



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 REPLY BRIEF

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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 4395 words.

DATED this 10th day of February 2026.

/s/ *Earl E. DeBrine Jr.*

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I. INTRODUCTION

The Commissioner's Answer Brief fails to refute Marathon's showing that (1) the Commissioner's tort claims are subsumed by her admittedly released and dismissed contract claims; and (2) even if her tort claims are independent from her contract claims, NMSA 1978, §19-10-13, the statutory Leases, and the Commissioner's own regulations contain a clear, express release of any tort liability. Thus, the Court of Appeals' Opinion ("Opinion") must be reversed.

The Commissioner's interpretation of the release language lacks textual support, runs contrary to the rules of statutory construction and contract interpretation and is at odds with legislative history of the oil and gas leasing statutes and a century of course of dealing with lessees. To try to overcome these deficiencies, the Commissioner resorts to a policy argument—that her ability to sue past lessees in tort is “integral” to her ability to “protect state trust land from harm caused by oil and gas operations” [AB 1] But the Legislature in 1929 provided the ultimate mechanism for the Commissioner to protect state trust lands from the very damages the Commissioner alleges. Specifically, the Legislature authorized the Commissioner the “right to refuse approval of any assignment...when the lease is not in good standing.” L. 1929, Ch. 125, §4. The Legislature added this enforcement mechanism at the same time it provided that, upon assignment, the assigning lessee “shall stand relieved from all obligations to the state with respect to the lands

embraced in the assignment,” added a reciprocal release for the state, and included the concomitant assumption by the assignee of all the assignor’s duties and obligations to the state.

The Commissioner fails to acknowledge the Legislature’s comprehensive legislative program to prevent and address the environmental impacts of oil and gas operations detailed in the brief by amici and the variety of mechanisms for preventing the damage the Commissioner now claims. During Tesoro’s tenancy, the Commissioner could have, but did not cancel the Leases according to their terms. If Tesoro left behind debris or caused any damages the Commissioner could have, but did not, disapprove the assignment from Tesoro, just as other Commissioners could have, but did not, disapprove subsequent assignments. This Court should reject the Commissioner’s call to affirm the Court of Appeals’ judicial amendment of §19-10-13 and the Leases to allow the Commissioner to pursue damages claims decades after Tesoro was relieved of all obligations to the state.

Throughout the Answer Brief, the Commissioner raises the specter of “absurd results” or “deleterious effects” of Marathon’s reading of the Leases and §19-10-13. **[AB 31-32; 40-43]** Not only did the Commissioner not raise most of these issues below, they cannot be reconciled with the fact that no such absurdities or effects have emerged since 1929. The Commissioner’s hand wringing is entirely unfounded because all the Commissioner needs to do is exactly what the Legislature has

authorized—refuse to approve an assignment until the lease is in good standing as determined by the Commissioner. In fact, the Commissioner acknowledges that she is doing just that. [AB 25] (“[T]his Commissioner has generally increased efforts to generally hold all lessees and operators accountable under both the common-law and contract for damage to state trust land.”). And, as it did in this case, once an assignment is approved, the Commissioner can look to the current lessee who assumed all of the assignor’s obligations to the state and operators that caused the damages. Because a lease cannot be assigned without Commissioner approval, an assignor has an incentive to ensure the lease is in good standing prior to an assignment. Thus, the purposes of tort law and ensuring that damages to state trust lands are remedied are met. [AB 41-42]

II. THE ANSWER BRIEF HIGHLIGHTS THE DEFICIENCIES IN THE OPINION’S ANALYSIS OF THE COMMISSIONER’S TORT AND CONTRACT CLAIMS

The Court need look no further than *Dean v. Paladin Exploration Co.*, 2003-NMCA-049, 133 N.M. 491, and the Answer Brief to reverse. In *Paladin*, the Court of Appeals reviewed the statutory lease language that a “[l]essee 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 lands.” 2003-NMCA-049, ¶14. The Court of Appeals reasoned: “Such lease terms are generally given effect, and *the mineral lessee may be liable for damages without regard to negligence.*” *Id.* (emphasis

added). The Commissioner acknowledges the breadth of *Paladin*'s holding, stating: "The Leases therefore impose a contractual obligation on the lessee *to go further than the common law requires and address all damage to the surface, including reasonable impacts for which the lessee would not be liable under the common-law.*" [AB 11 (emphasis added)] If under *Paladin*, a lessee is strictly liable for *all damages to the surface estate, whether negligent or not*, there is no room for holding a lessee liable in damages if they coincide with breach of a common law or statutory tort duty. The Opinion's contrary conclusion conflicts with *Paladin*, and with settled precedent reiterating the need to maintain the distinction between tort and contract claims, warranting reversal.

The Commissioner attempts to avoid the natural reading of *Paladin* and the Leases by arguing that the Leases are "not the only source of a lessee's duty to exercise reasonable care to avoid unreasonable, excessive, or negligent damage to the surface, which is a duty imposed by the common law." [AB 11] But, because a lessee is strictly liable and must pay for *all damages to the surface estate, whether negligent or not*, there is no room for an independent common law or statutory tort duty. Otherwise, the legislative covenant and provision in the Leases releasing "all obligations" is meaningless.

The Commissioner also misreads New Mexico precedent regarding the proper analysis for evaluating whether a complaint alleges tort duties independent from

contract duties. The Commissioner appears to argue that if a tort duty exists and a complaint alleges its breach, then the tort claim can move forward, irrespective of whether the same duty exists under the contract. [AB 7-9 (outlining elements of trespass and waste and regulatory provisions governing same)]; [AB 5] (contending that the Opinion “correctly identified the longstanding common-law and statutory duties invoked by the Complaint”)]. However, a court’s role is not to merely “identify” sources of tort duties, but is, instead, to evaluate the gravamen of a complaint to determine whether it identifies tort duties based upon duties other than those imposed by the contract. *Cottonwood Enters. v. McAlpin*, 1991-NMSC-044, ¶11, 111 N.M. 793; *Kreischer v. Armijo*, 1994-NMCA-118, ¶5, 118 N.M. 671.

The Answer Brief states that the “gravamen” of the Commissioner’s tort claims is that during the “time Tesoro was lessee, unit operator, and well operator for many of the individual wells on those premises, Tesoro discarded debris and caused oil to contaminate the leased premises, conditions which persist today.” [AB 5] These claims, as well as the Commissioner’s statutory claims, are all subsumed by the duties imposed by the Leases.¹ See *NM-Emerald, LLC v. Interstate Dev., LLC*, 2021-NMCA-020, ¶25, 488 P.3d 707; see Marathon’s Brief in Chief (“BIC”) 10-20. In

¹ Contrary to the Answer Brief, Marathon did not cite only the Complaint’s allegations relating to breach of contract—Marathon compared the Complaint’s breach of contract claims with its tort claims. [BIC 13-14] (citing Complaint, ¶¶68-74 and ¶¶78-80).

fact, the Answer Brief concedes that the tortious conduct the Complaint alleges is the “same alleged conduct” that:

forms the basis of the Commissioner’s now-dismissed breach of contract claim against Marathon, *based on provisions in the Leases holding the lessee liable for all damage to the surface of the leased premises and requiring that the lessee comply with all applicable laws*, including State Land Office regulations requiring full reclamation and remediation of lease sites.

[AB 5] (emphasis added). The Commissioner cannot have it both ways under New Mexico precedent. If, as the Commissioner acknowledges, the conduct alleged is the same for both contract and tort claims, and if, as she acknowledges, the Leases impose a two-fold obligation to be “liable for all damage”² to the Subject Lands, and further require compliance with all laws, including regulations requiring full remediation and reclamation, there simply is no room to be liable for or pay damages attributable to common law or statutory obligations. Instead, the Complaint is “nothing more than an attempt to...allow the contract to be rewritten under the guise of an alleged action

² That Marathon uses the word “liability” in its briefing is telling, but not for the reasons the Commissioner implies. [AB 30] While §19-10-13 does not use the word liability, that is what this case is centered upon—the provision in the Leases imposing strict liability on the lessee which “shall be **liable for** and agree to pay for all damages” to the surface. While conceding below that these obligations were released upon approval of Tesoro’s assignment of the leases, the Commissioner seeks to impose “liability” and recover damages from Marathon by labeling her claim for surface damages as sounding in tort, rendering the release of the obligation to be liable and pay damages meaningless.

in tort.” *Rio Grande Jewelers Supply, Inc. v. Data Gen Corp.*, 1984-NMSC-094, ¶6, 101 N.M. 798.

The Commissioner’s discussion of *McNeill v. Burlington*, 2008-NMSC-022, 143 N.M. 740 [AB 6-7], highlights the superficial nature of her analysis and the Opinion’s shortcomings. The Commissioner relies on *McNeill* only to identify a tort duty owed to a surface estate owner. What the Commissioner does not do, and what the Court of Appeals failed to do, is explain how the more limited tort obligation to refrain from negligently causing damages to the surface by unreasonable or excessive use is not subsumed by the unqualified contractual obligation that a lessee is liable for and pay *all damages* to the subject lands and to comply with laws mandating site remediation and reclamation.

The Commissioner and the Opinion fault Marathon for relying on *Isler v. Texas Oil & Gas Corporation*, 749 F.2d 22 (10th Cir. 1984). [AB 11-12] Marathon cited *Isler* for the proposition that the Commissioner should not be allowed to nullify the bargain struck in the Leases by asserting claims in tort and is entirely consistent with Marathon’s briefing throughout the case. *See, e.g.*, RP 238; Marathon Ct. App. Answer Br. 24-27. This Court in *Udall*, reaffirmed *Isler*’s statement of New Mexico law and the Tenth Circuit, federal district courts and the Court of Appeals have all since cited and applied it in precluding the assertion of tort claims subsumed by the parties’ contract. *See State ex rel. Udall v. Colonial Penn Ins. Co.*, 1991-NMSC-048,

¶¶37-39, 112 N.M. 123; *Elliott Indus. Ltd. P'ship v. BP Am. Prod. Co.*, 407 F.3d 1091, 1115–16 (10th Cir. 2005); *Anderson Living Tr. v. ConocoPhillips Co., LLC*, 952 F. Supp. 2d 979, 1032–33 (D.N.M. 2013); *Nearburg v. Yates Petroleum Corp.*, 1997-NMCA-069, ¶ 31, 123 N.M. 526, 537. *Isler* and these cases apply with equal force here.

That the Commissioner is not seeking recovery for failure to pay rent or royalties [AB 15] is irrelevant to whether the common law and statutory tort duties she asserts are independent from her now dismissed contractual claims. 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; *Bernalillo Cnty. Deputy Sheriffs Ass'n v. Cnty. of Bernalillo*, 1992-NMSC-065, 114 N.M. 695, ¶13;³ BIC 15-17.

Marathon is not arguing that the compliance of laws provision negates the existence of independent duties. [AB 12-14] Marathon does not dispute that, if a lessee (prior to assignment) breached the compliance with laws provision or

³ The Commissioner's effort to distinguish *Bernalillo County* [AB n. 2] fails because *Cockrell v. Bd. of Regents of N.M. State Univ.*, 2002-NMSC-009, ¶17, 132 N.M. 156, went on to acknowledge that the contract incorporated the FLSA, but because Congress cannot "subject a nonconsenting state to private remedies in the state's own court for the violation of a federal statute," the FLSA's waiver of sovereign immunity, which was at issue in the case, "does not have the force of law as applied against the State and therefore cannot be incorporated into a state employment contract by operation of law."

undertook an unlawful act, the Commissioner can enforce that provision against the current lessee, which assumed those duties and obligations. Marathon's argument, however, is that once the Commissioner has approved an assignment, the assignor stands relieved of all obligations under the Lease, which would necessarily include the compliance with laws provision. The Commissioner's attempt to point to "extra-contractual duties invoked by the Complaint" fails for the same reasons.⁴ **[AB 14]** While the duties the Commissioner identifies do "exist" outside of the Lease, such as in a statute or common-law, under the circumstances here they are subsumed by Lease language which imposes the same, albeit broader, unqualified duties.

The Commissioner asserts that Marathon did not identify a "compelling reason" for this Court to reverse the Court of Appeals on the issue of independent duties. **[AB 10]** However, the Commissioner completely ignores the brief by amici, which forcefully addresses the deleterious effect of the Opinion's re-writing of the thousands of oil and gas leases and the pending innumerable transactions premised upon a shared understanding of the legislative and lease covenants. In addition, as Marathon demonstrated, the Opinion departs from established precedent. Thus, reversal is warranted.

⁴ Contrary to the Commissioner **[AB n.3]**, Marathon did not cite *Amrep Sw., Inc. v. Shollenbarger Wood Treating, Inc.*, 1995-NMSC-020, ¶28, 119 N.M. 542, for its discussion of the economic loss doctrine but instead for the proposition that courts recognize the need "to preserve the line between contract law and tort law."

III. THE COMMISSIONER FAILS TO OVERCOME MARATHON'S SHOWING THAT §19.10.13, THE LEASES AND THE COMMISSIONER'S REGULATIONS MEAN WHAT THEY SAY

The Commissioner's assertion that her arguments below "put the meaning of 'obligations' squarely before the Court of Appeals" [AB 22] cannot be reconciled with her briefing in the district court and Court of Appeals, statements at oral argument, or even the Opinion. 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. The Court of Appeals' decision to create ambiguity and resolve it without the benefit of briefing by the parties was error.

The Commissioner cites *NM-Emerald*, 2021-NMCA-020, for the proposition that appellate courts are "empowered to conduct their own research and analysis." [AB 34] But in *NM-Emerald*, the court declined to rule on an issue of first impression because "to rule on these questions would thus require this Court 'to develop the arguments itself, effectively performing the parties' work for them.'" *Id.*, 2021-NMCA-020, ¶12 (quoting *Elane Photography, LLC v. Willock*, 2013-NMSC-040, ¶70, 309 P.3d 53).

A. The Commissioner Fails to Refute Marathon's Showing that the Assignment Provision in the Leases Is Unambiguous.

The assignment provision in the Leases is unambiguous, and the Commissioner's contrary arguments all fail. Contrary to the Commissioner's

assertion [AB 18-19 & n.4], Marathon’s arguments regarding the error of the Opinion’s analysis based on *Udall*, 1991-NMSC-048, are fully developed and consistent with Marathon’s briefing below.⁵ Marathon takes issue with the Opinion’s suggestion, based on *Udall*, the parties to the Leases knew, in 1922 and 1932, that magic language to release liability in tort was needed to comply with a rule of contract interpretation adopted decades later. [BIC 38-39] The Commissioner, citing cases evaluating negotiated contracts, takes the suggestion further arguing that the Legislature must include language such as a release “of and from any and all claims, causes of action, rights suits, covenants, contracts, agreements, judgments and demands of whatsoever kind or nature” to comply with *Udall*. [AB 20] But *Udall* does not require an express 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).

⁵ The Commissioner incorrectly contends Marathon’s “new retroactivity argument” ignores the rebuttable presumption of retroactivity in civil cases [AB 19]. Rather, Marathon cited *Smith v. Interinsurance Exch. of Auto. Club*, 2025-NMSC-004, 563 P.3d 86, BIC 29-30, to make the point that as a result of the Opinion’s unaided ambiguity conclusion, there has been no analysis of whether *Udall* should be applied to leases executed decades earlier. It is entirely consistent for Marathon to rely on cases that post-date the Leases for rules of interpretation (which have remained consistent). What Marathon disputes is the Opinion’s imposition of substantive standards on Leases executed decades earlier. [AB 19]

The Leases’ assignment provision *does* contain an express limitation of tort liability, stating that upon 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.” RP 24 ¶7. This statutorily required language reflects a bargained for mutual release—both the assignor and the state are relieved from all obligations with respect to the lands embraced in the assignment. As if that language is not clear enough to demonstrate an express release, the Legislature went one step further and mandated that the Leases provide, upon assignment, the assignee “shall be held to have assumed all of the duties and obligations of the assignor to the [state].” RP 24 ¶7; RP 20 (example of approved assignment includes language that assignee “assumes and agrees to perform all obligations to the State....”).

This language demonstrates that limited liability was expressly bargained for, *i.e.*, there is a mutual release upon approval of the assignment by the Commissioner, and the concomitant assumption of all obligations makes the intent to negate the usual consequences of tortious conduct plain. *See Acquisto v. Joe R. Hahn Enterprises, Inc.*, 1980-NMSC-126, ¶7, 95 N.M. 193 (“While the law allows one to exculpate [them]self by contract, it will do so only if the exculpation is set forth with such clarity that the intent to negate the usual consequences of tortious conduct is made plain.”). Indeed, the language in the statutory lease has been recommended for

use when drafting a lease intended to release an assignor of continuing liability after assignment. *See* BIC 39.⁶

The Commissioner's attempt to validate the Opinion's reliance on *Mark V, Inc. v. Mellekas*, 1993-NMSC-001, 114 N.M. 778, fails. In *Mark V*, unlike here, after concluding the language was ambiguous because it conflicted with other language in the contract, the Court remanded for a full evidentiary hearing to resolve the ambiguity. 1993-NMSC-001, ¶21. The Commissioner attempts to sidestep *Mark V* by arguing that a different outcome is warranted because this appeal involves the release of tort liability rather than the discharge of contractual obligations. [AB 23] That is a distinction without a difference because whether the assignment provision releases tort liability is a matter of contract interpretation subject to the general principles of *Mark V* and New Mexico precedent governing contract interpretation.⁷

⁶ The Commissioner misreads *Bad Moon Rising*, and the case it discusses, *Seagull Energy E&P, Inc. v. Eland Energy, Inc.*, 207 S.W.3d 342 (Tex. 2006). [AB 27] *Seagull* turned on whether the contract included a release of liability, and noted that “[e]ven when the contract does not expressly provide for the consequences resulting from the assignment of one's interest, the contract's subject or other circumstances may indicate that obligations were not intended to survive assignment.” 207 S.W.3d at 347.

⁷ The Commissioner suggests the only evidence of a decades-long course of dealing is her concession at oral argument. [AB 25] However, there is no reported or unreported decision reflecting an attempt by any commissioner to hold a former lessee liable for surface damages. It is impossible to prove a negative and concessions at oral argument are often the basis for a court's decision and in one case was the sole basis. *See Lopez v Wal-Mart Stores, Inc.*, 1989-NMCA-013, ¶¶8-

The Commissioner's efforts to distinguish the cases Marathon cited as examples of the understanding of "all obligations to the state" in and around the time the Leases were executed, are not persuasive. [AB 26] (discussing *Geiger v. Sanitary Farm Dairies*, 146 Minn. 235 (1920), *Kansas City-Leavenworth R. Co. v. Langley*, 78 P. 858 (Kan. 1904)] The Commissioner ignores the assumption language in the Leases specifically states that an assignee shall be "*held to have assumed all of the duties and obligations of the assignor to the state.*" Thus, the assumption language expressly states that an assignee "assumes" all of the assignor's duties and obligations.

B. The Commissioner Fails to Refute Marathon's Showing that §19-10-13 Relieves an Assignor of Tort Liability

Marathon's interpretation of §19-10-13 is reasonable, consistent, and gives effect to the Legislature's intent, whereas the Commissioner's reading cannot be squared with the legislatively mandated language and this Court's precedent governing statutory interpretation, as Marathon has demonstrated. BIC 21-34.

The Commissioner's exegesis of the Oil and Gas Leasing Statutes cannot be reconciled with the legislative changes to the statute. As Marathon established, this Court in 1930 characterized the 1929 Act as a "comprehensive act regulating oil and

9, 108 N.M. 259. Notably, the Answer Brief did not qualify this concession or point to any evidence contradicting it.

gas leases of state lands,” adding 8 new sections and making significant changes to others with their genesis in the 1925 statute. BIC 26-27. Significantly, the 1925 Law did not (1) authorize the Commission to refuse approval of an assignment when a lease was not in good standing, (2) release an assignor of all obligations to the state; (3) release the state of all obligations to an assignor, or (4) provide that an assignee “shall be held to have assumed all obligations” to the state, but instead only that an assignee shall be “entitled to all the rights and privileges and be bound by all the obligations of the lease.” These were all added in 1929 to spur the development of a burgeoning oil and gas industry and have remained relatively unchanged to this day.

Marathon agrees with the Commissioner that under the 1925 Law, an assignor would continue to be bound by the lease and liable to the Commissioner. Marathon also agrees that it is reasonable to conclude that the Legislature, in 1929, sought to prevent that outcome and added language releasing an assignor. But, Marathon’s agreement with the Commissioner ends with the Commissioner’s limited reading that “all obligations” means only “express covenants” in the Lease. There is nothing in the 1929 Act to support this reading, especially in light of the additional language requiring that an assignee “assume” all of the duties and obligations to the state. The Commissioner’s interpretation gives no effect to the language the Legislature intentionally added and changed in 1929, namely that an assignee is not simply

bound by the obligations of the lease, but that an assignee *assumes all of the duties and obligations of the assignor to the state.*

The Commissioner's discussion of §19-10-13's language regarding record title owners' obligations to the state actually supports Marathon. Section 19-10-13 specifically states when a record title owner enters into an agreement with another for development of the leased area or for other purposes, doing so shall not "relieve the record title owner of such lease from complying with any of the terms or provisions thereof, and the commissioner shall look solely and only to such record owner for compliance therewith." In addition, such agreements do not need Commissioner approval. *Id.*

This language stands in stark contrast to the assignment language which specifically requires Commissioner approval and, upon such approval, states that a lessee "shall stand relieved" of all obligations to the state. If the Legislature had intended for lessees to have ongoing obligations to the state post-assignment, it could have said so in much the same way it maintained a geothermal lessee's ongoing obligations. **[BIC 28-29]** (discussing 1967 Geothermal Resources Act). It did not. Commissioners could have changed SLO Rule 19.2.100.43, aptly titled "Effect of Commissioner's Approval." They did not. However, this Commissioner deleted the identical language at issue from its geothermal leasing regulation.

The Commissioner criticizes Marathon's characterization of the statutory language as a legislative covenant or contractual promise arguing that it is a "new argument" and that Marathon provides no support for its characterization of §19-10-13 as "some sort of legislative promise to assignors." **[AB 33]** Yet, that is what §19-10-13 is. The Legislature, prior to mandating the use of a statutory lease form, codified a mutual covenant between the state and lessees: Upon approval 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."

As Marathon demonstrated, the Opinion's out-of-state cases support Marathon's position and the Commissioner's attempt to show otherwise fails. **[AB 35-36]** The Commissioner criticizes Marathon's discussion of those cases by arguing they relate only to a release of express covenants in a contract as opposed to a release of tort liability. Any such criticism, however, lies with the Opinion, which, *sua sponte* found these cases and cited them. Beyond that, the Commissioner fails to meaningfully grapple with these authorities that recognize that obligations can be assigned *and* released when consented to by the other party to the contract. **[BIC 30-31]** That is exactly what the language in §19-10-13 and the Leases does.

IV. MARATHON'S RIGHT FOR ANY REASONS ARGUMENT SUPPORT REVERSAL

Marathon's right for any reasons arguments support reversal and the Commissioner does not show otherwise. **[AB 43-45]** As Marathon demonstrated, because §19-6-3's obligations to prevent waste or trespass were clearly included in the release of "all obligations to the state with respect to the lands embraced in the assignment," the Commissioner's tort claims premised on §19-6-3 are subsumed within the Commissioner's contract claims. In addition, because §19-6-3 imposes liability for conduct by current lessees, the Commissioner's attempt to leverage that statute against a former lessee and Commissioner approved assignor fails. Finally, even if the Commissioner could establish a violation of §19-6-3, the time to do so was prior to assignment of the Leases, not now, decades after Tesoro assigned the Leases. **[BIC 41-45]**

V. CONCLUSION

Marathon respectfully requests the Court of Appeals be reversed.

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 10th day of February, 2026:

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