Secretary Sarah Cottrell Propst  
Energy, Minerals and Natural Resources Department

Director Dylan Fuge  
New Mexico Oil Conservation Division

October 16, 2023

Re. Oil and Gas Act Reforms (2024 Short Session)

Dear Secretary Propst and Director Fuge,

We are glad to hear that the Energy, Minerals and Natural Resources Department (EMNRD) is working on proposed legislative reforms to the New Mexico Oil and Gas Act to address the Act’s lack of environmental and public health protections, and inadequate financial standards. We write to provide recommendations for initial improvements to the Act that could be accomplished in the 2024 session that would help EMNRD come closer to complying with its constitutional duty to control pollution and prevent the despoilation of New Mexico’s air, water, and other natural resources.

Communities who are directly impacted by oil and gas production and pollution must have the opportunity to meaningfully inform conversations about reforms to the Oil and Gas Act. EMNRD’s decision to exclude individuals and organizations who are involved in litigation with the state from the discussions that EMNRD is convening around these reforms is unfortunate and unnecessary and will diminish the strength of EMNRD’s legislative proposals. Many signatories to this letter have written to EMNRD asking to be included in this process but have not been granted permission to participate. EMNRD should act quickly to engage these community members and organizations and do broader outreach with frontline stakeholders.

To begin mitigating the health and safety risks New Mexicans face from oil and gas production and pollution, legislative reforms to the Oil and Gas Act must include the following:

1. **Health Buffer Zones**
   a. Establish statutory health buffer zones (setbacks) of one mile (5,280 feet) around sensitive locations including schools and educational facilities, healthcare facilities, occupied residences, and places of work for all new oil and gas facilities;
   b. Grant the Oil Conservation Division the authority to increase health buffer zones by rule; and,
   c. Phase out existing oil and gas extraction sites within the health buffer zones by no later than January 1, 2028, through a plan developed and implemented by the Oil Conservation Division.

2. **Strict Enforcement, Liability and Notification for Spills**
   a. Strictly prohibit spills, leaks, or other releases into the environment of oil, gas, produced water or other nondomestic wastes resulting from the exploration, drilling, production, treatment or refinement of oil or gas;
b. Amend Act to specify civil penalties for bad actors (persons who spill, leak, or release into the environment) in the amount of two thousand dollars ($2,000) for a release of less than five barrels, ten thousand dollars ($10,000) for a release of five to twenty-five barrel, and twenty-five thousand dollars ($25,000) for a release of more than twenty-five barrels plus two thousand dollars ($2,000) per barrel for each additional barrel released over twenty-five barrels. Penalties collected shall be deposited in the state treasury;

c. Require OCD to make rules and order that protect public health, worker safety and the environment, including freshwater resources, using the best available science and technology to:
   i. Require the identification of the chemical and radionuclide composition of produced water or treated produced water that is spilled, leaked, or released into the environment and to make such information available to the public;
   ii. Require tracking and reporting of the movement, transportation and location of produced water and treated produced water throughout its production treatment, reuse and disposition in oil and gas operations and to compile the reported tracking information and make it publicly available; and
   iii. Require a person who causes or contributes to a spill, leak or other release into the environment of oil, gas, produced water or other nondomestic wastes resulting from the exploration, drilling, production, treatment or refinement of oil or gas to immediately provide emergency notification of the release to any land owners, residences, schools, institutions, businesses, and any other inhabited structures within one half mile (2640 feet) of the point of release).

3. Protect Freshwater Resources
   a. Add a definition of “freshwater” to the Oil and Gas Act to mean: (1) water with less than ten thousand milligrams per liter of total dissolved solids; (2) water in lakes and playas, regardless of quality, unless the water exceeds ten thousands milligrams per liter of total dissolved solids and it can be shown that degradation of the particular waterbody will not adversely affect hydrologically connected fresh ground water; (3) the surface waters of streams regardless of the water quality within a given reach; and (4) the underground waters containing ten thousand milligrams or less per liter of total dissolved solids; and
   b. Prohibit the use of freshwater for oil and gas operations when it is possible to use produced, treated or recycled water.

4. Increase Financial Assurances
   a. Replace the blanket bond with a financial assurance scheme that will ensure that oil and gas operators cover the full cost of cleanup, including plugging and remediation.
By advocating for the above outlined reforms to the Oil and Gas Act before the legislature, EMN RD will be one step closer to compliance with its constitutional duties. We look forward to working with you to pass and implement these reforms.

Sincerely,

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Indigenous Lifeways

Julia Bernal, Executive Director
Pueblo Action Alliance

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Policy Campaign Manager, Youth United for Climate Crisis Action

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Plaintiff in *Atencio v. State of New Mexico*

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