STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

Case assigned to Mathew, Francis J.

D-101-CV-2025-02088

STATE OF NEW MEXICO *ex rel.* [QUI TAM PLAINTIFFS UNDER SEAL], Qui Tam Plaintiffs, vs. [DEFENDANTS UNDER SEAL], Defendants.	Case No. _____ *SEALED* **FILED UNDER SEAL** **PLEASE FILE COMPLAINT IN CAMERA IN THE DISTRICT COURT AND COMPLAINT SHALL REMAIN UNDER SEAL FOR SIXTY DAYS** JURY TRIAL DEMANDED

SEALED QUI TAM PLAINTIFFS' COMPLAINT PURSUANT TO THE NEW MEXICO FRAUD AGAINST TAXPAYERS ACT, N.M. STAT. ANN. §44-9-1, *ET SEQ.*

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Case No. _____ *SEALED*

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

STATE OF NEW MEXICO *ex rel.* Gregory Rogers and Theron Horton, Qui Tam Plaintiffs, vs. EMPIRE PETROLEUM CORPORATION; EMPIRE NEW MEXICO LLC; EXXON MOBIL CORPORATION; XTO ENERGY INC.; and XTO HOLDINGS, LLC, Defendants.	Case No. _____ *SEALED* **FILED UNDER SEAL** **PLEASE FILE COMPLAINT IN CAMERA IN THE DISTRICT COURT AND COMPLAINT SHALL REMAIN UNDER SEAL FOR SIXTY DAYS** JURY TRIAL DEMANDED

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Qui Tam Plaintiffs Gregory Rogers ("Rogers") and Theron Horton ("Horton") (collectively, "Qui Tam Plaintiffs"), on behalf of themselves and the State of New Mexico ("New Mexico" or "State"), bring this action against Empire Petroleum Corporation ("Empire Petroleum"); Empire New Mexico LLC ("Empire New Mexico"); Exxon Mobil Corporation ("Exxon Mobil"); XTO Energy Inc. ("XTO Energy"); and XTO Holdings, LLC ("XTO Holdings") (collectively, "Defendants") for violations of the New Mexico Fraud Against Taxpayers Act ("FATA"), N.M. Stat. Ann. §44-9-1, *et seq.*, and to recover all damages, civil penalties, and other recoveries provided for under that statute.

Qui Tam Plaintiffs have set forth facts supporting allegations that Defendants have conspired to violate, and have in fact violated, the FATA at locations throughout New Mexico. Venue is appropriate in the First Judicial District because the false claims giving rise to the suit were presented to the New Mexico State Land Office and the New Mexico Oil Conservation Division ("OCD"), located in Santa Fe, New Mexico.

SUMMARY OF THE ACTION

1. This action arises out of massive accounting fraud by major oil and gas operators to avoid obligations owed to the State of New Mexico and its taxpayers. This fraud has been one of the underlying causes of the ongoing orphan well crisis in the State and has caused the State and its taxpayers to bear millions of dollars in well plugging and remediation costs.

2. New Mexico faces an environmental and economic crisis created by the oil and gas industry's conscious plan to evade its legal obligation to clean up after itself.

3. Current estimates suggest that 90% of America's oil and gas wells are no longer producing or barely producing any oil. They have been stripped dry, and a small number of wells now produce a majority of America's oil supply.[1]

4. Of New Mexico's 116,541 total wells, only 48,674 are currently producing, leaving a significant number inactive.[2] According to state records, there are about 20,000 inactive, unplugged oil and gas wells in New Mexico.

5. When oil and gas wells have "no future beneficial use," New Mexico regulations require the operator to plug the wells, remediate any environmental damage, and restore the surface to its original condition. For financial accounting purposes, these end-of-life environmental obligations to plug and abandon, remediate, and reclaim wells are called asset retirement obligations ("AROs").

6. An "orphaned well" refers to an abandoned oil or gas well where no responsible party exists to discharge AROs at the end of its useful life cycle, due either to the operator's bankruptcy or inability to be located, leaving the public with the financial burden.

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[1] Mark Olalde, *The Rising Cost of the Oil Industry's Slow Death*, ProPublica (Feb. 22, 2024), https://www.propublica.org/article/the-rising-cost-of-the-oil-industrys-slow-death.

[2] *See New Mexico Oil & Gas Activity*, Mineral Answers, https://www.mineralanswers.com/new-mexico (last visited Mar. 27, 2025).

7. A recent report by the U.S. Geological Survey identified 117,672 ***documented*** orphaned oil and gas wells nationwide, but the U.S. Environmental Protection Agency estimates that there are 2.7 million abandoned oil wells and 600,000 abandoned gas wells nationwide.[3]

8. In New Mexico, state records identify over 1,700 orphaned wells on State and private land, alone.[4] In the Permian Basin, spanning West Texas and Southeastern New Mexico, for example, thousands of wells have been abandoned and remain unplugged, emitting methane and pollutants, exacerbating climate change, and endangering communities.[5]

9. At the heart of this crisis is the systematic, fraudulent scheme employed by major operators like Exxon Mobil, its subsidiaries, and small, undercapitalized companies like Empire Petroleum, to avoid New Mexico's legal requirements that operators plug oil wells and remediate the surrounding land once the wells become non-productive.

10. The fraud is based on deceptive accounting and the strategic transfer of gas and oil wells to facilitate the evasion of AROs. As Qui Tam Plaintiffs allege in greater detail below, oil and gas operators have devised a "playbook" – a series of financial maneuvers that allow them to profit from the production of their wells during their useful lives while escaping their creditor obligations under New Mexico law.

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[3] U.S. Dep't of the Interior, *Department of the Interior Bipartisan Infrastructure Law 40601 Report to Congress, Orphaned Well Program – Annual Report* (Nov. 2022), https://www.doi.gov/sites/default/files/fy22-ecrp-congressional-report.pdf.

[4] *See New Mexico Oil & Gas Activity*, *supra* n.2.

[5] New Mexico Legislative Finance Committee, *Policy Spotlight: Orphaned Wells* (June 24, 2025), https://www.nmlegis.gov/Entity/LFC/Documents/Program_Evaluation_Reports/LFC%20Policy%20Spotlight%20-%20Orphaned%20Wells%20-%20Final.pdf.

11. Oil and gas operators delay retirement of wells with matured AROs; falsify records by understating the financial obligations to relevant state regulators; transfer underperforming wells to smaller, "ARO insolvent" operators, who then milk the remaining production; distribute the resulting revenue to shareholders and working interest owners, rather than setting aside funds for AROs; and ultimately orphan those wells to the State.

12. An analysis of decommissioning costs for New Mexico's oil and gas wells by ProPublica and Capital and Main based on OCD documents submitted to the U.S. Department of the Interior found that oil and gas wells in NM are under-secured by at least $11.8 billion.[6] If the playbook is allowed to continue, each New Mexico taxpayer could end up paying $6,431 to clean up oil and gas operators' messes, and that liability will only continue to rise as more wells are orphaned.[7]

13. Defendants in this case employed accounting fraud and knowingly made false financial assurances to the State to facilitate their own participation in this game. Elements of the playbook that underlie Defendants' fraudulent evasion of AROs for the wells at issue in this case include, but are not limited to, the following conduct:

- Exxon Mobil, XTO, and Empire, in their accounting books and records, intentionally and grossly understated and underreported the true costs of AROs for 670 unreclaimed wells in Lea County, which XTO transferred to Empire in 2021. Of these, 647 are unplugged and 23 are plugged but unreleased.

- Exxon Mobil sold the wells to Empire at a price that all Defendants knew did not accurately reflect true valuation. Had Exxon Mobil and Empire properly factored in the amount that Empire or its assignee would face for the wells' AROs, the price of the

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[6] *The Rising Cost of the Oil Industry's Slow Death*, *supra* n.1.

[7] This calculation is based on the U.S. Internal Revenue Service's ("IRS") most recent data, showing that 1,575,426 tax returns were filed in New Mexico in fiscal year ("FY") 2023.

transfer would have been far less. In fact, Exxon Mobil would have had to pay Empire many millions of dollars to assume and reduce their liability.

- Empire's FY 2021 Form 10-K estimated that its cost to discharge the AROs for the 670 unreclaimed wells it had acquired from Exxon Mobil would be approximately $6,117,709 averaging $9,131 per well – when, in fact, Empire and Exxon Mobil both knew that the cost of plugging and remediating wells is much higher.[8] In 2024, New Mexico's Energy, Minerals and Natural Resources Department ("EMNRD") estimated combined plugging and remediation costs statewide averaged at least $214,000 per well,[9] but it can reach into the millions if extensive remediation is needed.

- Empire posted bonds to guarantee AROs that they know to be inadequate to cover the actual cost of plugging and land restoration, falsely confirming to the State that they could comply with financial assurance obligations.

- Empire was made insolvent by the XTO transaction (defined below), and subsequent to the sale, Empire failed to set aside restricted assets for AROs that are anywhere near the amounts it knows will be necessary to fulfill them. Worse, it distributes cash flow from operations to its parent company Empire Petroleum, working interest owners, and other insiders as "profits" – a hallmark flag of fraudulent intent to avoid its AROs to the State.

14. Exxon Mobil, via its subsidiary XTO Holdings, transferred aging, low-producing wells to a smaller, financially weaker company – Empire Petroleum and its New Mexico subsidiary – knowing they had no ability to pay the AROs.

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[8] In its FY 2021 Form 10-K, Empire Petroleum states that Empire New Mexico acquired "approximately 730 wells" from XTO. *See* Empire Petroleum Corp., Annual Report (Form 10-K) (Mar. 31, 2022), https://s3.amazonaws.com/sec.irpass.cc/2431/0001753926-22-000383.pdf. However, OCD records indicate that Empire New Mexico acquired 670 wells from XTO, all of which have outstanding AROs. *See* New Mexico Oil Conservation Division, *OCD Permitting, Empire New Mexico LLC, Well Search Normal,* https://wwwapps.emnrd.nm.gov/ocd/ocdpermitting/data/WellSearchResults.aspx?OperatorSearchClause=BeginsWith&ogrid_name=Empire%20New%20Mexico&WellSearchClause=BeginsWith&WellNumberSearchClause=BeginsWith&PoolSearchClause=BeginsWith&section=00&CancelledAPDs=Exclude&PluggedWells=Exclude&SearchLocation=Surface (last visited July 25, 2025).

[9] N.M. Energy, Minerals and Natural Resources Dep't, *Annual Report*, at 59 (2024), https://www.emnrd.nm.gov/officeofsecretary/wp-content/uploads/sites/2/emmrd_annual_report_2024.pdf.

15. Defendants conspired to cheat the State with respect to AROs through the May 2021 fraudulent transfer and acquisition of unreclaimed wells from XTO Holdings to Empire New Mexico. Based on a fair valuation of the AROs, Empire New Mexico did not receive reasonably equivalent value for the AROs assumed in the XTO transaction, was made insolvent by the transaction, and has remained insolvent ever since.

16. While insolvent, Empire New Mexico has unlawfully distributed earnings to its owner, Empire Petroleum, that were needed to discharge environmental obligations owed to the State.

17. Empire and its co-conspirators concealed this scheme using fraudulent financial statements and other false and misleading statements and records, discussed herein, in violation of the FATA and must be held accountable.

18. The economic impact on New Mexicans of Defendants' conduct is staggering. Conservative minimum estimates put the total actual costs for AROs for the 670 at-issue wells, all of which are located in Lea County, at $199,576,929.

19. The facts demonstrate that XTO knowingly transferred the wells to Empire with a total recorded ARO liability of $6,117,709; this is fraud *per se* because this amount doesn't remotely cover, and could not have covered, the actual legal financial responsibilities. It is a minimum intentional gross undervaluation of $193,459,220.

20. If there are extenuating circumstances for an old and contaminated site – as there are with many of the Empire wells – then the cost of AROs could exceed the per well liability value by hundreds of thousands of dollars, if not millions of dollars.

21. The average Empire well is more than 63 years old. These numbers are extremely conservative and a true accounting would require a forensic environmental analysis by a third party to determine actual estimated plugging and remediation costs for each of the 670 at-issue wells.

22. The environmental impact is equally severe. Orphaned and abandoned wells leak methane – a greenhouse gas over 80 times more potent than carbon dioxide – exacerbating climate change.[10] They also emit benzene and other toxic volatile organic compounds linked to cancer, neurological damage, and respiratory illnesses.[11] These pollutants contaminate New Mexico's land, air, and groundwater aquifers, on which 78% of state residents rely for drinking water.[12] In many communities, especially indigenous and rural areas, these abandoned wells create dangerous public health hazards, depress property values, and erode the local tax base, leaving behind impoverished municipalities burdened with environmental degradation and economic stagnation.

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[10] Stuart N. Riddick et al., *Methane emissions from abandoned oil and gas wells in Colorado*, Energy Inst., Col. St. U. (Feb. 29, 2024), https://www.sciencedirect.com/science/article/abs/pii/S004896972401129X?via%3Dihub; Mary Kang et. al., *Environmental risks and opportunities of orphaned oil and gas wells in the United States*, 18 Env't Rsch. Letters 7 (June 20, 2023), https://iopscience.iop.org/article/10.1088/1748-9326/acdae7; Daniel J. Mallinson et al., *The Scourge of Orphaned and Abandoned Wells: Leveraging Public-Private-Citizen Collaboration to Solve a Big Problem*, Pub. Works Mgmt. & Pol'y (July 1, 2022), https://journals.sagepub.com/doi/10.1177/1087724X221112958.

[11] Ahmed Alsubaih et al., *Environmental Impacts of Orphaned and Abandoned Wells: Methane Emissions, and Implications for Carbon Storage*, Hildebrand Dep't of Petro. & Geosystems Eng'g, U. of Tex. (Dec. 11, 2024), https://www.mdpi.com/2076-3417/14/24/11518; Dominic C. DiGuilo et al., *Chemical Characterization of Natural Gas Leaking from Abandoned Oil and Gas Wells in Western Pennsylvania*, ACS Omega (May 19, 2023), https://pubs.acs.org/doi/full/10.1021/acsomega.3c00676.

[12] N.M. Env. Dep't, *Water Resources & Management*, https://www.env.nm.gov/water/ (last visited July 25, 2025).

23. Ultimately, Defendants' fraudulent system is neither an accident nor a side effect of market failure. It is a deliberate, carefully designed scheme to maximize profits while externalizing costs onto New Mexico taxpayers and future generations.

24. These companies distribute their extracted profit to shareholders and working interest owners while socializing the financial and environmental risks onto New Mexicans. New Mexico risks becoming a toxic wasteland – its people forced to bear the cost of corporate greed and its water poisoned and land scarred by pollution that could persist for generations.

THE PARTIES

I. Qui Tam Plaintiffs

25. Qui Tam Plaintiff Gregory Rogers is an adult resident of Broomfield, Colorado. Rogers is a former practicing attorney and CPA. For 20 years he has specialized in matters involving the measurement, management, and reporting of environmental liabilities and risks. He is an expert in the following subject matters: (1) Generally Accepted Accounting principles ("GAAP"); (2) international financial reporting standards; and (3) U.S. securities laws and regulations. Rogers is a Fellow and Advisor to the Master of Accounting Program at the Cambridge Judge Business School.

26. Rogers is the author of a comprehensive 384-page desk book on financial reporting of environmental liabilities and risks published in 2005 by John Wiley & Sons.

27. Rogers has also guest lectured at the Cambridge Judge Business School, the Stanford Graduate School of Business, the University of Colorado Leeds School of Business, the University of Texas at Dallas School of Management, the Erb Institute for Global Sustainable

Enterprise at the University of Michigan, and the Donald Bren School of Environmental Science & Management at the University of California, Santa Barbara.

28. Qui Tam Plaintiff Theron Horton is an adult resident of Taos, New Mexico. Horton currently serves as a strategist with the ARO Working Group, a multi-disciplinary network of professionals focused on the financial and environmental risks of oil and gas AROs. Horton was the chief ARO researcher and data analyst for Carbon Tracker North America (2020-2024) and is presently a data strategy consultant.

29. Horton's expertise has been integral to investigations by the Department of Interior's Office of Inspector General (2024); the Secretary of the Interior's Advisor on Orphaned Wells, Office of Policy, Management and Budget (2024); the U.S. House Committee on Energy and Commerce (2024); and the Office of the Attorney General of California (2021).

30. Horton and his team developed the basic analysis and policy initiative for Congresswoman Teresa Leger Fernández, who introduced the Orphaned Wells Cleanup and Jobs Act of 2021 that culminated in the Bipartisan Infrastructure Law's $4.7 billion investment to plug orphaned wells (2021), of which $45.7 million was allocated to the State of New Mexico for orphan well cleanup with a total program grant potential of over $72 million.

31. Qui Tam Plaintiffs have standing to bring this action under N.M. Stat. Ann. §44-9-5(A). Qui Tam Plaintiffs' Complaint is not based on any other prior disclosures of the allegations or transactions discussed herein in a criminal, civil, or administrative hearing, lawsuit or investigation, or any other news media or publicly disseminated government report.

II. Defendants

A. The "Empire" Defendants

32. Defendant Empire Petroleum Corporation is a Delaware corporation with its principal address at 2200 South Utica Place, Suite 150, Tulsa, Oklahoma 74114. Empire Petroleum is an oil and gas producer that "engages in unlocking value in developed assets" in New Mexico, North Dakota, Montana, Louisiana, and Texas.[13] Empire Petroleum is the parent corporation of several subsidiaries that own and operate oil and gas wells in New Mexico's Permian Basin, including Empire New Mexico.[14] In May 2021, Empire Petroleum, through its subsidiary Empire New Mexico, acquired 670 unreclaimed oil, gas, and injector wells from XTO Holdings, a subsidiary of Exxon Mobil ("XTO transaction").[15]

33. Upon information and belief, Empire Petroleum is not registered as a foreign corporation and does not maintain a statutorily designated agent in the State.

34. Defendant Empire New Mexico LLC is a Delaware limited liability company with its principal address at 2200 South Utica Place, Suite 150, Tulsa, Oklahoma 74114. Empire New Mexico is a wholly owned subsidiary of Empire Petroleum.[16] Empire New Mexico owns and

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[13] Empire Petroleum Corp., Annual Report (Form 10-K) (Mar. 27, 2025), https://s3.amazonaws.com/sec.irpass.cc/2431/0001072613-25-000246.htm.

[14] Empire Petroleum Corp., Registration Statement (Form S-3) (Sep. 1, 2023), https://www.sec.gov/Archives/edgar/data/887396/000107261323000451/empire-s3_18750.htm#a_002.

[15] Empire Petroleum Corp., Annual Report (Form 10-K) (Mar. 31, 2022), *supra* n.8; New Mexico Oil Conservation Division, *OCD Permitting, Empire New Mexico LLC, Operator Details*, https://wwwapps.emnrd.nm.gov/OCD/OCDPermitting/Operators/Search/OperatorDetails.aspx?Operator=330679 (last visited Aug. 5, 2025).

[16] Empire Petroleum Corp., Annual Report (Form 10-K) (Mar. 27, 2025), *supra* n.13.

operates oil and natural gas wells in New Mexico on behalf of its parent corporation, Empire Petroleum. Empire Petroleum formed Empire New Mexico for the sole purpose of acquiring oil and gas production assets, including 670 unreclaimed oil, gas, and injection wells from XTO Holdings.[17] Currently, Empire New Mexico operates 670 unplugged oil, gas, and injection wells in the State, all of which were received in the acquisition and transfer from the Exxon Mobil Defendants (defined below). *See infra* §II(B).[18]

35. Empire New Mexico is a registered foreign limited liability company operating in the State. Empire New Mexico's designated agent is CT Corporation System, 206 South Coronado Avenue, Espanola, New Mexico 87532.

36. Collectively, Empire Petroleum and Empire New Mexico are referred to herein as "Empire."

B. The "Exxon Mobil" Defendants

37. Defendant Exxon Mobil Corporation is a New Jersey corporation with its principal address at 22777 Springwoods Village Parkway, Spring, Texas 77389. Exxon Mobil is a large, multinational oil and gas producer whose business involves the "exploration for, and production of, crude oil and natural gas; manufacture, trade, transport and sale of crude oil, natural gas, petroleum products, petrochemicals, and a wide variety of specialty products[.]"[19] Exxon Mobil

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[17] *Id.*

[18] New Mexico Oil Conservation Division, *OCD Permitting, Operator Details, Empire New Mexico LLC*, *supra* n.15.

[19] Exxon Mobil Corp., Annual Report (Form 10-K) (Feb. 28, 2024), https://investor.exxonmobil.com/sec-filings/all-sec-filings/content/0000034088-24-000018/0000034088-24-000018.pdf.

owns and operates oil and gas wells through hundreds of affiliates, including operations in New Mexico thorough its subsidiaries XTO Energy and XTO Holdings.

38. Exxon Mobil is a registered foreign corporation operating in the State. Exxon Mobil's designated agent is Corporation Service Company, 732 East Michigan Drive, Suite 500, Hobbs, New Mexico 88240.

39. Defendant XTO Energy Inc. is a Delaware corporation with its principal address at 22777 Springwoods Village Parkway, Spring, Texas 77389.[20] XTO Energy is a wholly owned subsidiary of Exxon Mobil.[21] XTO Energy currently operates 650 active oil and gas wells in the State.[22]

40. XTO Energy is a registered foreign corporation operating in the State. XTO Energy's designated agent is Corporation Service Company, 732 East Michigan Drive, Suite 500, Hobbs, New Mexico 88240. XTO Energy maintains an office at 3104 East Green Street, Carlsbad, New Mexico 88220.[23]

41. Defendant XTO Holdings, LLC is a Delaware limited liability company with a principal address of 22777 Springwoods Village Parkway, Spring, Texas 77389. XTO Holdings

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[20] XTO Energy Inc., *Contact us*, https://www.xtoenergy.com/company/contact-us (last visited May 22, 2025).

[21] Exxon Mobil Corp., Annual Report (Form 10-K) (Feb. 28, 2024), *supra* n.19.

[22] New Mexico Oil Conservation Division, *OCD Permitting, Operator Details, XTO Energy, Inc.*, https://wwwapps.emnrd.nm.gov/OCD/OCDPermitting/Operators/Search/OperatorDetails.aspx?Operator=5380 (last visited Apr. 22, 2025).

[23] Hobbs Chamber of Commerce, *XTO Energy*, https://business.hobbschamber.org/list/member/xto-energy-4947.htm (last visited July 25, 2025).

is a wholly owned subsidiary of Exxon Mobil.[24] In 2021, XTO Holdings acted as the holding company for Exxon Mobil's transfer of 670 unreclaimed wells to Empire Petroleum via its subsidiary Empire New Mexico.

42. XTO Holdings is a registered foreign limited liability company operating in the State. XTO Holdings' designated agent in the State is Corporation Service Company, Inc., 732 East Michigan Drive, Suite 500, Hobbs, New Mexico 88240.

43. Collectively, Exxon Mobil, XTO Energy, and XTO Holdings are referred to herein as "Exxon Mobil Defendants."

III. The State of New Mexico

44. The State of New Mexico is a party to this action, and Qui Tam Plaintiffs bring this action on behalf of the State. New Mexico is a plaintiff on behalf of the New Mexico State Land Office and the OCD of the EMNRD.

JURISDICTION & VENUE

45. Jurisdiction is founded upon Article VI, Section 13 of the New Mexico Constitution, and upon the FATA, specifically N.M. Stat. Ann. §44-9-5(A)-(B). This Court also has jurisdiction to hear this dispute pursuant to Article VI, Section 13 of the New Mexico Constitution.

46. Venue is appropriate in the First Judicial District Court of New Mexico under N.M. Stat. Ann. §38-3-1(A) and (F) as Defendants are foreign business entities who continuously operate and maintain registered agents within the State; the Office of the Attorney General, the

[24] Exxon Mobil Corp., Annual Report (Form 10-K) (Feb. 28, 2024), *supra* n.19.

New Mexico State Land Office, the OCD, and the seat of State government are located in the County of Santa Fe; and the County of Santa Fe is the county in which the claims originated.

47. Qui Tam Plaintiffs have provided the Attorney General of New Mexico with a copy of this Complaint and a full written disclosure of substantially all material evidence and information that Qui Tam Plaintiffs possess, as required by N.M. Stat. Ann. §44-9-5(C).

GOVERNING LAW

I. The New Mexico Fraud Against Taxpayers Act

48. The FATA provides for civil liability against any person who knowingly submits false claims to the State. *See* N.M. Stat. Ann. §44-9-3(A). The FATA allows individual persons, or "qui tam plaintiffs," to file a FATA claim on behalf of the State or a political subdivision of the State. N.M. Stat. Ann. §44-9-5(A).

49. Under the FATA, a person may be liable if they: (1) knowingly present, or cause to be presented, to the State a false or fraudulent claim for payment or approval; (2) knowingly make or use false or misleading records or statements to obtain approval or payment on a false claim; (3) conspire to defraud the State by obtaining approval or payment on a false or fraudulent claim; (4) conspire to use a false or misleading statement or record to avoid or decrease a monetary obligation to the State; or (7) knowingly make or cause to be made false statements or records to avoid or decrease an obligation to pay or transmit money to the State. N.M. Stat. Ann. §44-9-3(A)(1)-(4), (7).

50. Under the FATA, a person acts knowingly when they act: "(1) with actual knowledge of the truth or falsity of the information; (2) in deliberate ignorance of the truth or

falsity of the information; or (3) in reckless disregard of the truth or falsity of the information[.]" N.M. Stat. Ann. §44-9-2(C).

51. The FATA does not require "proof of specific intent to defraud" to prove a claim. N.M. Stat. Ann. §44-9-3(B). All essential elements of a FATA claim, including damages, must be proven by a preponderance of the evidence. N.M. Stat. Ann. §44-9-12(C).

52. FATA violations may result in penalties of: (1) three times the amount of damages sustained by the State; (2) civil penalties not less than $5,000 but not more than $10,000 for each violation; (3) the costs of a civil action brought to recover damages or penalties; and (4) reasonable attorney's fees. N.M. Stat. Ann. §44-9-3(C). Two or more persons who commit an act in violation of the FATA are jointly and severally liable for that act. N.M. Stat. Ann. §44-9-13. These remedies "are not exclusive and shall be in addition to any other remedies provided for in any other law or available under common law." N.M. Stat. Ann. §44-9-14.

53. A qui tam plaintiff is entitled to between 25% and 35% of the proceeds resulting from the action or settlement. N.M. Stat. Ann. §44-9-7(B).

II. The New Mexico Oil and Gas Act

A. Asset Retirement Obligations

54. Under New Mexico regulations, a company that wishes to drill for oil or gas must first secure a permit and assure the State that it has the financial ability to plug the wells and restore and remediate the land once the wells have no future beneficial use. N.M. Admin. Code §19.15.14.8 (permit required); N.M. Admin. Code §19.15.25.8 (beneficial use).

55. In order to transport from, or inject into, those wells, operators must file C-115 Monthly Report forms for each unplugged well, which is used to track and report oil and natural gas production, disposition, and waste. N.M. Admin. Code §19.15.7.24.

56. The criteria for future "beneficial" use are not defined, except that a well that has been continuously inactive for ***one year*** is presumed to have no future beneficial use.[25] N.M. Admin. Code §19.15.25.8(B).

57. Oil and gas operators must "either properly plug and abandon a well or place the well in approved temporary abandonment" within 90 days after: "(1) a 60 day period following suspension of drilling operations; (2) a determination that a well is no longer usable for beneficial purposes; or (3) a period of one year in which a well has been continuously inactive." *Id.*

58. Oil and gas operators must plug wells "in a manner that permanently confines all oil, gas and water in the separate strata in which they are found" before abandonment. N.M. Admin. Code §19.15.25.10(A).

59. As soon as the drill bit pierces the land, an ARO is created. This requirement to plug and abandon, remediate, and reclaim each and every oil and gas well at the end of its lifecycle creates an ARO – a legal obligation and financial liability associated with the retirement of each well that oil and gas companies must properly recognize and account for in their financial

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[25] Guidance from the state of Colorado helps operators and regulators determine when the "no future beneficial use" threshold is met. In 2022, the Colorado Energy & Carbon Management Commission identified the following factors indicating that an operator's producing wells are at or near their economic limit: (1) average daily production volume equal to or less than 2 bbl/day of oil or 10 MCF/day of gas (1.7 boe) over the previous 12 months; (2) failure to drill wells with approved drilling permits; and (3) a high ARO-to-asset ratio. *Statement of Basis, Specific Statutory Authority, and Purpose New Rules and Amendments to Current Rules of the Colorado Oil and Gas Conservation Commission*, 2 C.C.R. §404-1, at 16, 24.

statements, including the fair value of the future retirement costs. AROs are a certain and definite debt owed to ARO creditors – here, the State of New Mexico and the owners of land burdened by the wells – and AROs must be accounted for in financial analyses as a non-cash expense over the useful life of the asset.

60. Drilling an oil and gas well thus gives rise to an ongoing and transferrable obligation owed by the operator and its successors to plug and abandon, remediate, and reclaim the well. Until the operator and its successors complete these asset retirement activities, the State has an unfixed and unmatured claim for the AROs (*i.e.*, the full costs of performing these tasks), which qualifies as a claim or right to payment, owed to the State, under the FATA.

61. Under the New Mexico Oil and Gas Act, oil and gas operators are required to "furnish financial assurance in the form of an irrevocable letter of credit or a cash or surety bond" to the OCD running to the benefit of the State that guarantees the ability of a well owner to satisfy its AROs. N.M. Stat. §70-2-14(A).

62. This financial assurance requires "that the well be plugged and abandoned in compliance with the rules of the [OCD]." *Id.*; N.M. Admin. Code §19.15.8.9(A).

63. The financial assurance for active wells ranges from a single-well bond of $25,000 plus $2 per feet of the depth of the well, to a blanket multi-well bond of $250,000 if an operator has more than 100 active wells. N.M. Admin. Code §19.15.8.9(C).

64. The financial assurance for inactive or temporarily abandoned[26] wells ranges from a single-well bond of $25,000 plus $2 per foot of depth of the well, to a blanket multi-well bond of $1,000,000 if an operator has more than 25 inactive wells. N.M. Admin. Code §19.15.8.9(D).

65. The OCD may release the financial assurance to the operator only once the operator has properly plugged and abandoned, remediated, and reclaimed the site, or alternatively, if the OCD approves a separate financial assurance to cover the AROs. N.M. Admin. Code §19.15.8.12.

66. If an oil and gas operator has "failed to plug and abandon the well and restore and remediate the location as provided for in the financial assurance or division rules," the OCD may order the plugging of the well and the forfeiture of the financial assurance. N.M. Admin. Code §19.15.8.13(A); *see* N.M. Stat. §70-2-14(B)-(D).

67. If the well is improperly abandoned, and if the operator does not follow an OCD compliance order, the OCD is obligated to "reclaim and properly plug all abandoned wells and . . . restore and remediate abandoned well sites and associated production facilities[.]" N.M. Stat. Ann. §70-2-38(B).

68. If the forfeited financial assurance is insufficient to cover the AROs (it usually is) and if taxpayer "funds must be expended from the oil and gas reclamation fund to meet the additional expenses," the OCD may bring suit against the operator "for indemnification for all

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[26] "The division may place a well in approved temporary abandonment for a period of up to five years. Prior to the expiration of an approved temporary abandonment the operator shall return the well to beneficial use under a plan the division approves, permanently plug and abandon the well and restore and remediate the location or apply for a new approval to temporarily abandon the well." N.M. Admin. Code §19.15.25.12.

costs incurred" by the OCD decommissioning the well. N.M. Stat. Ann. §70-2-14(E); N.M. Admin. Code §19.15.8.13(A)-(D).

69. The OCD deposits proceeds from indemnification proceedings into the oil and gas reclamation fund for future plugging and reclamation of abandoned wells. N.M. Admin. Code §19.15.8.13(A)-(D).

70. This indemnification provision is meant to provide a financial backstop for the State. However, it is of little practical value in those circumstances where the well operator is insolvent.

71. The value of forfeited surety bonds also falls ***woefully*** short of the actual AROs.

72. New Mexico currently faces a multibillion-dollar shortfall between the money oil and gas companies have set aside to plug wells and the actual cost of doing so.[27]

73. As discussed below, the "bonding gap" between the surety bonds posted to cover New Mexico's wells, and the predicted actual costs for plugging and abandoning, remediating, and reclaiming, represents a fraudulent avoidance of the full amount of an operator's ARO claim to the State when operators: (1) pay an inadequate bond and certify compliance with financial assurance obligations while knowingly acquiring the obligation to pay a claim (in the form of AROs for wells) that far exceeds their assets (in the form of the remaining productive value of the wells); and (2) pay dividends to shareholders on the earnings from the remaining life of the well without setting aside assets to pay the AROs, and subsequently declare bankruptcy to avoid paying

[27] New Mexico State Land Office, *Center for Applied Research: New Mexicans Could Get Stuck With Over $8 Billion Bill for Oil and Gas Clean Up* (May 20, 2021), https://www.nmstatelands.org/2021/05/20/center-for-applied-research-new-mexicans-could-get-stuck-with-over-8-billion-bill-for-oil-and-gas-clean-up/.

the ARO, thwarting the OCD's attempts to hold them liable for their AROs in court and deliberately rendering their wells "orphans."

B. Transfer of Wells

74. Oil and gas operators may change ownership of wells through sale, assignment by the court, or by changes in an operator agreement. N.M. Admin. Code §19.15.9.9(A). The operator of record and the new operator must jointly file a C-145 Change of Operator form[28] with the OCD. *Id.* at (B). A C-145 form requires the seller to certify past compliance with all rules, including ARO financial assurance rules, and requires the buyer to certify compliance with all rules, including ARO financial assurance rules – implicitly certifying to the State its ability and intent to discharge AROs.

75. State approval of a Change of Operator application is necessary for the buyer to exercise the rights granted by a mineral lease or other property interest in oil and gas. N.M. Admin. Code §19.15.9.8.

76. A change of operators request does not itself release a former operator of its own financial assurance. N.M. Admin. Code §19.15.8.12(B). The new operator must also provide financial assurance before the OCD will approve the change. *Id.* ("The division shall not approve a request for change of operator for a well ***until*** the new operator has the required financial assurance in place.")

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[28] New Mexico Oil Conservation Division, Change of Operator (Form C-145) (Nov. 28, 2023) https://ocdimage.emnrd.nm.gov/imaging/filestore/santafe/wf/20231128/30025326910000_11_28_2023_01_39_52.pdf.

77. The OCD may ***deny*** a change of operators if either the operator of record or the new operator are out of compliance with the financial assurance rules or other OCD compliance obligations. N.M. Admin. Code §19.15.9.9 (B)-(C). In other words, the State could and would deny a change of operator application if it knew that the buyer lacked the financial ability and intent to discharge AROs on the transferred wells.

78. Financial solvency and an accurate valuation of assets versus liabilities are critical factors in assessing and affirming compliance with financial assurance obligations.

FACTUAL ALLEGATIONS

I. The XTO Transaction

79. As stated above, on May 14, 2021, Empire New Mexico, a wholly owned subsidiary of Empire Petroleum, acquired certain oil and gas assets from XTO Holdings, a subsidiary of Exxon Mobil.[29]

80. Approximately fifty-six percent of the Empire wells are on State-owned land.

81. In the XTO Transaction, Empire New Mexico paid XTO Holdings approximately $17.8 million for approximately 48,000 gross acres (40,000 net acres) held by production in Lea County, New Mexico.[30]

82. The assets included 670 unreclaimed wells.[31] These 670 wells, all located in the Permian Basin, were mature assets with an average age of over 63 years, low daily production

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[29] Empire Petroleum Corp., Annual Report (Form 10-K) (Mar. 31, 2022), *supra* n.8.

[30] *Id.*

[31] New Mexico Oil Conservation Division, *OCD Permitting, Operator Details, Empire New Mexico LLC*, *supra* n.15.

rates averaging 4.8 barrels of oil equivalent per day per producing well, and a remaining economic life of just a few years.

83. As part of the XTO Transaction, Empire New Mexico assumed the AROs associated with these wells, which Defendants knowingly undervalued and underreported, as detailed further below.

84. By creating a special purpose entity in the form of Empire New Mexico, Empire Petroleum attempted to insulate itself from legal responsibility for AROs on the XTO wells. It's goal: extract all value from the wells, abandon the wells, forfeit Empire New Mexico's scant financial assurance bonds, and transfer the full AROs to the public – without costing Empire Petroleum a dime.

85. The transaction was structured such that Empire used accounting fraud to: falsely provide financial assurance to the State; hide that the true value of the assumed AROs far exceeded the assets Empire acquired in the transaction, rendering Empire insolvent; dissipate assets to its parent company Empire Petroleum, working interest owners, and other insiders without setting aside reserves to discharge the AROS; and knowingly offload cleanup costs to New Mexico taxpayers.

II. ARO Fraud Playbook

86. The scope and cost of the orphan well crisis is well-documented.

87. What is concealed from taxpayers and the State, however, is that the orphan well crisis is not the result of random business failures. Instead, it is the intended outcome of a playbook whereby certain oil and gas operators fraudulently avoid their plugging and abandoning,

remediating, and reclaiming costs (*i.e.*, their AROs), while misappropriating to co-conspirators the assets needed to discharge them.

88. Across the country, and certainly in New Mexico, oil and gas operators have followed the playbook to skirt their financial obligations – dumping their messes into the laps of local taxpayers and landowners by intentionally selling their low-producing wells to smaller companies that cannot, and will never be able to, make good on their AROs.

89. Those smaller operators continue to generate cash flow from underperforming wells as they near the end of their life cycle. But rather than set aside earnings to satisfy AROs, revenue is distributed to investors via "dividends," until the final operators in the ownership chain ultimately declare bankruptcy.

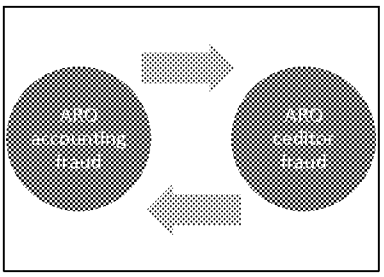
90. The ten steps in the playbook are as follows: (1) plug and abandon wells only when necessary to drill new ones or when surface owners can be extorted to pay decommissioning costs; (2) avoid or delay remediation and reclamation of plugged well sites; (3) protect assets from AROs by concentrating AROs for uneconomic wells and unreclaimed plugged wells in undercapitalized companies; (4) misappropriate earnings needed to discharge unmatured AROs for uneconomic wells to owners, investors, and insiders; (5) delay or avoid compliance costs (*e.g.*, methane emissions, spill response, mechanical integrity); (6) operate underperforming wells to their economic limit and beyond to maximize net cash flow and delay or avoid AROs; (7) falsify records to delay retirement of wells with matured AROs; (8) conceal intent to avoid AROs and inability to discharge them; (9) falsify records to relevant state entities to minimize mandatory financial assurance; and (10) when there is no value left to extract from wells, forfeit the minimal and inadequate financial assurance and orphan wells to the public for taxpayers to discharge.

91. As described further below, Defendants have conspired and engaged in this scheme by abusing general accounting principles for ARO accounting to make false financial assurances regarding their ability to pay AROs for the wells transferred in the XTO transaction.

III. ARO Accounting Principles Create Ample Opportunity for Fraud

92. Financial accounting for AROs lies at the heart of Defendants' scheme. This is so because the scheme rests on the illusion that Empire New Mexico had the financial ability and intent to discharge the AROs as they came due. If the true amount and timing of the purchased wells' AROs was accurately reflected on its accounting books, this illusion would have vanished and Empire's insolvency would have been laid bare.

93. Accounting fraud is a precursor to ARO fraud and vice versa. Operators, including Defendants, conceal their insolvency and illegal dividends from regulators by reducing ARO accounting estimates to reflect the probability that regulators will be unable to enforce AROs against insolvent operators and their predecessors in interest. They then prepare financial statements that assume AROs will not be enforced and use those financial statements to actually avoid AROs.



94. Unscrupulous operators can easily, if fraudulently, avoid AROs through eventual asset abandonment.

95. ARO enforcement operates on the honor system. Generally, only the operator can determine that a well has no future beneficial use, but operators have an economic incentive to keep wells open as long as possible, even if they aren't being used. A drop of oil from those wells can still be claimed profitable, and owners often let wells lie dormant, arguing they might have economic potential in the future and that decommissioning should be delayed indefinitely.

96. Tens of thousands of active oil and gas wells in New Mexico are producing merely a trickle a day – some as low as a single barrel of oil.[32] In fact, as of 2022, New Mexico had some of the highest concentrations of low-producing stripper wells in the country.[33] In Lea County, where Empire's wells are located, 67.44% of the active wells were stripper wells (8,885 stripper wells).[34]

97. When a well is left idle for more than a year at a time, the OCD is empowered to require immediate decommissioning of the well. N.M. Admin. Code §19.15.25.8(B). But when production drops so low and the expense to plug and restore the well surpasses the total remaining

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[32] Marissa DeLang et. al., *Marginal Wells 101: What are they, where are they, and why do we need to assess them?*, RMI (Apr. 23, 2025), https://rmi.org/marginal-wells-101-what-are-they-where-are-they-andwhy-do-we-need-to-assess-them/; *see also* N.M. Energy, Minerals and Natural Resources Dep't, Oil Conservation Division Statistics, *Stripper and Marginal Wells (Gas)* (Oct. 12, 2021), https://www.emnrd.nm.gov/ocd/ocd-data/statistics/; N.M. Energy, Minerals and Natural Resources Dep't, Oil Conservation Division Statistics, *Stripper and Marginal Wells (Oil)* (Oct. 12, 2021), https://www.emnrd.nm.gov/ocd/ocd-data/statistics/.

[33] Adrian Hedden, *New Mexico's oil counties lead nation in low-producing, high-polluting wells, report says*, Las Cruces Sun News (Aug. 13, 2022), https://www.lcsun-news.com/story/news/2022/08/13/new-mexico-oil-counties-lead-nation-in-low-producing-wells-report-says/65399982007.

[34] Environmental Defense Fund, *U.S. low-producing oil and gas wells and the people affected by their pollution* (July 18, 2022), https://www.edf.org/low-producing-wells-map.

value of operating the well, as is the case with the Empire wells, well operators often shut down production ***intermittently*** – whether illegally[35] or by placing the wells under "temporary abandonment" status.[36]

98. As a result, terminal operators can defer asset retirement costs for decades.

99. And operators like Defendants use fraudulent accounting to conceal their insolvency and the illegality of dividends that cheat ARO creditors, like the State, and strip the land dry, before eventually abandoning the assets.

A. Accounting Principles Allowing For Fraud

100. Ample opportunity for accounting fraud arose in the XTO transaction from two features in general accounting principles governing AROs: (1) nondisclosure of assumptions used to estimate AROs; and (2) offsetting of ARO liabilities with phantom ARO assets.

(i) Assumptions Incorporated in ARO Accounting Estimates

101. For financial accounting purposes, AROs are reported in financial statements at "expected present value" – considering the probability of future cash flows and the time value of money. ASC 410-20-30-1.

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[35] Press Release, Center for Biological Diversity, *New Mexico Officials Urged to Clean Up Thousands of Inactive, Polluting Oil Wells* (Aug. 21, 2024), https://biologicaldiversity.org/w/news/press-releases/new-mexico-officials-urged-to-clean-up-thousands-of-inactive-polluting-oil-wells-2024-08-21/; Letter from Gail Evans & Colin Cox, Attorneys, Climate Law Inst. Ctr. for Biological Diversity & Michelle Harrison, Deputy Gen. Counsel, EarthRights Int'l, to Gerasimos Razatos, Acting Director, N.M. Oil Conservation Div. (Aug. 21, 2024), https://biologicaldiversity.org/programs/energy-justice/pdfs/24-08-21-OCD-Request-for-Enforcement-Action.pdf.

[36] N.M. Admin. Code §19.15.25.13.

102. However, accounting standards ***do not*** require operators to disclose the assumptions used to calculate expected present value (*e.g.*, the remaining economic life of the assets, the discount rate, the current dollar cost estimate, and the probability of enforcement).

103. Three underlying accounting assumptions incorporated in expected present value estimates help create an inscrutable "black box" where fraud can hide. In this case, Empire and XTO deliberately manipulated these assumptions to slash $199.6 million in real cleanup costs down to just $6.1 million on paper.

104. First, operators estimate the expected cost to discharge AROs in current dollars. When the amount is uncertain, the operator considers different outcomes and their associated probabilities of occurrence.

105. One such uncertainty is the probability that the ARO will not be enforced against current or former operators. Accounting standards allow operators to discount AROs in their financial statements based on the assumed probability of non-enforcement. ASC 410-20-25-15, 410-20-55-5. So, for example, applying a 97% probability of non-enforcement magically reduces $199.6 million in real AROs to $6.1 million on paper.

106. Although GAAP contemplates that an ARO should be recorded regardless of whether there is a possibility that the asset will be sold, nothing appears to keep an operator from discounting the amount of the liability to reflect the probability that the asset will be sold.

107. For example, in an audit of Empire Petroleum's current independent registered public accounting firm, Grant Thornton LLP, the Public Company Accounting Oversight Board ("PCAOB") found that the firm had failed to identify a departure from GAAP that it should have identified and addressed before issuing its audit report. The PCAOB audit report stated:

> SFAS No. 143, *Accounting for Asset Retirement Obligations* ("SFAS No. 143") requires recognition of a liability for an Asset Retirement Obligation ("ARO") in the period in which it is incurred. In calculating its ARO, the issuer excluded certain percentages of its oil and gas wells that it assumed would be sold, with the obligation being assumed by the purchaser. SFAS No. 143 contemplates that an ARO should be recorded regardless of whether there is a possibility that the asset will be sold.[37]

108. A ***fair valuation*** of AROs in a solvency analysis, on the other hand, ***would not*** include a discount for the probability of non-enforcement. As a result, the fair value actually assigned to AROs in a solvency analysis may be much higher than accounting estimates that do incorporate the probability of non-enforcement.

109. ARO non-enforcement in such a case – where the fair value is much higher than accounting estimates that incorporate anticipated (*i.e.*, planned) non-enforcement – is due to fraud. It is ***not*** legitimate business policy, and financial statements containing ARO estimates that assume non-enforcement due to operator fraud are ***themselves*** fraudulent. AS 2401.0.5 & 06 (Financial reporting fraud is any intentional act that results in a material misstatement in financial statements.).

110. By concealing the operator's insolvency, enforcement-adjusted ARO valuations ultimately result in non-enforcement. In essence, they become a self-fulfilling prophecy.

111. Second, companies estimate how long wells will produce at economic quantities. The longer the estimated production, the more the liability gets discounted.

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[37] Public Company Accounting Oversight Board, *Report on 2006 Inspection of Grant Thornton LLP*, Release No. 104-2007-088 (June 28, 2007), https://assets.pcaobus.org/pcaob-dev/docs/default-source/inspections/reports/documents/2007_grant_thornton.pdf?sfvrsn=d2d792c5_0.

112. Generally, only the operator can determine that a well has no future beneficial use. And under GAAP, the Empire Defendants are not obligated to disclose the remaining economic life ascribed to the Empire New Mexico wells.

113. Assuming that present value discounting accounted for all of the difference between Empire New Mexico's recorded ARO liability of $6.1 million and the $199.6 million fair value of these liabilities, the assumed remaining life of the wells would be 350 years (discounted at a real risk-free rate of 1%). In reality, many of these wells were already at or past their economic limit at the time of sale – many had already been inactive for over a year.

114. Third, companies choose a discount rate to calculate present value. The higher the discount rate, the smaller the recorded liability.

115. Empire New Mexico used a "credit-adjusted" interest rate to reflect the probability that it would be financially unable to discharge its obligations. ASC 410-20-30-1.

116. A credit-adjusted interest rate reflects the credit standing of the debtor or the debtor's "own credit risk." Incorporating own credit risk produces counterintuitive reporting, whereby the lower an operator's credit standing, the lower the expected present value of its AROs.

117. Contrary to GAAP, however, a valuation of environmental liabilities in a solvency analysis does not consider own credit risk. For this reason alone, the real value or legal fair value of AROs may be much higher than their recorded accounting value.

118. Empire's use of a credit-adjusted interest rate reflecting its own credit risk further reduced its stated AROs by millions of dollars, which Empire concealed by omitting disclosure of the undiscounted value of the AROs (*i.e.*, a proper real valuation of the environmental liabilities).

119. The accounting fraud committed through these three undisclosed assumptions, along with use of the "phantom asset" principle discussed below, made it possible for Empire New Mexico and co-conspirators to hide $199.6 million in liabilities and Empire New Mexico's resulting insolvency from State regulators (*i.e.*, New Mexico).

(ii) Phantom ARO Assets

120. Investors and other financial statement users may not be motivated to unpack "black box" ARO accounting estimates when a well operator's financial statement masks and minimizes the impact of ARO liabilities with phantom ARO assets.

121. AROs are a type of capital investment, except that instead of happening at the start of an asset's life, they occur at the end.

122. Under GAAP, when an ARO liability is recognized, a corresponding phantom ARO asset is recorded in the same amount, as if asset retirement costs had been incurred in advance. ASC 410-20-25-5. The net liability is thus zero.

123. Over time, the phantom asset, which unlike other assets promises no future economic benefit, is depreciated ***along*** with the real asset. Then, the ARO liability increases to reflect the unwinding of the discount. So net liability grows.

124. However, every time an asset is sold – and mature oil and gas wells are sold frequently – the ARO asset and liability are reset to matching amounts. The net liability then returns to zero.

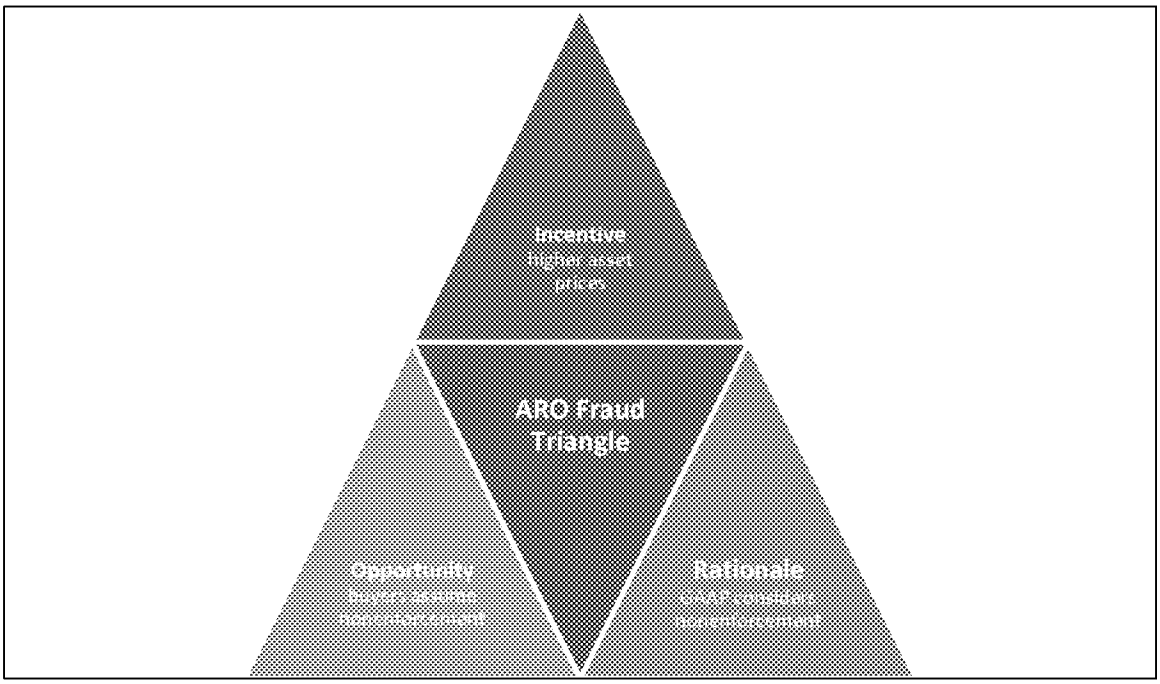
125. This phantom asset phenomenon is an unintended consequence of GAAP accounting for AROs and is not itself fraud. But it conveniently conceals fraud based on undisclosed assumptions.

126. Using these accounting practices to conceal the true size of the purchased wells' AROs here, Defendants were able to fraudulently certify to the State that they were and are in compliance with financial assurance obligations, when they are not. They were then able to obtain the requisite authorization to complete the XTO transaction and transfer the wells to Empire New Mexico – a shell holding company – through fraud.

B. The ARO Fraud Triangle

127. Conditions here are conducive for ARO accounting and creditor fraud. The elements of the fraud triangle are all present for ARO fraud:

> (1) **Incentive**. Sellers of upstream assets must pay buyers to assume AROs. The higher the ARO, the lower the sales price. The higher the assumed probability of avoidance, the lower the ARO.
>
> (2) **Opportunity**. Buyers are willing to accept AROs for less than equivalent value based on a high probability of nonperformance.
>
> (3) **Rationalization**. Buyers and sellers rationalize that the fair value of AROs properly incorporates the probability of non-enforcement, ignoring that non-enforcement is due to fraud. *See* AS 2401.07.



128. ARO accounting and upstream economics are intertwined making the elements of the fraud triangle self-reinforcing. Past transactions based on fraudulent ARO accounting estimates beget future transactions based on fraudulent estimates, and so on. Any effort to revise previously recorded accounting estimates to faithfully represent fair value could cause many listed operators to restate their prior years' financial statements.

129. Worse, large oil and gas producers would no longer be able to offload AROs to terminal operators because it would be uneconomic to pay equivalent value to buyers for assuming AROs. That would impair the economics of the U.S. onshore oil and gas industry and trigger accounting and securities fraud litigation against operators and their financial auditors. For these reasons, fraudulent ARO accounting and its corollary, ARO creditor fraud, cannot be corrected from within.

130. And because the fraud is rooted in sale transactions, it necessarily ***requires the knowing complicity*** of both buyers and sellers, who participate in a conspiracy to cheat ARO creditors while investors and working interest owners benefit.

131. ARO accounting fraud is tightly concealed. Operators conceal ARO accounting fraud by preparing false and misleading financial statements that omit disclosures of critical assumptions about the probability of non-enforcement, the impact on the operator's solvency if its AROs did not incorporate a high probability of non-enforcement, the operator's potential legal liability for AROs avoided through fraudulent transfers and illegal dividends, and the sensitivity of ARO estimates to change based on reasonably likely outcomes such as ARO fraud litigation (*see* ASC 275 (disclosure of material risks and uncertainties) and recommended disclosures for "critical accounting estimates" at Securities Act Release, No. 33-8350, 68 Fed. Reg. 75,056 (Dec. 29, 2003)). As a result, ARO creditors like the State are unable to discover that they are being defrauded.

C. Integrity Assumptions Allowing for Fraud

132. The State relies on the financial statements and good faith of operators, and oil and gas regulations require operators to provide third-party financial assurance for AROs. Regulators also rely on operators to act in good faith compliance with the law.

133. Operators with many wells and large obligations must provide bond sureties with financial statements showing themselves to be solvent.[38]

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[38] *See, e.g.*, Axcess Surety Bonds, *Oil and Gas Plugging and Abandonment Bonds*, https://axcess-surety.com/oil-and-gas-surety-bonds/plugging-and-abandonment-bonds/ (last visited July 25, 2025).

134. The State may also require an operator to file financial statements to evaluate the operator's ability to fulfill financial assurance conditions. *See, e.g.*, N.M. Admin. Code 19.15.25.10(B).

135. Maintaining the integrity of the data upon which regulators base decisions is, therefore, essential. Operators act in bad faith when they conceal their lack of financial ability and intent to discharge their legal obligations, as Defendants did here.

136. Without knowing the assumptions used to develop ARO accounting estimates, New Mexico could not assess whether Defendants' estimates are reasonable, when the AROs are expected to mature, nor whether Empire New Mexico has the ability and intent to discharge them.

137. If the State was aware of the true size of the purchased wells' AROs and that Empire New Mexico is not financially solvent enough to satisfy those debts at the end of the assets' life cycle, it would not have allowed the transfer. And Exxon Mobil and XTO would still be legally responsible for the AROs.

IV. Defendants' Scheme to Defraud New Mexico Taxpayers

138. Following this playbook and abusing the accounting principles that are the heart of Defendants' particular scheme, Empire New Mexico and its parent and co-conspirators have defrauded and continue to defraud the State by dissipating assets needed to discharge AROs to its parent company Empire Petroleum, working interest owners, and other insiders – and concealing Empire New Mexico's inability to discharge AROs on its retired and soon-to-be retired New Mexico wells.

139. Transfers are fraudulent when AROs are assumed for less than reasonably equivalent value. Dividends are illegal when corporations are insolvent (or are made insolvent by

the transfer). An operator is legally insolvent if, at a fair valuation, the sum of its debts is greater than the sum of its assets. *See* Uniform Voidable Transactions Act, §1(5). All three of these principles apply to the XTO transaction and subsequent distributions of earnings from the XTO wells.

140. Evidence of Defendants' intent to defraud the State includes the following: (1) Empire did not receive equivalent value for AROs assumed in a purchase of oil and gas wells from XTO in May 2021; (2) the XTO transaction caused the fair value of Empire New Mexico's liabilities to exceed the fair value of its assets; (3) in connection with the transaction, neither Empire New Mexico nor XTO arranged for assets to be legally restricted in favor of the State sufficient to fully discharge AROs; (4) since the XTO transaction, Empire New Mexico has not retained earnings for the purpose of discharging its AROs but has instead dissipated assets needed to discharge them to its parent company Empire Petroleum, working interest owners, and other insiders; and (5) Defendants knowingly made or used false, misleading, or fraudulent records and statements to conceal their intent to offload AROs on New Mexico taxpayers.

A. Defendants Understated ARO Liabilities to Misrepresent the Value Equivalence of the XTO Transaction

141. On May 14, 2021, Empire paid $17.8 million to acquire 670 unreclaimed wells.[39]

142. State records show that 647 of the Empire wells are unplugged and 23 are "plugged but not released," indicating some AROs (*e.g.*, assessment, remediation, and/or reclamation) are incomplete. Therefore, a total of 670 wells are unreclaimed and have outstanding AROs.

[39] Empire Petroleum Corp., Annual Report (Form 10-K) (Mar. 31, 2022), *supra* n.8 at 67.

143. These wells are at or near their economic limit. As of March 11, 2025, only 58% of Empire's wells actively produced oil and gas. Over 10% of its wells have been inactive for more than a year. The wells have an average age of 63 years, average daily production of 4.8 BOE/day per producing well, an annual production decline rate of 8%, and a remaining economic life of 6 years.

144. The XTO wells are capable of generating positive cash flow but in amounts that are insufficient to discharge the AROs.

145. According to its internal accounting records, Empire paid XTO Holdings $17.8 million in exchange for assets valued at $18,160,104 and an assumption of liabilities valued at $6,408,034.[40]

146. On its books, Empire's total assumed liabilities included $6,117,709 in AROs. Upon recording the ARO liability, Empire recorded a corresponding ARO asset of equal value to be depreciated over the remaining economic life of the acquired wells. ASC 410-20-25-5. The ARO liability was thus fully offset by a corresponding ARO asset, resulting in a net ARO liability value of $0.

147. As discussed above, this "phantom ARO asset" affords no future economic benefits to Empire, is only a depreciation expense, and should be ignored in assessing the value equivalence of the XTO transaction and the solvency of Empire New Mexico.

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[40] *Id.* at 69.

148. State law does not require operators to report ARO cost data, and the oil and gas industry ***deliberately*** conceals and distorts this information.[41]

149. Empire has not disclosed the undiscounted value assigned to the AROs – *i.e.*, the actual estimated cost to discharge the AROs today.

150. Assuming that the remaining economic life of the wells was ten years as of the date of sale and that Empire's credit-adjusted, risk-free interest rate was 6.7% (calculated from ARO disclosures in Empire Petroleum's financial statement), the undiscounted value assigned by Empire to these AROs would have been approximately $12 million, or $18,000 per unplugged well (net of non-operating working interest).

151. That said, assessing the value equivalence of the XTO transaction or the solvency of Empire New Mexico requires a ***fair value*** of the AROs assumed. Reliable ARO cost data for such a valuation is available only from the State orphan well program, and the New Mexico Reclamation Fund provides the best evidence for calculating the fair value of these AROs.

152. The EMNRD's Annual Report 2024 reported statewide average plugging costs of $164,000, plus minimum per well remediation and reclamation costs of $50,000, for an average total decommissioning costs of $214,000 per well.[42]

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[41] *See* Robert Schuwerk & Greg Rogers, *It's Closing Time: The Huge Bill to Abandon Oilfields Comes Early*, Carbon Tracker, §5 (June 2020), https://eplanning.blm.gov/public_projects/2000534/200380399/20030035/250036234/Exhibit%20D.1_Its_Closing_Time_CT_Report.pdf.

[42] Annual Report 2024, *supra* n.9 at 58-59.

153. However, these costs varied widely, reaching up to $523,725.26 for a single well in Lea County (Bagley #002), where plugging costs averaged $211,008 per well in FY 2024.[43] Remediation and reclamation costs are "more variable and can cover a wide range from $50,000 to restore the surface around a plugged well to several million dollars for the cleanup of large tank batteries with extensive contamination."[44]

154. Including the minimum per-well remediation and reclamation cost of $50,000, the estimated minimum total decommissioning cost per well in Lea County in 2024 was $261,008.[45]

155. Because the depth of the Empire wells is shallower than the average depth of wells in Lea County, Qui Tam Plaintiffs calculate the per well plugging cost – using the same cost per foot – to be $185,914.

156. Together with the $50,000 per well average remediation costs and a contingency adjustment, discussed below, Qui Tam Plaintiffs estimate the undiscounted fair value of the AROs for the Empire wells to be $306,688 per well on average and $199,576,929 total – shown in the following table.

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[43] N.M. Energy, Minerals, and Natural Resources Dep't, *Oil and Gas Reclamation Report for Fiscal Year 2024* (July 1, 2025).

[44] Annual Report, *supra* n.9 at 58-59.

[45] Oil and Gas Reclamation Report for Fiscal Year 2024, *supra* n.43.

	Statewide	Lea County	Empire
Well count - unplugged	46	41	647
Well count – plugged but unreleased			23
Age	43	42	63
Years inactive	8	5	8
P&A cost	$164,000	$211,008	$185,914[46]
Average vertical depth	4,302	5,241	4,416
P&A cost per foot	$39.56	$42.10	$42.10
Remediation (OCD minimum)	$50,000	$50,000	$50,000
Total ARO cost per well	$214,000	$261,008	$235,914
Contingency (30%)			$70,774
Total ARO fair value per well			$306,688
ARO (647 unplugged wells)			**$198,426,929**
ARO (23 plugged but unreleased wells)			**$1,150,000**
Total ARO fair value			**199,576,929**

157. The above ARO estimates are Class 3 estimates under the AACE International Cost Estimate Classification System. Typical accuracy ranges for Class 3 estimates are -10% to -20% on the low side, and +10% to +30% on the high side. A 30% contingency has been added to reflect this estimation uncertainty. The contingency represents the price that a third party would demand and could expect to receive for bearing the uncertainties and unforeseeable circumstances inherent in the obligations. ASC 410-20-55-13(d).

158. Empire New Mexico's own average ARO accounting estimate per well is ***much lower*** than average costs incurred by the State (and much lower than Lea County) and is therefore incredulous.

159. In truth, Qui Tam Plaintiffs' analysis shows that the real value of the Empire ARO is ***at least $199.6 million***.

[46] $42.10 cost/ft. x 4,416 avg. depth = $185,914.

160. In a determination of solvency or value equivalency under creditor rights law, the expected present value of AROs is calculated using a real risk-free interest rate without a credit adjustment. The average long-term real risk-free interest rate is 1%.[47] Over the estimated remaining economic life of the XTO wells, the effect of discounting at a risk-free interest rate (*i.e.*, one that excludes the possibility that the debtor may be unable to pay its obligations) is immaterial.

161. Empire New Mexico assumed gross AROs with a real value of $199.6 million that were recorded on its books at a net value of $0, after offsetting the ARO liability against the ARO asset.

162. XTO Holdings, for its part, collected a purchase price of $17.8 million for 60-year old wells approaching their economic limit and conveniently rid itself of AROs worth nearly ***eleven*** times that amount.

163. For an equivalent exchange of value in the sale of the XTO wells, instead of Empire New Mexico paying XTO Holdings $17.8 million, it should have paid Empire New Mexico $181.7 million ($18.2 million in oil and gas assets, excluding the phantom ARO asset minus $199.6 million in AROs and $0.3 million in other assumed liabilities).

164. Therefore, Empire did not receive XTO Holdings' value in assets for the AROs assumed in its May 2021 purchase of the 670 unreclaimed oil and gas wells from XTO Holdings.

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[47] Federal Reserve Bank of St. Louis, *10-Year Real Interest Rate*, https://fred.stlouisfed.org/series/REAINTRATREARAT10Y (last accessed Jul. 24, 2025).

B. Empire New Mexico Was Made Insolvent by the XTO Transaction

165. Empire New Mexico is a wholly owned subsidiary of Empire Petroleum formed specifically for the XTO acquisition. It has no other assets or liabilities.[48]

166. Qui Tam Plaintiffs' calculations show that application of 100% of Empire New Mexico's future net operating cash flow to AROs will be woefully inadequate to discharge them.

167. Empire is legally responsible for 100% of the AROs for the XTO wells it now operates. Offsetting working interest owners' share of AROs against this liability is proper only so long as the value of future production exceeds the value of AROs – *i.e.*, only so long as Empire New Mexico can unilaterally withhold future asset retirement costs from distributions to working interest owners.[49]

168. Here the evidence demonstrates the opposite: Empire New Mexico has been distributing earnings to its parent company Empire Petroleum, working interest owners, and other insiders even though the value of AROs ***exceeds*** the value of future production.

169. The XTO transaction left Empire New Mexico with gross ARO liabilities having a fair value of $199.6 million – nearly ***11 times*** the $18.2 million recorded fair value of its oil and gas assets.

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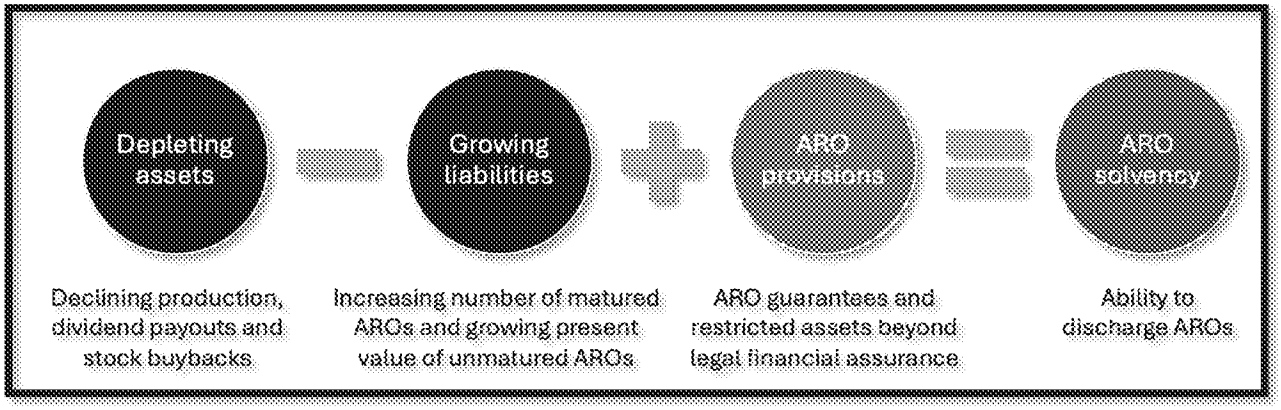
[48] Empire Petroleum Corp., Annual Report (Form 10-K) (Mar. 27, 2025), *supra* n.13.

[49] Financial Accounting Standards Board, *Interpretation No. 39: Offsetting of Amounts Related to Certain Contracts* (Mar. 1992), https://www.fasb.org/page/ShowPdf?path=fin%2039.pdf&title=FIN%2039%20(AS%20ISSUE).

170. There is ***no*** evidence, where there should be, that Empire New Mexico has withheld funds distributable to working interest owners as collateral for their share of AROs or that these counterparties can and will pay their share of AROs when called upon to do so.

171. In other words, Empire New Mexico was made "ARO insolvent" by the XTO transaction because, at a fair valuation, the sum of its debts is greater than the sum of its assets.

172. Knowingly diminishing one's ability to discharge AROs demonstrates Empire's intent to avoid or decrease them.



173. Absent evidence that working interest owners are not complicit in the scheme to defraud the State, Empire New Mexico's AROs should be valued on a gross basis rather than a net basis (*i.e.*, without consideration for potential contribution of working interest owners).

174. Moreover, the amount of accrued environmental liabilities recorded in corporate financial statements is of no probative value in a solvency analysis. A risk element is built into an analysis of income to be received in the future, on the ground that the expected income may never be received, but fair valuation of environmental liabilities for purpose of a solvency analysis does not consider the possibility that a debtor may not be able to pay.

175. If the true value of Empire New Mexico's AROs relative to its assets were known to its financial auditor, it would be cause for a qualified or adverse opinion to warn those relying on its financial statements, including its bond sureties to the State of New Mexico. Such an adverse opinion would warn that there was and is substantial doubt about Empire New Mexico's ability to continue as a going concern, let alone to satisfy its AROs on the underperforming wells.[50]

176. Empire New Mexico's assumption of AROs when insolvent, for less than their equivalent value or in connection with increased financial assurance, are "badges of fraud." Uniform Voidable Transactions Act, §4(b)(8)-(9).

C. Defendants Did Not Arrange for Assets to Be Legally Restricted in Favor of the State Sufficient to Fully Discharge the AROs

177. Before reaching their economic limit, mature oil and gas wells may produce at paying quantities for several years beyond the point at which the value of their AROs exceeds the value of their future production.

178. As wells approach their economic limit, an operator's ability to fund AROs from future cash flow rapidly diminishes due to naturally declining production volumes. This means operators must retain past earnings to pay for future retirement costs.

179. At the time of the May 2021 sale, 29 of XTO's unplugged oil and gas wells had been inactive for more than one year with an average inactivity period of four years. And at the time of filing, Empire has 78 long inactive. *See* N.M. Admin. Code §19.15.8.

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[50] Public Company Accounting Oversight Board, *AS 2415: Consideration of an Entity's Ability to Continue as a Going Concern*, https://pcaobus.org/oversight/standards/auditing-standards/details/AS2415 (last visited July 25, 2025).

180. At the time of sale, XTO's producing oil and gas wells had an average daily production of 4.8 BOE/day per producing well declining at 8% annually, indicating that the wells were at or near their economic limit.

181. Between 2008 and 2015, XTO drilled one new well (API #30-025-06149 spud in April 2009 and since temporarily abandoned), but canceled eight approved drilling permits, indicating that the field was no longer economic.[51]

182. The $17.8 million purchase price reflected the future revenue potential of the XTO wells. Even at the unrealistically low valuation of $6.1 million, the AROs amounted to 34% of the purchase price. But valued at $199.6 million, the AROs were actually 11 times the purchase price.

183. Long inactive wells, low and declining production, abandoned drilling permits, and a high ARO-to-asset value ratio all indicate that the XTO wells were at or beyond their economic limit with AROs at or near maturity.

184. Under State regulations, Empire was required to provide ARO financial assurance bonds in favor of the State in the amount of $1,250,000 – a $250,000 blanket bond and $1,000,000 for the long inactive wells. N.M. Admin. Code §19.15.8. This equates to only $1,865.67 per well – not nearly enough to actually fulfill its AROs.

185. As a condition of the sale, Empire purchased a $5,000,000 performance bond ***in favor of XTO*** for proper plugging, abandonment, and restoration of the purchased properties. The

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[51] New Mexico Oil Conservation Division, *OCD Permitting, XTO Energy, Inc., Well Search Normal,*, https://wwwapps.emnrd.nm.gov/OCD/OCDPermitting/Data/WellSearchResults.aspx?ogrid=5380&OperatorSearchClause=ogrid (last visited Aug. 4, 2025).

performance bond was collateralized with a letter of credit in the amount of $3,750,000. To effect the letter of credit, Empire entered into a Promissory Note Agreement with Bank of Oklahoma, NA in the amount of $3,750,000, which is due on demand. The Promissory Note, and associated letter of credit, is collateralized with a bank certificate of deposit in a corresponding amount. In addition, Empire agreed to deposit $100,000 per month, up to $1,250,000, into a sinking fund to be held by the surety. Subsequent amendments increased the monthly payment amounts to $160,000 in response to additional bonding requested by the State of New Mexico.[52]

186. As part of the XTO transaction, Empire also entered agreed to create a sinking fund for future plugging liabilities, paying approximately $4.8 million into that fund in 2021. In 2022, Empire negotiated the release of the sinking fund requirement. Approximately $2.8 million and $2 million of the sinking fund balance was returned to Empire in 2023 and 2022, respectively.[53]

187. Notwithstanding evidence that the AROs assumed by Empire were nearly or fully matured, the financial assurance provided by Empire was for an amount far less than needed to fully discharge the AROs and was in favor of XTO, rather than New Mexico. Empire agreed to assure XTO for $7,463 per well, when Empire and/or XTO should have assured the State (at a minimum) for $185,914 per well, for plugging costs alone. *See supra* at ¶¶155, 185.

188. The extremely wide gap (32 times) between Empire's recorded ARO liabilities for the XTO wells and the State's actual decommissioning costs indicates that Empire incorporated a high assumed probability of non-enforcement in its ARO accounting estimates thereby materially

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[52] Empire Petroleum Corp., Annual Report (Form 10-K) (Mar. 31, 2022), *supra* n.8.

[53] Empire Petroleum Corp., Annual Report (Form 10-K) (Mar. 28, 2024), https://s3.amazonaws.com/sec.irpass.cc/2431/0001072613-24-000353.htm.

misstating the financial statements relied upon by Empire's bond surety. Empire's financial statements telegraph Empire's assumption that the XTO wells will eventually be orphaned and serve to make this a self-fulfilling prophesy.[54]

D. Empire Has Not Provisioned for the AROs Following the XTO Transaction

189. The key "tell" of fraudulent intent is not asset stripping or the transfer of mature wells, but the failure to provision for AROs, starting long before the final operator becomes insolvent.

190. Empire's working interest owners are contractually responsible for their share (28%) of AROs. Empire is entitled to withhold and escrow cash distributions to working interest owners to satisfy this obligation.

191. GAAP requires operators to disclose the fair value of assets legally restricted for purposes of settling AROs. ASC 410-20-50-1.

192. Empire has not disclosed any such restricted assets, and in fact, Empire's Consolidated Statements of Cash Flows for FY 2021-24 ***do not*** reflect any amounts deposited into an ARO escrow account of a sinking fund other than amounts deposited and later returned in connection with the XTO transaction.

193. Instead, Empire New Mexico distributes all free cash flow to its parent corporation, Empire Petroleum, working interest owners, and other insiders.

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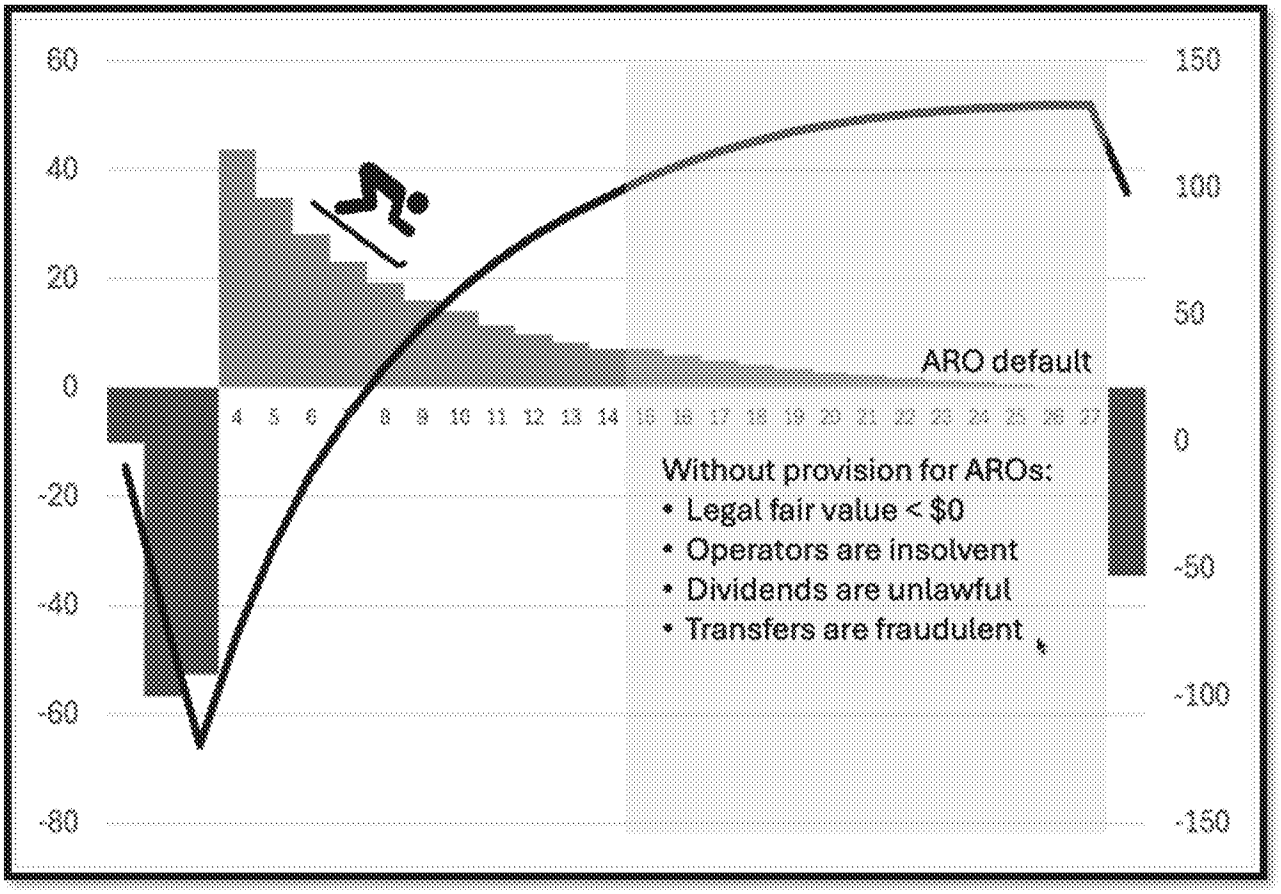
[54] In an unrelated matter, Exxon Mobil has been accused of fraudulently inflating the value of its assets in the Delaware Basin. *See* C-SPAN, *Lindsey Gulden National Whistleblower Day 2024 Speech* (July 30, 2024), https://www.c-span.org/clip/public-affairs-event/user-clip-lindsey-gulden-national-whistleblower-day-2024-speech/5127471.

194. Dividend payments to Empire Petroleum and others are a fraudulent transfer because Empire New Mexico is balance sheet insolvent – *i.e.*, its debts in the aggregate are greater than its assets in the aggregate – and will lead to ARO default.



195. Asset stripping by itself is not evidence of ARO fraud, so long as the operator sets aside funds restricted for AROs. But if the operator does not provision for AROs, default is inevitable because its physical and financial assets will deplete over time from natural production decline curves and distributions to owners.

196. Knowingly diminishing one's ability to discharge AROs is circumstantial evidence of intent to avoid or decrease them.

197. Such is the case with Empire.

E. Defendants Knowingly Conspired to Use False, Misleading, or Fraudulent Records and Statements to Avoid Legal Obligations to the State

198. Empire and XTO knowingly used false, misleading, or fraudulent ARO valuations and purchase accounting records to create the illusion that the parties exchanged reasonably equivalent value. Otherwise, the sale could not have taken place.

199. Empire and XTO falsely certified compliance with State financial assurance requirements based on their false, misleading, or fraudulent ARO valuations and financial statements in their Change of Operator Forms[55] so that the OCD would approve the change of operator applications.

200. Empire New Mexico knowingly used false, misleading, or fraudulent ARO valuations and financial statements to obtain third-party surety bonds required to get the State's approval of its applications for change of operator. Otherwise, it would not have qualified for the bonds and could not have obtained State approval of its applications for change of operator.

201. Empire New Mexico, and XTO before it, submitted records to the OCD, including C-115 Monthly Report forms, so as to maintain a license to produce oil and gas from depleted wells with AROs exceeding the value of future production, while continuing to strip the last remaining value and dissipate the earnings.

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[55] *See, e.g.*, N.M. Energy, Minerals and Natural Resources, Oil Conservation Division, Change of Operator (Form C-145) signed on behalf of XTO Energy and Empire New Mexico (May 25, 2021), https://ocdimage.emnrd.nm.gov/imaging/filestore/santafe/wf/20210525/30025354590000_05_25_2021_01_29_46.pdf.

202. Every record, including C-115 Monthly Report forms for each unplugged well, that Empire New Mexico submitted to maintain its license to produce oil and gas, while dissipating the profits therefrom, impeded the OCD's ability to carry out its statutory mandates. *See* N.M. Admin. Code §19.15.7.6.

203. Following the XTO transaction, Empire New Mexico knowingly used false, misleading, or fraudulent ARO valuations and financial statements to justify fraudulent distributions to Empire Petroleum and working interest owners. Otherwise, it would have been required by law to set aside all earnings for the benefit of creditors including the State.

204. In each instance, as the parent corporation of Empire New Mexico, Empire Petroleum authorized and directed the preparation and use of these false, misleading, or fraudulent ARO valuations, purchase accounting records, and financial statements.

205. The fraudulent $6,117,709 ARO valuation recorded by Empire New Mexico, which lies at the heart of this case, originated with Exxon Mobil and XTO. Knowing that they would each be required to report the sales price allocation to the IRS and that their respective records should match, parent companies Exxon Mobil and Empire Petroleum coordinated on the purchase accounting records for the XTO transaction, including the amount allocated to AROs – an amount already recorded on Exxon Mobil's books that would be deducted from the ARO balance in Exxon Mobil's as part of a $1,002 million "Reduction due to property sales."[56] Empire New Mexico did not fabricate the $6.1 million figure out of thin air – it adopted it from Exxon Mobil and XTO.

[56] Exxon Mobil Corp., Annual Report (Form 10-K) (Feb. 23, 2022), https://www.sec.gov/Archives/edgar/data/34088/000003408822000011/xom-20211231.htm.

V. Defendants' Scheme to Avoid Their ARO Claims Caused Damages to the State

206. While oil and gas operators are required to plug most wells in New Mexico, the OCD intervenes to plug wells that operators leave inactive and unplugged without authorization. In the past 20 years, the OCD has plugged approximately 1,000 of these "orphaned" wells, or 5% of all wells plugged in the State. However, the number of wells the division is authorized to plug has consistently outpaced its plugging efforts.[57]

207. Currently, the OCD has plugging authority for roughly 700 wells on State and private (fee) lands. The State likely will need to plug an additional 1,400 inactive wells for which the OCD has not yet pursued plugging authority. On top of that, there are more than 3,000 wells on State or private land producing extremely small quantities of oil and gas, whose expected cleanup costs far exceed their predicted future revenues, increasing their risk of being orphaned.[58]

208. At recent State-contracted rates, plugging, remediating, and reclaiming currently orphaned wells and their associated infrastructure will likely take close to a decade and cost more than $208 million. Plugging and reclaiming the other 1,400 inactive wells on State and private land could cost more than $468 million. Should additional extremely low-producing wells be orphaned by their operators, the costs for plugging and reclaiming them could approach $1 billion. Altogether, the State's current and near-future liability for well plugging and site remediation is estimated at ***$700 million to $1.6 billion***.[59]

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[57] New Mexico Legislative Finance Committee, *Policy Spotlight: Orphaned Wells*, *supra* n.5.

[58] *Id.*

[59] *Id.*

209. Even as the orphan well crisis unfolds in New Mexico, Empire Petroleum states: "We are committed to . . . fostering a culture that is steadfast on environmental sustainability, operational safety, social responsibility, and sound corporate governance."[60] And yet Defendants' own scheme to defraud the State and taxpayers has significantly exacerbated the orphan well crisis in the State.

210. In fact, Defendants' fraud has led to significant economic damages from their avoidance of claims owed to the State and widespread environmental damage to the State's natural resources stemming from unplugged and abandoned wells, which the State will have to remediate.

211. Although Qui Tam Plaintiffs used the average well plugging costs and the low end of the range of remediation and reclamation costs in their value equivalence and solvency analysis above, the State's actual damages sustained as a result of Defendants' fraud is likely much greater.

212. As discussed above in Section IV(A), Qui Tam Plaintiffs estimate the total actual costs for plugging and reclamation of the 670 unreclaimed wells to be $199,576,929. But actual costs to discharge the Empire AROs may be significantly higher. Plugging costs per foot for the Empire wells may be even higher than the Lea County average due to age and inactivity. Well age is a factor commonly considered when estimating plugging costs. *See, e.g.*, 14 CCR §1753.2. The Empire wells are very old, averaging 63 years. Long periods of inactivity may also present

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[60] Empire Petroleum Corp., *Corporate Responsibility*, https://empirepetroleumcorp.com/corporate-responsibility/#:~:text=Our%20focus%20on%20minimizing%20our,that%20minimize%20our%20environmental%20impact (last visited July 25, 2025). Worse, Empire Petroleum Corporation is a member of the New Mexico Oil & Gas Association, which states that its members are "dedicated to promoting the safe and environmentally responsible development of oil and natural gas resources in New Mexico." New Mexico Oil & Gas Association, *About Us*, https://www.nmoga.org/about_us (last visited July 25, 2025).

conditions that increase plugging costs. *See, e.g.*, 14 CCR §1772.4. Empire's inactive wells have been idle for an average of eight years and some have been idle for several decades.

213. Finally, according to EMNRD, remediation and reclamation costs can range from $50,000 (on the low end) to restore the surface around a plugged well to ***several million dollars*** for the cleanup of large tank batteries with extensive contamination. State records list 61 major spills for the Empire wells since 2003, which indicated that the remediation and reclamation costs for the Empire wells at issue in this litigation is likely to be substantial.

214. As discussed above, in its 2021 purchase of XTO wells, Empire posted a total bond in the amount of $1,250,000, or $1,865.67 per each well – not nearly enough to cover these costs.

215. Although the OCD has access to some funding for orphan well decommissioning through the New Mexico Reclamation Fund, the overwhelming majority of funding used to plug and remediate orphan wells has so far come from the federal government through the Infrastructure Investment and Jobs Act. That funding was briefly halted in early 2025 but has since resumed. In January 2025, New Mexico received a $5.5 million performance matching grant to plug and remediate orphaned wells. While federal funding has allowed the OCD to decommission more wells per year, it is woefully insufficient when one considers that wells in New Mexico are under-secured by a staggering $11.8 billion.[61]

216. Thus, the State and taxpayers will bear the majority of the costs to plug and remediate Empire's orphan wells, net of any federal funding, insufficient and forfeited bonds, or other sources of funding or bonds.

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[61] New Mexico Legislative Finance Committee, *Policy Spotlight: Orphaned Wells*, *supra* n.5, at 11-12.; *see also The Rising Cost of the Oil Industry's Slow Death*, *supra* n.1.

VI. Unplugged Wells Pose Substantial Environmental and Public Health Risks

217. Although this lawsuit seeks economic damages that Defendants have caused the State and taxpayers, the health and environmental dangers posed to New Mexico by Empire's orphaned wells are Qui Tam Plaintiffs' driving motivation for uncovering and blowing the whistle on Defendants' fraud.

218. Abandoned wells have been shown to leak volatile organic compounds ("VOCs"), as well as benzene and other compounds that damage the human nervous, immune, and respiratory systems. [62]

219. In air concentrations near abandoned wells, benzene, in particular, was found more than 250,000 times higher than the established safety threshold for human health.

220. The other VOCs leaked by abandoned wells include the precursors for ozone, another cause of severe respiratory, cardiovascular, nervous, immune, and respiratory diseases.

221. Additionally, when gas leaks from an abandoned well, it carries with it cancer causing chemicals used in drilling and fracking (*i.e.*, methane, benzene, heptane, hexane, and cyclohexane). These same chemicals have been found to leak directly from unplugged well heads, even if the gas and oil itself is contained.

222. The majority of these wells also leak methane, which is a known and major contributor to climate change. Recent research indicates that methane emissions from unplugged

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[62] *See* Gregg P. Macey et al., *Air Concentrations of Volatile Compounds Near Oil and Gas Production: A Community-Based Exploratory Study*, 13 ENVTL. HEALTH 1, 8-10 (2014); Liza Gross, *Abandoned Oil and Gas Wells Emit Carcinogens and Other Harmful Pollutants, Groundbreaking Study Shows*, Inside Climate News (June 6, 2023), https://insideclimatenews.org/news/06062023/abandoned-oil-gas-wells-health/.

wells in certain regions exceed the national average by a factor of ***70***.[63] Across the nation, an average unplugged well emits over 100kg of methane each year, as compared to an average plugged well which emits less than 1kg of methane per year.[64]

223. More than 80 times more powerful than carbon dioxide, methane has been found to leak from abandoned wells in such high concentrations that the surrounding air literally becomes explosive.

224. Among Americans aged 30 years or older, 761 Americans per million people die every year for every 10 metric tons of methane emitted.[65]

225. These same orphaned wells also leak hydrogen sulfide, which turns the surrounding air toxic and makes it painful to breathe.

226. Beyond methane and other air emissions, these wells threaten groundwater resources and cause surface land degradation.

227. In New Mexico, 78% of residents rely on groundwater aquifers for their drinking water, and remain especially vulnerable to the deadly seepage from these corroded and abandoned wells.[66]

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[63] *Methane Emissions from Abandoned Oil and Gas Wells in Colorado*, *supra* n.10.

[64] U.S. Environmental Protection Agency, *Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990-2018,* at 3-102 (2020), https://www.epa.gov/sites/production/files/2020-04/documents/us-ghg-inventory-2020-main-text.pdf.

[65] United Nations Environment Programme, *Global Methane Assessment: Benefits and Costs of Mitigating Methane Emissions*, at 167 (2021), https://www.ccacoalition.org/sites/default/files/resources/2021_Global-Methane_Assessment_full_0.pdf.

[66] N.M. Env. Dep't, *Water Resources & Management*, *supra* n.12; Joshua Woda et. al., *A geospatial analysis of water-quality threats from orphan wells in principal and secondary aquifers*

228. Orphan wells are also more likely to be the location of well blow-outs, where a well spews toxic gas and chemicals into the air and the surrounding environment.[67]

229. As abandoned wells proliferate and corrupt the surrounding environment with toxic pollutants like benzene and VOCs, property values in the surrounding areas plummet and the tax base shrinks. A study in 2021 found that construction and development on the land surrounding unplugged wells is reduced by as much as 50%, resulting in a substantially depressed local tax base. The halving of local property values was estimated to have cost one school district near orphaned wells at least $1,000 per student in foregone property taxes.

230. The final result is a blighted landscape and impoverished municipalities too broke to clean up the mess.[68]

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of the United States, 976 Science of the Total Env't 179246 (May 10, 2025), https://www.sciencedirect.com/science/article/pii/S0048969725008824.

[67] Carlos N. Ramos & Alejandra Martinez, *"Should we be worried?": Another well blowout in West Texas has a town smelling of rotten eggs*, Texas Tribune (Oct. 10, 2024), https://www.texastribune.org/2024/10/10/west-texas-well-blowout-oil-gas-railroad-commission/; Vamshi Karanam et. al., *Investigation of Oil Well Blowouts Triggered by Wastewater Injection in the Permian Basin, USA*, Geophysical Research Letters (July 22, 2024), https://agupubs.onlinelibrary.wiley.com/doi/full/10.1029/2024GL109435#:~:text=Abstract,of%20oil%20and%20gas%20production; 9NEWS, *Chevron releases cleanup efforts after oil well blowout in Weld County*, YouTube (May 7, 2025) https://www.youtube.com/watch?v=iyViDvCZ7t4.

[68] Elliott Woods, *Thousands of Abandoned Oil and Gas Wells Pollute the Texas Landscape*, Capital & Main (April 29, 2024), https://capitalandmain.com/thousands-of-abandoned-oil-and-gas-wells-pollute-the-texas-landscape; *Texas Has Thousands of Abandoned Oil and Gas Wells. Who Is Responsible for Cleaning Them Up?*, Journal of Petroleum Technology (May 19, 2025), https://jpt.spe.org/texas-has-thousands-of-abandoned-oil-and-gas-wells-who-is-responsible-for-cleaning-them-up; Danielle Prokop, *New report: New Mexico on the hook for millions, if not billions, to plug oil and gas wells*, Source NM (June 26, 2025), https://sourcenm.com/2025/06/26/new-report-new-mexico-on-the-hook-for-millions-if-not-

CAUSES OF ACTION

COUNT I

Knowingly Making and Using False Records and Statements to Obtain Regulatory Approvals in Violation of the FATA, N.M. Stat. §44-9-3(A)(2) (against Empire Petroleum Corporation; Empire New Mexico LLC; XTO Energy Inc.; and XTO Holdings, LLC)

231. Qui Tam Plaintiffs incorporate paragraphs 1-230 of this Complaint as if fully set forth herein.

232. The FATA creates liability for any person who "knowingly make[s] or use[s], or cause[s] to be made or used, a false, misleading or fraudulent record or statement to obtain or support the approval of or the payment on a false or fraudulent claim[.]" N.M. Stat. §44-9-3(A)(2).

233. At all times relevant to this Complaint, Empire Petroleum, Empire New Mexico, XTO Energy, and XTO Holdings have knowingly made and used false, misleading, and fraudulent records and statements to obtain and support approval of false applications for change of operator and continued operations and regulatory compliance by systematically understating the AROs associated with the transferred wells to the State of New Mexico and omitting to disclose Empire's inability to discharge its AROs.

234. Empire recorded AROs at $6,117,709 when the true expected present value of these obligations was approximately $199,576,929, thereby concealing liabilities of over $193,000,000 from the State of New Mexico. XTO Energy and XTO Holdings knowingly participated in this

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billions-to-plug-oil-and-gas-wells/#:~:text=New%20report:%20New,further%20extraction%20from%20nearby%20wells.

undervaluation, having superior knowledge of the actual costs to properly plug and remediate these wells based on their decades of operations.

235. Empire knowingly created and used phantom ARO assets that artificially offset ARO liabilities on its books, falsely showing a net ARO liability of $0 when in fact Empire had no ability to discharge its massive environmental obligations.

236. Empire Petroleum, Empire New Mexico, XTO Energy, and XTO Holdings knowingly failed to disclose the critical assumptions used to calculate ARO accounting estimates, including the assumed probability of non-enforcement, the remaining economic life of wells, discount rates, and current dollar cost estimates, thereby preventing the State from discovering the fraudulent understatement of AROs.

237. Before and after the sale, Empire New Mexico, XTO Energy, and XTO Holdings knowingly filed fraudulent C-115 Monthly Report forms concealing that the wells were at or beyond their economic limit, so as to maintain a license to produce oil and gas from depleted wells with AROs exceeding the value of future production, while continuing to strip the last remaining value and dissipate the earnings.

238. In connection with the May 2021 transaction, Empire Petroleum, Empire New Mexico, XTO Energy, and XTO Holdings knowingly made and used false and fraudulent C-145 Change of Operator forms filed with the OCD, which misrepresented Empire's financial capacity to meet the AROs for the transferred wells and failed to disclose that the transaction was structured to orphan these wells to the State.

239. By virtue of the false and fraudulent records and statements made and used by Empire Petroleum, Empire New Mexico, XTO Energy, and XTO Holdings, the State of New

Mexico has suffered damages through the assumption of environmental liabilities that, by law, Empire should have discharged.

240. Empire Petroleum, Empire New Mexico, XTO Energy, and XTO Holdings are liable to the State of New Mexico for three times the amount of damages sustained by the State because of these violations, civil penalties of not less than $5,000 and not more than $10,000 for each violation, and costs and reasonable attorney fees.

COUNT II

Knowingly Concealing and Avoiding Obligations to Pay Money to the State in Violation of the FATA, N.M. Stat. §44-9-3(A)(8)
(against Empire Petroleum Corporation; Empire New Mexico LLC; XTO Energy Inc.; and XTO Holdings, LLC)

241. Qui Tam Plaintiffs incorporate paragraphs 1-230 of this Complaint as if fully set forth herein.

242. The FATA creates liability for any person who "knowingly make[s] or use[s], or cause[s] to be made or used, a false, misleading or fraudulent record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the state[.]" N.M. Stat. §44-9-3(A)(8).

243. At all times relevant to this Complaint, Empire Petroleum, Empire New Mexico, XTO Energy, and XTO Holdings have knowingly made and used false, misleading, and fraudulent records to conceal, avoid, and decrease their respective obligations to pay money to the State of New Mexico for the plugging and remediation of oil and gas wells.

244. Empire New Mexico, XTO Energy, and XTO Holdings knowingly understated the ARO liabilities by over $193,000,000, concealing from the State the true magnitude of environmental obligations that would ultimately become the State's responsibility.

245. Empire has systematically dissipated assets needed to discharge AROs to its parent corporation, Empire Petroleum, working interest owners, and other insiders, rather than retaining such assets for the satisfaction of its environmental obligations to the State.

246. Empire knowingly failed to establish legally restricted assets in favor of the State sufficient to discharge its AROs, despite operating as an undercapitalized special purpose entity created solely for the acquisition of these distressed assets, while XTO Energy and XTO Holdings knew that Empire lacked the financial capacity to meet these obligations.

247. Empire has operated with the knowledge that it lacks the financial capacity to discharge its AROs, while continuing to extract value from wells and distribute all free cash flow to insiders, obligating the State to spend hundreds of millions of dollars in public funds to properly plug, abandon, and remediate Empire's orphaned wells. XTO Energy and XTO Holdings knowingly enabled this scheme by transferring mature wells to an entity they knew could not fulfill the ARO obligations.

248. By virtue of Empire Petroleum's, Empire New Mexico's, XTO Energy's, and XTO Holdings' knowing concealment and avoidance of their obligations to pay money to the State of New Mexico, the State has suffered and will continue to suffer damages in the form of assumption of plugging and remediation costs.

249. Empire Petroleum, Empire New Mexico, XTO Energy and XTO Holdings are liable to the State of New Mexico for three times the amount of damages sustained by the State because of these violations, civil penalties of not less than $5,000 and not more than $10,000 for each violation, and costs and reasonable attorney fees.

COUNT III

Conspiracy to Defraud the State Through False Claims in Violation of the FATA, N.M. Stat. §44-9-3(A)(3)
(against Empire Petroleum Corporation; Empire New Mexico LLC; XTO Energy Inc.; XTO Holdings, LLC; and Exxon Mobil Corporation)

250. Qui Tam Plaintiffs incorporate paragraphs 1-230 of this Complaint as if fully set forth herein.

251. The FATA creates liability for any person who "conspire[s] to defraud the state or a political subdivision by obtaining approval or payment on a false or fraudulent claim[.]" N.M. Stat. §44-9-3(A)(3).

252. Empire Petroleum, Empire New Mexico, XTO Energy, XTO Holdings, and Exxon Mobil conspired with each other to defraud the State of New Mexico by obtaining regulatory approval for change of operator and continued operations based on false and fraudulent representations regarding Empire's ability to discharge its AROs.

253. In furtherance of this conspiracy, Empire Petroleum, Empire New Mexico, XTO Energy, XTO Holdings, and Exxon Mobil structured a sham transaction in May 2021 whereby Empire paid $17.8 million to assume oil and gas wells with AROs having a real value of $199,576,929.

254. As part of the conspiracy, Empire Petroleum, Empire New Mexico, XTO Energy, XTO Holdings, and Exxon Mobil transferred to Empire 670 unreclaimed wells, including 78 wells that have now been inactive for extended periods and require immediate plugging, without providing adequate financial assurance to the State.

255. Empire Petroleum, Empire New Mexico, XTO Energy, XTO Holdings, and Exxon Mobil conspired to arrange for a $5,000,000 performance bond in favor of XTO rather than the

State of New Mexico, demonstrating their knowledge that the transaction was designed to orphan these wells to the State.

256. The conspirators knew that Empire New Mexico, as a special purpose entity with no assets other than the acquired wells, would never have the financial capacity to discharge the AROs, and that the State would ultimately bear the cost of plugging and remediating these wells.

257. As part of the conspiracy, Empire Petroleum, Empire New Mexico, XTO Energy, XTO Holdings, and Exxon Mobil knowingly submitted or caused to be submitted a false C-145 Change of Operator form to the OCD, which fraudulently represented that Empire New Mexico had the financial capacity to meet all regulatory obligations, including AROs, when all conspirators knew this representation was false.

258. This conspiracy is designed to transfer environmental liabilities from the profitable oil companies to undercapitalized entities that will then offload orphan wells to the taxpayer.

259. As a result of this conspiracy to defraud the State through false claims regarding Empire's financial capacity and intent to discharge AROs, the State of New Mexico has suffered actual damages.

260. Empire Petroleum, Empire New Mexico, XTO Energy, XTO Holdings, and Exxon Mobil are liable to the State of New Mexico for three times the amount of damages sustained by the State because of these violations, civil penalties of not less than $5,000 and not more than $10,000 for each violation, and costs and reasonable attorney fees.

COUNT IV

Knowingly Presenting False Claims Related to Financial Assurance Requirements in Violation of the FATA, N.M. Stat. §44-9-3(A)(1) (against Empire Petroleum Corporation and Empire New Mexico LLC)

261. Qui Tam Plaintiffs incorporate paragraphs 1-230 of this Complaint as if fully set forth herein.

262. The FATA creates liability for any person who "knowingly present[s], or cause[s] to be presented, to an employee, officer or agent of the state or political subdivision . . . a false or fraudulent claim for payment or approval[.]" N.M. Stat. §44-9-3(A)(1).

263. At all times relevant to this Complaint, Empire New Mexico has knowingly presented false and fraudulent claims for regulatory approval to release XTO's financial assurance and continue operations by misrepresenting its compliance with state financial assurance requirements.

264. Empire operates with only $1,250,000 in state-required blanket financial assurance for 670 wells, which equates to approximately $1,865.67 per well, when the fair value of the ARO was $306,688.00 per well.

265. Empire has knowingly submitted regulatory filings and renewal applications that falsely represent its financial capacity to meet ARO obligations and its compliance with financial assurance requirements under N.M. Admin. Code §19.15.8.

266. Empire has continued to operate wells while knowing it is financially incapable of meeting its well plugging and remediation obligations, with gross ARO liabilities of $199,576,929 against oil and gas assets valued at only $18.2 million, constituting a false claim each time it seeks regulatory approval or files required reports with state agencies.

267. Empire's false claims regarding financial assurance have allowed it to continue extracting value from wells while accumulating ever-greater environmental liabilities that will fall upon the State.

268. Empire knowingly presented multiple false C-145 Change of Operator forms to the OCD in May 2021, which constituted a false claim for regulatory approval by misrepresenting Empire's financial capacity to operate the transferred wells and meet all associated ARO obligations. As a result of these false statements, the State released XTO's financial assurance.

269. By virtue of the false claims presented by Empire regarding its financial assurance and capacity to discharge AROs, the State of New Mexico has suffered damages.

270. Empire is liable to the State of New Mexico for three times the amount of damages sustained by the State because of these violations, civil penalties of not less than $5,000 and not more than $10,000 for each violation, and costs and reasonable attorney fees.

COUNT V

Conspiracy to Conceal Obligations Through Fraudulent Accounting in Violation of the FATA, N.M. Stat. §44-9-3(A)(4) (against all Defendants)

271. Qui Tam Plaintiffs incorporate paragraphs 1- 230 of this Complaint as if fully set forth herein.

272. The FATA creates liability for any person who "conspire[s] to make, use or cause to be made or used, a false, misleading or fraudulent record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the state." N.M. Stat. §44-9-3(A)(4).

273. Empire Petroleum, Empire New Mexico, XTO Energy, XTO Holdings, and Exxon Mobil have conspired with Empire's parent corporation, working interest owners, and other members of the oil and gas industry to make and use false and fraudulent accounting records to conceal ARO obligations from the State of New Mexico.

274. This conspiracy involves the exploitation of GAAP that permit: (1) nondisclosure of critical assumptions used to calculate ARO accounting estimates; and (2) the creation of phantom ARO assets that offset ARO liabilities on financial statements.

275. In furtherance of this conspiracy, Empire has coordinated with Empire Petroleum and working interest owners to distribute all free cash flow rather than retaining assets for ARO obligations.

276. The conspirators have created and maintained accounting records showing net ARO liabilities of $0 when actual net liabilities exceed $199 million, for the specific purpose of concealing Empire's inability to discharge its obligations to the State.

277. Empire has conspired to operate wells beyond their economic limit to extract remaining value while avoiding compliance costs for mechanical integrity, methane emissions, and spill response, all while maintaining false accounting records.

278. XTO Energy, XTO Holdings, and Exxon Mobil knowingly used their sophisticated understanding of ARO accounting manipulation, gained through decades of operations, to structure the transaction in a way that would conceal the true ARO obligations from regulators and the public.

279. This conspiracy has enabled Empire and Defendant co-conspirators to extract millions of dollars in value that should have been reserved for environmental obligations, leaving the State with massive unfunded liabilities.

280. As a result of this conspiracy to conceal obligations through fraudulent accounting practices, the State of New Mexico has suffered actual damages.

281. Defendants are liable to the State of New Mexico for three times the amount of damages sustained by the State because of these violations, civil penalties of not less than $5,000 and not more than $10,000 for each violation, and costs and reasonable attorney fees.

PRAYER FOR RELIEF

WHEREFORE, Qui Tam Plaintiffs seek the following relief:

A. That New Mexico be awarded damages, assessed jointly and severally against all Defendants, in the amount of three times the damages sustained by New Mexico as a result of the false claims and fraud alleged within this Complaint, as provided by the FATA, N.M. Stat. §44-9-3(C)(1);

B. That penalties be assessed against Defendants for every false claim, statement, or record submitted to New Mexico, to the maximum extent permitted by the FATA, N.M. Stat. §44-9-3(C)(2);

C. That Qui Tam Plaintiffs be awarded the maximum possible share of proceeds that is permitted by the FATA, N.M. Stat. §44-9-7(A)-(B) for any recovery by New Mexico;

D. That Qui Tam Plaintiffs be awarded litigation costs, expenses, and attorneys' fees to be paid by Defendants to the fullest extent permitted under the law, including under N.M. Stat. §44-9-3(C)(3)-(4) and N.M. Stat. §44-9-7(D); and

E. That Qui Tam Plaintiffs be awarded such other and further relief as equity and justice may require.

JURY TRIAL DEMANDED

Pursuant to New Mexico Rule of Civil Procedure 1-039, Qui Tam Plaintiffs demand a trial by jury of any and all issues in this action so triable as of right.

DATED: August 14, 2025

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STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

STATE OF NEW MEXICO *ex rel.* Gregory Rogers and Theron Horton, Qui Tam Plaintiffs, vs. EMPIRE PETROLEUM CORPORATION; EMPIRE NEW MEXICO LLC; EXXON MOBIL CORPORATION; XTO ENERGY INC.; and XTO HOLDINGS, LLC, Defendants.	Case No. _____ *SEALED* **FILED UNDER SEAL** **PLEASE FILE COMPLAINT IN CAMERA IN THE DISTRICT COURT AND COMPLAINT SHALL REMAIN UNDER SEAL FOR SIXTY DAYS** JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

Pursuant to N.M. Stat. §44-9-5(C), on today's date, August 14, 2025, I caused the complaint to be filed under seal on behalf of the qui tam plaintiffs.

On August 11, 2025, the attorney general was served a copy of the complaint and written disclosure of substantially all material evidence and information the qui tam plaintiffs possess.

DATED: August 14, 2025

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