firewood.

17. The Atencios believe that the oil and gas facilities across the landscape have polluted the water available to them and others in the area due to the amount of oil and gas development around the reservoir where their drinking water comes from and due to the many spills of toxic liquid waste from oil and gas production in the area.

18. Paul Atencio’s family land is in Counselor, New Mexico, and his family lives there today. Oil and gas development permitted by Defendants is within a stone’s throw of their family home, and their family’s livestock graze around and on land containing fracking wells.

19. In February 2019, Mr. Atencio’s family land and water in Counselor was contaminated by a 42,000-gallon toxic liquid waste and 12,500-gallon crude oil spill from oil development permitted by Defendants. Defendants did not notify the Atencios about the massive spill on their land and near their home and the Atencios have not been made whole after their land, water and livestock were poisoned by the spill. No one from the State has ever contacted them about remediation of the massive spill on their land which contaminated groundwater.

20. Atencio family lands in Torreon and Counselor are surrounded by fracking sites, and other oil and gas infrastructure. As a result, the air quality on and around these family lands



is very poor. The smell of the pollutants from oil and gas development is very strong and, even wearing a mask, visitors who are not accustomed to the pollution quickly get a headache and some feel nauseous. People in the Atencio family have asthma and other health problems which they believe are due to oil and gas pollution.

21. The Atencio family has lived and worked on their land for several generations, and they have livestock on the land. The Atencios have a deep spiritual and cultural connection to their land and the area surrounding their home. The land is central to their very being, their history, culture and identity as Diné.

22. Mario Atencio has made presentations to committees of the New Mexico Legislature about the damage that oil and gas development has done to the air, land, water and cultural resources on and around his ancestral homelands and testified against new development in front of the Oil Conservation Division. No Defendant or other state official has ever addressed his concerns.

23. The Atencios have seen a loss of water and plant life in the area. It has been a long time since they saw any arrow grass, which used to be abundant, and grows near water. The medicinal plants that Mary Ann Atencio's grandmother used to pull for their roots are no longer around.

24. The Defendants have harmed the Atencio family by authorizing oil and gas development on and near their family lands and causing degradation to the Indigenous ancestral landscape, sacred places, and traditional cultural resources, thereby harming the Atencio Family's ability to practice traditional ceremonies. The Atencios are also harmed by the degraded air quality and the contamination to the land and water around their homes – all caused by the Defendants' permitting of oil and gas development and pollution.

2) Daniel Tso

25. Plaintiff Daniel Tso is Diné, from ancestral lands of the Greater Chaco Landscape. He was born in the Star Lake area, near the headwaters of the Chaco Wash. He grew up in the Torreon Chapter of New Mexico, in Sandoval County, where he continued to live as an adult. Plaintiff Tso has rights to land in Torreon / Star Lake, Pueblo Pintado, Counselor and Nageezi, some of which has been leased for oil and gas development.

26. Mr. Tso is a former Navajo Nation Council Delegate for many chapters in the Eastern Agency of the Navajo Nation, including Torreon / Star Lake, Counselor, Pueblo Pintado, Ojo Encino, White Horse Lake, Little Water, Casamero Lake, and Baca / Pruitt.

27. Since 1995, Mr. Tso has lived in Flora Vista, New Mexico in San Juan County. He has five acres of irrigated land, with a herd of Navajo Churro sheep, a couple of brood mares and a couple of riding horses. There are oil and gas wells and infrastructure development about a mile from his home.

28. Plaintiff Tso practices traditional Diné lifeways and spiritual ways, which means that his philosophy is to live in harmony, to co-exist, and to take care of the land and the animals.

29. Plaintiff Tso has been harmed by Defendants' authorizing of extensive oil and gas development that has degraded the lands in and around his home and Indigenous ancestral lands, sacred places and traditional cultural resources across the Greater Chaco Landscape, harming Mr. Tso's ability to practice traditional ceremonies and lifeways on the land. Mr. Tso is also harmed by the degraded air quality in the areas where he lives and works and practices ceremony.

30. Mr. Tso has attempted to stop or slow the development of oil and gas development on his ancestral homelands and around his home by objecting to requests for

development by oil and gas companies in front of the Oil Conservation Division and Oil Conservation Commission. None of Plaintiff Tso's protests or appeals has been successful because the laws and regulations of New Mexico do not contain requirements or legal provisions upon which he can rely to administratively challenge oil and gas extraction by energy companies. Mr. Tso has also made presentations to committees of the New Mexico Legislature, asking them to address the damage to Indigenous ancestral lands and sacred places, and air quality due to oil and gas development on his ancestral homeland and around his home. Defendant New Mexico Legislature has failed to act to address Mr. Tso's concerns.

31. To protect their health, it has been necessary for children in Counselor, including children in Mr. Tso's family, to attend and work in the schools in Cuba, New Mexico, rather than at the closer Lybrook Elementary School in Counselor, in order to get away from the air pollution and other dangers created by the oil and gas production sites that surround the Lybrook school. Children who are related to Mr. Tso by clan have experienced nose bleeds and use an inhaler, and Mr. Tso believes this is due to the oil and gas development sites that surround the Counselor Chapter House and health clinic and the Lybrook Elementary School.

3) Samuel Sage

32. Plaintiff Samuel Sage is Diné, from the ancestral lands of the Greater Chaco Landscape in Ojo Encino, New Mexico and lives in Farmington, New Mexico in San Juan County. Plaintiff Sage is the Community Services Coordinator at the Counselor Chapter House. Previously, Plaintiff Sage served as the President of the Counselor Chapter of the Navajo Nation.

33. Since the Mancos shale boom began in the Navajo Tri-Chapter area around 2014, Mr. Sage has experienced degraded air quality where he works and lives, and community members have complained to him about the poor air quality and the noise and vibrations in their

homes from oil and gas development. Many roads on which Mr. Sage routinely travels have become impassable due to heavy oil and gas truck traffic, and these trucks' dust and grit in the air adds to the poor air quality. Many Counselor Chapter community members tell Mr. Sage about their upper respiratory problems. Mr. Sage is aware that more and more children on the local school bus use inhalers to help them breathe. There are four to five oil and gas wells about one half mile from the Counselor Chapter House. These wells are also very close to the Lybrook Elementary School, which is surrounded by oil and gas development.

34. There are six or seven oil or gas pump jacks within a mile of Mr. Sage's home and the community where he lives. The air quality where he lives is poor.

35. Mr. Sage has property rights to land in the Greater Chaco Landscape that has been leased for oil and gas development. The land is about 8 miles southeast of the Chapter Counselor House.

36. Mr. Sage has been harmed by the State's permitting of oil and gas development and pollution. Mr. Sage is harmed by breathing poor air, polluted by oil and gas production authorized by Defendants, where he lives and works. Sometimes Mr. Sage can smell the gaseous fumes from the oil and gas production near his home and his work, and he gets headaches and a runny nose. He has also been harmed by Defendants' authorizing of oil and gas development because it has degraded his ancestral lands, which is now a noisy place, full of pump jacks, pipelines, oil and gas production sites, trucks, and foul odors. Pipelines and well sites are across the land where he and his family used to herd sheep.

37. Mr. Sage has a deep spiritual and cultural connection to the Greater Chaco Landscape. The land is central to his very being, history, Diné culture and identity. He is harmed when the landscape is harmed by oil and gas development authorized by the Defendants.

4) Cheyenne Antonio

38. Plaintiff Cheyenne Antonio's family home is in Pueblo Pintado, New Mexico, in the Greater Chaco Landscape, on Chaco Mesa. Ms. Antonio's family are weavers and she had a traditional Diné upbringing. Her grandparents taught her about her sacred relationship to the land and animals.

39. Oil and gas development has degraded and continues to degrade Ms. Antonio's ancestral lands, and increasingly encroaches on her home. From her home, she can see giant water and oil barrels used for oil and gas development. Ms. Antonio has noticed an increase in new roads, truck traffic, and light and noise pollution associated with oil and gas development permitted by Defendants. Ms. Antonio regularly smells the foul smells of oil and gas development while she is traveling to and from her home.

40. Ms. Antonio has had many family members suffer from cancer, including her father and her younger brother who was diagnosed with thyroid cancer when he was just 15, and her grandmother (who lived on "Pipeline Road") who recently died from cancer. She believes the cancer is due to the oil and gas pollution in the area that she, her little brother, father, and other family members regularly breathe.

41. When Ms. Antonio is tending to the community garden or looking for livestock on her ancestral homelands in the Greater Chaco Landscape, she frequently gets headaches. She believes it is because the garden is surrounded by oil and gas development and waste sites. Other members of Ms. Antonio's family who live in the area frequently get headaches, and other family members get headaches when they visit the area.

42. Ms. Antonio has seen drastic changes to the landscape over the past two decades from oil and gas development. The land used to be greener, with a lot of wild grasses. There used

to be a lot of Indian tea. Now there are oil and gas wells all over the area, around her ancestral land and near her home, and she can hear trucks regularly, instead of the birds.

43. Children in Ms. Antonio's family attend the Lybrook Elementary School in Counselor, New Mexico which is surrounded by oil and gas production sites. Ms. Antonio is concerned about their health.

44. In addition to being impacted by air, land, and water pollution caused by oil and gas development near her home, Ms. Antonio's safety has been threatened by increased violence in her community due to the increase of oil and gas development since industry workers from outside of the community now inhabit or work in the area where she lives. Oil and gas workers frequently drive through her community to work on the rigs or tend to oil and gas infrastructure. Drug and alcohol abuse, and complaints of violence committed by oil and gas workers who do not come from the community, are common. This is another type of social-environmental harm that is perpetuated by the expansion of Defendants' permitting of oil and gas production that disproportionately impacts Indigenous people and frontline community members.

45. Ms. Antonio is deeply harmed by the damage that the Defendants' authorizing of oil and gas development has done to the air she breathes, and her homelands, health, family's health, way of life, feelings of safety, Indigenous ancestral land, sacred places and traditional resources, and her identity as Diné.

5) Kendra Pinto

46. Plaintiff Kendra Pinto lives in Twin Pines, near Lybrook, New Mexico. Twin Pines is part of the Counselor Chapter of the Navajo Nation and part of the Greater Chaco Landscape. Ms. Pinto resides about a half mile from her grandmother's birthplace. Ms. Pinto intends to live her whole life in this place, due to her deep connection and ancestral ties to the

land. Her path is to protect the land, air and the water for future generations.

47. Plaintiff Pinto and her family are Diné, have deep roots in the Greater Chaco Landscape, and have lived and worked on their ancestral lands in this area for generations.

48. Ms. Pinto's home and ancestral lands are now surrounded by oil and gas wells and development. There are at least five active oil and gas sites within a mile of Ms. Pinto's home, all permitted by the Defendants.

49. Ms. Pinto is deeply connected to the land. She was raised by her grandmother who taught her to treat the land well because the land always provided for her and her family. She grew up outside, playing, exploring, and gardening with her grandmother, enjoying what the land offered to her.

50. Over the last 10 years, Ms. Pinto has seen an increase in oil and gas development around her home and ancestral lands, including increased truck traffic, oil field workers, and oil and gas infrastructure. Ms. Pinto regularly walks along a horse trail, and she now sees compressors and metal structures blighting the landscape, instead of wild grass and wild trees; she has noticed that rare cacti are dwindling.

51. Defendants' authorizing of oil and gas development harms Ms. Pinto's sense of safety when she walks in her community and on her ancestral lands. She routinely comes across unfamiliar faces who work for the oil and gas industry, and some of the oil field workers are confrontational, questioning why Ms. Pinto is walking in the area where they work. With the influx of workers who are not from her community, there has been increased violence, drugs and alcohol in the community, leaving Ms. Pinto in fear for her own safety.

52. Since 2018, Ms. Pinto has filed approximately 40 complaints with the New Mexico Environment Department regarding methane and air pollutants known as volatile organic

compounds (“VOCs”) emissions from oil and gas sites that are polluting the air in northwest New Mexico generally, and around her home and ancestral lands specifically. These complaints include data from a Forward-Looking Infra-Red (“FLIR”) camera that records hydro-carbons - which includes methane and VOCs. Basically, the FLIR records air pollution emissions from oil and gas development sites. Generally, the Environment Department does not respond to Ms. Pinto’s complaints.

53. In September 2021, Ms. Pinto found and reported underground emissions to the Environment Department. The harmful emissions came from a well that had not produced oil or gas since mid-2019. This complaint eventually led the energy company that operated the well to shut-in and excavate the site in order to properly address the detected emissions. The Environment Department did not find the dangerous emissions; Ms. Pinto did.

54. On March 22, 2022, Ms. Pinto was at a well site near Lybrook Elementary school while the workers were on site performing routine maintenance. With the FLIR camera, Ms. Pinto could see that the tank battery was completely open and venting methane. The site is 1,900 feet from the school. The wind carried the plume of emissions in the direction of the elementary school. Ms. Pinto took video footage of this leak, and the video is publicly available on YouTube.<sup>1</sup>

55. The next day, on March 23, 2022, Ms. Pinto found a large hole at the bottom of a separator in the Gallup Horseshoe Oilfield, near Waterflow, New Mexico, that was also emitting large amounts of methane. Ms. Pinto took video footage of this leak, and the video is also

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<sup>1</sup> See Kendra Pinto, *Enduring Resources NE Chaco Com #271H, Rio Arriba County, NM (March 2022)*, YouTube (Mar. 31, 2022), <https://youtu.be/P5XKh13vLSA>.



publicly available on YouTube.<sup>2</sup>

56. Ms. Pinto has been harmed by the damage to the landscape, ancestral lands, traditional resources and the environment around Lybrook and in the Counselor Chapter caused by Defendants' permitting of oil and gas production and pollution. Defendants' actions have disrupted her relationship with the land, damaged her traditional resources and ancestral lands. Oil and gas development authorized by the Defendants harms plants and wildlife that she observes and enjoys, has damaged places associated with traditional Diné culture, offering places and plant gathering, and has diminished her ability to enjoy and relax in her ancestral lands.

57. Defendants' authorization of oil and gas development without adequate pollution controls continues to despoil the air quality where Ms. Pinto lives and works. Ms. Pinto regularly experiences headaches, sinus issues and nosebleeds when she is outside for more than a few hours. She lives in fear of toxic air pollutants that harm her health and the health of the living landscape.

#### 6) Common Harm to the Diné Family Plaintiffs

58. Diné Family Plaintiffs live, work, subsist and practice traditional ceremonies in the areas and landscapes that are directly harmed by oil and gas leasing and development authorized by Defendants. Although there has been oil and gas development in other parts of the Navajo Nation, the eastern portion of the Navajo Nation is the region where horizontal hydraulic fracturing ("fracking") has boomed in recent years. This region is part of the Navajo people's centuries-old homeland and where their ancient cultural heritage is located.

59. Diné Family Plaintiffs' homes are in an area where the Defendants authorize and

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<sup>2</sup> See Kendra Pinto, *Chuzza Oil Company – NE Hogback Unit 53, San Juan County, NM (March 2022)*, YouTube (June 15, 2022), <https://youtu.be/BwO9RB5vaIg>.

permit enormous volumes of VOCs and hazardous air pollutants to be released into the air by oil and gas operators. This pollution caused by oil and gas development frequently results in headaches, sore throats, nausea, and sickness - even for visitors who only come to the area for a short time. These pollutants also increase the risk of cancer and other serious illnesses to people who live near them or spend significant time near them, including the Diné Family Plaintiffs.

60. Diné Family Plaintiffs suffer particular harm because the air on their homeland is part of the “Four Corners Methane Hot Spot”—an area with so much methane pollution from oil and gas development that it can be seen in satellite imagery--causing distress to Diné Family Plaintiffs since they know that the methane hot spot is due to the widespread oil and gas production across their homelands, and is an indicator of harmful, unhealthy air and climate pollution.

61. Due to the Defendants’ authorization of oil and gas production and pollution around the Diné Family Plaintiffs’ homes and on their ancestral lands, the air quality has worsened. The declining air quality harms not only the Plaintiffs, but all the children in their community, many of whom attend the Lybrook Elementary School, which is surrounded by oil and gas wells that emit pollutants that have poisoned the air that the children breathe.

62. Diné Family Plaintiffs are concerned about the impact that state-authorized oil and gas production has on their scarce freshwater resources, and it is increasingly difficult to access clean water. Many homes in the area do not have access to running water.

63. The Diné Family Plaintiffs’ physical safety is in jeopardy due to accidents from oil and gas development. For example, an explosion occurred in 2016 in Nageezi, on U.S. 550 at mile marker 114, where a well blew out and spread to the storage tanks on the site. The oil and gas site exploded into a massive fire that burned for 5 days. In 2016, the Diné Family Plaintiffs

witnessed the emptying into the ground of a massive liquid waste storage tank that was holding toxic liquid waste created by oil and gas companies. The Diné Family Plaintiffs are imminently threatened with injury and face a real risk of future injury due to accidents from oil and gas development.

64. The Diné Family Plaintiffs have seen a loss of plants and animals since the Defendants have increased permitting of oil and gas development near their homes and land.

65. The Diné Family Plaintiffs are having increased difficulty finding sufficient amounts of rare plants and herbs used for Navajo teas and traditional practices. Birds and wildlife are disappearing in and around oil and gas development, and rare birds such as the Navajo Yellow Bird, used for feathers for traditional practices, are gone.

66. The Diné Family Plaintiffs' ancestral lands have been destroyed by Defendants' authorization of oil and gas development, with no or inadequate remediation for the damage caused. For example, impacts from truck traffic associated with oil and gas development include increased erosion, presence of invasive species, and dust.

67. The destruction of sacred places, ancestral landscapes and traditional cultural resources caused by Defendants' permitting of oil and gas development activities impedes Diné Family Plaintiffs' ability to practice traditional ceremonies which are central to their culture and identity.

68. Diné Family Plaintiffs continue to practice traditional Diné cultural and spiritual teachings and practices that reference significant sacred sites in Dinétah, a region that Diné history describes as the place their people first emerged into this world. Dinétah is located in Eastern Navajo lands, in New Mexico, on the Greater Chaco Landscape, adjacent to the communities of Torreon, Na'geezi, Counselor, Pueblo Pintado, and Ojo Encino. Continued and

increased oil and gas operations and pollution in this area harms these sacred and spiritually significant sites of the Navajo people and their traditionally practicing members.

69. Diné Family Plaintiffs make pilgrimages that consist of traditional offerings and prayers to the sacred mountains and sites in Dinétah and eastern Navajo Nation. These areas support numerous medicinal and ceremonial herbs that are threatened from oil and gas drilling and operations. Oil and gas activities cause surface disturbance and water runoff, which displaces plants and sacred ceremonial herbs that are integral to Diné spiritual and ceremonial practices. Emission and pollution from oil and gas operations harm the natural environment and the Diné Family Plaintiffs' health. The pollution and destruction to sacred places and the environment across the Greater Chaco Landscape directly harms Diné Family Plaintiffs' way of life, including holistic wellness, and their ability to continue their spiritual and cultural practices.

70. All of these impacts to Diné Family Plaintiffs are due to the Defendants' authorization of oil and gas development and pollution. Because the harm to Diné Family Plaintiffs causes a direct imminent threat to their culture and identity as Diné people, they are disproportionately impacted by oil and gas pollution. They are also disproportionately harmed because they are frontline community members facing increased health harms from Defendants' permitting of oil and gas production and pollution.

71. All of the Diné Family Plaintiffs experience the harm caused by the State's permitting of oil and gas production as both a personal harm and a community harm. They are connected as a people to the land. Their survival as a people depends on the survival of their ancestral land, and traditional cultural resources and sacred places.

## **B. Pueblo Family Plaintiffs**

### 1) Julia Bernal

72. Plaintiff Julia Bernal is from Sandia Pueblo, the home of her father's family for generations. She lives there today with her family. Julia Bernal's father's side of the family is from Taos Pueblo, Picuris Pueblo and Isleta Pueblo, so Julia Bernal has long Pueblo roots. Julia Bernal had a traditional upbringing, steeped in Pueblo ceremony, practices and culture. Plaintiff Bernal is also the Director of Pueblo Action Alliance, one of the Organizational Plaintiffs in this case.

73. Plaintiff Bernal has deep roots in the Greater Chaco Landscape – a Pueblo ancestral landscape steeped in Pueblo culture and sacred places that still exist for Julia Bernal, and her relatives. It is a place where Plaintiff Bernal and her relatives still practice sacred ceremonies and rely on the landscape for their spiritual ways.

74. Plaintiff Bernal has tried to limit oil and gas development and pollution both in the Greater Chaco landscape and in Sandoval County, where Sandia Pueblo is located. Julia Bernal has testified at numerous New Mexico legislative hearings and spoken publicly about how oil and gas development has damaged the Greater Chaco Landscape, air quality and the climate.

75. The Defendants authorizing of oil and gas development and pollution has harmed Ms. Bernal by harming the land, water and air in the Greater Chaco Landscape, impinging on her ability to practice cultural and spiritual ceremonies, and in Sandoval County, impinging on the quality of life, air and the water where she lives. Plaintiff Bernal's health is threatened by oil and gas pollution in areas where she lives and practices ceremony.

2) Jonathan Alonzo

76. Plaintiff Jonathan Alonzo is from Laguna Pueblo. He currently lives in Albuquerque, New Mexico. He is the policy lead for Organizational Plaintiff Youth United for Climate Crisis Action and the community defense organizer for Pueblo Action Alliance.

77. Mr. Alonzo visits Laguna Pueblo and the Greater Chaco Landscape for ceremonial reasons and to visit family. He also visits these areas to reconnect with his ancestral lands and Indigenous culture and sacred places that have sustained generations of his people.

78. The oil and gas development that is authorized by the State is degrading the Greater Chaco Landscape and has impeded Mr. Alonzo's ability to participate in ceremonies and enjoy his ancestral lands. It also threatens Mr. Alonzo's ability to pass on his culture to future generations of his people, causing a loss of his cultural heritage and cultural wealth.

79. As a 20-year-old youth, Mr. Alonzo is disparately affected by oil and gas pollution and climate change. He and future generations will have to deal with the worst effects of the pollution and the climate crisis exacerbated by uncontrolled oil and gas development, including development in northwest and southeast New Mexico. Mr. Alonzo sees land stewardship as his responsibility, and he engages in work to try and protect his ancestral lands from the degradation caused by oil and gas development and climate change.

80. Mr. Alonzo is harmed by the state's authorizing of oil and gas development across the Greater Chaco Landscape without adequate regulation because it impinges on his ability to practice ceremonies and breathe clean air, both key to his survival.

3) Common Harm to the Pueblo Family Plaintiffs

81. The Greater Chaco Landscape, in the San Juan Basin, is sacred to Pueblo people, bringing all Pueblo communities together to a central space throughout the spectrum of time.

82. Ancestral Pueblo people lived in Chaco Canyon for over 2,000 years before migrating to the nearby lands they currently occupy. Chaco Canyon and the Greater Chaco Landscape are deeply rooted in the Pueblo collective memory and living traditions. There are many sacred Pueblo structures, sites, shrines, and landscape features across the Greater Chaco Landscape. The Greater Chaco Landscape is an important part of Pueblo collective identity and many Pueblo people connect to it through song, prayer, and pilgrimage.

83. The disruption of the Greater Chaco Landscape, and the decimation of sacred sites and cultural resources caused by Defendants' permitting of oil and gas development and pollution harms the Pueblo Family Plaintiffs as it impedes their culture, their identity, and their ability to practice their traditional Pueblo ceremonies.

84. When the Pueblo Family Plaintiffs visit their ancestral Greater Chaco Landscape, they are exposed to dangerous oil and gas pollution due to Defendants' authorization of oil and gas development. This exposure is harmful to their health.

### **C. Permian Family Plaintiff**

85. Plaintiff Pastor David Rogers is the preacher at First Christian Church in Carlsbad, New Mexico, in Eddy County. He lives in Carlsbad, New Mexico with his family.

86. Eddy County is located in the Greater Carlsbad region of southeast New Mexico, known to the oil industry as the "Permian Basin."

87. Eddy County has some of the highest levels of oil and gas production in the world, along with some of the worst air quality in the country as a result of Defendants' authorization of oil and gas development with inadequate regulation. The widespread adoption of horizontal drilling and multi-stage hydraulic fracturing by the oil and gas industry has opened up significant areas of "tight oil" to production that were previously uneconomical to extract,

thereby enabling a boom in oil and gas production in the Permian Basin, starting about 10 years ago. The inadequate regulation and enforcement of oilfield emissions, VOCs, leaking wells, tank batteries, pipelines, improper or inadequate flaring, and numerous spills have caused water, land and air degradation and harmful pollution.

88. There is a massive amount of truck traffic in Eddy County due to oil and gas production, adding to the County's noticeably bad air quality. Emissions from generators, compressors, and trucks, all powered by gas and diesel, emit exhaust 24 hours a day, seven days a week.

89. In 2023, the American Lung Association ranked Eddy County 19<sup>th</sup> of the 25 most polluted counties in the United States, one of the few rural counties on the list of 25. The County experienced increases in harmful ozone levels during the past five years (2019 through 2023).

90. Air quality in Eddy County does not meet federal health air quality standards.

91. Plaintiff Rogers has experienced increasing levels of pollution and destruction of the environment caused by Defendants' increased permitting of oil and gas production with inadequate regulation.

92. Plaintiff Rogers has been and continues to be exposed to water and air pollution, which contains dangerous carcinogenic chemicals, like benzene, and other volatile organic compounds that were not present before oil and gas drilling began near his home and property and in other areas he routinely uses in New Mexico's Permian Basin.

93. Plaintiff Rogers has family members who are children who attend schools in Eddy County that have dozens of oil and gas wells in close proximity to the school, harming the health of the children who attend these schools, including children in his family.

94. Plaintiff Rogers and his family are harmed by living and working in an area that



has unhealthy air quality caused by Defendants' authorizing of oil and gas development with inadequate regulation, which has resulted in the air quality in Eddy County being out of compliance with federal air quality standards.

#### **D. Organizational Plaintiffs**

##### 1) Youth United for Climate Crisis Action (YUCCA)

95. Plaintiff Youth United for Climate Crisis Action ("YUCCA") is a membership organization of youth whose members are harmed by Defendants' permitting of oil and gas production and pollution without preventing the despoilment of natural resources and a healthful and beautiful environment. YUCCA's mission is to address pollution caused by fossil fuel production that is creating climate change. YUCCA members have sought, unsuccessfully, state legislative and regulatory changes to protect the environment from oil and gas industry pollution. YUCCA's members organize and take action to stop the climate and health impacts created by the continued extraction of and reliance on fossil fuels without adequate regulation. YUCCA's members rely on scientific evidence which proves that Defendants' actions of permitting oil and gas production are a threat to life on earth and their futures and their children and grandchildren's ability to live in New Mexico.

96. The interests that YUCCA seeks to protect through this lawsuit are germane to its mission, goals, and purposes.

97. Because of Defendants' continued promotion and permitting of oil and gas production with inadequate pollution controls, YUCCA's members' life, liberty, property, safety, happiness, and a livable future are imminently threatened, and they face a real risk of future harm. Consequently, they live in fear about their and their families' future.

98. Some YUCCA members are from northwest New Mexico in the San Juan Basin

area, and some are from southeast New Mexico in the Permian Basin area. These members have grown up in areas heavily polluted by oil and gas production and are harmed by the pollution caused by Defendants' authorizing of oil and gas development.

99. Some YUCCA members are Indigenous and are deeply tied to the Greater Chaco Landscape. These members are directly harmed by degradation of the Greater Chaco Landscape due to the Defendants' permitting of oil and gas development across the landscape.

100. Some YUCCA members visit and recreate in and around New Mexico's San Juan and Permian basins where they observe and are harmed by the impacts of oil and gas development including contamination of the air, land, and water from oil and gas pollution and despoilment of the landscape and natural resources, all due to the Defendants' authorization of oil and gas development in the San Juan Basin with inadequate regulation.

## 2) Pueblo Action Alliance

101. Plaintiff Pueblo Action Alliance is a community driven Indigenous organization that promotes cultural sustainability and community defense by addressing environmental and social impacts in Indigenous communities.

102. Pueblo Action Alliance's staff members and board members all have deep Pueblo roots, and all are harmed by the State's permitting of oil and gas production with inadequate regulation. All of Pueblo Action Alliance's staff and board have cultural and spiritual ties to land and landscapes in and around the Greater Chaco Landscape that are being destroyed due to the State's authorizing of oil and gas extraction and pollution.

103. Pueblo Action Alliance's staff and board members visit, recreate and practice ceremony in the Greater Chaco Landscape of northwestern New Mexico, an area that is part of the San Juan Basin, and that has been despoiled by the state's authorization of oil and gas

production without controlling for pollution. Some of Pueblo Action Alliance staff and board members are youth who's livable future is threatened by Defendants' authorization of oil and gas production and pollution.

104. Pueblo Action Alliance works with Pueblo community partners to improve health and wellness, educational outcomes and environmental justice for Pueblo people.

105. Central to Plaintiff Pueblo Action Alliance's mission is the protection of the Greater Chaco Landscape and Pueblo lands across New Mexico from the harms caused by oil and gas extraction, production and transportation, including impacts to air quality, freshwater resources, cultural resources and the climate.

106. The interests that Pueblo Action Alliance seeks to protect through this lawsuit are germane to its mission, goals, and purposes.

### 3) Indigenous Lifeways

107. Plaintiff Indigenous Lifeways is a non-profit organization led by Indigenous women whose mission is to restore health and balance for all people and the environment by utilizing traditional knowledge and wisdom, respectful land-based practices, ceremonies, and a deep understanding of the dynamics and peoples of Indigenous communities. Working for more than 30 years to revitalize and preserve native languages, traditions, and cultures, Indigenous Lifeways is deeply rooted in the frontlines of activism, engaging with communities in proactive responses to climate degradation; cultivating green pathways in local economic development; and building individual and community capacity.

108. Plaintiff Indigenous Lifeways' staff, board members, volunteers and members are all Indigenous people (primarily Diné), who are harmed by the State's authorizing of oil and gas development without putting in place a pollution control scheme that protects Indigenous

ancestral landscapes, sacred places and culture, public health, and the environment. Indigenous ways of life are harmed by the State's actions to permit oil and gas development without adequate pollution control and harm management.

109. The interests that Indigenous Lifeways seeks to protect through this lawsuit are germane to its mission, goals, and purposes.

4) Center for Biological Diversity

110. 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 over 84,000 members, including over 1,500 members in New Mexico, and maintains offices across the United States and Baja California Sur, Mexico, including in New Mexico.

111. The Center's Climate Law Institute works to protect people, wildlife, and ecosystems from climate change and the deleterious effect on water, air, land, public health and cultural practices caused by the fossil fuel industry. 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.

112. The Center has members who live, work, and recreate in New Mexico, including the Greater Carlsbad and Greater Chaco regions of the State where the Permian Basin and San Juan Basin (also known as the Greater Chaco Landscape) are located. Some of the Center's members live in Eddy County, in the Permian Basin, home to one of the largest oil fields in the world, where they suffer from the health impacts of oil and gas pollution. For example, one

member, who can see venting and flaring from oil and gas wells from their home, has asthma and frequent migraines. The Center's members who live, work, visit or recreate in the Greater Chaco or Greater Carlsbad regions of New Mexico are harmed by the State's authorizing of oil and gas development without controlling pollution; they are exposed to unhealthy and toxic air pollution, water pollution, and degradation of land, biodiversity and other natural resources.

113. The inadequately regulated oil and gas production in New Mexico is also a leading contributor to the global climate crisis, an existential threat that the Center, its Climate Law Institute, and its members are working to halt.

114. The interests that the Center for Biological Diversity seeks to protect through this lawsuit are germane to its mission, goals, and purposes.

5) WildEarth Guardians

115. Plaintiff WildEarth Guardians ("Guardians") is a non-profit environmental advocacy and conservation organization headquartered in Santa Fe, New Mexico. Guardians has more than 6,800 members. Many of these members live, work or recreate in New Mexico, including in the Greater Carlsbad and Greater Chaco regions of the State where the Permian Basin and San Juan Basin (also known as the Greater Chaco Landscape) are located. Guardians and its members are dedicated to protecting and restoring the wildlife, wild places, wild rivers, and health of the American West. Towards this end, Guardians and its members work to replace fossil fuels with clean, renewable energy in order to safeguard community health, the environment and the earth's climate.

116. Guardians' members live, work, recreate, use, and enjoy areas and lands in the Greater Chaco and Greater Carlsbad regions that are in and adjacent to, and affected by, the State's authorizing of oil and gas development without sufficient pollution controls on the

development, production and remediation of the industry. The State's permitting of oil and gas development in these areas without sufficient pollution controls will industrialize these treasured landscapes; produce air pollution that is offensive and harmful to human health, especially for children and those in the Greater Chaco and Grater Carlsbad areas already facing multiple environmental and social stressors; add to the cumulative harmful effects of greenhouse gas emissions; and lead to connected development that will further adversely impact nearby public lands and harm the health, aesthetic and recreational interests, cultural practices, and spiritual well-being of the people and communities who visit, use and depend on these lands and call them home.

117. The interests that Guardians seeks to protect through this lawsuit are germane to its mission, goals, and purposes.

6) Common Harms to Organizational Plaintiffs

118. YUCCA, Pueblo Action Alliance, Indigenous Lifeways, the Center for Biological Diversity and WildEarth Guardians (collectively "Organizational Plaintiffs") have staff, board members and/or members with a substantial, direct, and immediate interest in protecting natural resources, a beautiful and healthful environment, water, land, air, the climate, and their rights to their life, liberty, property, happiness and safety, and equal protection under the law.

119. The Organizational Plaintiffs have staff, board members and/or members who are frontline community members, Indigenous peoples, and youth, who have been harmed by oil and gas pollution permitted by the Defendants.

7) Common Harm to All Plaintiffs

120. All Plaintiffs suffer both immediate and threatened injuries as a result of actions and omissions by Defendants alleged herein. Plaintiffs suffer and will continue to suffer harm to

their health, personal safety, bodily integrity, cultural and spiritual practices, economic stability, food security, property, aesthetic and recreational interests from the impacts of oil and gas pollution caused by Defendants' inadequate regulation of oil and gas development.

121. All Plaintiffs have (1) suffered concrete, particularized and actual or imminent injuries; (2) their injuries are fairly traceable to Defendants' failure to abide by their constitutional duties to protect our beautiful and healthful environment and to control for the despoilment of natural resources by pollution caused by the oil and gas industry; and (3) their injuries are likely to be redressed by a favorable court decision in which the Defendants are ordered to come into compliance with their constitutional obligations to control the oil and gas pollution in New Mexico in a way that protects our air, water and other natural resources and a beautiful and healthful environment, as well as Plaintiffs' rights to life, liberty, property, happiness, safety and equal protection under the law.

## **II. Defendants**

122. Defendant STATE OF NEW MEXICO is a sovereign State of the United States and, as trustee, holds all natural resources within the State's borders in public trust for the benefit of the people of New Mexico. Defendant State of New Mexico has authorized oil and gas development while failing to prevent substantial impairment to the environment and to control pollution and control despoilment of the air, water, and other natural resources in violation of its constitutional and statutory duties, thereby injuring Plaintiffs.

123. Defendant NEW MEXICO LEGISLATURE is the branch of state government responsible for establishing statutory schemes to comply with their state constitutional duties, and for appropriating sufficient state monies to state agencies to be able to enforce the laws of the state. The New Mexico Legislature has passed a statutory scheme that does not control oil

and gas pollution in violation of its state constitutional duty to control pollution and protect our beautiful and healthful environment. The Legislature's statutory scheme and inadequate funding for state agencies does not control pollution and violates Plaintiffs' state constitutional rights to life, liberty, property, happiness and safety, a livable future, and equal protection under the law. The Legislature has also failed in its state constitutional obligation to monitor executive agencies to ensure they are complying with their statutorily delegated duties.

124. Defendant HONORABLE GOVERNOR MICHELLE LUJAN GRISHAM is sued in her official capacity as Governor of New Mexico. Governor Lujan Grisham is the Chief Executive Officer of the State of New Mexico. She is vested with the supreme executive power of the State and shall take care that the laws be faithfully executed. N. M. Constitution Art. V, § 4. As Chief Executive Officer, Governor Lujan Grisham is charged with overseeing State actions, including the State's implementation of its constitutional duties. Governor Lujan Grisham proposes a state budget, leads state policy matters, exercises veto power over legislation, including the budget, and is ultimately responsible for all State agency actions, including the authorization of oil and gas production with inadequate pollution controls. Governor Lujan Grisham has failed to prevent substantial impairment to the environment and has failed to effectively implement and enforce the laws and constitution under her jurisdiction causing injury to Plaintiffs.

125. Defendant NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCE DEPARTMENT is an executive agency with the following mission posted on its website: "[The Department] strives to make our state a leader in developing reliable supplies of energy, and energy-efficient technologies and practices, with a balanced approach toward conserving our renewable and non-renewable resources; to protect the environment and ensure



responsible reclamation of land and resources affected by mineral extraction; to be effective in leading our state in growing healthy, sustainable forests and managing them for a variety of users and ecologically sound uses; and to improve the state park system into a nationwide leader that contributes to a sustainable economy statewide while protecting New Mexico's natural, cultural, and recreational resources for posterity."

126. Defendant NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT includes the Oil Conservation Division which was established pursuant to the New Mexico Oil and Gas Act, NMSA 1978 §§ 70-2-1, *et seq* (1977, as amended through 2019). The Oil Conservation Division has "jurisdiction and authority over all matters relating to the conservation of oil and gas" (§ 70-2-6) and to prevent waste (§ 70-2-11) and to enforce the oil and gas act. § 70-2-1 *et seq*. According to the Oil Conservation Division's website, the Division is obligated to monitor, regulate, control, and enforce laws against oil and gas pollution: "To protect human health and the environment from the effects of development of the state's oil [and] gas ... resources," the Division "develops and enforces all of the environmental regulations and programs in the oil and gas industry for the prevention of ground water contamination," and "ensures oil and gas development is conducted in a way that protects human health and the environment and the lands of New Mexico are protected and responsibly restored." According to the Energy, Minerals and Natural Resources Department, the Oil Conservation Division's mission is as follows: "The Oil Conservation Division (OCD) regulates oil and gas activity in New Mexico. It gathers oil and gas well production data, permits new oil, gas and injection wells, enforces the Division rules, develops administrative orders to which operators are subject, enforces the State's oil and gas statutes, ensures abandoned wells are properly plugged, and that the land is responsibly restored once production activities are done."

127. Defendant ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT CABINET SECRETARY SARAH COTTRELL PROPST is sued in her official capacity. She is vested with the responsibility to execute the mission of the Department, and shall take care that the laws be faithfully executed and implement the rules of the Department, pursuant to the laws of the State of New Mexico, including the New Mexico Oil and Gas Act, NMSA 1978 §§ 70-2-1, *et seq.* (1977, as amended through 2019), and the New Mexico Water Quality Act, NMSA 1978 §§ 74-6-1 *et seq.* (1967, as amended through 2019); and 19.15.1, 19.15.2 and 19.15.5 NMAC *et seq.* She must also enforce the requirements of the New Mexico Constitution.

128. Defendant OIL CONSERVATION COMISSION was also established by the New Mexico Oil and Gas Act, NMSA 1978 §§ 70-2-1, *et seq.* (1977, as amended through 2019), and is “composed of a designee of the commissioner of public lands, a designee of the secretary of energy, minerals and natural resource and the director of the Oil Conservation Division.” § 70-2-4. The Commission has concurrent jurisdiction with the Oil Conservation Division to regulate oil and gas production. § 70-2-6(B). Both agencies are concurrently empowered to prevent waste, protect correlative rights, enforce rules and regulations, and “do whatever may be reasonably necessary to carry out the purpose of [the Oil and Gas Act].” § 70-2-11(A). Defendant Oil Conservation Commission is responsible to promulgate and adopt rules to enforce the Oil and Gas Act. 19.15.3 NMAC.

129. Defendants NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCE DEPARTMENT, SECRETARY PROPST and the OIL CONSERVATION COMMISSION have failed to fulfill their duties to control pollution from oil and gas development; they have also failed to protect Plaintiffs from the harms caused by pollution

generated by oil and gas production, thereby violating their fundamental rights.

130. Defendant NEW MEXICO ENVIRONMENT DEPARTMENT (hereinafter “Environment Department”) was created by statute to “be responsible for environmental management and consumer protection in this state in order to ensure an environment that in the greatest possible measure will confer optimum health, safety, comfort and economic and social well-being on its inhabitants; will protect this generation as well as those yet unborn from health threats posed by the environment; and will maximize the economic and cultural benefits of a healthy people.” NMSA 1978 § 74-1-2.

131. Defendant NEW MEXICO ENVIRONMENT DEPARTMENT CABINET SECRETARY JAMES KENNEY is sued in his official capacity. He is vested with the responsibility to execute the mission of the Environment Department, to protect and restore the environment and to foster a healthy and prosperous New Mexico for present and future generations, shall take care that the laws be faithfully executed and implement the rules of the Environment Department, pursuant to the Air Quality Control Act, NMSA 1978 §§ 74-2-1 *et seq.* (1967, as amended through 2021), Environmental Improvement Act, NMSA 1978 §§ 74-1-1 *et seq.* (1971, as amended through 2020), Ground Water Protection Act, NMSA 1978 §§ 74-6B-1 *et seq.* (1990, as amended through 2018), Radiation Protection Act, NMSA 1978 §§ 74-3-1 *et seq.* (1971, as amended through 2003), and New Mexico Water Quality Act, NMSA 1978 §§ 74-6-1 *et seq.* (1967, as amended through 2019). He must also enforce the requirements of the New Mexico Constitution.

132. Defendant ENVIRONMENTAL IMPROVEMENT BOARD was established by statute and consists of seven members appointed by the governor. NMSA 1978 § 74-1-4A. The Board is responsible for adopting regulations administered by the Environment Department. The

Board also hears appeals of air quality permits issued by the Environment Department. Pursuant to NMSA 1978 § 74-1-8, Defendant Environment Improvement Board is responsible for environmental management and must promulgate rules for water supply, liquid waste, air quality management, radiation control, noise control, nuisance abatement, occupational health and safety, hazardous wastes and underground storage tanks, and solid waste, among others.

133. Defendants NEW MEXICO ENVIRONMENT DEPARTMENT, SECRETARY KENNEY and the ENVIRONMENTAL IMPROVEMENT BOARD are responsible for maintaining, developing, and enforcing New Mexico's air quality management regulations and they have failed in that responsibility, violating their constitutional duties and causing injury to Plaintiffs.

134. Defendants have the authority and are constitutionally mandated to regulate, limit and deny the extraction and production of oil and gas to limit or prohibit emissions and pollution in a manner that prevents the despoilment of New Mexico's beautiful and healthful environment and protects Plaintiffs from the harmful impacts of oil and gas pollution. Defendants have failed to uphold their constitutional duties to Plaintiffs while authorizing the production of oil and gas in New Mexico.

### **JURISDICTION AND VENUE**

135. This Court has jurisdiction of the subject matter of this action pursuant to the New Mexico Constitution, Art. VI, § 13, NMSA 1978 § 44-6-2 (1975), NMSA 1978 § 44-6-9 (1975), NMSA 1978 § 44-6-13 (1975), and NMSA 1978 §§ 41-4A-1 – 41-4A-13 (2021).

136. 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.

137. 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. Plaintiffs' Rights Under the New Mexico Constitution**

138. In November of 1971, the people of New Mexico voted to amend the New Mexico Constitution to include Art. XX, § 21 (“Pollution Control Clause”), which states:

The protection of the state’s beautiful and healthful environment is hereby declared to be of fundamental importance to the public interest, health, safety and the general welfare. The legislature shall provide for control of pollution and control of despoilment of the air, water and other natural resources of this state, consistent with the use and development of these resources for the maximum benefit of the people.

139. By amending the Constitution and adding the Pollution Control Clause, the people of New Mexico raised the State’s authority to control pollution under its police powers to a constitutional duty to control pollution, and to protect New Mexico’s air, water and other natural resources of the state from despoilment.

140. The Pollution Control Clause constitutes a positive, mandatory, and judicially enforceable duty on the Legislature to “provide for control of pollution and control of despoilment of the air, water and other natural resources of this state, consistent with the use and development of these resources for the maximum benefit of the people.”

141. Similar to the positive right created under the Education Clause of the State Constitution, Art. XII, § 1, which places an affirmative duty on the State to establish and maintain a sufficient education system (*see Yazzie / Martinez v. State of New Mexico*, No. D-101-CV-2014-00793, No. D-101-CV-2014-02224 (First Judicial District, J. Singleton), July 20, 2018 Decision and Order), under the Pollution Control Clause, Art. XX, § 21, the State has an affirmative constitutional duty to control pollution and protect the State’s land, water, air, and

natural resources from despoilment. In essence, the State has a duty to protect New Mexico's "beautiful and healthful environment."

142. Pursuant to the positive right created by the Pollution Control Clause, the Legislature must establish a sufficient statutory framework, with requisite funding to executive agencies to implement the framework, to comply with the constitutional mandate to control pollution and despoilment of the air, water, and other natural resources of this state. In this context, pursuant to the State's Environmental Improvement Act, a sufficient statutory framework is one that will "ensure an environment that in the greatest possible measure will confer optimum health, safety, comfort and economic and social well-being on its inhabitants; will protect this generation as well as those yet unborn from health threats posed by the environment; and will maximize the economic and cultural benefits of a healthy people." NMSA § 74-1-2.

143. The executive agencies authorized by the Legislature to implement the statutory framework must then promulgate and enforce rules to comply with the constitutional mandate to control pollution.

144. The Legislature also has the duty to monitor the executive agencies to ensure compliance with the positive constitutional duties.

145. Since adoption of the Pollution Control Clause, the Legislature has not passed laws sufficient to protect the air, land, water or a beautiful and healthful environment from pollution created by oil and gas development. The only statute that mandates controlling pollution from oil and gas production is the New Mexico Air Quality Control Act (NMSA 1978 § 74-2-1 *et seq.* (1967, as amended through 2021)); it was passed in 1967, four years prior to the adoption of the Pollution Control Clause. As set forth below, the New Mexico Air Quality

Control Act requires the State to prevent or abate air pollution and comply with health-based federal air quality standards. But the State is not complying with its own statute, and the State's air quality in areas of heavy oil and gas production is unhealthy and poor.

146. Defendants authorize the extraction and production of oil and gas without any review or consideration of the impacts on public health, the environment, land, air, water, natural resources or the climate. Defendants fail to protect Plaintiffs and others similarly situated to Plaintiffs from the negative impacts of oil and gas development, leaving a large number of New Mexicans harmed by oil and gas production. Defendants' failure to control oil and gas pollution does not benefit the people of New Mexico; it harms them.

147. The New Mexico Constitution, Art. II, § 4 ("Inherent Rights Clause"), states:

All persons are born equally free, and have certain natural, inherent and inalienable rights, among which are the rights of enjoying and defending life and liberty, of acquiring, possessing and protecting property and of seeking and obtaining safety and happiness.

148. The Inherent Rights Clause is judicially enforceable, stating clearly that New Mexicans' rights to property, liberty, life, safety, and happiness are inalienable and thus fundamental.

149. The New Mexico Constitution, Art. II, § 18 ("Due Process and Equal Protection Clauses") states:

No person shall be deprived of life, liberty or property without due process of law; nor shall any person be denied equal protection of the laws....

150. The Due Process and Equal Protection Clauses are judicially enforceable and prohibit substantive due process violations of rights to life, liberty and property, as well as unlawful discrimination against groups of people.

151. "When government is alleged to have threatened any of these rights, it is the

responsibility of the courts to interpret and apply the protections of the Constitution.” *Griego v. Oliver*, 2014-NMSC-003, ¶ 1, 316 P.3d 865, 870). “[W]hen litigants allege that the government has unconstitutionally interfered with a right protected by the Bill of Rights . . . courts must decide the merits of the allegation . . . [and] if proven, must safeguard constitutional rights. . . .” *Id.*

152. Defendants have broad jurisdictional authority to regulate oil and gas development and concomitant pollution across all of New Mexico, including federal, state, and private lands.

153. Along with their authority to permit oil and gas production, Defendants have the authority to limit and regulate oil and gas production across the State of New Mexico, and Defendants have the authority to control pollution created by oil and gas production across New Mexico, regardless of land status.

154. Defendants have failed to establish appropriate statutory, regulatory and enforcement procedures to comply with their constitutional obligations to protect New Mexico’s beautiful and healthful environment and natural resources from despoilment.

155. Defendants also have a constitutional duty to enact and implement laws in a manner that does not violate Plaintiffs’ fundamental constitutional right to life, liberty, property, safety, happiness and the right to equal protection under the law.

156. Defendants have violated the New Mexico Constitution by enacting, funding, and enforcing a statutory and regulatory framework for oil and gas extraction and development that authorizes oil and gas development yet fails to regulate oil and gas activities in a manner that protects New Mexico’s land, air, water, and natural resources, for the maximum benefit of the people. Defendants abrogate their duties under the pollution control clause and their



constitutional violations are causing Plaintiffs to suffer the significant harms described herein.

## **II. Oil and Gas Production in New Mexico**

157. Oil and gas production in New Mexico, which has risen dramatically in the past decade, and continues to increase, pollutes the air, land, water, natural resources and environment and causes harm to New Mexicans, including Plaintiffs.

158. Each stage of oil and gas production results in air pollution, including well pad construction, drilling, well completion, fracking and maintenance, enhanced oil recovery, transportation, waste disposal, inactive wells, and abandoned infrastructure.

159. Many stages of production require the use of chemical additives that contain multiple toxic substances known to cause adverse health impacts, including known or possible human carcinogens and pollutants that are considered hazardous both by federal and state agencies. Chemical mixtures used to facilitate drilling, for example, contain chemicals known to cause adverse health impacts. Emissions from wastewater disposal pits can contain high levels of benzene and other harmful air pollutants. In addition, oil and gas hydrocarbons themselves contain carcinogens and other chemicals harmful to human health.

160. Oil and gas production in New Mexico produces ozone precursors, carbon dioxide, methane, and other dangerous gasses, particles, chemicals, and dust that are released into the air, leading to poor air quality and immediate negative health impacts, and accelerating the climate crisis.

161. Most new oil and gas production in New Mexico is done with a method called hydraulic fracturing (“fracking”), a process that involves the injection of enormous volumes of water, chemicals, and sand or other proppant into the ground under extreme pressure to fracture the underground formation and allow recovery of oil or gas.

162. Fracking creates large amounts of toxic liquid waste, called “produced water” which contains a combination of the injected fluid that flows back to the surface during the fracking process and formation water brought to the surface from the targeted underground rock formations. This liquid waste is carcinogenic and toxic and frequently radioactive.

163. Four to seven barrels of this toxic liquid waste are produced for every barrel of oil.

164. This toxic liquid waste must be stored, disposed of, and/or re-used in the production process.

165. There are thousands of storage and disposal ponds and pits across the state containing produced water and other toxic liquid waste that emit volatile chemicals into the air. These ponds and pits also leak and contaminate the land and ground water.

166. There are more than a thousand spills of toxic liquid waste every year, totaling millions of gallons. Many of these spills are close to areas where Plaintiffs live, work, recreate or otherwise use.

167. These spills contaminate the land where they occur, and many contaminate or threaten to contaminate New Mexico’s precious fresh water. Most of these spills are not remediated.

168. After a well stops producing and becomes inactive, it typically continues to emit toxic chemicals into the air. It can also cause chemical releases to the land and water.

169. In addition to over 66,000 active oil and gas wells, New Mexico has tens of thousands inactive, unplugged wells that continue to emit dangerous pollutants, including methane, into the air. Many of these abandoned, unplugged wells are close to areas where Plaintiffs live, work, recreate or otherwise use.

170. While the State of New Mexico has a record budget surplus due to oil and gas production, the Legislature has failed to impose a legal, regulatory and enforcement framework to protect human health and the environment from the pollution caused by the oil and gas extraction and production activities, authorized by the State.

171. With oil and gas production in New Mexico continuing to rise, the need to control pollution to protect Plaintiffs' constitutional rights grows more urgent each day.

172. Today's production creates more pollution and more environmental damage than in the past since operators must continually drill further, use fracking, and drill more wells to maintain and increase production.

173. Defendants continue to authorize oil and gas production without having established a statutory, regulatory, and enforcement scheme to protect Plaintiffs from the damages of oil and gas pollution.

174. Frontline communities, Indigenous peoples and youth, including Plaintiffs, are the most heavily impacted and harmed by the State's inadequately regulated development of oil and gas, and all New Mexicans are harmed by Defendants' failure to carry out its constitutional duty to protect their environment and natural resources.

**III. Defendants Authorize Oil and Gas Production and Pollution Without Protecting New Mexico's Beautiful and Healthful Environment, in Violation of the New Mexico Constitution.**

**A. The Legislature has exempted oil and gas pollution from key environmental protections.**

175. Despite the constitutional duty to protect New Mexico's beautiful and healthful environment contained in the Pollution Control Clause, Art. XX, § 21, the State has excluded or exempted the oil and gas industry from the key environmental protection statutes enacted in New Mexico since adoption of the Pollution Control Clause.

1) Environmental Improvement Act and the 1971 Legislative Session

176. In 1971, during the same legislative session in which the State enacted legislation proposing a constitutional amendment to adopt a “Pollution Control Clause,” the Legislature also enacted the Environmental Improvement Act (“EIA”). The purpose of the EIA is to “ensure an environment that in the greatest possible measure will confer optimum health, safety, comfort and economic and social well-being on its inhabitants; will protect this generation as well as those yet unborn from health threats posed by the environment; and will maximize the economic and cultural benefits of a healthy people.” NMSA 1978 § 74-1-2.

177. The Environmental Improvement Act led to the establishment of the New Mexico Environment Department (hereinafter “Environment Department”) which “is responsible for environmental management and consumer protection programs” and has a duty to “maintain, develop and enforce rules and standards,” in the areas of air quality, water quality, hazardous waste, underground storage tanks and solid waste. NMSA 1978 § 74-1-7.

178. However, the Environment Department is statutorily prohibited from regulating oil and gas, except to address air quality issues, because, as set forth below, the laws concerning water quality, hazardous waste, storage tanks and solid waste that the Environment Department is tasked with enforcing all explicitly exclude the oil and gas industry.

179. Also during the 1971 legislative session, the State enacted a state law analogue to the National Environmental Policy Act (“NM NEPA”), which required state agencies to conduct an environmental review before projects were approved.

180. In addition to passage of the EIA and the NM NEPA, the 1971 Legislature decided to go further than statutory protection for New Mexico’s environment, and passed a Senate Joint Resolution requiring the people of New Mexico to vote on a proposed constitutional

amendment to make it a constitutional duty to control pollution. This amendment was approved by the voters in November of 1971, thus placing an affirmative constitutional duty on the State to control pollution.

181. Several years later, rather than taking steps towards pollution control, the Legislature went backwards and repealed the NM NEPA in 1974. *See* 1974 N.M. Laws, ch 46, § 1. But the constitutional pollution control amendment remains in effect.

2) Hazardous Waste Act

182. Six years after the State amended the Constitution to include the Pollution Control Clause, the Legislature passed the Hazardous Waste Act in 1977.

183. According to the Environment Department, the Hazardous Waste Act is part of the Environmental Improvement Act and is intended to implement the purpose of the EIA.

184. The purpose of the New Mexico Hazardous Waste Act “is to help ensure the maintenance of the quality of the state's environment; to confer optimum health, safety, comfort and economic and social well-being on its inhabitants; and to protect the proper utilization of its lands.” NMSA 1978 § 74-4-2.

185. However, the Hazardous Waste Act explicitly excludes the regulation of waste associated with oil and gas exploration, development, or production. NMSA 1978 § 74-4-3(K)(2)(A) (“Hazardous waste” under the statute “does not include any of the following . . . (a) drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil or natural gas or geothermal energy.”).

3) Hazardous and Radioactive Materials Act

186. The Legislature passed the Hazardous and Radioactive Materials Act in 1979, eight years after the Pollution Control Clause was added to the New Mexico Constitution.

187. The purpose of the New Mexico Hazardous and Radioactive Materials Act is to address “much public and state concern in the area of public health and safety” relating to the safe treatment, disposal, and transportation of hazardous materials, as well as “the effective provision of regulation and information regarding hazardous chemicals in the community and in the work place.” NMSA 1978 § 74-4A-3 (1997).

188. However, the Hazardous and Radioactive Materials Act excludes the regulation of all waste associated with oil and gas exploration, development, or production. NMSA 1978 § 74-4A-4(D) (“hazardous waste” does not include “drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil or natural gas or geothermal energy, any fly ash waste, bottom ash waste, slag waste, flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels . . .”).

#### 4) Solid Waste Act

189. The Legislature passed the Solid Waste Act in 1990, 19 years after the Pollution Control Clause was added to the New Mexico Constitution.

190. Among the purposes of the New Mexico Solid Waste Act are to “enhance the beauty and quality of the environment; conserve, recover and recycle resources; and protect the public health, safety and welfare; ...[and] plan for and regulate, in the most economically feasible, cost-effective and environmentally safe manner, the reduction, storage, collection, transportation, separation, processing, recycling and disposal of solid waste....” NMSA 1978 § 74-9-2.

191. However, the Solid Waste Act excludes the regulation of all waste associated with oil and gas exploration, development, production, transportation, storage, or treatment. NMSA 1978 § 74-9-3(N)(1)(“solid waste” does not include “(1) drilling fluids, produced waters

and other non-domestic wastes associated with the exploration, development or production, transportation, storage, treatment or refinement of crude oil, natural gas, carbon dioxide gas or geothermal energy; (2) fly ash waste, bottom ash waste, slag waste and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels and wastes produced in conjunction with the combustion of fossil fuels that are necessarily associated with the production of energy and that traditionally have been and actually are mixed with and are disposed of or treated at the same time with fly ash, bottom ash, boiler slag or flue gas emission control wastes from coal combustion . . . .”).

#### 5) Groundwater Protection Act

192. The Legislature also passed the Groundwater Protection Act in 1990, 19 years after the State adopted the Pollution Control Clause into the Constitution. However, the Groundwater Protection Act does not control pollution from oil and gas development and is limited to attempting to regulate leakage from certain petroleum storage tanks.

193. In the Groundwater Protection Act the Legislature recognized both “the threat to the public health and safety and the environment resulting from pollution of ground water resources as a result of leaking storage tanks,” and that storage tank owners and operators’ businesses could experience financial setbacks when taking corrective actions on leaking tanks. NMSA § 74-6B-2(A). The Act’s purpose is to “enable the state to take corrective action at sites contaminated by leakage from storage tanks” but only “to the extent that funds are available.” § 74-6B-2(C).

194. The Act does not include many types of storage facilities associated with oil and gas production and waste, explicitly excluding surface impoundments, pits, ponds and lagoons. NMSA § 1978 74-6B-3(A)(3). The Act only makes the owner of some leaking petroleum tanks

“strictly liable” for the costs of taking corrective action. § 74-6B-8(A). It does not mandate measures for preventing leaks in the first place. Nor does it address any of the other ways in which oil and gas production can pollute groundwater.

6) Water Quality Act

195. In addition to the statutes listed above, the Legislature enacted the New Mexico Water Quality Act in 1967, prior to the passage of the Constitution’s Pollution Control Clause.

196. The New Mexico Water Quality Act requires the Water Quality Control Commission to “adopt... regulations to prevent or abate water pollution in the state or in any specific geographic area, aquifer or watershed of the state.” NMSA 1978 § 74-6-4(E) (2019).

197. However, the Water Quality Act does not apply to “any activity or condition subject to the authority of the oil conservation commission pursuant to provisions of the Oil and Gas Act [], NMSA 1978 § 70-2-12 and other laws conferring power on the oil conservation commission to prevent or abate water pollution.” NMSA 1978 § 74-6-12(G).

198. As described below, the Oil and Gas Act has no mandatory pollution control measures and thus, while the Natural Resources Department has jurisdiction over water contamination caused by oil and gas operations, the Department is not required to protect New Mexico’s water quality from oil and gas pollution and has in fact failed to do so.

**B. Defendants fail to fulfill their duties under the New Mexico Air Quality Control Act.**

199. The Air Quality Control Act (“AQCA”), which was passed in 1967, before the New Mexico Constitution was amended to contain the pollution control clause, is the only statute applicable to oil and gas production that actually mandates the prevention or control of pollution – specifically air pollution. Yet, the State does not comply with its own statute, permitting unhealthy air quality in areas with heavy oil and gas production. The State continues to permit



new oil and gas production in counties that are out of compliance with federal health-based air quality standards.

200. The Environment Department regulates air pollution under the AQCA. The AQCA requires the Environmental Improvement Board to adopt regulations “to attain and maintain national ambient air quality standards and prevent or abate air pollution.” NMSA 1978 § 74-2-5(B)(1). The AQCA also mandates that the Environment Department shall enforce these rules and the AQCA in order to maintain the National Ambient Air Quality Standards (“NAAQS”) and prevent or abate air pollution. NMSA 1978 § 74-2-5.1.

201. The U.S. Environmental Protection Agency establishes NAAQS to protect public health and welfare from adverse effects of air pollution. 42 U.S.C. § 7409(b). The NAAQS are a floor with which all states must comply.

202. The primary NAAQS are standards that limit the maximum concentration of pollution in the air to protect public health with an adequate margin of safety to include protection of sensitive populations, such as older adults, children, and asthmatics. *Am. Lung Ass’n v. EPA*, 134 F.3d 388, 389 (D.C. Cir. 1998). The secondary NAAQS are ambient air quality standards set at a level to protect public welfare, which includes, but is not limited to, damage to or effects on soils, water, crops, vegetation, animals, wildlife, climate, and property. 42 U.S.C. §§ 7409(a), (b)(2), 7602(h).

203. The counties with the largest amount of oil and gas production, Eddy and Lea Counties in southeast New Mexico, along with two other oil and gas producing counties, San Juan and Sandoval Counties in northwest New Mexico, all have unhealthy air quality. Air quality monitors in these counties regularly register pollutant emissions levels that exceed the NAAQS.

204. The Air Quality Control region for Eddy and Lea County has registered unhealthy

air monitor readings frequently enough to be considered out of compliance with the NAAQS.

205. The Environment Department is violating its statutory duty under the AQCA to maintain air quality that complies with the NAAQS.

206. In addition to mandating compliance with the NAAQS, the AQCA also mandates the State to “prevent or abate air pollution.” NMSA 1978 § 74-2-5(B)(1).

207. The AQCA broadly defines “air pollution” as “the emission, except emission that occurs in nature, into the outdoor atmosphere of one or more air contaminants in quantities and of a duration that may with reasonable probability injure human health or animal or plant life or as may unreasonably interfere with the public welfare, visibility or the reasonable use of property.” NMSA 1978 § 74-2-2(B).

208. The definition for “air contaminant” is similarly broad and means “a substance, including any particulate matter, fly ash, dust, fumes, gas, mist, smoke, vapor, micro-organisms, radioactive material, any combination thereof or any decay or reaction product thereof.” NMSA 1978 § 74-2-2(A).

209. Eddy and San Juan Counties, where some Plaintiffs reside, were given an “F” grade and Lea County and Sandoval County, where some Plaintiffs reside, were given a “D” for ozone pollution by the American Lung Association. In 2022, the American Lung Association ranked Eddy County 22<sup>nd</sup> out of the 25 most polluted counties in America for ozone and saw increases in ozone levels during the three years (2019, 2020 and 2021) of its study. In 2023, the American Lung Association ranked Eddy County the 19<sup>th</sup> most polluted county in the country and again found increased in ozone pollution.

210. The Environment Department is not fulfilling its statutory duty to prevent or abate air pollution in the counties with heavy oil and gas production where Plaintiffs live, work,

recreate and practice ceremony.

211. The Environment Department grants “construction permits” and “operating permits” to oil and gas companies under the ACQA. NMSA 1978 § 74-2-1 *et seq.* (1967, as amended through 2021).

212. The Environment Department continues to grant permits to extract additional oil and gas and create new pollution sources even in counties where air monitors consistently register exceedances of federal air quality standards, in violation of its duties under the AQCA.

213. Additionally, Defendants have not placed air quality monitors in areas of heavy oil and gas production near where many of the Plaintiffs live, recreate, work and practice ceremony, meaning that Defendants are not measuring Plaintiffs’ acute and chronic exposures to unmonitored emissions of VOCs and hazardous air pollutants that endanger their health.

214. While the Environmental Improvement Board has promulgated regulations to limit “toxic air pollutants,” which include pollutants produced by oil and gas production, the Board exempted oil and gas production facilities from these regulations. 20.2.72.402(C)(5) NMAC.

215. Although the Environmental Improvement Board has promulgated regulations intended to limit emissions of “ozone precursor pollutants” and requiring oil and gas operators to report “ozone precursor pollutants” emitted, the Environment Department does not have the funding to enforce these rules, and the rules rely on self-inspections by operators and self-reporting by the operators. 20.2.50 NMAC. Since passage of these rules, ozone pollution in Eddy County has gotten worse, not better.

216. As a result of the Environmental Improvement Board’s failure to promulgate adequate requirements and the Environment Department’s failure to conduct adequate

enforcement and oversight of oil and gas production to meet air quality standards, the counties in New Mexico with heavy oil and gas production have extremely poor air quality, which results in significant harm to Plaintiffs.

**C. The New Mexico Oil and Gas Act is not a pollution control statute.**

217. The New Mexico Energy, Minerals and Natural Resources Department (hereinafter “Natural Resources Department”), through its Oil Conservation Division, is the state agency responsible for implementing the New Mexico Oil and Gas Act, NMSA 1978 §§ 70-2-1 *et seq.* (1977, as amended through 2019) (“Oil and Gas Act” or “O&G Act”), the primary statute that governs activities of the oil and gas industry in New Mexico.

218. The Oil and Gas Act was originally passed in New Mexico in 1935. Its purpose is to prohibit waste in the production or handling of oil and gas. NMSA 1978 § 70-2-2. The Act’s purpose does not include protecting the environment and public health from the hazards created by oil and gas production.

219. The Oil and Gas Act established the Oil Conservation Division and authorizes the Division to limit oil and gas production, but only if necessary to prevent waste. *See* NMSA 1978 §§ 70-2-1 *et seq.* “Waste” is defined in terms of market value, and how to efficiently extract and sell as much oil and gas as possible, and not to produce in excess of the reasonable market demand. The Act does not authorize the Oil Conservation Division to limit production in order to control pollution or protect the environment. *See* NMSA 1978 § 70-2-3.

220. Under the Oil and Gas Act and its implementing regulations, the Oil Conservation Division grants permits to drill for every well drilled in New Mexico, regardless of land status (i.e., private, county, state and federal). The Oil and Gas Act does not require that wells meet any environmental or public health standards in the permitting process. Consequently, the Oil

Conservation Division does not consider the environment or public health when granting an operator a permit to drill. Instead, the permits are granted based on considerations of how to extract the oil or gas in the most efficient, economical manner, regardless of considerations for public health or the environment. *See generally* 19.15.14 NMAC.

221. The Oil and Gas Act allows, but does not require, the Oil Conservation Commission to issue regulations concerning the disposal and handling of domestic waste created by the oil and gas industry. NMSA 1978 § 70-2-12(B)(15), (21) and (22) (2019). These are the only provisions mentioning protection of public health, the environment, or freshwater resources in the Oil and Gas Act. While the Oil Conservation Commission recently promulgated several regulations intended to limit pollution, as discussed below, those regulations rely on self-reporting, are not enforced and are not limiting pollution.

222. Pursuant to its duty to prevent the waste of oil and gas, the Oil Conservation Commission promulgated regulations generally prohibiting the venting and flaring of gas and requiring operators to report how much gas they vented or flared. However, like the Environment Department's rules, these rules also rely on self-reporting and are unenforced. In fact, according to the Oil Conservation Division reports, venting and flaring has increased dramatically over recent months. Flaring reached a new peak in March of 2023. Venting reached an all-time high in December 2022, with a 161% monthly increase in natural gas vented straight to the atmosphere, as well as a 39% monthly increase in flared gas. According to the EPA's greenhouse gas calculator, those releases in one month were equivalent to the CO<sub>2</sub> emissions of 8,600 gasoline-powered cars driven for a year.

223. Since the New Mexico Constitution was amended in 1971 to mandate control of pollution, the State has not amended the Oil and Gas Act to include mandatory environmental or

public health protections.

224. Likewise, the State has not enacted other mechanisms to fulfill its constitutional duty to protect New Mexico’s beautiful and healthful environment. New Mexico has no laws that require an environmental review or impact assessment before oil and gas development is approved, and New Mexicans have no mechanism by which to challenge oil and gas development that detrimentally impacts the environment, public health, or cultural resources.

**D. The Legislature provides regulatory agencies with insufficient resources to regulate, monitor and control pollution from oil and gas production.**

225. Neither the Environment Department nor the Natural Resources Department has sufficient resources to conduct adequate inspections, enforce its own rules, or conduct effective rulemaking to control pollution created by the oil and gas industry.

226. Despite record high overall state budgets in the past few years, with increases of 13 to 15% over the prior year’s overall state budget, the Legislature still has not provided the Environment Department or the Natural Resources Department with sufficient resources to implement the constitution’s mandatory Pollution Control Clause.

1) Insufficient oversight and enforcement by New Mexico Environment Department

227. The Legislature has not provided the Environment Department with sufficient funding to inspect oil and gas wells and infrastructure for air pollution or to enforce air pollution rules.

228. The Environment Department has low inspection rates, and regularly performs below performance targets set by the New Mexico Legislative Finance Committee (“LFC”).

229. For example, LFC’s 2022 Quarter 1 Performance Report Card for the Environment Department indicates a low rate of inspections stating “most below-target

performance results [are] associated with low inspection rates” and “In the Air Quality Bureau, [the Environment Department] reports a vacancy rate of more than 50 percent was the cause of only nine inspections being completed in the first quarter.”

230. While the Environment Department has an increased workload, staffing levels have not kept up with the rate of new air permit issuance. In late 2020, LFC reported that “air quality permitting grew by 256 percent between 2008 and 2018, but [the Environment Department’s] Air Quality Bureau did not increase inspection or permitting staff during that time” and “this lack of oversight may contribute to poorer air quality as unpermitted emissions go undiscovered and violations are not addressed by Air Quality Bureau staff.” The LFC also noted that the Environment Department considered “the larger impact on air quality [to be] increased oil production and related facilities in the state.”<sup>3</sup>

231. The most recent LFC report card from the second quarter of 2023 shows more of the same. The Environment Department only inspected 3.9% of air emitting sources in the second quarter of the year, a small fraction of the 50% target set by LFC which stated “While inspections are valuable for determining whether regulated entities comply with applicable laws, rules, or permits, the division has continually failed to meet its target percentage of applicable entities inspected.”<sup>4</sup>

232. The Environment Department does not have sufficient staff to meet even LFC’s

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<sup>3</sup> N. M. Legis. Fin. Comm., *Performance Report Card: Department of Environment, Third Quarter, Fiscal Year 2020* (2020), [https://nmlegis.gov/Entity/LFC/Documents/Agency\\_Report\\_Cards/667%20-%20NMED%20FY20%20Q3.pdf](https://nmlegis.gov/Entity/LFC/Documents/Agency_Report_Cards/667%20-%20NMED%20FY20%20Q3.pdf).

<sup>4</sup> N. M. Legis. Fin. Comm., *Performance Report Card: Environment Department, Second Quarter, Fiscal Year 2023* (2023), [https://nmlegis.gov/Entity/LFC/Documents/Agency\\_Report\\_Cards/667%20NMED%20FY23%20Q2%20Report%20Card%20FINAL.pdf](https://nmlegis.gov/Entity/LFC/Documents/Agency_Report_Cards/667%20NMED%20FY23%20Q2%20Report%20Card%20FINAL.pdf).

low inspection rates, let alone inspect all oil and gas wells and other oil and gas infrastructure across the state even once per year.

233. The Environment Department has a high vacancy rate, which is due, in part, to low salaries. The Environment Department's Air Quality Bureau is staffed at about 50% of a fully staffed Bureau. About half of the Environment Department's inspector positions are vacant. According to a budget factsheet that the Environment Department presented to the LFC in December 2022, it would take more than 6 years to inspect all operators in the state with air quality permits, at current staffing levels.

234. The Environment Department's staffing levels have not kept up with the increased workload caused by the explosion of oil and gas production in the state, thereby contributing to the Environment Department's inability to meet LFC's inspection goals.

235. Documents responsive to a March 8, 2022 Inspection of Public Records Act request show that the Environment Department's Air Quality Bureau had 21 vacant positions, including 14 in the Compliance and Enforcement Section, including the Section's chief. The Bureau also had vacancies in 5 of 9 inspection staff positions, including the staff manager.

236. The Environment Department's budget is essentially flat since 2016 when adjusted for inflation, even though in that same time period, oil and gas production greatly increased. Oil production nearly quadrupled, from about 146,635 thousand barrels in 2016 to about 574,334 barrels in 2022, and gas production more than doubled, from about 1,282,666 million cubic feet in 2016 to about 2,726,519 million cubic feet in 2022.

237. By its own admission, the Environment Department does not have the resources it needs to conduct enforcement actions and protect communities around the state from air pollution from oil and gas activities. Secretary Kenney made public statements explaining the



Department's budget issues and how that affects the Department's ability to do its job:

“[O]ur staffing isn't where it needs to be. And that means that we may find a lot of problems in the field when we go out and do inspections, and we don't have the technical or legal staff to adjudicate those issues. So, that means polluters go unchecked. . . .

[T]he Environment Department does not have the funds it needs. And the way I would say that back to you is that we don't have the funds to protect communities around the state[.]”

And I'll be the first to tell you that passing nationally-leading oil and gas rules — or any other rule for that matter — without the staff to implement them, falls short of our ability to say, "We're doing a good job." Passing rules is not the destination. Passing them and ensuring compliance is.<sup>5</sup>

238. The Legislature's decision not to adequately fund the Environment Department leads to disparate treatment of certain New Mexicans. Secretary Kenney acknowledged this fact stating “[Inadequate funding to agencies] has a chronic impact on our ability to hold polluters accountable. We cannot protect all communities in New Mexico with our budget, so there is inequity built into this.”<sup>6</sup>

239. In sum, the Environment Department does not have the funding or the staff to inspect sources of industry pollution or conduct enforcement actions to hold polluters accountable and protect communities.

2) Insufficient oversight and enforcement by the Natural Resources Department

240. Although oil production nearly quadrupled from 2016 to 2022, and gas production

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<sup>5</sup> See Nash Jones, *Without more funds, NM Environment Department must pick 'winners and losers,' says top official*, KUNM, Feb. 6, 2023, <https://www.kunm.org/local-news/2023-02-06/without-more-funds-nm-environment-department-must-pick-winners-and-losers-says-top-official>.

<sup>6</sup> See Lindsay Fendt, *Oil boom feeds NM budget, but environmental agencies left wanting*, Searchlight New Mexico, Feb. 28, 2022, <https://searchlightnm.org/oil-boom-feeds-nm-budget-but-environmental-agencies-left-wanting/>.

more than doubled in the same time period, the Oil Conservation Division's budget within the Natural Resources Department remained about the same in that time period. While the Oil Conservation Division's budget for FY 2024 is higher than previous years, this increase is due to temporary federal funding and special projects funding and does not address the basic underfunding of the agency for oversight and enforcement.

241. Given budget and staffing deficiencies, inspections are severely limited. The Oil Conservation Division does not have enough inspector positions, called "compliance officers," and many of the positions that it does have are vacant. At times, half of the compliance officer positions are vacant, along with vacancies in environmental technical positions.

242. As of May 2022, the Oil Conservation Division had 9 inspectors for about 66,000 wells. New Mexico is the number two oil producing state and number seven gas producer, but it has far fewer inspectors than other oil and gas producing states that produce less oil than New Mexico, including North Dakota, Oklahoma, Colorado, and California.

243. Only Texas produces more oil than New Mexico, and the Texas Railroad Commission, which is the Texas agency that inspects wells, has about 185 inspectors that inspect about 441,000 wells statewide. That breaks down to about 2,400 wells per inspector in Texas. New Mexico's 9 inspectors for about 66,000 wells across the State yields a ratio of 1 inspector for every 7,300 wells, meaning there are about 4,900 more wells per inspector in New Mexico than in Texas.

244. While oil and gas production in New Mexico continues to increase, the total number of well inspections has actually decreased. Inspections dropped from almost 43,000 well inspections in 2018 to about 31,000 well inspections in 2022.

245. With New Mexico's rapid increase in oil and gas development comes more

pollution and a dramatic rise in spills of chemicals and toxic liquid waste. Between 2008 and 2018, the total number of oil and gas-related spills nearly doubled (an increase of nearly 100%), but the penalties in 2018 were zero.

246. While not required to do so by statute, in the summer of 2021, the Oil Conservation Commission promulgated rules that prohibit oil and toxic liquid waste spills. 19.15.29 NMAC. Since then, however, there have been over 1,870 self-reported spills and the Oil Conservation Division has not issued a single penalty or taken other effective enforcement action for a spill. The Oil Conservation Division still relies on operators to self-report spills.

247. Many of the companies responsible for the spills are repeat violators, yet Defendants allow them to continue to operate in New Mexico.

248. Recently, the Oil Conservation Division cataloged a backlog of almost 4,000 unremediated oil and gas spills for which it has failed to take action against the operators. These are mostly spills of oil, chemicals and produced water. Unremediated spills can pollute groundwater, land, and air, and affect the health of people nearby.

249. Additionally, the Oil Conservation Division has another backlog of about 16,000 remediation spill cases running from the early 2000s up to 2018, where the operators have submitted a proposed remediation plan but the Division has not approved or denied the proposed plan, so the spills remain unremediated.

250. The Oil Conservation Commission's new rules that are supposed to reduce dangerous emissions by reducing venting and flaring rely on self-reporting by industry for compliance. 19.15.27 NMAC. Under the rules, operators are responsible for inspecting their facilities, reporting the amount of gas vented or flared monthly, and indicating whether the amount reported is a measurement or an estimate.

251. One year into the new self-reporting program administered by the Oil Conservation Division, 262 operators failed to file quarterly reports tallying gas lost to venting and flaring. Other operators self-reported zero venting and flaring of gas, which is not plausible since some venting and flaring is inherent in the production process.

252. Even with the new Oil Conservation Commission rule, which is intended to reduce venting and flaring, venting incidents in New Mexico increased by about 18 percent and reported flaring incidents increased about 65 percent in the second half of 2022 compared to the same period in 2021.

253. Because of the Oil Conservation Division's inadequate staffing, funding and enforcement efforts, harmful pollution from oil and gas activities continues.

3) Insufficient resources to clean up and remediate well sites

254. New Mexico has tens of thousands of inactive, unplugged wells. Inactive, unplugged wells typically continue to release air pollution and threaten contamination of land and water after production has stopped. All these wells need to be plugged and the well sites remediated in order to prevent further pollution and restore the land.

255. While oil operators are legally responsible for plugging their wells and remediating their well sites, Defendants have failed to implement an adequate statutory, regulatory and enforcement scheme to ensure the oil and gas industry fulfills its clean up obligations, leading to a large and growing inventory of unplugged wells.

256. New Mexico's statutory and regulatory scheme does not require oil and gas producers to provide sufficient financial assurance through bonds or other means to ensure that oil and gas wells are cleaned up and safely closed at the end of their use. NMSA 1978 §§ 70-2-12(B)(1) (2019); 70-2-14 (2018) and 19.15.8 NMAC *et seq.* This leads to massive gaps between

available funding for closure and cleanup of oil and gas infrastructure and the actual cost of closing and cleaning up these wells. These gaps, in turn, lead to large numbers of inactive, unsecured wells that continue to pollute. Defendants have failed to secure sufficient financial assurances from the well operators to clean up the sites and the state has failed to remediate and close these sites itself.

257. The bond amounts required of well producers in the Oil and Gas Act are wholly inadequate to cover the actual cost of plugging and cleaning up inactive wells across the state.

258. The Legislature, through the Oil and Gas Act, requires the Oil Conservation Division to establish blanket bonds in an amount not greater than \$250,000 regardless of how many wells an operator may have. NMSA 1978 §§ 70-2-12(B)(1) (2019); 70-2-14(A) (2018). The Oil Conservation Division estimates the average cost to plug a well in New Mexico is \$70,500. Therefore, under the Legislature's \$250,000 cap for blanket bonds, this amount is only sufficient to cover the plugging costs of approximately 3 wells.

259. The bonding cap results in grossly insufficient financial assurance for oil and gas wells in New Mexico. For example, New Mexico's largest producer alone has approximately 11,000 unplugged wells, and the Oil Conservation Division may not require more than a \$250,000 blanket bond for all 11,000 wells. *See* NMSA 1978 § 70-2-14(A) (2018).

260. Additionally, the Oil and Gas Act does not require financial assurance from producers for most other types of oil and gas infrastructure, and this results in a statutory scheme that is inadequate to protect the environment and public health, especially in frontline communities. NMSA 1978 § 70-2-1 *et seq* (1977, as amended through 2019).

261. Because other types of infrastructure like separators and gathering lines leak, spill, and even explode, these facilities should also be subject to statutory financial assurance

mandates. Defendants have failed to require sufficient financial assurance for these facilities.

262. Fracked wells are more difficult and costly to plug than conventional wells, given lengthy horizontal well bores for fracking and other factors, including larger well pads.

263. The number of fracked wells in New Mexico has increased dramatically in the past 10 years.

264. The total cost of closure and clean-up of the oil and gas infrastructure currently located on state trust and private lands is over \$8 billion.

265. However, the total financial assurance coverage for this infrastructure located on state trust and private lands accessible to state regulatory entities for the purpose of closure and clean-up efforts is estimated to be approximately \$200 million, resulting in a total financial assurance gap of approximately \$8 billion.

266. Each year far more new wells are drilled in New Mexico than plugged, making the problem worse.

267. Some of the inactive, unplugged wells are considered by Defendants to be “orphan wells,” meaning the well is “without a financially responsible operator,” and the state will be required to step in to plug the wells.

268. According to the Oil Conservation Division, there are currently 1,741 orphaned wells on state and private land in New Mexico, and the total cost to plug and remediate these wells is \$290 million.

269. Despite the large number of orphaned wells in the state, the Oil Conservation Division only plugged 234 orphan wells between 2015 and 2021.

270. Despite there being tens of thousands of inactive and unplugged wells in the state, less than 700 wells were plugged in 2022 by operators and the Oil Conservation Division

combined.

271. While the Oil Conservation Division may bring lawsuits to indemnify the Division for the costs of plugging a well, NMSA 1978 § 70-2-14(E) (2018), the Oil Conservation Division has failed to do so and has failed to obtain the necessary compensation from oil and gas polluters to address the very serious environmental consequences.

272. The LFC gave the Oil Conservation Division a score of “red,” which is the lowest score possible, for its performance in properly plugging abandoned wells.

273. In order to ensure the appropriate clean-up of this infrastructure, Defendants must impose financial assurance requirements on oil and gas operations in sufficient amounts, ensure the plugging of inactive wells, and plug orphan wells itself, in order to protect the State’s beautiful and healthful environment.

**IV. Defendants’ Authorization of Oil and Gas Development and Pollution Despoils the Environment and Infringes on the Fundamental Rights of Frontline Communities, Indigenous Peoples and Youth, in Violation of the New Mexico Constitution.**

**A. Air pollution from oil and gas development and pollution authorized by Defendants injures Plaintiffs.**

274. As alleged above, all stages of oil and gas development result in air pollution.

275. New Mexico counties with large levels of oil and gas production, where Plaintiffs live, work, recreate, and practice ceremony, have unhealthy air quality— some of the very worst in the country—with air monitor readings that regularly exceed federal health standards.

276. As oil and gas development boomed in New Mexico in recent years, air pollution spiked in areas of heavy fossil fuel operations.

277. In the San Juan Basin, there are approximately 26,000 active wells, and many thousands of inactive wells, all of which create air pollution.

278. In New Mexico’s Permian Basin, there are approximately 40,000 active wells,

and many thousands of inactive, unplugged wells, all of which create air pollution.

279. According to Defendant Environment Department Director James Kenney, air quality in southeast New Mexico has “deteriorated” to dangerous levels, due to growth in the oil and gas industry and the actions of its producers, and “the oil and gas industry is a leading cause and contributor of the rising ozone levels.”<sup>7</sup>

280. Fracking releases dangerous and toxic substances into the environment, including benzene, formaldehyde, toluene, ethylbenzene, xylene, nitrogen oxide, hydrogen sulfide, methylene chloride, petroleum distillates, particulate matter (“PM”), and other harmful pollutants.

281. Many of these substances, such as benzene, ethylene, formaldehyde, methylene chloride, toluene, and xylene, are Volatile Organic Compounds (“VOCs”). More than 337,500 metric tons of VOCs are emitted each year by oil and gas operations in New Mexico. Some VOCs increase the risk of cancer. Breathing VOCs can irritate the eyes, nose and throat, can cause difficulty breathing and nausea, and can damage the central nervous system and other organs. VOCs contribute to smog and ozone and can cause respiratory illness and other health problems, particularly among children.

282. Benzene, toluene, ethylbenzene, and xylene (“BTEX”) are hydrocarbons emitted from oil and gas extraction activities, and all BTEX compounds can produce neurological impairment. Benzene is implicated in causing several diseases in the brain and nervous system,

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<sup>7</sup> See Adrian Hedden, *Oil and gas air pollution in Permian Basin could trigger federal restrictions on permits*, Carlsbad Current-Argus, July 13, 2022, <https://www.currentargus.com/story/news/2022/07/13/permian-basin-faces-federal-oil-gas-permit-restrictions-because-pollution/65371000007/>; and see Nash Jones, *EPA will crack down on Permian Basin air pollution, state Environment secretary says – and NM isn’t ready*, KUNM, Feb. 7, 2023, <https://www.kunm.org/local-news/2023-02-07/epa-will-crack-down-on-permian-basin-air-pollution-this-year-and-top-official-says-state-not-ready>.



such as leukemia. Formaldehyde is a known carcinogen. 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.

283. Other gasses produced during oil and gas extraction activities also cause harm. For example, 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, and stomach upset. Another gas produced during oil and gas extraction is nitrogen dioxide which causes, contributes to, or increases the risk of a range of harmful effects on the lungs, including increased inflammation of the airways; worsened cough and wheezing; reduced lung function; increased asthma attacks; greater likelihood of emergency department and hospital admissions; cardiovascular harm; low birth weights; and premature death.

284. Oil and gas extraction also emits liquids that cause harm when inhaled or absorbed through the skin. Methylene chloride, used as a solvent in oil and gas production, is a colorless liquid that can harm the eyes, skin, liver, and heart. Exposure can cause drowsiness, dizziness, numbness and tingling limbs, and nausea. It may cause cancer. Severe exposure can cause loss of consciousness and death. Petroleum distillates are a colorless liquid with an odor like kerosene or gasoline. Overexposure to petroleum distillates may cause dizziness, drowsiness, headache, and nausea. They may also cause irritation of the eyes, throat, and skin.

285. Oil and gas production produces particulate matter, which consists of a mixture of

solid particles and liquid droplets in the air. There are separate regulatory thresholds for particles less than 10 micrometers in diameter (“PM<sub>10</sub>”) and particles less than 2.5 micrometers in diameter (“PM<sub>2.5</sub>”), because while all PM pollution is harmful, the smallest particles are the most damaging. PM<sub>2.5</sub> poses the greatest health threat because it can get deep into the lungs, and even into the bloodstream. Exposure to such particles can harm the lungs and heart. Particle pollution exposure is linked to a variety of problems, including premature death in people with heart or lung disease, nonfatal heart attacks, irregular heartbeat, aggravated asthma, decreased lung function, and increased respiratory symptoms, such as irritation of the airways, coughing or difficulty breathing. People with heart or lung diseases, children, and older adults are the most likely to be affected by particle pollution exposure.

286. VOCs and PM 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.

287. Methane is emitted by oil and gas infrastructure at multiple points in the production and transportation process, through intentional venting, unintentional leaks, and flaring. During flaring, operators combust the methane in a fiery blaze emitting CO<sub>2</sub>, particulate pollution, nitrous oxide, and uncombusted methane.

288. Both venting and flaring of methane cause environmental damage.

289. Flaring causes health harms. A one percent increase in flaring of unprocessed fossil gas and the contaminants that come with it has been found to result in an increase in hospitalizations for respiratory illness. Higher levels of mortality than baseline mortality rates in New Mexico, Texas, and North Dakota have been associated with flaring. The Permian Basin in New Mexico has one of the highest levels of premature death in the United States (from flaring-

caused black carbon).

290. As explained further below, oil and gas production also creates huge volumes of toxic liquid waste, and this liquid waste also contributes to air pollution, especially when it is stored in open pits and ponds. Volatile toxic materials in pits and ponds released into the air include the BTEX compounds: benzene, toluene, ethylbenzene and xylene.

291. Plaintiffs experience air pollution caused by oil and gas extraction either at their place of residence, while visiting family, when visiting Chaco Canyon National Historic Park for cultural and ceremonial reasons, or when otherwise using areas polluted by oil and gas production.

292. Plaintiffs either live near or visit areas near oil and gas infrastructure in and around New Mexico's San Juan and Permian Basins, resulting in exposure to dangerous carcinogenic chemicals, such as benzene and other volatile organic compounds.

293. Defendants' authorization of oil and gas production, without adequately controlling air pollution caused by oil and gas production results in a violation of Defendants' duties under the Pollution Control clause and violates Plaintiffs' rights to life, liberty, property, safety or happiness, and their rights to equal protection under the law.

1) Frontline Plaintiffs are particularly injured by air pollution from oil and gas production.

294. Plaintiffs and other people living nearest to the well pads are at increased risk for substantial negative neurologic, developmental, endocrine system, and respiratory health effects, as well as cancer and stress.

295. The closer one lives, works, seeks health care, goes to school or plays near oil and gas extraction and fracking sites, the more likely one is to experience toxic exposures and a related number of negative health impacts.

296. In New Mexico the people most vulnerable to health risks often live in rural areas, including Native Americans, Hispanics, babies, children, and the elderly.

297. Proximity to oil and gas production is associated with asthma exacerbations, nasal and sinus irritation, migraine headaches, and fatigue symptoms.

298. Multiple studies of birth outcomes and respiratory effects show evidence of harm up to 1 km (3,200 feet, or approximately a half mile) from fracking and other oil and gas extraction sites, and some studies show evidence of harm at distances of up to 10 miles.

299. Approximately 144,000 New Mexicans (about 7% of the State's population), including almost 28,000 children, reside or attend school or daycare within a half mile radius of oil and gas production.

300. In Eddy County, in the Permian Basin, almost 24,000 people, meaning more than one third of the County's population of 60,000 people, live within a half mile of an oil and gas facility. The number of people living in this proximity to oil and gas operations has increased by approximately 40 percent since 2017.

301. In neighboring Lea County, also in the Permian Basin, over 25,000 people, more than one third of the County's population, live within a half mile of an oil and gas facility. The number of people living in this proximity to oil and gas operations has increased by approximately 17% since 2017.

302. About 80% of people in the San Juan Basin live within a half mile of an oil or gas facility.

303. A spokesperson from the Environment Department, Mathew Maez, recently confirmed that oil and gas activities impact the health of people living nearby, noting that "[t]he most widespread reported symptoms include respiratory problems like asthma and coughing,

eye, nose, and throat irritation, headaches, nausea, dizziness, trouble sleeping, and fatigue.”<sup>8</sup>

304. Almost all of the elementary, middle and high schools in the Hobbs Municipal School District in Lea County, and the Carlsbad and Loving Municipal School Districts and in Eddy County are surrounded by oil and gas extraction and production sites, with some schools having over 100 active wells within a one mile radius. Likewise, in Sandoval County, the Lybrook Elementary School in the Counselor Chapter is surrounded by oil and gas extraction and production sites within a one mile radius. By authorizing oil and gas production activities near schools, Defendants put the health of school children at risk.

305. Public health near oil and gas development can be protected with “setbacks,” or a separation between oil and gas activities and homes, schools, and other places where people are exposed to oil and gas pollution, with engineering controls that reduce pollution from oil and gas activities, and with consistent environmental monitoring and remediation.

306. Defendants have not put in place any setback requirements and are not conducting environmental monitoring or remediation to protect public health.

307. County level requirements, where they exist, are inadequate to protect public health. A number of counties within the oil and gas intensive San Juan and Permian Basins, including Lea, San Juan, Sandoval, McKinley and Chavez Counties, have not enacted *any* county-wide setback requirements for oil and gas drilling sites. Eddy County requires that oil and fossil gas wells be located at least 300 feet away from “a residence, mercantile establishment, school or church” without written consent of the owner.

308. Plaintiffs are at increased risk for health harms from oil and gas pollution due to

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<sup>8</sup> See Samuel Gilbert, *Invisible and toxic in New Mexico*, SourceNM, June 30, 2022, <https://sourcenm.com/2022/06/30/invisible-and-toxic-in-new-mexico/>.

Defendants' inaction.

2) Youth Plaintiffs are particularly vulnerable to air pollution from oil and gas production.

309. Living near flaring from oil and gas during pregnancy is associated with a 50% higher likelihood of preterm births. Preterm children are born with immature lungs and can develop respiratory and cardiac problems later in life.

310. Living close to active and high producing wells is linked to low birth weights and small-for-gestational-age births. Exposure to VOCs, such as BTEX and formaldehyde, which are found at wellheads, is associated with adverse birth outcomes.

311. Proximity to oil and gas production activities results in increases in congenital heart defects and neural tube defects, low birth weight, preterm birth and high-risk pregnancy.

312. Among U.S. children ages 0 to 14, acute lymphocytic leukemia ("ALL") is the most commonly diagnosed cancer. Plaintiffs living in areas with oil and gas development may be at an increased risk for ALL. Young people from ages 5 to 24 with ALL have been found to be 4.3 times more likely to live in the highest tertile of oil and gas well density compared to controls; risk to children from oil and gas pollution increases with well density.

313. Exposure to toxins from oil and gas production can harm the cognitive ability and lung capacity of youths even more than adults, and children can suffer these deficits their entire lives.

3) Indigenous Plaintiffs are particularly injured by air pollution from oil and gas production.

314. The Greater Chaco region of northwestern New Mexico, home of the Chaco Culture National Historical Park, is experiencing deteriorating air quality from oil and gas extraction. High levels of particulate matter and volatile organic compounds have been found in

Chaco communities near well pads.

315. Exposure to particulate matter is linked to increased morbidity and mortality from respiratory and heart disease and the unusually high rates of illness severity and death from COVID-19 in the Navajo Nation population.

316. Ozone pollution associated with methane emissions poses a serious public health threat and disproportionately impacts Indigenous Plaintiffs and other Indigenous people who live in San Juan County, where about 22,000 people live within half a mile of a wellsite.

317. In the areas of Counselor, Torreon, and Ojo Encino, some of the Diné Family Plaintiffs joined with others to document the changes happening in their community with the increase of fracking sites in the area: new chemical odors in the air, harsh lights and sounds, the destruction of sacred sites, the deterioration of local roads, and changes people's sense of safety in their own communities.

318. The group launched a Health Impact Assessment ("HIA") in 2018 with a study protocol approved by the Navajo Nation Human Research Review Board.

319. The group responded to the primary health concern – emissions from new oil and gas wells – by installing eight indoor-outdoor air monitors to sample air quality in residential areas throughout the Chapter. The HIA revealed several important local risks and impacts not adequately portrayed by the broad, county-level data.

320. The group produced preliminary data on the kinds of pollutants residents in Counselor are exposed to. The group's locally specific monitoring revealed levels of airborne formaldehyde that far exceeded permissible exposure levels, levels of particulate matter that routinely spiked to unhealthy and hazardous levels, as well as the continuous presence of VOCs, all of which can be harmful to human respiratory health, and in the case of formaldehyde, lead to

nose and throat cancer.

321. While these “episodic intense peak exposures may only last for a few minutes to an hour in Counselor,” “such exposures can cause acute health symptoms, even though the total exposure averaged over a 24-hour period appears acceptable” under national air quality standards applied to a larger area and broader population. And even short-term air pollution exposures can have both acute and chronic health consequences, particularly during a respiratory pandemic such as the COVID-19 crisis.<sup>9</sup>

322. The HIA reported the following highest recorded symptoms:

90% reported sinus problems (discharge, obstruction and pain) and irritated/sore throat

80% reported coughs, headaches, itching/burning of eyes, joint pain, fatigue & sleep disturbance

70% reported nosebleeds and wheezing (loud breathing)

60% reported shortness of breath

42% reported itching of skin/rash

323. Most of Counselor Chapter’s 700 residents, including some Plaintiffs, live within a mile of one or more oil and gas wells, pipelines, or other pieces of oil and gas infrastructure that are ongoing sources of pollutant exposures.

324. In addition to the harm caused to Indigenous Plaintiffs who live near oil and gas development authorized by Defendants, Indigenous Plaintiffs who do not live on their ancestral

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<sup>9</sup> See Counselor Health Impact Assessment - K’ée Bee Hózhqoggo Iná Silá Committee, *A Cultural, Spiritual and Health Impact Assessment* 24 (2021), <http://nmhep.org/wp-content/uploads/FINAL-HIA-KBHIS-06-52-2021-00-copy1.pdf>.



lands of the Greater Chaco Landscape but visit their ancestral lands and sacred places to pray, and practice ceremony are harmed because they breathe unhealthy air on their ancestral landscape.

**B. Toxic liquid waste from oil and gas development authorized by Defendants contaminates land and water and harms Plaintiffs.**

325. As alleged above, fracking involves the injection of substantial volumes of water, chemicals, and sand or other proppant into the ground under extreme pressure to fracture the underground formation and allow recovery of oil or gas, creating large amounts of produced water.

326. Produced water is highly saline and includes naturally occurring radioactive materials at levels harmful to human health, and sand or other proppant, acids, gelling agents, biocides, solvents, surfactants, corrosion inhibitors, and a host of other chemicals, some known to be hazardous to human health.

327. The U.S. Environmental Protection Agency (“EPA”) banned the disposal of produced water at public sewage treatment plants in 2016 because it contains contaminants such as total dissolved solids, organic and inorganic chemicals, and technologically enhanced naturally occurring radioactive material, all of which can be harmful to human health.

328. Produced water contains VOCs, including BTEX, which dissolve readily in water and can have acutely toxic effects. Produced water also contains mid-weight organic compounds, such as polycyclic aromatic hydrocarbons, which pose a great risk to the environment because they persist for longer periods of time. People exposed to hydrocarbons can suffer various health problems, including growth reduction, endocrine alteration, cancer, and birth defects. Long-term health effects include leukemia, life threatening anemia, immune system suppression, and possible fetal abnormalities. Very high levels of the toxic carcinogen benzene result in coma,

seizures, irregular heart rhythms, fluid in the lungs, and death.

329. Oil and gas companies have also used per- and polyfluoroalkyl substances (“PFAS”) as well as PFAS precursors in their fracking operations in New Mexico. Between 2013 and 2022, oil and gas companies injected over 200 wells in both the San Juan and Permian Basins with PFAS. During the same period, oil and gas companies injected 240 million pounds of trade secret chemical into oil and gas wells in New Mexico. These chemicals could be PFAS or precursor chemicals that could degrade into PFAS, but an exception in the State’s chemical disclosure laws for “proprietary, trade secret or confidential business information” prevents the public from knowing how extensively PFAS and other hazardous substances have been used in oil and gas production. 19.15.16.19(B)(2) NMAC.

330. PFAS have been linked to cancer, birth defects, preeclampsia, and other serious health effects. Because of their toxicity in miniscule concentrations, ability to accumulate inside the body, and resistance to breaking down in the environment, PFAS are also known as “forever chemicals.”

331. As oil and gas production increases, the amount of produced water increases. In 2020, New Mexico’s oil and gas industry produced almost 1.4 billion barrels of produced water. In 2021, the oil and gas industry produced more than 1.6 billion barrels of produced water. In 2022, the oil and gas industry produced 2 billion barrels, or 5.4 million barrels per day of produced water. A “barrel” is about 42 gallons.

332. This toxic liquid waste is either disposed of in ponds or pits, injected deep into the earth, re-used in fracking, or illegally spilled and leaked into the ground and water.

333. Since the industry only re-uses a portion of its wastewater for fracking, the majority of this toxic liquid waste water must be otherwise disposed of.

334. The industry's practice of disposing of produced water through injection wells that pump it back into the subterranean formations has been linked to increased seismic activity, causing earthquakes by increasing subsurface pressure.

335. New Mexico's spike in oil and gas production has led to a spike in spills, or "unauthorized releases" of produced water, in New Mexico. These spills have occurred in the counties where Plaintiffs reside, and close to places where they live, work, recreate and practice ceremony.

336. A "major release" is an unauthorized release of a volume, excluding gases, of 25 barrels or more that: a) results in a fire or is the result of a fire; b) may with reasonable probability reach a watercourse; or c) may with reasonable probability endanger public health or d) substantially damages property or the environment. A major release is also an unauthorized release of gases exceeding 500 MCF or a release of a volume that may with reasonable probability be detrimental to fresh water. NMAC 19.15.29.7 (A).

337. According to the Oil Conservation Division's database, in New Mexico between January 1, 2010 and January 1, 2023, there have been over 7,700 distinct spills of produced water, 4,163 of which were major releases, and over 3,600 spills of crude oil, 1,539 of which were major releases. Combined, this equates to an average of 2.4 produced water or oil spills a day over thirteen years.

338. In the past few years in New Mexico, there have been an average of more than 4 spills a day of toxic liquid waste, primarily produced water and oil. The true number of spills and the true volume of material spilled likely exceeds the figures in the Oil Conservation Division's database, because spill data is self-reported by oil and gas operators.

339. During 2021 alone, there were nearly 1,400 spills of liquid waste, including spills

of acid, brine water, basic sediment and water, chemicals, condensate, diesel, drilling mud/fluid, gelled brine (frac fluid), glycol, crude oil, lube oil, motor oil, liquid natural gas, and produced water. 728 of these spills were classified as major releases.

340. In 2022, there were over 1,450 spills of liquid waste, including spills of acid, brine water, basic sediment and water, chemicals, condensate, diesel, drilling mud/fluid, gelled brine (fracking fluid), glycol, crude oil, lube oil, motor oil, liquid natural gas, and produced water. These spills resulted in over 142,773 barrels, or 5,996,466 gallons, of liquid waste being released into New Mexico's environment in counties where Plaintiffs reside. 801 of these incidents were classified as "major releases."

341. The Oil Conservation Division data shows that in New Mexico in 2022, 13 liquid waste spills affected a watercourse; 14 liquid waste spills endangered property or the environment; 1 spill endangered freshwater, and 2 spills endangered public health.

342. Of the over 1,450 reported spills reported in 2022, most of them were caused by equipment failure.

343. In 2022, there were nearly three times as many spills in New Mexico compared to Colorado and Wyoming.

344. Defendants have not established a statutory, regulatory or enforcement scheme to prevent these spills or to ensure remediation when a spill does occur.

345. While the Oil Conservation Commission promulgated a rule prohibiting oil and gas spills and releases in 2021 (19.15.29.8 NMAC), the Oil Conservation Division has failed to issue a single notice of violation or penalty for any of the 1,890 self-reported oil and gas related spills that occurred between August 24, 2021 (when spills became prohibited in New Mexico) and January 1, 2023. Cumulatively, these spills resulted in the release of over 379,978 barrels (or

15,959,075 gallons) of toxic liquid waste into New Mexico's environment, including into counties where Plaintiffs reside. Of these 1,890 spills, 1,052 were classified as "major releases."

346. While the Oil Conservation Division has authority to sue energy companies for failing to adequately remediate spills, NMSA 1978 § 70-2-28; NMSA 1978 § 70-2-31(A)(2) (2019), they very rarely, if ever, take such action. In an Inspection of Public Records Act response in 2022, the Oil Conservation Division indicated it had no responsive records related to its authority to sue oil and gas producers for violations of the Oil and Gas Act.

347. Produced water that is not injected back into the earth, or spilt and leaked into the ground, or re-used in the fracking process is discharged in pits.

348. There are approximately 8,300 produced water pits in New Mexico. There are over 40,000 additional oil and gas waste pits in New Mexico where other types of waste are discharged.

349. The produced water and other wastes stored in pits in New Mexico contaminate groundwater, soil, vegetation, and pose a hazard to wildlife and livestock near the site.

350. Between the mid-1980s and 2003, the Oil Conservation Division recorded nearly 7,000 cases of pits contaminating soil and water in New Mexico. State testing in 2007 from the San Juan and Permian basins found 77 different harmful contaminants in sampled pits, including benzene, toluene, xylenes, arsenic, mercury, and lead.

351. The Oil Conservation Division is under no statutory or regulatory requirement to notify impacted Plaintiffs or other frontline community members if there is a spill near their home, school, or workplace, or if a pit or pond is nearby.

352. The spills and leaks and evaporation of toxic liquid waste contaminate New Mexico's land, air and water.

353. Frontline community members, Indigenous Plaintiffs, and Youth Plaintiffs are disproportionately impacted by the contamination of land, air and water caused by the spills of toxic liquid waste and oil. Frontline Plaintiffs live closest to these spills, and are closest to the contamination; Indigenous Plaintiffs' relationship with their ancestral landscapes, Indigenous sacred places and traditional resources is harmed by the contamination of the land, air and water; and youth are more harmed and more vulnerable to the health and climate impacts of the pollution.

354. Defendants' failure to control for spills of toxic liquid waste and to require adequate cleanup and remediation after a spill has occurred results in a violation of their duties under Art. XX, § 21, and a violation of Plaintiffs' constitutional rights to a healthful and beautiful environment, clean air, clean land, clean water, equal protection, and their substantive due process rights to life, liberty, property, safety and happiness.

**C. Defendants' authorization of oil and gas development and pollution harms and depletes New Mexico's freshwater resources.**

355. New Mexico, where freshwater is extremely scarce, is in an extreme drought which is made worse by rising temperatures caused by climate change.

356. Regionally, the warming associated with human-caused climate change drove the Southwest, including New Mexico, into a 22-year "megadrought" between 2000-2021, rivaling the worst in 1,200 years.

357. New Mexico is the most water-stressed state in the nation, on par with the United Arab Emirates, the 10th most water-stressed country in the world.

358. A recent New Mexico Bureau of Geology and Mineral Resources report that compiled and assessed peer-reviewed, published research confirms that the ongoing drought in

New Mexico is “consistent with projected climate changes for the Southwest.”<sup>10</sup>

359. In October 2021, 1.8 million people in New Mexico, or eighty-six percent of the population, were affected by drought.

360. Rising temperatures in New Mexico will result in less water for human consumption as well as for wildlife and plants, even if precipitation were to remain the same.

361. As a result of climate change, aquifers are lower, surface water is disappearing, reservoirs are almost empty, acequias are depleted, and agricultural watering seasons are shorter.

362. New Mexico does not have a plan in place to respond to the current state of depleted water conditions nor to the greater water scarcity to come due to climate change.

363. The New Mexico Bureau of Geology and Mineral Resources stated in its December 2022 climate change report:

Surface-water supply shortages induced by climate change will drive both agricultural and municipal/industrial water users to rely more heavily on groundwater. Less surface water will lead to lower recharge to some groundwater aquifers. The Lower Rio Grande is an in-progress example of this effect, with prolonged surface-water shortage leading to plunging groundwater levels. All water users in the state will experience decreased water availability as the climate warms and aridification occurs. This decrease in water availability will likely trigger changes of use from lower-value uses to higher-value uses, and this generally means a migration from agricultural water use to municipal/industrial uses.<sup>11</sup>

364. The widespread use of fracking has greatly increased the use of freshwater in oil and gas extraction in the United States. According to the United States Geological Survey, from

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<sup>10</sup> Nelia Dunbar et al., N.M. Bureau of Geology and Mineral Res., *Climate Change in New Mexico Over the Next 50 Years: Impacts on Water Resources* 40 (2022), [https://geoinfo.nmt.edu/publications/monographs/bulletins/downloads/164/B-164\\_web.pdf](https://geoinfo.nmt.edu/publications/monographs/bulletins/downloads/164/B-164_web.pdf).

<sup>11</sup> Nelia Dunbar et al., N.M. Bureau of Geology and Mineral Res., *Climate Change in New Mexico Over the Next 50 Years: Impacts on Water Resources* ix (2022), [https://geoinfo.nmt.edu/publications/monographs/bulletins/downloads/164/B-164\\_web.pdf](https://geoinfo.nmt.edu/publications/monographs/bulletins/downloads/164/B-164_web.pdf).

2000 to 2014, median annual water volume estimates from fracking in horizontal wells nationwide increased from about 177,000 gallons per oil and gas well to more than 4 million gallons per oil well and 5.1 million gallons per gas well.

365. Between 2011 and 2016, water use per well for fracking operations in the major shale gas and oil production regions is increasing. The greatest increase in water use per well, 770%, is in the Permian Basin. In 2016, drilling a single well in the Permian Basin required more than 11 million gallons (42,500 m<sup>3</sup>) of water per day, enough to fill 17 Olympic size swimming pools, up from 1.3 million gallons (4,900 m<sup>3</sup>) in 2011— a 770% increase. “The steady increase of the water footprint of hydraulic fracturing with time implies that future unconventional oil and gas operations will require larger volumes of water for hydraulic fracturing, which will result in larger produced oil and gas wastewater volumes.”<sup>12</sup>

366. The oil and gas industry used approximately 14 billion gallons of New Mexico’s freshwater resources in 2019 – equal to the amount of water needed annually for household use for more than 278,000 people — about an eighth of New Mexico’s population.

367. In 2019, the oil and gas industry created about 1.3 billion barrels of produced water. That year, only 10% of all produced water was re-used for oil and gas operations in New Mexico.

368. In 2022, the oil and gas industry in New Mexico created about 2 billion barrels of produced water.

369. While a larger portion of produced water is re-used today than it was in 2019, the overall amount of produced water has increased as oil and gas production has increased, meaning

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<sup>12</sup> Andrew Kondash et al., *The intensification of the water footprint of hydraulic fracturing*, 4 *Sci. Adv.* eaar5982 (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6093634/>.



there is more produced water than ever to either inject, re-use on the oil field, or store.

370. Rather than using New Mexico's scarce freshwater resources in fracking, approximately 95% of all fracking operations could be done with produced water.

371. In 2020, the New Mexico State Land Office halted sales of state water supplies to the oil and gas industry extracting oil and gas on State lands in order to conserve state water for other uses. However, Defendants continue to allow oil and gas operators to use freshwater for fracking on all other lands across New Mexico.

372. Defendants authorize the extraction of oil and gas without requiring the oil and gas industry to reuse its produced water in the extraction process.

373. Across the State, there are huge gaps in water data. There is no centralized database with records or measurements. The State does little to track how much water flows in and out of its rivers and aquifers.

374. There isn't a state agency that tracks how many water wells go dry each year or how much water is used overall throughout New Mexico.

375. While the State passed the Water Data Act in 2019, which requires certain state agencies to work together to gather data about water quantity, water quality and water usage, the agencies have not been provided enough funding from the State of New Mexico to catalog and monitor the State's water resources.

376. Due to New Mexico's scarce freshwater resources and the persistent megadrought, New Mexico cannot afford to use freshwater for fracking. Most water used in fracking is permanently removed from the hydrological cycle, because it either remains in the shale formation, or returns as highly saline and toxic flowback waste.

377. Defendants have failed to establish any adequate process to analyze the impact of

authorizing further oil and gas extraction on our precious freshwater resources.

378. Defendants' failure to adequately regulate oil and gas production in New Mexico is unnecessarily reducing the amount of New Mexico's precious freshwater resources.

379. Defendants' failure to account for and preserve New Mexico's precious freshwater resources when authorizing oil and gas extraction and production results in a violation of their duties under Art. XX, § 21, and a violation of Plaintiffs' rights to a beautiful and healthful environment, life, liberty, property, safety and happiness, and equal protection under the law.

**D. Defendants' authorization of oil and gas development and pollution imperils native plants and wildlife.**

380. New Mexico lists various species and subspecies of mammals, birds, reptiles, amphibians, fishes, mollusks, and crustaceans native to New Mexico as threatened or endangered under the Wildlife Conservation Act ("WCA"). According to the New Mexico Department of Game and Fish ("NMDG&F"), the list of threatened and endangered New Mexico wildlife now includes 116 species and subspecies, including 2 crustaceans, 25 mollusks, 22 fishes, 6 amphibians, 15 reptiles, 32 birds, and 14 mammals.

381. NMDG&F considers oil and gas development a threat to numerous listed species, including the dunes sagebrush lizard, blue sucker, grey redhorse, Noel's amphipod, Texas hornshell, and Pecos pupfish.

382. The federal Endangered Species Act lists nearly 60 species in New Mexico as threatened or endangered, including the Lesser prairie-chicken, Northern aplomado falcon, Southwestern willow flycatcher, black-footed ferret, Pecos gambusia, Gila trout, loach minnow and spikedace.

383. In addition to the harm to animals and plants caused by air and water pollution

discussed above, chronic noise from drilling and fracking operations, including compressor stations, affects levels of stress hormones in songbirds and masks critical acoustic cues, decreasing the birds' ability to survive and reproduce.

384. Oil and gas development permitted by Defendants causes significant harm to wildlife, including through fragmentation and destruction of habitat and migration corridors, harassment and disturbance that can affect species' behavior and breeding patterns, water scarcity and quality, toxic pollution, and climate change.

385. Additionally, oil and gas development impedes the growth, reproduction and maturation of piñon and juniper seedlings, resulting in a decline of these foundational species.

386. The Lesser prairie-chicken, recently listed under the federal Endangered Species Act, has been a focus of conservation efforts for many years. Population estimates show that the endangered Southern Distinct Population Segment, which comprises portions of the remaining shinnery oak prairie region of southeastern New Mexico and West Texas, has as few as 5,000 birds remaining, with the estimates dropping to as low as 1,000 birds in 2015 and 2022 following drought conditions.

387. The Lesser prairie-chicken and dunes sagebrush lizard, a candidate for federal listing, are both imperiled by oil and gas development, including frack-sand mining operations, in the remaining portions of their habitat in New Mexico.

388. These and other increasingly rare species are part of a shared heritage held sacred by native peoples and others who enjoy recreating and seeing native plants and wildlife in their natural habitat.

389. Defendants' authorization of oil and gas production with inadequate regulation risks extinction or extirpation of these species, which harms Plaintiffs' cultural, spiritual,

recreational, and scientific interests and will deprive present and future generations of their biodiversity heritage.

**E. Defendants' authorization of oil and gas development and pollution contributes to catastrophic climate damage and harms Plaintiffs.**

390. Human-caused climate change is driven primarily by the extraction and burning of fossil fuels, which release greenhouse gasses (“GHGs”) – carbon-dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), and other GHGs. CO<sub>2</sub> has caused the most global heating and associated climate change. Methane, the primary component of gas, is a climate super-pollutant over 80 times more powerful than CO<sub>2</sub> in heating the climate over a 20-year period and second only to CO<sub>2</sub> in driving climate change.

391. Oil and gas development is the leading source of New Mexico’s GHG emissions.

392. The greenhouse pollution and other air pollutants from fossil fuel extraction and combustion of New Mexico oil and gas cause cumulative and synergistic climate and health damage.

393. The average temperature at the surface of the Earth has already risen 1.1 degrees Celsius (°C). The consequences of this warming to date are already disastrous and life-threatening. Scientists, world leaders, courts, and others refer to today’s situation as the “climate emergency” or “climate crisis.”

394. While climate harms are occurring around the world, some places, including New Mexico, are particularly vulnerable.

395. New Mexico is the second-fastest-warming state after Alaska. New Mexico warmed 1.8°C (3.3°F) between 1970 and 2018.

396. Projections of future warming based on today’s and projected future emission levels indicate a staggering increase in temperature that would have profound consequences for

all aspects of life, including water resources, in New Mexico.

397. According to Governor Michelle Lujan Grisham’s 2019 Message in the New Mexico Interagency Climate Change Task Force “Climate Strategy Report” of 2019, “New Mexico has always treasured its air, land, and water. Our skies, our streams, our mountains, and mesas— these are our inheritance as people of this sacred place. But they do not belong to us. We receive them in a trust; we are obligated to protect them, to preserve them, to ensure they remain beautiful and whole. Our natural resources are what we will leave behind to our children, their children, and every generation to follow. The threat of climate change is a threat to this trust, a threat to who we are as New Mexicans. It endangers how people have lived in this place for thousands of years, the air and soil and water we have always depended upon. It’s a threat to the future we want to leave for our kids and grandkids, the future they deserve.”<sup>13</sup>

398. Climate change has already caused extreme heat, drought, and fires in New Mexico, and these impacts are projected to worsen in the coming decades. As a result of climate change, New Mexico is experiencing increasingly arid conditions, including decreased soil moisture, stressed vegetation, more severe droughts, and lower river flows. Indeed, New Mexico is the most water stressed state in the country. In 2022, New Mexicans suffered from the largest fire in New Mexico’s history.

399. The Interagency Climate Change Task Force’s “Climate Strategy Report” of 2019 states: “New Mexico is already experiencing the effects of climate change. We see changes in our weather manifested in hotter and longer summers, more intense storms, and more frequent droughts. We see less predictable and robust harvests of our agricultural products, an increase of

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<sup>13</sup> N.M. Interagency Climate Change Task Force, *New Mexico Climate Strategy 3* (2019), [https://www.climateaction.nm.gov/wp-content/uploads/2021/07/NMClimateChange\\_2019.pdf](https://www.climateaction.nm.gov/wp-content/uploads/2021/07/NMClimateChange_2019.pdf).

natural disasters like flash floods and brushfires, and in the health of New Mexicans – who are experiencing higher rates of asthma and heat-related illnesses. Warmer year-round temperatures mean additional energy costs to keep residences and businesses cool throughout the year. Our critical infrastructure is vulnerable, including roads, overpasses, bridges, and rail; electrical power distribution systems; drinking water and sewer pipes; and flood control and drainage systems. Declining air and water quality are disrupting natural habitats and ecosystems, leading to bark beetle infestations, fish habitat reduction, and fewer alpine meadows.”<sup>14</sup>

400. Climate change affects nearly every sector of New Mexico’s economy. New Mexico is projected to be among the U.S. states with significant losses in income, employment, and population due to climate change between 2010 and 2050.

401. The economic cost to New Mexico from the 2020 drought and wildfire season alone was \$100 million to \$250 million.

402. Climate change’s burden on the New Mexico economy, from fire suppression to heat wave deaths and increased energy costs for air conditioning, is projected to double between 2020 and 2040 to \$3.3 billion per year.

403. Climate change creates particularly heavy burdens on Plaintiffs who are members of frontline communities, Indigenous communities and youth – all of whom disproportionately experience the effects of drought, water scarcity and contamination, air quality degradation caused by climate change, and other consequences of the climate crisis.

404. Tribal communities in New Mexico are especially vulnerable to climate extremes. For example, rising temperatures are causing migrations of sand that are threatening housing,

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<sup>14</sup> N.M. Interagency Climate Change Task Force, *New Mexico Climate Strategy 4*(2019), [https://www.climateaction.nm.gov/wp-content/uploads/2021/07/NMClimateChange\\_2019.pdf](https://www.climateaction.nm.gov/wp-content/uploads/2021/07/NMClimateChange_2019.pdf).

grazing lands, health, and transportation in the Navajo nation. Many tribal communities live on lands with limited water resources and tribal lands are becoming increasingly dry due to climate change.

405. As stated by a Hawaii Supreme Court Justice: “Climate change is a human rights issue at its core; not only does it inordinately impact young people and future generations, but it is also a profound environmental injustice disproportionately impacting native peoples.”<sup>15</sup>

406. Children are also disproportionately impacted by climate change and fossil fuel extraction. They are more vulnerable than adults to extreme weather. For example, children are less able to regulate their body temperature during heat waves. Children also breathe more rapidly and breathe more air than adults, and are at crucial stages of brain and organ development, and are therefore particularly vulnerable to air pollution.

407. Climate change-caused disasters, air pollution extremes, and environmental degradation also disrupt education. Excessive heat interferes with learning capacity.

408. “Given that there are at least 27 different physiological pathways in which a heatwave can kill a human being, continued greenhouse gas emissions endanger our children’s lives.”<sup>16</sup>

409. Oil and gas greenhouse pollution comes both from the direct emissions of methane during production, storage, and transmission of oil and gas, and from the CO<sub>2</sub> emitted when the oil and gas is burned (“combustion emissions.”)

410. With the United States being the world’s largest producer of oil and gas, and New

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<sup>15</sup> *In the Matter of the Application of Hawai‘i Electric Light Company, Inc.* SCOT-22-0000418, Concurring Opinion by Wilson, J. at 15 (Haw. Mar. 13, 2023), <https://www.courts.state.hi.us/wp-content/uploads/2023/03/SCOT-22-0000418con.pdf>.

<sup>16</sup> *Id.* at 12 n. 7.

Mexico being the country's second largest producer of crude oil and seventh largest producer of fossil gas, greenhouse gas pollution from the extraction and combustion of oil and gas produced in New Mexico is a significant contributor to the climate crisis.

411. According to the 2020 New Mexico Climate Strategy Report, “[t]he oil and gas sector generated 60 million metric tons (MMT) of greenhouse gas emissions in 2018, nearly four times more than previously estimated based on national data.” This refers to emissions from oil and gas production and combustion within the state's borders.<sup>17</sup>

412. “New Mexico produces more than twice the national average of greenhouse gas emissions per capita. New Mexicans produce over 50 tons per person per year, while the average in the United States is 18 tons per person per year. New Mexico’s high per capita emissions are largely the result of our greenhouse gas-intensive oil and gas industry, which makes up a significant portion of our overall greenhouse gas emissions profile. Carbon dioxide (CO<sub>2</sub>) makes up 62% of New Mexico’s emissions profile followed by methane at 35%. Nationally, CO<sub>2</sub> makes up 82% of the emissions profile, followed by methane at 10%.”<sup>18</sup>

413. Both the Permian Basin and the San Juan Basin have exceedingly high methane emission rates. These emissions result in “methane clouds” seen from outer space hovering over the Basins at various times.

414. A comprehensive study of methane leakage from oil and gas production in New Mexico’s Permian Basin estimated that 9.4 percent of all methane produced in this region is

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<sup>17</sup> N.M. Interagency Climate Change Task Force, *New Mexico Climate Strategy: 2020 Progress and Recommendations* 6 (2020), [https://www.climateaction.nm.gov/wp-content/uploads/2021/06/NMClimateChangeReport\\_2020.pdf](https://www.climateaction.nm.gov/wp-content/uploads/2021/06/NMClimateChangeReport_2020.pdf).

<sup>18</sup> N.M. Interagency Climate Change Task Force, *New Mexico Climate Strategy: 2020 Progress and Recommendations* 7 (2020), [https://www.climateaction.nm.gov/wp-content/uploads/2021/06/NMClimateChangeReport\\_2020.pdf](https://www.climateaction.nm.gov/wp-content/uploads/2021/06/NMClimateChangeReport_2020.pdf).



leaking into the atmosphere, which is nearly seven times higher than EPA’s average methane leakage rate for the US of 1.4%.

415. The oil and gas produced in New Mexico, when combusted, whether inside or outside of New Mexico, produces enormous additional greenhouse gas emissions that worsen the climate crisis in New Mexico and elsewhere. In 2018, the emissions from the combustion of New Mexico’s oil and gas—including emissions inside and outside state borders—amounted to 228 million metric tons (MMT).

416. New Mexico’s oil and gas production is undergoing unprecedented expansion and its climate pollution is rapidly increasing. In 2030, burning the currently undeveloped oil and gas that New Mexico is projected to produce in 2030 could reach 478 MMT of emissions, with total combustion emissions from New Mexico oil and gas reaching 550 MMT, the equivalent of 141 coal plants’ annual emissions.

417. The Permian Basin is categorized as one of the world’s global “carbon bombs,” because of its potential to produce more than 1 gigaton (1,000 MMT) of GHG emissions. In fact, New Mexico’s portion of the Permian creates 1 gigaton of GHG emissions every few years, and the Permian Delaware Tight sub-basin, which spans New Mexico and into northern Mexico is **the single biggest carbon bomb**, with potential CO<sub>2</sub> emissions of nearly 28 gigatons.

418. The Intergovernmental Panel on Climate Change (“IPCC”), the scientific body created to advise the nations of the world on climate change, has used 1.5°C as a reference point for avoiding the most catastrophic climate damages. According to the IPCC, a world where warming is limited to 1.5°C would be overwhelmingly safer than one where warming reaches even 2°C. Thus, the IPCC and other scientific institutions have issued ever more urgent warnings that the world must act to limit warming to below 1.5°C.

419. The actions necessary to limit warming to below 1.5°C can be expressed in terms of a “carbon budget” which is the remaining amount of CO<sub>2</sub> that can be emitted—and fossil fuels that can be extracted and burned—for maintaining a likely chance of limiting global temperature rise to 1.5°C. The carbon budget for 1.5°C is already overspent. Research has shown that there is already enough oil, gas, and coal in developed fossil fuels globally to exceed 1.5°C if these reserves were all extracted and burned. For this reason, there is no room in the carbon budget for new oil, gas, or coal development. In fact, there is more than enough oil and gas in already developed reserves to exceed 1.5°C, even if all coal extraction and combustion stopped immediately.

420. Despite the urgent need to limit oil and gas production, Defendants have done the exact opposite. Defendants are permitting and promoting unsustainable, climate destroying levels of oil and gas production, causing grave harm to Plaintiffs and all New Mexicans.

421. Rather than implement a rational course of effective action to control the State’s excessive GHG emissions, Defendants have continued to permit increased oil and gas extraction, development, consumption and exportation – activities producing enormous quantities of pollution, toxic waste and GHG emissions, thereby putting our air, land, water, natural resources, our lives and future generations lives in grave danger.

**F. Defendants’ authorization of oil and gas development and pollution destroys Indigenous ancestral landscapes, sacred places and traditional cultural resources, harming Indigenous Plaintiffs.**

422. Defendants have permitted and promoted oil and gas production while failing to put in place a constitutionally sufficient statutory, regulatory and enforcement scheme to protect Indigenous ancestral landscapes, sacred places and traditional cultural resources from the harms of oil and gas development and pollution. Defendants’ failure to put such a statutory, regulatory

and enforcement scheme in place, results in a violation of the Indigenous Plaintiffs' constitutional rights.

423. The Greater Chaco region is a living and ancient cultural landscape sacred to Indigenous people, including Pueblo and Diné peoples. The Greater Chaco Landscape has been described as the “Chaco phenomenon” due to its unique archeological signatures.

424. A thousand years ago, Chaco Canyon in northwestern New Mexico was the ceremonial and economic center of the Greater Chaco Landscape, an area encompassing more than 75,000 square miles of the Southwest in New Mexico, Arizona, Colorado, and Utah. The Chaco Culture National Historical Park (“the Park” or “CCNHP”), is listed on the National Register of Historic Places and is a United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage Site. The World Heritage designation includes not only the park, but also several satellite villages – known as “Chacoan Outliers” – including Pierre’s Site, Halfway House, Twin Angels, Aztec Pueblo, Kin Nizhoni and Casamero, all located on the Greater Chaco Landscape. While the Park is considered one of the most important archaeological sites in the Americas, it is surrounded by oil and gas extraction.

425. While the National Park Service protects and manages the cultural sites within the Park, there are thousands of Chacoan sites across the modern Four Corners states that are not protected by the National Park Service, including scores of great houses, agricultural sites, and small houses, all linked through a network of roads – the most prominent of which is the Great North Road, which connects Chaco Canyon to a settlement approximately 55 miles to the north known today as Aztec Ruin. A system of rock features (“shrines”) on high places further integrated the Greater Chaco Landscape across large distances. All of these cultural sites within the Greater Chaco Landscape are exposed to the negative impacts of Defendants’ oil and gas

development activities.

426. The Greater Chaco Landscape includes the northwest corner of New Mexico and smaller portions of the adjacent states of Colorado, Utah, and New Mexico. Between AD 840 and 1140, communities that built great houses and great kivas flourished in at least 200 locations throughout this region, which covers nearly 50,000 square miles (an area greater than Massachusetts, Connecticut, Rhode Island, Vermont, and New Hampshire combined).

427. Oil and gas companies have drilled over 37,000 wells in the area and helped build a sprawling network of roads (15,000 miles) that is five times greater than the distance from Los Angeles to New York.

428. Decades of intensive development have caused profound harm to the ancestral landscape, sacred places and traditional resources in the landscape surrounding CCNHP, as oil and gas wells, roads, pipelines, and other infrastructure have destroyed long stretches of the sacred Great North Road and transformed significant sites, such as Pierre's Site, and other sacred places into industrial parks.

429. The culturally important and beautiful dark skies at CCNHP are marred by gas flares, thrown up by oil wells, that light up the sky, as drilling activities are visible for at least twenty miles from the boundaries of the Park. These ongoing oil and gas activities are also a threat to the health and safety of Tribal members who live in the landscape surrounding CCNHP.

430. The ancestral landscape, sacred places and traditional resources across the Greater Chaco Landscape are central to the identities, cultures, and spiritual practices of the Diné Family Plaintiffs, the Pueblo Family Plaintiffs, and Plaintiffs Pueblo Action Alliance, and members of YUCCA.

431. The preservation of and access to these landscapes, places, and traditional

resources is critical for the continuance of Diné and Pueblo Plaintiffs' cultural and traditional practices.

432. While protecting distinct places and traditional resources from physical damage is critical, so too is protecting sensory dimensions of the landscape from disturbances that disrupt cultural practices. For instance, Diné and Pueblo Plaintiffs have important connections to the soundscapes and viewscapes of the Greater Chaco Landscape. These soundscapes, viewscapes, and other sensory dimensions of the landscape are increasingly being disrupted by oil and gas infrastructure and pollution across the region. The visual, olfactory, and auditory disturbances caused by road and pipeline construction, heavy industry traffic, ground disturbances, flaring, spills, air pollution, haze, and the physical presence of oil and gas infrastructure on the landscape cumulatively alter the experience of being in the Greater Chaco region, negatively affecting the connection to place, history, culture, and tradition that Diné and Pueblo Plaintiffs experience when they are present on the landscape, when they hold ceremonies that are connected to the landscape and sites or places therein, or when they hold the landscape in their prayers and thoughts.

433. Damage to these sacred places or significant disturbances to the sensory dimensions of the landscape interferes with the ability of Diné and Pueblo Plaintiffs to carry out cultural and traditional practices.

434. Diné elders and medicine people report that many sites, places, and cultural resources in the region have been destroyed or disrupted by oil and gas activities. Some of these sites include Naazhiin, Shashjaa', Tsénaajiin, Anáásazí Kits'iil, Yoo'tsoh Dziil, and Sisnáát'eeł – all sites that Diné people regard with the utmost reverence. These sacred sites have been degraded to such an extent that they can no longer be used for ceremonies or offerings. This

degradation represents an enormous, irreparable harm to Diné people in the area as well as those who would travel there to take part in ceremonies or offerings that can only be made in specific places in Dinétah.

435. Diné herbal medicine people and elders report that medicinal plants that had always been in the area of Counselor, Ojo Encino and Torreon have disappeared with the expansion of fracking in the region. These medicinal plants are used in healthcare and in ceremonies.

436. Oil and gas development and pollution in the Greater Chaco Landscape has negatively disrupted the spiritual connection that Diné Family Plaintiffs have with the land. A central part of Diné lifeway involves maintaining reciprocal relationships with the land and broader environment, including the air, water, and nonhuman animals and elements of the land. All these aspects of the environment have a living spirit (*bii'istxiin*), which can be detrimentally affected by negative forces that are brought into their proximity. Oil and gas pollution is one such negative force that diminishes the living spirit of the land, air, water, and the sacred.

437. In the Greater Chaco Landscape, oil and gas development adversely impacts Diné Family Plaintiffs because the effects of oil and gas extraction on the environment have a cumulative impact on their ceremonial and spiritual practices that are at the center of Diné lifeways.

438. For Pueblo Plaintiffs, the connections to places like Chaco Canyon and the Greater Chaco Landscape are critical to their identity as Pueblo people.

439. According to the All Pueblo Council of Governors, “[t]he Greater Chaco Region ... centuries ago was the center of a thriving civilization that flourished in the Four Corners region. This society left behind a vast and sacred landscape rich in cultural resources, which the

Pueblos use today as integral to individual and collective living identity.”

440. According to Pueblo historians, Chaco is a puebloan past, puebloan history, puebloan lifespan. Chaco protection benefits all the puebloan people. All pueblos have the similar concepts about Chaco and the Greater Chaco Landscape. It is a living landscape. If it is destroyed, the Pueblo people are destroyed.

441. For Pueblo Plaintiffs, there are places on the Greater Chaco Landscape, beyond the Park proper, that are critical and crucial components to their culture.

442. Damage or destruction to these traditional resources, sacred places, and the ancestral landscape interferes with the ability of Diné and Pueblo Plaintiffs to carry out cultural and traditional practices, and thus causes harm to their individual and collective identities and lifeways.

443. Defendants’ unconstitutional authorization and promotion of oil and gas development has resulted and continues to result in the desecration of the land, Indigenous sacred places, and traditional resources across Greater Chaco Landscape, thereby harming Diné and Pueblo Plaintiffs.

## **CAUSES OF ACTION**

### **COUNT I**

#### **Violation of Pollution Control Clause, Article XX, Section 21 of the New Mexico Constitution**

1. Plaintiffs reallege and incorporate by reference all paragraphs above as if fully set forth herein.
2. Art. XX, § 21, the pollution control clause, states:

The protection of the state’s beautiful and healthful environment is hereby declared to be of fundamental importance to the public interest, health, safety and the general welfare. The legislature shall provide for control of pollution and control of despoilment of the air, water and other natural

resources of this state, consistent with the use and development of these resources for the maximum benefit of the people.

3. Defendants are violating the pollution control clause by permitting oil and gas production and concomitant pollution without adequately controlling pollution and controlling despoilment of the air, water, and other natural resources of this state, consistent with the use and development of these resources for the maximum benefit of the people.
4. Defendants' long-standing authorization of oil and gas extraction and production without adequate statutory and regulatory control of pollution is unconstitutionally depleting and degrading New Mexico's beautiful and healthful environment and natural resources and causing poor air quality, water and land pollution, harming public health, and exacerbating the climate crisis, in violation of Art. XX, § 21.
5. Defendants' failure to ensure that air quality across the State is healthy results in a violation of their duties under Art. XX, § 21.
6. Defendants' failure to control for spills of toxic liquid waste and to require adequate cleanup and remediation after a spill has occurred results in a violation of their duties under Art. XX, § 21.
7. Defendants' failure to account for and preserve New Mexico's precious freshwater resources when authorizing oil and gas extraction and production results in a violation of their duties under Art. XX, § 21.
8. Defendants have unconstitutionally exempted oil and gas pollution from key environmental statutes, like the Environmental Improvement Act, the Hazardous Waste Act, the Hazardous and Radioactive Materials Act, the Solid Waste Act, the Water Quality Act, and the Groundwater Protection Act, all laws that are intended to protect the environment from pollution.



9. The exclusion of oil and gas pollution from New Mexico's environmental protection statutes is not rational and not based on the protections required by Art. XX, § 21 of the New Mexico Constitution. For example:
  - a. Produced water, and other by-products of oil and gas production are hazardous waste. Yet, Defendants have excluded these hazardous by-products of oil and gas extraction from the Hazardous Waste Act and the Hazardous and Radioactive Waste Act, and exempted the oil and gas industry from disclosing the contents of its toxic waste, meaning that they are not controlled to protect the environment and public health like all other hazardous waste in New Mexico.
  - b. Produced water, and other by-products of oil and gas production, are toxic and can pollute land and groundwater. Yet, Defendants have excluded these toxic by-products of oil and gas production from the Solid Waste Act and excluded oil field pollution from the Water Quality Act, meaning that this toxic waste is not controlled to protect the water, the environment, public health, safety and welfare, like other pollutants in New Mexico.
10. Defendants' financial assurance system for oil and gas infrastructure is unconstitutionally insufficient because it does not come close to covering the cost of plugging and remediating wells and pipelines. Defendants' statutory and regulatory scheme of financial assurance results in thousands of inactive, unplugged wells that continue to release toxic pollutants into the atmosphere and into the air, land and water.
11. Defendants' funding to regulatory agencies is unconstitutionally insufficient because the agencies do not have sufficient resources to monitor or regulate the industry, resulting in

poor air quality, water and land pollution, degradation of sacred landscapes, cultural resources and public health.

## COUNT II

### **Violation of the Frontline, Indigenous and Youth Plaintiffs' Inherent Rights and Substantive Due Process Rights Under Article II, Sections 4 and 18, of the New Mexico Constitution, and the New Mexico Civil Rights Act, NMSA 1978 §§ 41-4A-1 – 41- 4A-13**

1. Plaintiffs reallege and incorporate by reference all paragraphs above as if fully set forth herein.
2. The due process clause of the New Mexico Constitution, Art. II, § 18, provides:

No person shall be deprived of life, liberty or property without due process of law. . . .
3. The New Mexico Constitution, Art. II, § 4, the Inherent Rights Clause, states:

All persons are born equally free, and have certain natural, inherent and inalienable rights, among which are the rights of enjoying and defending life and liberty, of acquiring, possessing and protecting property and of seeking and obtaining safety and happiness.
4. Defendants are violating Frontline, Indigenous and Youth Plaintiffs' rights to life, liberty, property, safety and/or happiness by permitting oil and gas production and the concomitant pollution in a manner that despoils the air, land, water, and public health, and adds to the climate crisis, as described herein.
5. Defendants' actions authorizing oil and gas extraction without putting in place a system to control pollution substantially damages the health of frontline community members, and the environment and the climate system in a way that has caused and will continue to cause human deaths, shorten life spans, result in widespread damage to property, threaten human food sources and dramatically alter ecosystems.
6. Defendants are violating Indigenous Plaintiffs' rights to life, liberty, property, safety and/or happiness by allowing the oil and gas industry to pollute, degrade, denigrate and

eliminate Indigenous Plaintiffs' air, land, and water, and harm their health, their relationship to Indigenous ancestral landscapes, sacred places, and traditional cultural resources, and impede on their ability to practice cultural ceremonies and lifeways.

7. Defendants' failure to adequately regulate oil and gas extraction, development and pollution substantially damages the Youth Plaintiffs' health, environment and the climate system in a way that will cause human deaths, shorten life spans, result in widespread damage to property, threaten human food sources and dramatically alter the planet's ecosystem, resulting in substantive due process and inherent rights violations.
8. Defendants' authorization of oil and gas extraction, development and pollution has denied Frontline, Indigenous and Youth Plaintiffs' rights to life, liberty, property, safety and/or happiness and places them in a position of foreseeable danger, with deliberate indifference to their life, liberty, property, safety or happiness, in violation of the substantive due process clause of the New Mexico Constitution.
9. Defendants' authorization of oil and gas extraction, production and pollution without establishing a sufficient statutory, regulatory and enforcement scheme that controls pollution and prevents despoilment of the beautiful and healthful environment, air, land, water, natural resources, and public health violates Frontline, Indigenous and Frontline Plaintiffs' rights guaranteed by Art. II, §§ 4 and 18 of the New Mexico Constitution.

### **COUNT III**

**Disparate and Discriminatory Impact on Frontline Community Member Plaintiffs from Oil and Gas Pollution Permitted by the State: Violation of the Equal Protection Clause, Article II, Section 18, of the New Mexico Constitution, and the New Mexico Civil Rights Act, NMSA 1978 §§ 41-4A-1 – 41- 4A-13**

1. Plaintiffs reallege and incorporate by reference all paragraphs above as if fully set forth herein.

2. The equal protection clause of New Mexico Constitution, Art. II, § 18, provides:

No person shall be . . . denied equal protection of the laws.

3. Defendants violate frontline community member Plaintiffs' right to equal protection under Art. II, § 18 of the New Mexico Constitution by permitting the oil and gas industry to extract and pollute New Mexico's environment, without a sufficient regulatory and enforcement scheme to control for the heavier burden of pollution placed on people who live near oil and gas drilling sites, namely frontline community members.
4. Frontline community member Plaintiffs are residents of the State of New Mexico, and are similarly situated to all other residents of the state. Frontline community members live in close proximity to oil and gas development and are treated differently and impacted differently by the State's inadequate regulation of oil and gas production and pollution than other residents of the State who do not live near oil and gas production.
5. Frontline community members are a protected class because they are primarily low income and/or people of color and constitute a racial or national origin minority for purposes of equal protection law.
6. The production of oil and gas is associated with health and environmental hazards and reduced social welfare at every stage of its life cycle. Gas compressor stations emit toxic and carcinogenic chemicals such as benzene, 1,3-butadiene, and formaldehyde. Wells, pipelines, and compressor stations are disproportionately located in low-income, minority, and marginalized communities, where they may leak gas, generate noise, endanger health, and contribute to environmental injustice while producing no local benefits. Gas combustion generates oxides of nitrogen that increase asthma risk and aggravate chronic obstructive pulmonary disease. Spills of toxic liquid waste happen in

frontline communities.

7. Defendants' failure to adequately regulate oil and gas extraction, development and pollution has caused and will continue to cause Frontline community member Plaintiffs to be exposed to harmful and potentially lethal substances and at levels greater than normal background levels and at levels greater than other New Mexicans who do not live near oil and gas production sites and thereby cause them to suffer harsher, disproportionate and discriminatory levels of contamination, environmental degradation and health risks as compared with other New Mexicans, impinging on their fundamental rights to life, liberty, property, safety, and /or happiness, and violating their right to Equal Protection under Art. II, § 18 of New Mexico Constitution.
8. The disparate treatment between frontline community members and other residents of the State of New Mexico is not closely related to a compelling governmental interest, substantially related to an important government interest, or rationally related to a legitimate governmental purpose.

#### **COUNT IV**

**Disparate and Discriminatory Impact on Indigenous Plaintiffs from Oil and Gas Pollution Permitted by the State: Violation of the Equal Protection Clause, Article II, Section 18, of the New Mexico Constitution, and the New Mexico Civil Rights Act, NMSA 1978 §§ 41-4A-1 – 41- 4A-13**

1. Plaintiffs reallege and incorporate by reference all paragraphs above as if fully set forth herein.
2. Defendants violate Indigenous Plaintiffs' rights to equal protection by allowing the oil and gas industry to pollute, degrade, and denigrate the land, air, and water close to where they live, work, and practice ceremony, thereby harming Indigenous Plaintiffs' health and impeding on their relationship with Indigenous ancestral landscapes, sacred places and

traditional cultural resources across New Mexico.

3. Indigenous Plaintiffs are residents of the State of New Mexico, and are similarly situated to all other residents of the State of New Mexico. Yet, Indigenous Plaintiffs are treated differently and are impacted differently from other people who are not Indigenous by the State's failure to adequately control and regulate oil and gas extraction, production and pollution that is located on or near Tribal Lands and Indigenous ancestral landscapes.
4. Indigenous peoples are a protected class, belonging to a "racial or national origin minority" for purposes of equal protection law.
5. Indigenous Peoples suffer disparate and discriminatory impacts from the State's failure to adequately regulate oil and gas production and pollution because this failure has caused Plaintiffs to lose or has significantly interfered with Plaintiffs' use of unique land, natural resources, sacred places, ancestral landscapes and traditional resources.
6. Indigenous Peoples, unlike other residents of the State similarly situated, face harsher, disproportionate and discriminatory levels of contamination, environmental degradation, traditional and natural resource degradation, and health risks, from the state's permitting of oil and gas production and the concomitant pollution, impinging on their fundamental rights to life, liberty, property, safety, and /or happiness.
7. The disparate treatment between Indigenous peoples and other residents of the State of New Mexico is not closely related to a compelling governmental interest, substantially related to an important government interest, or rationally related to a legitimate governmental purpose.

## COUNT V

**Disparate and Discriminatory Impact on Youth Plaintiffs from Oil and Gas Pollution Permitted by the State: Violation of the Equal Protection Clause, Article II, Section 18, of the New Mexico Constitution, and the New Mexico Civil Rights Act, NMSA 1978 §§ 41-4A-1 – 41- 4A-13**

1. Plaintiffs reallege and incorporate by reference all paragraphs above as if fully set forth herein.
2. Defendants violate Youth Plaintiffs' right to equal protection under Art. II, § 18 of the New Mexico Constitution by allowing the oil and gas industry to pollute New Mexico's environment, without a sufficient regulatory and enforcement scheme to control for the heavier burden and impact that this pollution places on vulnerable youth.
3. Youth Plaintiffs are residents of the State of New Mexico, and are similarly situated to all other residents of the State of New Mexico.
4. Youth Plaintiffs belong to a protected class. They have the immutable characteristic of being a young age, more vulnerable to the effects of pollution, politically powerless, and historically subjected to discrimination and exclusion from the political process.
5. Defendants' permitting of oil and gas production and pollution with inadequate pollution control has caused and will continue to cause Plaintiff Youth to suffer disparate and discriminatory impacts on their health, safety and enjoyment of life because the impacts of the pollution not only create greater physical health risks to youth, but also create greater mental health risks to youth who literally fear for their own lives, as well as the continued existence of functioning ecosystems in their lifetimes, let alone the lifetimes of their children and grandchildren.
6. As a result of Defendants' unconstitutional acts and omissions, the Youth Plaintiffs have been exposed to harmful and potentially lethal physical and mental health risks at levels

greater than others who are not young, impinging on their fundamental rights to life, liberty, property, safety, and /or happiness, and resulting in a violation of Plaintiffs' rights to equal protection under the law.

7. Youth, unlike other residents of the State similarly situated, face harsher, disproportionate levels of contamination, environmental degradation, health risks, and risks due to the climate crisis, caused by the state's authorizing of oil and gas production and pollution.
8. The disparate treatment between Youth and other residents of the State of New Mexico is not closely related to a compelling governmental interest, substantially related to an important government interest, or rationally related to a legitimate governmental purpose.

#### **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), to resolve an actual controversy with respect to their rights, status, and other legal relations concerning Defendants' failure to fulfill their constitutional duties with respect to oil and gas pollution. Plaintiffs further request, pursuant to the Declaratory Judgment Act, NMSA 1978 § 44-6-13, and the Civil Rights Act, NMSA 1978 §§ 41-4A-1 *et seq.* (2021), 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 the constitutional duties imposed by the pollution control clause of the New Mexico Constitution (Art. XX, § 21) because they permit oil and gas extraction, production and concomitant pollution without having put in place a sufficient statutory, regulatory and enforcement framework to protect our beautiful and healthful environment, air, land, water, natural resources, public health and climate from despoilment due to pollution caused by oil and gas production;



2. Declaring that Defendant Legislature is out of compliance with the constitutional duties imposed by the pollution control clause of the New Mexico Constitution (Art. XX, § 21) by failing to put in place a sufficient statutory, regulatory and enforcement framework and failing to provide regulatory enforcement agencies, the Natural Resources Department and the Environment Department, with sufficient money to propose and enforce regulations in a manner that protects the beautiful and healthful environment, land, air, water, natural resources, public health and climate from despoilment;
3. Declaring that in order for Defendants to meet the pollution control mandate in the New Mexico Constitution, Defendants must establish and fund a statutory, regulatory and enforcement scheme that protects a beautiful and healthful environment, the land, air, water, natural resources, public health and climate from despoilment due to pollution caused by oil and gas extraction and production;
4. Declaring that Defendants' permitting of oil and gas production and concomitant pollution without enacting and enforcing sufficient controls of pollution caused by oil and gas extraction and production violates Frontline community member Plaintiffs', Indigenous Plaintiffs' and Youth Plaintiffs' rights to life, liberty, property, safety and/or happiness, as set forth in Art. II, §§ 4 and 18, of the New Mexico Constitution;
5. Declaring that Defendants' permitting of oil and gas extraction, production and pollution without enacting sufficient controls of pollution caused by oil and gas extraction production violates Frontline community member Plaintiffs, Indigenous Plaintiffs and Youth Plaintiffs' equal protection rights since it disproportionately harms these Plaintiffs, resulting in unlawful discrimination, in violation of the equal protection clause, Art. II, § 18, of the New Mexico Constitution;

6. Enjoining Defendants to suspend additional permitting of oil and gas wells until they have come into compliance with their constitutional duties;
7. Enjoining Defendants to enact, fund and implement a statutory, regulatory and enforcement structure and plan that complies with the State's constitutional mandate to protect our beautiful and healthful environment, air, water and other natural resources from despoilment by pollution caused by the oil and gas industry;
8. Enjoining Defendants to establish and implement a statutory, regulatory and enforcement structure and plan that ensures the constitutional rights of frontline community members, Youth and Indigenous Plaintiffs are protected and enjoyed;
9. Enjoining Defendants to treat the byproduct waste of oil and gas extraction, including produced water, as Hazardous Waste and as Hazardous and Radioactive Waste;
10. Enjoining Defendants to establish a financial assurance system and remediation system for oil and gas wells that covers the cost of clean-up and remediation;
11. Enjoining Defendants to use the best available science to detect and analyze the environmental and health impacts of pollution caused by oil and gas production and to control the release of oil and gas pollution in order to protect the environment, climate and public health;
12. Enjoining Defendants to put in place a mandatory process whereby they formally and publicly consider their constitutional obligations pursuant to Article XX, § 21 when considering any policies or laws that impact New Mexico's natural resources;
13. Retaining jurisdiction to ensure that the Defendants promptly and fully comply with the remedies set forth herein;
14. Granting attorneys' fees to Plaintiffs; and

15. Granting any further and other relief the court deems just and proper.

RESPECTFULLY SUBMITTED,

THE CENTER FOR BIOLOGICAL DIVERSITY

By: /s/ gail evans

Gail Evans

Maya Golden-Krasner (*pro hac vice* in process)

Jason Rylander (*pro hac vice* in process)

1025 ½ Lomas NW

Albuquerque, NM 87102

Phone: (505) 463-5293

Email: [gevans@biologicaldiversity.org](mailto:gevans@biologicaldiversity.org)

Attorneys for Plaintiffs

WILDEARTH GUARDIANS

By: /s/ Timothy Davis

Timothy Davis

Samantha Ruscavage-Barz

301 N. Guadalupe St., Ste. 201

Santa Fe, NM 87501

Phone: (205) 913-6425 / (505) 401-4180

Email: [tdavis@wildearthguardians.org](mailto:tdavis@wildearthguardians.org)

email: [sruscavagebarz@wildearthguardians.org](mailto:sruscavagebarz@wildearthguardians.org)

Attorneys for Plaintiffs

DANIEL YOHALEM

By: /s/ Daniel Yohalem

1121 Paseo de Peralta

Santa Fe, New Mexico 87501

Phone: (505) 690-2193

Email: [daniel.yohalem@gmail.com](mailto:daniel.yohalem@gmail.com)

Attorney for Plaintiffs