



IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

**STEPHANIE GARCIA RICHARD,
COMMISSIONER OF PUBLIC LANDS
OF THE STATE OF NEW MEXICO,**

Plaintiff-Respondent,

v.

No. S-1-SC-40983

MARATHON PETROLEUM CORPORATION,
Defendant-Petitioner,

and

**BC & D OPERATING, INC.; DOMINION
PRODUCTION COMPANY, LLC;
NACOGDOCHES OIL AND GAS, INC.;
NORDIC OIL USA 2, LLLP; DOE
CORPORATIONS 1-10; DOE LIMITED
LIABILITY COMPANIES 1-10; and DOE
PARTNERSHIPS 1-10,**

Defendants.

MARATHON PETROLEUM CORPORATION'S BRIEF IN CHIEF

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 12-318(G), I certify that this Brief complies with the type-volume limitation of Rule 12-318(F)(3). According to Microsoft Office Word, the body of the Petition, as defined by Rule 12-318(F)(1), contains 10,977 words.

DATED this 2nd day of January 2026.

/s/ Earl E. DeBrine Jr.

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I. INTRODUCTION

The New Mexico Legislature in 1929 enacted legislation characterized by this Court soon after its passage as “a comprehensive act regulating oil and gas leases of state lands,” establishing procedures for assignment of oil and gas leases of state trust land and approval of assignments by the Commissioner of Public Lands (the “Commissioner”). *See* L.1929, Ch. 125 (the “1929 Act”); *Atlantic Oil Producing Co. v. Crile*, 1930-NMSC-040, ¶15, 34 N.M. 650. The 1929 Act modified the leasing statutes first enacted in 1912 in two important respects. For the first time, the Act granted the Commissioner authority to disapprove the assignment of a lease that was not in good standing. It further prescribed the legal effect of the Commissioner’s approval, providing that the assigning lessee was released of “all obligations to the state with respect to the lands embraced in the assignment.” *See* L.1929, Ch. 125, §4. This legislative covenant has remained unchanged to this day. *See* NMSA 1978, §19-10-13.

In 1931, the Legislature reinforced the legislative covenant when it prescribed a statutory form of oil and gas lease for the Commissioner to use when leasing state trust lands by including the covenant as a lease term. *See* L.1931, Ch. 18, §2 (§7 of the lease form). Despite various amendments to the statutory lease form (most recently in 2025), the Legislature has continued to include the contractual promise

to lessees that they are relieved of all liability to the state upon the Commissioner's approval of an assignment. *See* NMSA 1978, §19-10-4.3.

The Commissioner's rules governing lease assignment have formally recognized and endorsed this legislative covenant and contractual promise. *See* Rule 19.2.100.43 NMAC ("Upon approval by the commissioner, the assignor shall be relieved from all obligations owing to the state with respect to the lands embraced in the assignment."). For almost a century, 20 Commissioners have faithfully honored the legislative covenant and lease promise incorporated into the Commissioner's rules, never seeking to hold a former lessee liable for surface damages following the approval of a lease assignment. In 2021, the current Commissioner broke with this precedent by suing for surface damages against Marathon Petroleum Corporation, which the Commissioner's complaint alleged was a successor in interest to Tesoro Petroleum Inc. ("Tesoro"), a former lessee of record of the two state oil and gas leases at issue, Nos. X0-0662-22 and B0-1276-9 (the "Leases"), who assigned the Leases decades earlier with the Commissioner's approval.

The Commissioner conceded below that Tesoro (and Marathon as its putative successor) was relieved of all of its contractual obligations to the state as a result of this approval. The released contractual obligations are all-encompassing: (1) to "be liable and agree to pay for all damages to the range, livestock, growing crops or

improvements caused by lessee's operations on said lands” and (2) to “comply with all laws, regulations, rules, ordinances and requirements...in all matters and things affecting the premises and operations thereon which may be enacted or promulgated under the governmental police powers pertaining to public health and welfare, including but not limited to conservation, sanitation, aesthetics, pollution, cultural properties, fire and ecology.” The Commissioner did not oppose dismissal of her contract claims, agreeing that the statutory and lease language released Marathon of all contractual liabilities. The Commissioner nevertheless asserted that her tort claims for statutory and common law trespass, waste, and negligence remained viable even though they sought the same damages arising from the same alleged conduct as the contract claims.

The district court correctly concluded the Commissioner’s approval of Tesoro’s assignment of the Leases released Tesoro (and its putative successor, Marathon) from *all* liability, including both tort and contract claims. In a deeply flawed opinion, the Court of Appeals reversed. *See Richard v. Marathon Petroleum Corporation*, 2025-NMCA-____, ____ P.3d ____, 2025 WL 1430595 (“Opinion” and cited as “Op.”). The Opinion first erred by holding the Commissioner can sue an assignor of a state oil and gas lease in tort, even though the alleged conduct giving rise to the tort claims arose directly from contractual obligations imposed on the assignor for operations conducted under the lease. The Opinion compounded this

error by applying a 1991 New Mexico Supreme Court opinion to Leases executed decades earlier, and then *sua sponte* finding ambiguity in the word “all obligations” in the statute and Leases, deciding the meaning of the purported ambiguity without input from the parties, and disregarding other arguments for affirmance Marathon raised.

The survival of tort claims seeking the same damages cannot be reconciled with the conceded release of the unqualified contractual obligations. In its unilateral search for meaning, the Opinion disregards principles of statutory construction and contract interpretation to avoid enforcing clear legislative and contractual language limiting liability. The Opinion upends almost a century of administrative practice and course of dealing between the Commissioner and its lessees. It exposes an untold number of former lessees of state lands to liability for damages and for plugging wells and remediating the surface decades after all such obligations were released and expressly assumed by successor lessees with the Commissioner’s approval. This unaided search for reasons for reversal conflicts with the well-established principle that appellate courts should not “promulgate case law based on [their] own speculation rather than the parties’ carefully considered arguments.” *Elane Photography, LLC v. Willock*, 2013-NMSC-040, ¶70, 309 P.3d 53. Accordingly, Marathon respectfully requests that this Court reverse the Court of Appeals.

II. SUMMARY OF FACTS AND PROCEEDINGS

In 2021, the Commissioner filed a verified complaint against BC&D Operating, Inc. (“BC&D”) and Dominion Production Company, LLC, the last lessee of record and operator of the Leases. RP 1-34,¹ ¶¶28-29. The original complaint made only a passing reference to Tesoro, alleging that Tesoro and another defendant, as BC&D’s predecessor lessees of record, agreed in 1988 to be bound by the then-current statutory lease form set forth in NMSA 1978, §19-10-4.1 with respect to lease X0-0662-22. RP 3, ¶10. A table of wells located on Lease X0-0662-22 also listed Tesoro as the former operator of seven wells long since plugged and abandoned between 1970 and 1991. RP 4. The original complaint further alleged that, after intermediate assignments, the Leases were assigned to BC&D in 1993. RP 3, ¶11; 5, ¶21.

On June 14, 2021, the Commissioner filed an unverified First Amended Complaint (“Complaint”) adding as defendants, Marathon, an affiliate of BC&D, two other operators alleged to have conducted oil and gas operations on the Leases, and three categories of Doe entities. RP 45-81. The Complaint alleged, without factual support, that Marathon was liable as successor in interest to Tesoro. RP 51, ¶31; 52, ¶37.

¹ The Record Proper is cited as “RP ____”.

The Complaint alleges Lease X0-0662-22 was issued in 1922, assigned to Tesoro on or around December 31, 1964, and “[a]fter an intermediate assignment to another company,” was assigned to BC&D in 1993. RP 48, ¶¶15, 17; 49, ¶22. Regarding Lease B0-1276-9, the Complaint alleges it was issued in 1932, was assigned to Tesoro on December 24, 1964, and “[a]fter one or more intermediate assignments,” was assigned to BC&D in 1993. RP 52, ¶¶35, 37, 38. The Complaint attaches the approved assignments into BC&D. RP 67-68; RP 73-74. Each of the assignments states:

Assignee assumes and agrees to perform all obligations to the State of New Mexico insofar as said described land is affected, and to pay such rentals and royalties, and to do such other acts as are by said lease required as to said land, to the same extent and in the same manner as if the provisions of said lease were fully out herein.

Id.

The Leases are mandatory forms codified by the Legislature for use by the Commissioner since 1931. *See* NMSA 1978, §19-10-1; *id.* §19-10-4 (mandating use of lease forms); *id.* §19.10.4.1 (lease form); *see also* *Harvey E. Yates Co. v. Powell*, 98 F.3d 1222, 1239 (10th Cir. 1996) (“[T]he state constitution vests the New Mexico legislature with broad powers to prescribe the terms and conditions of mineral leases on the state’s public lands.”). Lease assignment is also accomplished through use of a mandatory form. NMSA 1978, §19-10-13 (mandating use of Commissioner-prescribed form of assignment). The Leases include the 1929 statutory covenant,

currently codified in Section 19-10-13, decreeing that upon the Commissioner's approval of an assignment of the lease,

the assignor shall stand relieved from all obligations to the state with respect to the lands embraced in the assignment and the state shall likewise be relieved from all obligations to the assignor as to such tract or tracts, and thereupon the assignee shall succeed to all of the rights and privileges of the assignor with respect to such tracts and shall be held to have assumed all of the duties and obligations of the assignor to the state as to such tracts.

This language appears in paragraph 7 of Lease BO-1276-9. RP 71, ¶7. For Lease X0-0662-22, issued prior to the 1931 statutory lease form, this provision was added when, as the Complaint alleges, Tesoro "agreed...to be bound by the terms of the then-current form of lease, as set forth in NMSA 1978, §19-10-4.1." RP 49, ¶21.

Following Tesoro's assignment of the Leases, BC&D "paid rent to the State Land Office...on behalf of BC&D Oil and Gas Corporation, and conducted other oil and gas operations on those lease premises until notified by the Commissioner of lease expiration by letters dated January 11, 2018 and May 8, 2019. RP 49, 51, 53, ¶¶23, 33; 44-45.

Marathon moved to dismiss the Complaint under Rule 1-012(B)(6) NMRA. RP 150, 173. The Commissioner's Response conceded that her claims for breach of contract were barred because of the Commissioner's approval of Tesoro's Assignment of the Leases. RP 213, 220. The contractual claims released included claims that Tesoro failed to comply with state conservation laws and State Land

Office rules that “require full site remediation and reclamation upon the cessation of lease operations” and claims for “*all* damage to the Subject Lands.” RP 58, ¶¶78-79 (emphasis added).

Following extensive briefing and oral argument, the district court dismissed all of the Commissioner’s claims against Marathon, concluding:

The statute governing assignments of state oil and gas leases (NMSA 1978, Section 19-10-13), the language of the statutory lease, and the Commissioner of Public Land’s regulation implementing the statute (19.2.100.43 NMAC) provide that upon approval of the assignment of the lease by the Commissioner, the lessee at issue, Tesoro Petroleum Corporation and its alleged successor Marathon, were relieved of all obligations to the State (or lessor) with respect to the lands embraced in the leases. The leases formerly held by Tesoro include provisions that the lessee shall be liable and agree to pay for all damages to the range, livestock, growing crops or improvements caused by lessee’s operations on said land and to fully comply with all laws and regulations in all matters and things affecting the premises and operations thereon which may be enacted or promulgated under the governmental police powers pertaining to public health and welfare.

Because no duty in tort can be imposed where the same duties and obligations are specifically defined by the parties’ contract, and the Commissioner’s tort claims are based upon the same facts and seek the same relief as her contract claims, which the Commissioner conceded should be dismissed, the Commissioner’s claims in tort against Marathon are legally insufficient and should also be dismissed.

RP 406-408 (9/20/22 dismissal order (“Order”)). The Order did not address Marathon’s alternative arguments that the Commissioner’s statutory tort claims were legally insupportable. *See* RP 178-180 (Marathon Amended Motion). The Order included a certification under Rule 1-054(B) and this appeal followed. RP 407.

During the appeal, the Commissioner has continued to litigate her claims against the last lessee of record and other defendant operators who conducted operations on the Leases in the decades following Tesoro’s assignment of the Leases. RP 425-459.

In its May 14, 2025 Opinion, the Court of Appeals reversed. It first found that the Complaint alleged tort claims distinct from contract claims. Op. pp. 6-15. Next, the court determined that the statutory and contractual language that an assignor “shall stand relieved of all obligations” was not an express limitation on tort liability and was ambiguous, notwithstanding that neither party nor the district court had raised that issue. Op. pp. 15-30. It then resolved that purported ambiguity without briefing by the parties. Op. pp. 30-39.

III. STANDARD OF REVIEW

A district court’s order dismissing a case for failure to state a claim under Rule 1-012(B)(6) is reviewed de novo. *Deljino v. Grijjo*, 2011-NMSC-015, ¶9, 150 N.M. 97. The Court accepts all well-pled factual allegations as true and determines whether the plaintiff is entitled to recover under any theory of the facts alleged. *Id.* ¶¶9, 12.

Questions of statutory construction are reviewed de novo. *State v. Sena*, 2023-NMSC-007, ¶15, 528 P.3d 631. Administrative rules are construed in the same manner as statutes. *N.M. Dept. of Health v. Ulibarri*, 1993-NMCA-048, ¶10, 115 N.M. 413. Whether a contract is ambiguous is reviewed de novo. *Mark V, Inc. v. Mellekas*, 1993-NMSC-001, ¶13, 114 N.M. 778. However, the meaning of an

ambiguous term is a question of fact, reviewed under the substantial evidence standard. *C.R. Anthony Co. v. Loretto Mall Partners*, 1991-NMSC-070, ¶18, 112 N.M. 504.

IV. QUESTIONS PRESENTED

1. Did the Court of Appeals err by holding that the Commissioner can sue an assignor of a state oil and gas lease in tort, where the alleged conduct giving rise to the tort claims arises directly from contractual obligations imposed on the assignor for operations conducted under the lease?

2. Did the Court of Appeals err by holding *sua sponte* that the statutory and lease language releasing the assignor “from all obligations to the state with respect to the lands embraced in the assignment” upon the Commissioner’s approval of the assignment, was ambiguous, deciding its meaning without input from the parties, and disregarding arguments raised by Marathon?

V. ARGUMENT

This appeal raises important legal issues and policy considerations that warrant reversal by this Court.

A. The Opinion’s Conclusion that the Complaint Alleges Breach of Tort Duties Independent from Contractual Duties Imposed by the Leases Conflicts with New Mexico Precedent and Cannot Be Reconciled with the Substance of the Claims Alleged.

The Court of Appeals departed from New Mexico precedent requiring a court to do more than merely accept the claims in a complaint at face value; rather, a court

must determine whether a complaint is simply attempting to repackage contract claims as tort claims for a second bite at the apple. When the Complaint is viewed through the correct lens, it is clear that it does not allege violations of tort duties existing independently from the much broader, comprehensive contractual obligations imposed by the Leases. The Opinion fails to answer a fundamental question: If a lessee, upon assignment, has no liability for contractual damages caused by its operations and is no longer obligated to comply with the conservation laws and rules requiring the plugging and abandonment of wells and reclamation and remediation of the premises, how can it still be liable for damages in tort for negligently performing the same released contractual obligations?

New Mexico courts have long recognized the distinction between contract and tort claims and the need to preserve that distinction. *Amrep Sw., Inc. v. Shollenbarger Wood Treating, Inc.*, 1995-NMSC-020, ¶28, 119 N.M. 542 (recognizing need “to preserve the line between contract law and tort law”); *Kreischer v. Armijo*, 1994-NMCA-118, ¶6, 118 N.M. 671. While distinguishing contract claims from tort claims can be difficult, *Kreischer*, 1994-NMCA-118, ¶5, courts have emphasized the need to hew to this distinction to “avoid subsuming contract law with negligence” and prevent plaintiffs from using “tort law to alter or avoid the bargain stuck in the contract.” See *NM-Emerald, LLC v. Interstate Dev., LLC*, 2021-NMCA-020, ¶25, 488 P.3d 707 (quoting *Amrep*, 1995-NMSC-020, ¶28).

When evaluating whether a claim sounds in contract or tort, courts must look beyond how they are “couched” in a complaint, and instead examine the gravamen of the cause of action. *E.g.*, *Kreischer*, 1994-NMCA-118, ¶5 (“The mere titling of the cause of action as one for gross negligence did not change its nature.”); *Rio Grande Jewelers Supply, Inc. v. Data Gen Corp.*, 1984-NMSC-094, ¶6, 101 N.M. 798 (claim for negligent misrepresentation was “nothing more than an attempt to...allow the contract to be rewritten under the guise of an alleged action in tort”). This Court has also held that the “tort of negligence must be based *upon a duty other than one imposed by the contract.*” *Cottonwood Enters. v. McAlpin*, 1991-NMSC-044, ¶11, 111 N.M. 793 (emphasis added). The Court of Appeals erred both by (1) accepting the Commissioner’s labeling of her claims without scrutinizing their substance, and (2) erroneously concluding that tort duties exist independently from contractual duties imposed by the Leases, even though it is clear that the Legislature imposed much broader, strict contractual liability to be “liable and pay for all damages” irrespective of fault, intent or other factor that might limit liability under the law of torts.

The Commissioner’s tort claims are subsumed by and not independent from the duties imposed by the Leases. Distilled to their essence, they all seek relief for damages to the Subject Lands premised on defendants’ alleged failure to remove debris, reclaim and remediate/restore the Subject Lands, and ostensibly to plug wells

(although the Complaint reflects that Tesoro's wells were plugged, *see* RP 50 (table)). Count I of the Complaint asserts claims for trespass, waste, and negligence *per se* based upon statutory waste and trespass, alleging "Defendants have caused damage to the Subject Lands by failing to remove debris, reclaim and remediate the site of its operations on those lands." RP 57, ¶68. Count II alleges claims for common-law trespass and waste, contending that Defendants have committed trespass and waste by "wrongfully occupying the Subject Lands and by failing to remove debris, plug the wells, and reclaim and remediate the site of their operations on those lands." *Id.* ¶71. Count III alleges negligence asserting that Defendants acted negligently by "failing to plug wells, remediate spills, remove debris, and restore those lands." *Id.* ¶74.

Proper scrutiny of the Complaint's allegations confirms that the gravamen of the Commissioner's tort claims is the alleged failure of Defendants to perform *contractual* obligations under the Leases to be liable and pay for all surface damages and to plug and abandon wells and reclaim and remediate the surface of the Subject Lands. *See Kreischer*, 1994-NMCA-118, ¶5 ("Nonetheless, we are satisfied from our review of Plaintiff's second amended complaint that, although his causes of action are couched in tort language, the gravamen of the complaint was essentially the failure of Defendant to complete the construction work in accordance with the contract."). While labeled as tort claims, they seek to impose liability for surface

damages to the Subject Lands and to reclaim and remediate the premises, all of which are encompassed by Lease obligations. Indeed, the Complaint expressly relies upon the Lease language as a basis for all of the Commissioner's damage claims against Marathon, citing to paragraph 17 of Lease, which states "Lessee shall be liable for *all damages* to the range, livestock, growing crops or improvements caused by lessee's operations on said lands." See RP 63, ¶17 (emphasis added). The Complaint then alleges that Defendants "are contractually liable to the Commissioner for *all damages* to the Subject Lands." RP 58, ¶79. The Complaint alleges that Defendants, by "assuming and agreeing to the terms of the Leases....Tesoro agreed to adhere to all applicable state laws, including 19.2.100.66 and 19.2.100.67 NMAC²....[which] require full site remediation and reclamation upon cessation of lease operations" and asserts that Defendants "failed to *honor their contractual obligations* to remediate and reclaim the Subject Lands." RP 58, ¶¶78-80. Thus, the Commissioner's tort claims for trespass, waste and negligence are subsumed by her admittedly released contract claims and should be treated as such.

The Legislature's lease form substantially expands the lessee's liability under the common law under which the lessee is only responsible for damages caused by

² Rule 19.2.100.66 requires operators to remove trash and debris from the leased lands, and Rule 19.2.100.67 imposes reclamation obligations, further demonstrating that the Commissioner's tort claims alleging a failure to remove debris and reclaim the Subject Lands are not independent from the Lease obligations.

unreasonable, excessive or unreasonable use of the surface, with no implied duty to reclaim the surface. *See McNeill v. Burlington Res. Oil & Gas Co.*, 2008-NMSC-022, ¶33, 143 N.M. 740; *Amoco Prod. Co. v. Carter Farms Co.*, 1985-NMSC-071, ¶¶ 11-12, 103 N.M. 117 (reversing Court of Appeal’s ruling that mineral lessee had a duty to completely restore the surface estate following the cessation of drilling operations). The Lease imposes contractual liability for *all damages* to the subject lands and to comply with laws mandating site remediation and reclamation. These strict, all-encompassing contractual liabilities and obligations imposed by the Leases leave no room for any lingering fault-based tort obligations. Indeed, the Commissioner acknowledged that the Lease language “holds a lessee liable for all damages to the surface, whether negligent or not.” *See* Commissioner of Public Land’s Brief in Chief filed with New Mexico Court of Appeals (October 12, 2023) at 23.

The Opinion does not identify any tort duty that is not subsumed within the unqualified contractual obligations under the Leases. Instead, it merely restates the Commissioner’s allegations or quotes cases setting out the general principles of tort law. Op. ¶14. While asserting that the Commissioner’s tort duties arise from the common law and statute, extra-contractual sources, the Opinion entirely overlooks that Tesoro’s obligations with respect to the Subject Lands *were created by the Leases*, which precludes any extra-contractual tort duties with respect to those same

obligations. *Isler v. Texas Oil & Gas Corp.*, 749 F.2d 22, 24 (10th Cir. 1984) (applying New Mexico law) (“Because the contract specifically defined the rights and duties of the parties regarding rental payments and notice, thereby precluding any extracontractual tort duty regarding such payments, we must reverse the judgment for plaintiffs sounding in tort.”). This Court and the Court of Appeals have routinely dismissed tort claims when the alleged duty breached was created by the contract giving rise to the relationship between the parties. *See Kreischer*, 1994-NMCA-118, ¶5 (upholding dismissal of negligence claims because “[t]he obligation to properly construct the house [] was created by the contract and was not an obligation imposed by law”); *Bernalillo Cnty. Deputy Sheriffs Ass’n v. Cnty. of Bernalillo*, 1992-NMSC-065, ¶13, 114 N.M. 69 (“There is no relationship between the County and its employees that gives rise to a legal duty to pay overtime which is independent of the Collective Bargaining Agreement.”); *Stern v. Farah Bros.*, 1913-NMSC-014, ¶19, 17 N.M. 516 (“It is a general rule that, where there is a breach of duty which is imposed upon one by law, plaintiff may, at [their] election, sue and declare upon the expressed or implied contract, or for the tort. 15 Cyc. 254. *It has been decided, however, that where there is no legal duty, except that arising from the contract, there can be no election between an action on contract and one on tort, since in such case there is no cause of action in tort.*” (emphasis added)); *Cottonwood Enterprises*, 1991-NMSC-044, ¶11 (“Although the genesis of most

duties and obligations between parties to a title insurance contract generally stem from the contract of insurance itself, in which case a breach thereof may give rise to a contract claim, *the tort of negligence must be based upon a duty other than one imposed by the contract.*” (Emphasis added) (citation omitted)).

Here, Tesoro’s liability to pay for damages to the Subject Lands caused by its operations and the duty to prevent waste, remove debris, and reclaim and remediate the leased premises were contractually imposed by the Leases. The grant of property and contractual rights to occupy and develop the subject lands under the Leases are the source of any legal obligations from which an alleged duty in tort could flow to the Commissioner. Thus, there is no independent tort duty that exists that is not subsumed by contractual obligation under the Leases.

This is not a situation where a stranger to the lease entered the premises in trespass, committed waste, or negligently caused damages to state lands—the Leases are the sole basis for the relationship between Tesoro and the Commissioner. Without the property rights granted by the Leases, Tesoro had no right to enter the lands, much less develop the oil and gas resources and contract operations about which the Commissioner now complains, decades after approving assignment of the Leases. And having accepted Tesoro’s assignment of its rights under the Leases and agreed that Tesoro is no longer contractually liable for surface damages caused by its operations or required to comply with laws and regulations requiring reclamation

and remediation of the leased premises, it is nonsensical for the Commissioner to assert that a former lessee commits trespass or waste, and is liable in tort for the same surface damages.

Notably, even the alleged violations of statutes and rules governing oil and gas operations flow from Tesoro's obligations in the Leases. The Commissioner alleges that, in assuming the Leases, Tesoro "bound [itself] to 'fully comply with all laws, regulations, rules, ordinances and requirements of state [and] federal authorities and agencies, *in all matters and things affecting the premises* and operations thereon ...'" See RP 54, ¶51 (quoting NMSA 1978, §19-10-4.1 (emphasis added)).³ Thus, the Opinion's reliance on Section 19-6-3, the trespass and waste statute, as an independent source of legal duties is flawed. See Op. ¶18 (concluding, incorrectly, that the "duty to not commit waste imposed by Section 19-6-3 does not arise from Marathon's contractual relationship with the Commissioner...."). That Section and its prohibition against committing waste are incorporated into the Leases as contractual

³ The Opinion's out of hand rejection of Marathon's reliance on this language is flawed for two reasons. See Op. n.4. First, the Opinion misapprehends Marathon's argument—Marathon was not arguing that this lease language extinguishes a lessee's obligations to comply with the law; rather Marathon's point is that the Leases themselves require compliance with the law as a matter of contract, leaving no room for an extra-contractual tort claim based on an alleged non-compliance of law and the Commissioner agreed to the dismissal of all her contract claims, which included the obligation to comply with law. Second, the Opinion faults Marathon for citing no authority for a construction of lease language that Marathon did not advance but that the Court of Appeals attributed to Marathon.

obligations and are not independent tort obligations. *See* NMSA 1978, §19-10-4.1. And, because the contractual claims have been dismissed, there can be no lingering tort claims based on Section 19-6-3. *See Bernalillo Cnty.*, 1992-NMSC-065, ¶13 (“Even the violation of the FLSA evolves from the contract of employment [because] [t]he FLSO provisions ‘are read into and become a part of every employment contract that is subject to the terms of the Act.’”).

As a member of the panel observed during argument, a lessee’s contractual obligations “are quite a bit higher than they would be under tort law.” 10/8/24 Oral Argument Tr. at 5:13-5:25.⁴ This is apparent from the Lease language making a lessee “liable and agree to pay for *all damages* ... caused by lessee’s operations.” *See* RP 6, ¶17; RP 71, ¶11. Indeed, in *Dean v. Paladin Exploration Co.*, 2003-NMCA-049, ¶14, 133 N.M. 49, the Court of Appeals held that under the statutory oil and gas lease, a lessee is liable for all surface damages caused by its operations irrespective of fault. In other words, the lessee’s contractual liability under the statutory lease includes all damages caused by its operations whether its conduct was negligent or even intentional. The release of these comprehensive contractual obligations therefore encompasses all of the Commissioner’s tort claims. The Opinion’s rationale turns *Paladin* on its head by holding that a lessee released of all liability for damages remains liable for the same damages when labeled as tort claims.

⁴ *See* Exhibit C to Marathon’s petition.

The Opinion cites *McNeill* for the proposition that under the common law an oil and gas operator can be held liable for surface damages caused by its negligent use of the surface. Op. ¶15. But *McNeil* is inapposite because, unlike *Paladin*, it did not involve a claim under the state lease in which the Legislature imposed broader unqualified contractual liability. That a surface owner has a common law cause of action against an oil and gas operator for negligent use of the surface *in the absence of a lease imposing strict liability for such damages* does not support the Opinion’s conclusion that the Commissioner can proceed against Marathon in tort seeking the same damages concededly released when the Commissioner approved the assignment of the Leases.

In sum, the Commissioner’s tort claims are “nothing more than an attempt to allow the [Leases] to be rewritten under the guise of an alleged action in tort.” *Rio Grande Jewelers*, 1984-NMSC-094, ¶6. Reversal is warranted to correct the Opinion’s departure from settled precedent, which affects every past and present oil and gas lessee.

B. The Opinion Erroneously Interpreted the Statutory and Contractual Release of Liability.

The Court of Appeals incorrectly interpreted the statutory and contractual release of liability. In resolving this issue of first impression, the Court of Appeals erred in two significant ways. First, it *sua sponte* raised an argument expressly disclaimed by the parties, concluding that the word “obligations” in Section 19-10-

13 and in the Lease was ambiguous. *See* Op. ¶¶43-59. The Opinion then proceeded to resolve the statutory ambiguity without the benefit of briefing and in doing so overlooked important aspects of the history of the legislative covenant while neglecting to apply established rules of statutory construction. Although the Opinion began with a review of the Lease language and found it ambiguous, Op. ¶¶35-40, the legislative history and language of Section 19-10-13 dispel any such ambiguity and for that reason, Marathon demonstrates the flaws in the Opinion’s statutory interpretation first and then turns to a discussion of the Opinion’s erroneous interpretation of the Leases.

1. The Opinion’s interpretation of Section 19-10-13 and its implementing regulation violates established rules of statutory construction.

The Opinion violated established rules of statutory construction by failing to give effect to the plain language of Section 19-10-13 and the Commissioner’s corresponding regulation. In order to “glean legislative intent, reviewing courts should look only to the plain language of the statute unless the meaning of the language is ambiguous.” *LM Insurance Corp. v. I Do Albuquerque*, 2023-NMCA-21, ¶21, 527 P.3d 685. As this Court has reiterated, courts should not read language into a statute that makes sense as written. *See Marbob Energy Corp. v. N.M. Oil Conservation Comm.*, 2009-NMSC-013, ¶20, 146 N.M. 24 (“The Commission’s interpretation of Section 70-2-28 would have us read into the statute language that is not there, which we will not do if the provision makes sense as written.”).

Only if a statute is ambiguous does a court turn to statutory interpretation. *State ex rel. Helman v. Gallegos*, 1994-NMSC-023, ¶18, 117 N.M. 346 (“When a statute contains language which is clear and unambiguous, we must give effect to that language and refrain from further statutory interpretation.” (quoted authority omitted)). In so doing, a court’s role is to “discern the intent of the Legislature” by “resort[ing] to well-accepted rules of statutory construction, always striving to select the rationale that most likely accomplishes the legislative purpose-or best fills a void not addressed by the Legislature.” *State v. Anaya*, 1997-NMSC-10, ¶29, 123 N.M. 14 (quoted authority omitted)).

Courts have universally held when construing statutes, as well as deeds and contracts, the use of the phrase “all obligations” unambiguously means all obligations. *See Wagner v. Apache Corp.*, 627 S.W.3d 277, 286 (Tex. 2021) (“All obligations means all obligations.”); *Culbreath v. First Tenn. Bank*, 44 S.W.3d 518, 524 (Tenn. 2001) (“[A]ll liabilities’ means *all* liabilities.”); *see also, Wade v. Farnsworth*, 1996-NMCA-053, ¶12, 121 N.M. 698 (“[T]he phrase ‘any and all’ is common in legal documents, and is a comprehensive term that, in essence, means ‘all’.”); *Al Czervik LLC v. Mayor and City Council of Baltimore*, 287 A.3d 1270, 1278 (Md. App. 2023) (The statutory term “‘all’ means all, which is unambiguous.”); *Halliburton, Inc. v. Admin. Review Bd.*, 771 F.3d 254, 266 (5th Cir. 2014) (statutory term “all relief necessary” authorized broad remedies because “we

think Congress meant what it said. All means all.”); *In re Sjogren*, 570 B.R. 1, 3 (Bankr. D. Mass. 2017) (“Quite simply, the term ‘all’ *means* ‘all.’”). The language in Section 19-10-13 is clear—once an assignment is approved, the assignor is “relieved of all obligations to the state” and the assignee assumes “all of the duties and obligations of the assignor to the state.” This language makes sense as written and the Court should reject the Opinion’s construction, which inserts qualifying language that is not there.

Rather than adhering to the parties’ arguments and what the district court decided, the Court of Appeals focused on the meaning of the word “obligations,” raising questions about its meaning at oral argument and then researching (on its own initiative) dictionary definitions existing when the legislative covenant was enacted. *See* Op. ¶45. Based on its unaided, *sua sponte* review, the Court of Appeals proclaimed the statute to be ambiguous. Op. ¶46. While the court is capable of determining ambiguity of a statute as a matter of law, it was improper for the court to create an issue out of whole cloth. *Matter of Doe*, 1982-NMSC-099, ¶ 3, 98 N.M. 540 (reiterating “[c]ourts risk overlooking important facts or legal considerations when they take it upon themselves to raise, argue, and decide legal questions....” (quoted authority omitted)). The Opinion acknowledges that “both parties agree that the statute is unambiguous”, while commenting that neither of the parties “provide

[the] Court with a rigorous, plain meaning analysis of Section 19-10-13.” Op. ¶43. The court could have, but did not, ask the parties to brief this issue.

The Opinion next rejected Marathon’s plain meaning interpretation as unreasonable and contradictory based on two untenable premises. Op. ¶¶47-48. First, the Opinion concluded that, because Section 19-10-13 “is one of approximately seventy statutes⁵ governing oil and gas leases on public lands....it is doubtful that the phrase ‘all obligations to the state with respect to lands embraced in the assignment’ in Section 19-10-13 refers to obligations beyond those arising under an oil and gas lease.” Op. ¶47. As discussed below, a review of the history of the oil and gas leasing act, and other leasing statutes confirms Marathon’s proffered plain meaning construction of the statutory language.

The Opinion then concluded, erroneously, that under Marathon’s interpretation, an assignor could avoid on-going duties to comply with common law rules or statutes applicable to leased state trust lands. Op. ¶48. As Marathon demonstrated in its Court of Appeals briefing, however, this is a red herring—Marathon simply is not arguing that a release of “all obligations” means that an assignor can return to land it previously leased and use it for any purpose, nor is

⁵ The Opinion generally cites various statutes without discussing any provision within them that contradicts Marathon’s position or supports the Opinion. Nor is the Opinion’s broad-brush reference to these statutes informative because most pertain to entirely unrelated subject matter, such as mineral leases on state park lands, pooling and communitization agreements, royalties on refineries, etc.

Marathon arguing that an assignor, which obviously relinquishes any right of occupancy, can take timber or minerals from State Trust Lands without authorization. None of those hypothetical situations exists here nor did the Commissioner present its “slippery slope” argument below. Beyond that, though, Marathon’s argument, and the district court’s Order, address the limited circumstances presented here—does Section 19-10-13 mean what it says—when an assignment is approved, the assignor “shall stand relieved of all obligations” to the State with respect to the lands? The answer to that question, applying established rules of construction, is unequivocally yes.

2. The history of the oil and gas leasing statutes demonstrates that the Legislature intended to facilitate oil and gas development by allowing for the assignment of leases the Commissioner determined were in good standing, releasing the assigning lessee of all obligations to the state and holding the assignee solely responsible.

Ignoring a decades-long course of dealing across multiple Commissioners, the Opinion purported to undertake an analysis of the Section 19-10-3’s purpose. Op. ¶52. However, the Opinion’s review of the “legal landscape in 1929” overlooked the history of the leasing statutes and pertinent contemporaneous authority. Op. ¶53. In 1912, the Legislature created the Land Office and passed the first statute providing for the leasing of state trust lands for various purposes, which leases were assignable with the Commissioner’s consent. *See* L. 1912, Ch. 82, §§12, 19. The Commissioner was further authorized in 1919 to issue leases for coal, oil and gas and other minerals

on such terms and conditions as he may deem to be for the best interests of the State.

L. 1919, Ch. 98, §1.

Significantly, in 1925 statutes specific to oil and gas leasing were enacted which allowed for the assignment of leases with the Commissioner's approval and the assumption of lease obligations by the assignee, but without any correlative release of the assignor, stating:

All oil and gas leases issued under the provisions of this Act may be assigned in whole or in part with the consent and approval of the Commissioner of Public Lands and after such approval the assignee shall become entitled to all the rights and privileges and be bound by all the obligations of the lease only so far as the lands assigned are concerned.

L. 1925, Ch. 137, §§1-3, 7.

Four years later, at the time oil and gas development was beginning to explode following the discovery of the Hobbs oil pool in 1928,⁶ the oil and gas leasing statutes were amended in a manner clearly designed to facilitate the development of oil and gas. For the first time, the Commissioner was vested with authority to refuse the assignment of any lease that was not in good standing or in litigation, and once the assignment was approved, the Legislature mandated the assignor was released of all obligations to the state:

⁶ See F. Barnes, "History of Development and Production of Oil and Gas in the San Juan Basin" N.M. Geo. Society Fall Field Conf. Guidebook (1951) at: https://nmgs.nmt.edu/publications/guidebooks/downloads/2/2_p0155_p0160.pdf

All leases issued under the provisions of this act shall be assignable in whole or in part. ...***The commissioner shall have the right to refuse approval of any assignment*** not executed in proper form or by the proper person or persons, or ***when the lease is not in good standing*** as to the assigned tracts, or when litigation is pending affecting the lease or the interest of any person therein. ***Upon approval by the commissioner of an assignment the assignor shall stand relieved from all obligations to the state with respect to the lands embraced in the assignment and the state shall likewise be relieved from all obligations to the assignor as to such tract or tracts, and thereupon the assignee shall succeed to all of the rights and privileges of the assignor with respect to such tracts and shall be held to have assumed all of the duties and obligations of the assignor to the state as to such tracts.***

L. 1929, Ch. 125, §4 (emphasis added).

The 1929 Act modified the 1925 statute in three important ways. First, the Legislature specifically added a correlative release of the assignor of all obligations to the state. Second, the Legislature added a release of all obligations from the state to the assignor. Third, the Legislature revised the language regarding the legal effect of an assignment on the assignee from the assignee being “bound by all obligations of the lease” to “shall be held *to have assumed all* of the duties and obligations of the assignor to the state.” (Emphasis added). The use of a mandatory lease form incorporating this legislative covenant as a lease covenant began in 1931. See L.1931, Ch. 18, §2.

In the nearly 100 years of unchanged statutory and lease language, the Commissioner had never, until this case, dishonored those covenants by bringing a claim against a former lessee whose assignment had been approved by the

Commissioner. Oral Argument Tr. at 15:04-16:03; Op. ¶3 (whether Commissioner approval relieves assignor of contract and tort duties is “a matter of first impression”).

That the Legislature knows how to limit the scope of release of a lessee’s obligations is demonstrated by language in the 1967 Geothermal Resources Act which imposed continuing obligations on lessees.⁷ *Cf. State v. Valerio*, 2025-NMCA-____, ____ P.3d ____, 2025 WL 1621551 (“We are mindful that “[t]he Legislature knows how to include language in a statute if it so desires.”). The Geothermal Resources Act specifically describes the obligations released and those that continue upon the relinquishment of the lease. *See* NMSA 1978, §19-13-8. Significantly, two of the “continued obligations” following relinquishment are those the Commissioner claims continue here: (1) the obligation to “place all wells on the lands to be relinquished in condition for suspension or abandonment; and (2) the obligation to protect or restore the surface and surface resources.” *Id.* And, even

⁷ After issuance of the Opinion, the Commissioner revised her geothermal leasing rules, deleting the release language that “the assignor shall be relieved from all obligations owing to the state.” *See* Notice of Supplemental Authority (Amendment to Rule 19.2.7.32 NMAC, submitted September 25, 2025). Notably, the Geothermal Resources Act, unlike the oil and gas leasing act, does not include the language relieving an assignor of obligations to the state and thus the Commissioner was not constrained by a legislative mandate to retain this language in its rules. This further supports Marathon’s argument that the Court of Appeals, at the Commissioner’s invitation, judicially amended the 1929 Act by effectively writing out the legislative covenant in Section 19-10-3. The only way to remove that language, however, is for the legislature to do so—not a court or the Commissioner.

upon the fulfillment of these obligations, the release of the lessee's obligations is limited to "all obligations thereafter accruing under the lease with respect to the lands relinquished, *but no such relinquishment shall release such person from any liability for breach of any obligation of the lease, other than an obligation to drill, accrued at the date of relinquishment.*" *Id.* (emphasis added).

The Opinion makes no mention of this statute even though "[i]n ascertaining legislative intent, the provisions of a statute must be read together with other statutes in *pari materia* under the presumption that the legislature acted with full knowledge of relevant statutory and common law." *Coalition for Clean Affordable Energy v. N.M. Pub. Regul. Comm'n*, 2024-NMSC-016, ¶30, 549 P.3d 500. It instead overlooks this history and relies upon a 1999 New Mexico decision, *Jacob v. Spurlin*, 1999-NMCA-049, 127 N.M. 127, in analyzing Leases executed decades earlier. The Opinion incorrectly assumes that because the general rule set out in *Spurlin* in 1999 that the assignment of a lease does not relieve the original lessee of the covenant to pay rent was "settled in other jurisdictions" in and around 1929, the New Mexico Legislature in 1929 would have been aware of that rule and intended it to limit the statutory release covenant. Op. ¶¶53-56. But the Court acted without the benefit of opposing views concerning authority the court found and applied. Nor was there any consideration given to as to whether this unprecedented rule affecting all former lessees could or should be applied retroactively. *See Smith v. Interinsurance*

Exchange of Automobile Club, 2025-NMSC-004, ¶8, 563 P.3d 868 (stating factors for retroactive application).

To the extent the 1929 New Mexico Legislature was aware of the “general rule” discussed 70 years later in *Spurlin*, the 1929 Act’s language granting the Commissioner authority to disapprove an assignment of a lease that was not in good standing and releasing an assignor from all obligations, added four year after imposing the assumption of those obligations on the assignee, can only be viewed as adopting an exception to the general rule, *i.e.*, that an assignment relieves the lessee of *all* its obligations when the lease so provides.

Moreover, the out-of-state authorities the Opinion cites, Op. ¶¶54-55, actually support Marathon because they stand for the proposition that an assignment *can* relieve a lessee of its obligations when the lease so provides. *See Wilson v. Gerhardt*, 13 P. 705, 705 (Colo. 1887) (“There is no such intention [to release lessee of liability] expressed in the writing.”); *W. Oil Sales Corp. v. Bliss & Wetherbee*, 299 S.W. 637, 638 (Tex. Comm’n App. 1927) (“When a contract is assignable, a party may assign the benefits of his contract to another, and delegate to his assignee the performance of his obligations under the contract; but he remains liable for the proper performance of those obligations, *unless the other party to the contract consents for the assignment to have the effect of releasing him.*” (emphasis added)); 5 C.J.S. Assignments §45 (1916) (“It is...a general rule that a party to a contract may

not, *unless authorized by the other party*, either in the contract itself, or otherwise, so assign the contract as to escape liability for the performance of acts or duties imposed upon [them] by its terms.” (Emphasis added)).

That is exactly what the Leases and Section 19-10-13 do here. They expressly authorize assignment, the Commissioner’s authority to disapprove an assignment and upon approval, release the assignor of “*all obligations to the state with respect to the lands embraced in the assignment...and thereupon the assignee...shall be held to have assumed all of the duties and obligations of the assignor to the state as to such tracts.*” NMSA 1978, §19-10-13 (emphasis added).

Other cases the Opinion cites involve completely different language from the Leases, which not only provide that the assignor is “relieved from all obligations” but also mandate that the “assignee...shall be held to have assumed all of the duties and obligations of the assignor....” For example, the landlord in *Spurlin* was unaware of the assignment because the lease authorized assignment without consent from the landlord and, from the landlord’s “perspective, the parties continued their relationship as lessor and lessee.” *Spurlin*, 1999-NMCA-049, ¶¶2-4. Nor is there any discussion in *Spurlin* about whether the lease allowed the lessee/assignor to be relieved of its duties, and “the undisputed facts...show[ed] that Defendant continued to act as the lessee in his individual capacity by signing the note and lease addendum following the assignment.” *Id.* ¶11.

McFarland v. Mayo, 162 P. 753, 755-76 (Okla. 1916), supports Marathon because it was “not claimed...that...the then owner of the property, ever consented or agreed to release [the lessee] or to accept [the assignees] as his tenants instead of [the lessee].” That is precisely what happened here—the Commissioner agreed to release the assignor (Tesoro) and agreed to accept BC&D as assignee, who was then held to have assumed all of Tesoro’s duties and obligations. *Sanders v. Sharp*, 25 A. 524 (Penn. 1893), does not contain any information on the terms of the lease and therefore, does not provide any guidance on whether Section 19-10-13’s language amounts to a release. In any event, here, there is more than a “mere assignment” because Section 19-10-13 authorizes the Commissioner to disapprove an assignment if the lease is not in good standing, and provides that the Commissioner’s approval of an assignment releases the assignor of all obligations, and mandates that the assignee “shall be held to have assumed all of the [assignor’s] duties and obligations.” Thus, the conclusion in *Sanders* that “mere assignment” does not discharge a lessee’s liability has no bearing on the issues in this case.

The Opinion claims that its interpretation benefits an assignor, because an assignor would no longer be “liable for express covenants, such as paying royalties and rent” if an assignee fails to pay and “[a]n assignor would no longer be obligated under the Leases to ‘pay for all damages to the range, livestock, growing crops or improvements caused by [their] operations.’” Op. ¶57. From this, the Court reasons,

the Commissioner would only be able to recover damages resulting from an operator's negligence, but would not be able to recover for "all damages," as the Leases would have permitted." *Id.* There is no textual support for this judicial redrafting of the Legislature's clear release of "all obligations." It entirely ignores the concomitant legislatively mandated assumption of those obligations by the assignee. The Opinion also does not account for the fact that the Commissioner's form of lease assignment specifically requires an assignee to "pay such rentals and royalties" to the Commissioner, which would be unnecessary to include in the assignment form if the intent of Section 19-10-13 was, at least in part, designed to address an assignor's future liability for rentals and royalties. Additionally, the Opinion fails to articulate how a release of "all damages" still leaves room for tort claims based on the same conduct and seeking the same relief.

The Opinion's flawed logic is further exposed by its acknowledgement that after an assignment, "an assignor does not retain any contractual obligations under an oil and gas lease..., and an assignee becomes solely responsible for fulfilling those obligations." Op. ¶59. Because the tort liabilities the Commissioner raises arise only from the contractual obligations within the Leases, there are no extra-contractual obligations that survive assignment.

As further support for its conclusion, the Opinion discusses statements made at oral argument regarding the potential impacts of assignments from larger oil and

gas companies to smaller less profitable operations. Op. ¶58. There is no record support for these speculative musings and the Commissioner never raised them below. This is a marked departure from the Court's role in statutory interpretation, by which it cannot rewrite a statute "as the court may think it should be [written] or would have been written if the Legislature had envisaged all the problems and complications which might arise in the course of its administration...." *Helman*, 1994-NMSC-023, ¶22; *Atlantic Oil Producing Co.*, 1930-NMSC-040, ¶6 ("If the Legislature has adopted a policy, the executive and the judiciary have but to enforce it. Considerations of public interest can have no greater weight than as they may aid us reasonably to interpret the legislative will.").

3. The Court of Appeals Erred by *Sua Sponte* Finding Ambiguity in the Lease Language

Against this backdrop, it is clear that the Court of Appeals erred by its *sua sponte* finding of ambiguity in the word "obligations" in the Leases, without the benefit of briefing by the parties. Op. ¶¶35-59. "In interpreting oil and gas leases, courts have generally applied the rules governing contract interpretation." *ConocoPhillips Co. v. Lyons*, 2013-NMSC-009, ¶23, 299 P.3d 844. "The purpose, meaning and intent of the parties to a contract is to be deduced from the language employed by them; and where such language is not ambiguous, it is conclusive." *Id.* The meaning to be ascribed to a particular term is to be determined by reference to the meaning at the time of the parties' agreement. *See C.R. Anthony Co.*, 1991-NMSA-

070, ¶15. “[W]hen parties have entered into a valid lease of land for oil and gas purposes, and the terms contained therein are ‘plain and unmistakable,’ a court does not have the power to place a different interpretation upon such terms.” *Id.* That a court does not have the power to rewrite a contract is especially apt where, as here, the contract is a legislatively mandated form, reflecting legislative policy decisions.

Neither party raised (nor did the district court rule upon) whether the word “obligations” was ambiguous. In fact, the opposite is true—both parties argued that the statutory and contractual language is unambiguous. Marathon’s Court of Appeals Answer Brief 9-17; Commissioner’s Court of Appeals Brief in Chief 28-31. Although whether a contract is ambiguous is a matter of law for a court to decide, under the circumstances presented here there was no basis for the Court of Appeals, even on *de novo* review, to make that determination as a matter of law without input from the parties. *See NM-Emerald*, 2021-NMCA-020, ¶12 (declining to rule on questions not argued by parties because doing so would “‘create[] a strain on judicial resources and a substantial risk of error,’ particularly on a question that has the potential to significantly impact contractual relationships in New Mexico” (quoting *Elane Photography*, 2013-NMSC-040, ¶70)); *United States v. Sineneng-Smith*, 590 U.S. 371, 375-76 (2020) (“[Courts] do not, or should not, sally forth each day looking for wrongs to right. They wait for cases to come to them, and...normally decide only questions presented by the parties.”).

More importantly, however, the Opinion’s review of the lease language does not support its conclusion of ambiguity. The Opinion cites *Mark V* in support of its conclusion that “relieved from all obligations” in the Leases is ambiguous. Op. ¶¶37-38. In *Mark V*, however, this Court was reviewing a district court’s determination that an addendum to a listing agreement canceling all obligations under the agreement was unambiguous, concluding that it was unclear based upon the consideration of testimony that the purpose was only to remove the contract from the multiple listing service. 1993-NMSC-001, ¶12. Here, the Commissioner offered no extrinsic evidence to support her construction of the Leases, nor could she since all the extrinsic evidence--her leasing rule, assignment form and unbroken course of dealing with lessees for almost a century reinforce Marathon’s interpretation.

Not only did the Court of Appeals err by finding uncertain meaning where none exists, it erroneously determined the meaning even though “the meaning to be assigned the unclear terms is a question of fact,” and not one of law capable of determination upon appellate review. *Mark V*, 1993-NMSC-001, ¶13. While the Court of Appeals acknowledged this well-established rule of contract interpretation, the Court of Appeals relied *on the ambiguity it created* to conclude, improperly, “as a matter of law—that the Leases do not express a clear intent to waive an assignor’s extra-contractual tort liability.” Op. ¶¶23. However, upon a determination of

contractual ambiguity, the Court of Appeals should have remanded the case for further proceedings. *Mark V*, 1993-NMSC-001, ¶13.

The Opinion overlooks that for nearly a century, as conceded by the Commissioner at oral argument, no Commissioner has *ever* sought to hold a former lessee liable in tort or otherwise for damages to the leased premises after approving the assignment of a lease. This course of dealing should have been afforded controlling weight in determining the meaning of any ambiguity. *Bachmann v. Regents of Univ. of N.M.*, 2021-NMCA-050, ¶24, 496 P.3d 604 (“Our Supreme Court has held that ‘the construction of a contract adopted by the parties, as evidenced by their conduct and practices, is entitled to great weight, if not controlling weight, in ascertaining their intention and their understanding of the contract.’” (quoting *Schultz & Lindsay Constr. Co. v. State*, 1972-NMSC-013, ¶5, 83 N.M. 534)); *Lyons*, 2013-NMSC-009, ¶10 (“In making the threshold determination regarding [contractual] ambiguity, courts may consider evidence of the circumstances surrounding the making of the contract and of any relevant usage of trade, course of dealing, and course of performance.”).

While the Opinion’s discussion of the Lease language purports to stop short of resolving the ambiguity, the Opinion’s analysis of the statutory language does just that. *See Op.* ¶¶41-64. The result then is that the Court of Appeals, under the guise of statutory interpretation, resolved a contractual ambiguity as a matter of law,

despite the Opinion’s acknowledgment of this Court’s holding that general principles of contract interpretation apply to the statutory oil and gas leases. *Lyons*, 2013-NMSC-009, ¶15 (applying rule to the statutory oil and gas lease); *see also Yates*, 98 F.3d at 1229-30 (noting that although the terms of the Leases are mandated by statute, “the lease itself is a contract between the State...and [a] lessee” and therefore the court applies “general contract principles in ascertain the effect of the particular provision of the lease”).

C. The Opinion Improperly Imposes a Requirement that a Contract Must Contain Magic Language Expressly Releasing Tort Liability to Be Effective

The Opinion relies upon *State ex rel. Udall v. Colonial Penn Ins. Co.*, 1991-NMSC-048, ¶37, 112 N.M. 123, to conclude that the Commissioner and oil and gas lessees somehow knew, in 1922 and 1932, that parties must include magic language in a contract to release liability in tort in order to comply with a rule of contract interpretation adopted decades later. *See* Op. ¶¶26-34. Use of the state oil and gas lease form has been mandated by the Legislature since 1931—Tesoro had no ability to negotiate its terms to add superfluous language required by the Opinion so that it should have stated “all obligations, *including but not limited to any tort obligations*” to comply with *Udall*.

Although it may now be “settled law” “that parties must specifically and clearly contract for limited liability,” Op. ¶28, the Opinion does not explain how a

rule adopted in 1991 is appropriately applied to Leases whose execution predate it or explain how it can be imposed on a contract mandated for use by the Legislature. Even if *Udall* can be applied retroactively, it did not require an express limited liability or exculpatory clause. Instead, this Court recognized that the “concept of freedom of contract...can act to limit general tort liability in certain circumstances *when limited liability is expressly bargained for.*” *Udall*, 1991-NMSC-048, ¶37 (emphasis added).

As discussed above, limited liability *was expressly bargained for* because the Leases—and the statutory covenant upon which they were based—state that the assignor “shall stand relieved from all obligations to the state with respect to the lands embraced in the assignment” upon the Commissioner’s approval of a lease assignment. This language, coupled with the correlative assumption of such obligations by the new lessee, satisfies *Udall*’s requirement for an expressly bargained for limitation of liability. See D. Patton, “Bad Moon Rising--The Continuing Liability of an Assignee after Assignment,” 53 RMMLF-Inst. 31-1 (2007) (recommending that lessees “borrow from the language used in New Mexico” if they want to limit all future post-assignment liability). This is more than apparent from the Legislative history of the leasing statute, which added the release language in an amendment that also granted the Commissioner authority to disapprove an assignment if the lease was not in good standing.

Contrary to the Opinion, *see* Op. ¶¶29-33, *Isler and Rio Grande Jewelers Supply*, along with the other authorities Marathon discussed in its Answer Brief, support Marathon’s position that the Lease language releasing an assignor and the concomitant assumption of obligations by the assignee demonstrates that the parties contracted away liability for tort claims. *See* Answer Brief 23-29. The Opinion’s conclusion that the release language must include the surplusage “*including, but not limited to, tort obligations,*” is a prohibited judicial amendment of the statute and Leases, which make perfect sense as written. No one in 1922 and 1932 would have had the prescience to predict that a release of “all obligations” needed to specifically mention liability in tort, to be effective. At that time, the law was clear that “[t]he assumption of all obligations of whatsoever character includes a liability arising in tort.” *Geiger v. Sanitary Farm Dairies*, 146 Minn. 235, 238 (1920) (alteration and quoted authority omitted); *see also Kansas City-Leavenworth R. Co. v. Langley*, 78 P. 858, 861 (Kan. 1904) (company charter which provided that successor railroad corporation shall own and control the connected lines of railroads of said several corporations with all the rights, powers, privileges and immunities and subject to all of the obligations and liabilities to the state...embraces obligations and demands arising out of tort as well as out of contract.”).

D. Marathon's Right for Any Reason Arguments Support Reversal

The Commissioner's claims for statutory trespass, waste, and negligence per se under NMSA 1978, §19-6-3 are legally unsupportable. The Opinion did not substantively address certain of Marathon's right for any reason arguments based on a contention that they were inadequately supported. Op. ¶14. However, Marathon's briefing devoted several pages to its alternative arguments for affirmance with citation to supporting authority. *See* Marathon's Court of Appeals Answer Br. 36-40 and citations to briefing below.

Beyond the inconsistency of refusing to address Marathon's arguments while raising entirely new arguments, the Opinion improperly rejected Marathon's right for any reason argument for two reasons. First, as discussed above, once the Commissioner approved the assignment of the Leases, any statutory obligation to prevent waste or trespass was clearly included in the release of "all obligations to the state with respect to the lands embraced in the assignment" under Section 19-10-13 and Section 7 of the Leases. Therefore, the Commissioner's tort claims premised on Section 19-6-3 are subsumed within the Commissioner's contract claims and must be dismissed.

Second, and contrary to the Opinion, Marathon demonstrated that Section 19-6-3 is inapplicable and therefore, even if not subsumed in the Commissioner's contract claims, cannot be an independent basis for a tort claim against Marathon.

Section 19-6-3 imposes criminal liability upon a current lessee for actions during its tenancy, not a former lessee that assigned a lease deemed in good standing with the Commissioner's approval. *See* NMSA 1978, §19-6-3 (authorizing criminal penalties against a lessee that "does not vacate [the lands] within 30 days after expiration or cancellation of his lease", a lessee "committing waste upon any state lands or any lessee who shall use the lands leased for any purpose other than that specified in the lease"). At the time Tesoro assigned the Leases, with Commissioner approval, the Leases were not expired or cancelled. Thus, Section 19-6-3's language regarding failure to timely vacate is inapplicable.

Section 19-6-3's prohibition on committing waste is also inapplicable, because the Leases were presumed to be in good standing, *i.e.*, Tesoro was not in violation of any lease or other obligation to maintain the premises, when assigned. In approving the assignments the Commissioner is presumed to have followed all proper procedures. *See State ex rel. Reynolds v. Aamodi*, 1990-NMSC-099, ¶ 9, 800 P.2d 1061; *Wing Pawn Shop v. Taxation and Revenue Dep't*, 1991-NMCA-024, 111 N.M. 735. Finally, the Commissioner did not and (and cannot) allege that Tesoro used the Subject Lands for any purpose other than specified in the Leases. Because the Complaint failed to support a violation of Section 19-6-3, the Commissioner's statutory tort claims necessarily fail.

Even if the Commissioner could establish a violation of Section 19-6-3, the time to do so was prior to assignment of the Leases, not now, decades after Tesoro assigned the Leases, which have been operated by a variety of other operators in the intervening years. During Tesoro's tenure as operator, if Tesoro committed waste, the Commissioner's remedy was to cancel the Leases according to their terms. *See* 1922 Lease, ¶19 (RP 63); 1932 Lease, ¶13 (RP 71). Additionally, at the time of the assignment, if Tesoro had committed waste, the Commissioner could have disapproved the assignment, a remedy the Legislature specifically authorized in the 1929 Act. *See* NMSA 1978, §19-10-13 ("The commissioner shall have the right to refuse approval of any assignment...when the lease is not in good standing as to the assigned tracts...."). Instead, the Commissioner approved the assignment, which relieved Tesoro of all obligations to the Commissioner and transferred all obligations to the assignee.⁸

The Opinion also summarily rejected Marathon's statute of limitations argument. Marathon's point, however, is that if suit for a violation of Section 19-6-3 were authorized, the time for doing so was within 2 years of the date the supposed

⁸ On its face, the Commissioner's remedy under Section 19-6-3 was to pursue criminal prosecution, which would need to be brought by the Attorney General, not the Commissioner. This is reinforced by Section 19-6-5, which only authorizes suit by the Attorney General, not the Commissioner. The Commissioner argued in the district court that the Attorney General may issue commissions for counsel to other state agencies, but identified no such commission for this case, and in fact conceded that the Commissioner "cannot criminally prosecute Marathon." RP 218, 219.

criminal acts of trespass was committed. *See* NMSA 1978, §30-1-8(C) (providing that a person shall not be prosecuted, tried or punished in any court of this state unless the indictment is found or information or complaint is filed within two years of the time a misdemeanor crime was committed). While this statute of limitations may not apply per se to the Commissioner's civil claims against Marathon, it illustrates why the Commissioner's decades-long delay is inappropriate, especially, when, as here, not only was there no timely prosecution—the opposite occurred—the Commissioner approved the assignment of the Leases, which are presumptively determined to have been in good standing and there was no allegation or claim regarding the condition of the premises when the Leases were assigned.

Because the Complaint acknowledges that Tesoro leased the Subject Lands and assigned the Leases with the Commissioner's approval, there is no legal basis for the Commissioner to assert a claim for damages against Tesoro (or Marathon) as a former tenant for waste or trespass. A tenant with a right of occupancy is not guilty of trespass unless it continues to occupy the property after termination of its tenancy. *See Friends of Tuhaye, LLC v. Tuhaye Homeowners Ass'n*, 777 F. App'x 903, 908 (10th Cir. 2019) (upholding dismissal of trespass claim by landowner where covenants granted permission to enter plaintiff's property). There simply can be no waste or trespass in this case given the Commissioner's approval of the assignment of the Leases, releasing Tesoro of all obligations with respect to the lands embraced

in the assignments and agreeing to the relinquishment of Tesoro's tenancy and an assumption of those obligations by the assignee.

VI. CONCLUSION

Marathon respectfully requests the Court reverse the Court of Appeals.

STATEMENT REGARDING ORAL ARGUMENT

Oral argument is requested because this case involves complex issues of first impression.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing pleading was submitted for e-filing and service through “Odyssey E-File & Serve” and e-mailed to the following counsel this 2nd day of January, 2026:

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