Oil and Gas Pollution Crisis in New Mexico

OIL AND GAS PRODUCTION IS BOOMING -- OVER 69,000 WELLS

- 2nd largest oil producing state in country, after Texas
  - Production increased tenfold in last decade; almost doubled under this administration
  - Permian Basin in SE corner of state one of biggest oil fields in the world
  - Air quality out of compliance with federal health standards
  - Contamination from toxic liquid waste

- 7th biggest gas producing state
  - San Juan Basin in NW corner of state
  - Unhealthy air quality
  - Harms to Greater Chaco Landscape – of great cultural importance to Indigenous peoples
  - Contamination from toxic liquid waste
Very little statutory or regulatory oversight

**New Mexico Oil and Gas Act (administered by Oil Conservation Division of EMNRD)**
- Purpose of Act is to prevent waste of oil and gas
- No mandatory protections for environment, public health or cultural resources
- No mechanism to challenge new permits to drill
- Spills prohibited by rule – over 1450 liquid waste spills last year and no penalties issued
- Land and water contaminated
- Venting and flaring prohibited by rule – but venting and flaring continues, poor air quality
- Insufficient inspections for over 69,000 active wells

**New Mexico Air Quality Act (administered by N.M. Environment Department)**
- Duty to comply with federal health standards and prevent/abate air pollution
- Air pollution has spiked as oil and gas production has spiked
- Not in compliance with federal health standards
- No mechanism to oppose new permits to drill
- Just passed new ozone precursor rules – enforcement??
- Insufficient inspectors/enforcement actions

**Oil and Gas Industry Excluded from Environmental Laws administered by N.M. Enviro Dept:**
- Water Quality Act (1967)
- New Mexico Groundwater Protection Act (1990)
- New Mexico Hazardous Waste Act (1977)
- New Mexico Hazardous and Radioactive Materials Act (1979)
- New Mexico Solid Waste Act (1990)
- Environmental Quality Act, passed in 1971 and repealed in 1974
Fundamental law – the New Mexico Constitution

State constitutions can put positive duty on state governments to act
State constitutions can provide stronger protections than federal constitution
State has constitutional duty to control oil and gas pollution
“A uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained.”
N.M. Constitution, Article XII, Section 1

Yazzie v. State – on behalf of low income, ELL, Native American and Special Ed students

We Won!
July 2018

“[T]he State Constitution requires the State to provide every student with the opportunity to obtain an education that allows them to become prepared for career or college.”
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.

N.M. Constitution, Article XX, Section 21 (Pollution Control Clause)

(1971)
Defendants authorize oil and gas production and pollution without protecting New Mexico’s beautiful and healthful environment, in violation of the New Mexico Constitution.

- Exempt oil and gas pollution from key environmental protections
- Fail to fulfill duties under New Mexico Air Quality Control Act
- Repealed Environmental Quality Act – no public health or environmental review before granting new drilling permits
- Oil and Gas Act is not a pollution control statute and provides no mandatory environmental or public health protections.
- Legislature provides regulatory agencies with insufficient resources to regulate, monitor and control pollution.
Defendants’ authorization of oil and gas production and pollution despoils the environment and infringes on fundamental rights of frontline community members, Indigenous peoples, and youth.

-- Air pollution

-- Toxic liquid waste contaminates land and water

-- Depletion of the State’s freshwater resources

-- Harm to native plants and wildlife

-- Catastrophic climate damage

-- Destruction of Indigenous ancestral landscapes, and cultural resources
Violation of equal protection and substantive due process rights to life, liberty, property, safety and happiness of Frontline communities, Indigenous peoples and youth

Frontline Communities
• Greater health harms from oil and gas pollution
• State has not established health buffer zones (setbacks)
• State does not consider environmental and public health impacts when permitting new drilling
• State does not ensure air safe for people near production sites

Indigenous Peoples
• Destruction of ancestral landscapes and cultural resources across Greater Chaco Landscape – impact on Diné and Pueblo plaintiffs
• Harm to ecosystems, plant and animal life on their lands
• Adversely impacts identity, lifeways, cultural survival

Youth
• Health more harshly impacted by pollution
• Climate change threats – impacts right to livable future
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 PROBST, 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
Media Hits on NM Oil and Gas Pollution Crisis

- Washington Post
- AP
- Reuters
- Bloomberg
- Santa Fe New Mexican
- Albuquerque Journal
- GRIST
- Capital and Main
- Local TV and Radio
- And more!!!
Relief and Remedies

• Declaration that Defendants are out of compliance with constitutional duties 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 from oil and gas production;

• Declaring that Defendants are violating the frontline community members, Indigenous and youth plaintiffs’ equal protection and substantive due process rights to life, liberty, property, safety and happiness by permitting oil and gas extraction without enacting and enforcing sufficient pollution controls;

• Enjoining Defendants to suspend additional permitting of oil and gas wells until they have come into compliance with their constitutional duties;

• Retaining jurisdiction to ensure that Defendants promptly and fully comply with their constitutional duties and the remedies developed.
Initial Remedy Development

1. Health Buffer Zones (i.e. setbacks) – one mile around schools, residences, health care facilities – follow lead of State Land Commissioner
2. Prohibit use of freshwater for fracking – again follow lead of State Land Commissioner
3. Mandatory penalties for spills of toxic liquid waste; notification to people near spills
4. Ensure plugging and cleanup of idle wells
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