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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Opinion Number: _____

Filing Date: May 14, 2025

No. A-1-CA-40747

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

Plaintiff-Appellant,

v.

**MARATHON PETROLEUM
CORPORATION,**

Defendant-Appellee,

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.

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY

Matthew J. Wilson, District Court Judge

1 New Mexico State Land Office
2 Ari Biernoff, General Counsel
3 Richard H. Moore, Associate Counsel
4 Santa Fe, NM

5 for Appellant

6 Modrall, Sperling, Roehl, Harris & Sisk, P.A.
7 Earl E. DeBrine, Jr.
8 Elizabeth A. Martinez
9 Deana M. Bennett
10 Jamie L. Allen
11 Albuquerque, NM

12 for Appellee

OPINION

BOSSON, Justice, retired, sitting by designation.

{1} The New Mexico Commissioner of Public Lands (the Commissioner) is entrusted with executing and issuing “leases for the exploration, development and production of oil and natural gas” on state trust lands. NMSA 1978, § 19-10-1 (1941). In exchange for the right to explore, develop, and produce oil or gas, lessees make royalty payments to the State of New Mexico (the State). NMSA 1978, §§ 19-10-4.1, -4.2, -4.3 (1985). With the Commissioner’s approval, lessees may assign their lease to other oil and gas producers, who, in turn, may reassign the lease to additional producers. NMSA 1978, § 19-10-13 (1951). Upon the Commissioner’s approval of a lease assignment, the assignor is “relieved from all obligations to the state with respect to the lands embraced in the assignment.” *Id.*; *see* 19.2.100.43 NMAC. The term “obligations” is not defined by statute.

{2} In this case, the current Commissioner seeks damages and other remedies for damage to leased land allegedly caused by Tesoro Petroleum Company (Tesoro) when it held leases to state trust lands—damage that allegedly occurred before the former Commissioner approved Tesoro’s lease assignments. The current Commissioner sued Marathon Petroleum Corporation (Marathon) for the alleged damage on the theory that Marathon is Tesoro’s successor in interest. The Commissioner’s complaint includes claims for breach of contract and tortious

1 conduct. The district court granted Marathon’s motion to dismiss all of the
2 Commissioner’s claims against Marathon for failure to state a claim.

3 {3} The Commissioner’s appeal presents two issues. First, we decide when the
4 Commissioner may sue in tort and under statute for damage to public lands.
5 Marathon argues, and the court below agreed, that no tort duty may exist where that
6 duty is also imposed by contract. Second, we decide a matter of first impression:
7 whether the Commissioner’s approval of lease assignments relieves assignors not
8 only of their contractual obligations, but also of obligations arising under statute and
9 the common law. The district court agreed with Marathon that Tesoro’s assignment
10 of the oil and gas leases in this case relieved Marathon of all of its obligations to the
11 State with respect to the land embraced in the leases, including obligations arising
12 under New Mexico common law and statutes. For the following reasons, we reverse
13 the district court and remand for further proceedings consistent with this opinion.¹

14 **BACKGROUND**

15 {4} At the center of this case are two expired oil and gas leases, X0-0662 and B0-
16 1276 (the Leases), issued by a former Commissioner in 1922 and 1932, respectively.

¹The Commissioner does not contest the dismissal of her breach of contract claim. We therefore affirm the district court’s dismissal with prejudice as to this claim only. *See, e.g., Hall v. City of Carlsbad*, 2023-NMCA-042, ¶ 5, 531 P.3d 642 (providing that “there is a presumption of correctness in the rulings and decisions of the district court,” and it is therefore “the appellant’s burden to persuade us that the district court erred” (internal quotation marks and citation omitted)).

1 The Leases encompass roughly 560 acres of state trust land in McKinley County and
2 were assigned to Tesoro in, or around, 1964. By this time, the Leases had both been
3 incorporated into the Hospah Field Sand Unit (the Unit), under which multiple oil
4 and gas leases were jointly managed. Tesoro served as the Unit’s operator from
5 approximately 1964 to 1988. At some point between 1988 and 1993, Tesoro
6 assigned the Leases to another company.

7 {5} The Commissioner filed suit against Marathon, as well as other oil and gas
8 companies that are not party to this appeal, alleging negligence, trespass, and waste
9 per se under NMSA 1978, Section 19-6-3 (1912); common law negligence, trespass,
10 and waste; breach of contract; and seeking damages, as well as declaratory and
11 injunctive relief pursuant to the Declaratory Judgment Act, NMSA 1978, §§ 44-6-1
12 to -15 (1975). Significant to this appeal, the Commissioner alleges that the leased
13 state trust lands were damaged and otherwise not properly remediated by Tesoro,
14 who allegedly left behind numerous oil spills, unplugged wells, and abandoned
15 infrastructure. The Commissioner alleged that Marathon acquired Tesoro, or is
16 otherwise Tesoro’s successor in interest, and is therefore derivatively liable for
17 damage to the leased land caused by Tesoro during its tenure as lessee.²

²In support of its motion to dismiss, Marathon asserted that it is not Tesoro’s successor in interest. The dispute over this point is not relevant at this stage of the proceedings. *See, e.g., Delfino v. Griffo*, 2011-NMSC-015, ¶ 9, 150 N.M. 97, 257 P.3d 917 (providing that, at the motion to dismiss stage, “we accept all well-pleaded

1 {6} Marathon filed a motion to dismiss the complaint for failure to state a claim
2 under Rule 1-012(B)(6) NMRA, arguing that Marathon had been relieved of all of
3 its obligations to the State under the terms of the Leases when the former
4 Commissioner approved Tesoro's assignment of the Leases in, or before, 1993.
5 Marathon's argument was based on its interpretation of (1) the Leases; (2) Section
6 19-10-13, a statute governing the assignment of oil and gas leases; and (3)
7 19.2.100.43 NMAC, a State Land Office (SLO) regulation controlling the effect of
8 the Commissioner's approval of lease assignments. Although the precise language
9 used varies across these sources, they all generally provide that when the
10 Commissioner approves an assignment of an oil and gas lease, "the assignor shall
11 stand relieved from all obligations to the state with respect to the lands embraced in
12 the assignment." *See* § 19-10-13; 19.2.100.43 NMAC. This phrase, Marathon
13 argued, relieved it of its common law and per se tort duties as well as its contractual
14 duties arising under the Leases.

15 {7} In response, the Commissioner did not oppose dismissal of her breach of
16 contract claim against Marathon due to Tesoro's assignment of the Leases between
17 1988 and 1993. The Commissioner defended, however, the viability of her common
18 law and per se tort claims against Marathon. In its reply, Marathon presented a new

factual allegations in the complaint as true and resolve all doubts in favor of
sufficiency of the complaint" (internal quotation marks and citation omitted)).

1 argument that the Commissioner could not state her common law or per se tort
2 claims because the Leases imposed contractual duties that encompassed the alleged
3 per se and common law duties, thereby foreclosing the Commissioner's ability to
4 sue in tort.

5 {8} The district court agreed with Marathon and granted its motion to dismiss with
6 prejudice, entering partial final judgment in Marathon's favor pursuant to Rule 1-
7 054(B) NMRA. In its order, the district court concluded that the Commissioner's
8 common law and per se tort claims were barred because (1) "Tesoro Petroleum
9 Corporation and its alleged successor Marathon, were relieved of all obligations to
10 the State (or lessor) with respect to the lands embraced in the [L]eases" upon the
11 Commissioner's approval of Tesoro's assignment; and because (2) "no duty in tort
12 can be imposed where the same duties and obligations are specifically defined by
13 the parties' contract, and the Commissioner's tort claims are based upon the same
14 facts and seek the same relief as her contract claims, which the Commissioner
15 conceded should be dismissed." The Commissioner appealed, and this Court held
16 oral argument.

17 **STANDARD OF REVIEW**

18 {9} We review de novo a district court's decision to grant a motion to dismiss for
19 failure to state a claim. *Delfino v. Griffo*, 2011-NMSC-015, ¶ 9, 150 N.M. 97,
20 257 P.3d 917. "[W]e accept all well-pleaded factual allegations in the complaint as

1 true and resolve all doubts in favor of sufficiency of the complaint.” *Id.* (internal
2 quotation marks and citation omitted). “Dismissal under Rule 1-012(B)(6) is
3 appropriate only where the non-moving party is not entitled to recover under any
4 theory of the facts alleged in their complaint.” *Richey v. Hammond Conservancy*
5 *Dist.*, 2015-NMCA-043, ¶ 25, 346 P.3d 1183 (internal quotation marks and citation
6 omitted).

7 {10} Resolving the Commissioner’s appeal requires that we interpret the language
8 of the Leases, Section 19-10-13, and 19.2.100.43 NMAC—questions of law that we
9 review de novo. *See Rivera v. Am. Gen. Fin. Servs., Inc.*, 2011-NMSC-033, ¶ 27,
10 150 N.M. 398, 259 P.3d 803 (“Contract interpretation is a matter of law that we
11 review de novo.”); *Marbob Energy Corp. v. N.M. Oil Conservation Comm’n*, 2009-
12 NMSC-013, ¶ 7, 146 N.M. 24, 206 P.3d 135 (“Statutory construction is a question
13 of law.”); *Quynh Truong v. Allstate Ins. Co.*, 2010-NMSC-009, ¶ 24, 147 N.M. 583,
14 227 P.3d 73 (providing that interpretation of a regulation is a question of law subject
15 to de novo review).

16 **DISCUSSION**

17 **I. The Commissioner’s Complaint Alleges Tortious Breach of Duties** 18 **Independent of the Contractual Duties in the Leases**

19 {11} We begin by addressing the district court’s conclusion that the
20 Commissioner’s tort claims should be dismissed because “no duty in tort can be
21 imposed where the same duties and obligations are specifically defined by the

1 [Leases], and the Commissioner’s tort claims are based upon the same facts and seek
2 the same relief as her contract claims, which the Commissioner conceded should be
3 dismissed.” Marathon defends this conclusion on appeal, arguing that the
4 Commissioner’s tort claims were properly dismissed because these claims “not only
5 arise from the same facts [as her breach of contract claim] but the same rights and
6 obligations under the Leases.” The Commissioner disagrees, citing Section 19-6-3
7 and New Mexico precedent addressing negligence and trespass to argue that she has
8 sufficiently pled “causes for action for the breach of duties arising independently of
9 the Leases.” For the following reasons, we agree with the Commissioner.

10 {12} The district court appears to have concluded, and Marathon seems to argue,
11 that the Commissioner’s tort claims cannot be sustained in part because they arise
12 from conduct that would also constitute a breach of contract under the Leases.
13 However, “[u]nder some circumstances, breach of a contractual duty may give rise
14 to an independent action in tort.” *Bernalillo Cnty. Deputy Sheriffs Ass’n v. Cnty. of*
15 *Bernalillo*, 1992-NMSC-065, ¶ 13, 114 N.M. 695, 845 P.2d 789. Our courts have
16 accepted this principle since before statehood. *See De Palma v. Weinman*, 1909-
17 *NMSC-009*, ¶ 14, 15 N.M. 68, 103 P. 782 (recognizing that “in many cases, an action
18 for tort or an action as for breach of contract may be brought by the same party on
19 the same state of facts” (internal quotation marks and citation omitted)); *cf. Stern v.*
20 *Farah Bros.*, 1913-NMSC-014, 17 N.M. 516, 529, 133 P. 400, 404 (“It is a general

rule that, where there is a breach of duty which is imposed upon one by law, [the] plaintiff may, at [their] election, sue and declare upon the expressed or implied contract, or for the tort.”). The question before us, then, is whether the Commissioner’s per se and common law tort claims allege a violation of legal duties existing independently of the Leases, or whether, as Marathon argues, these claims arise solely from contractual duties under the Leases. We turn to the complaint for our answer.

A. The Commissioner’s Common Law Tort Claims

{13} The Commissioner alleges that Marathon and the other defendants “committed the torts of trespass and waste under the common law” and “acted negligently in their respective operations on the [s]ubject [l]ands, including by failing to plug wells, remediate spills, remove debris, and restore those lands.” Our task is determining whether, as a matter of law, these claims are “based upon a duty other than one imposed by the contract.” *See Cottonwood Enters. v. McAlpin*, 1991-NMSC-044, ¶¶ 10-12, 111 N.M. 793, 810 P.2d 812 (considering whether a complaint stated a claim for negligence based on a breach of duty independent of the duties arising under a contract between the parties).

{14} The Commissioner’s common law tort claims do not arise from contractual duties under the Leases. Instead, the Commissioner alleges a breach of common law duties independent of contract: negligence, trespass, and waste. *See Milliron v. Cnty.*

1 of *San Juan*, 2016-NMCA-096, ¶ 11, 384 P.3d 1089 (providing that a common law
2 negligence claim “requires the existence of a duty from a defendant to a plaintiff,
3 breach of that duty, which is typically based upon a standard of reasonable care, and
4 the breach being a proximate cause and cause in fact of the plaintiff’s damages”
5 (internal quotation marks and citation omitted)); *North v. Pub. Serv. Co. of N.M.*,
6 1980-NMCA-031, ¶ 4, 94 N.M. 246, 608 P.2d 1128 (identifying “[e]very
7 unauthorized entry upon the land of another [as common law] trespass which entitles
8 the owner to a verdict for some damages”); *Mannick v. Wakeland*, 2005-NMCA-
9 098, ¶¶ 14-15, 138 N.M. 113, 117 P.3d 919 (providing that New Mexico recognizes
10 the common law claim of waste and setting forth its three elements), *aff’d but*
11 *criticized on other grounds sub nom. Coppler & Mannick, P.C. v. Wakeland*, 2005-
12 NMCA-022, ¶¶ 1, 10-14, 138 N.M. 108, 117 P.3d 914.

13 {15} Even though the Commissioner’s common law tort claims arise from the same
14 facts as her breach of contract claim, the duties allegedly breached originate from
15 the common law—an extra-contractual source. *See Kreischer v. Armijo*, 1994-
16 NMCA-118, ¶ 6, 118 N.M. 671, 884 P.2d 827 (providing that “the difference
17 between a tort and contract action is that a breach of contract is a failure of
18 performance of a duty arising or imposed by agreement; whereas, a tort is a violation
19 of a duty imposed by law” (alteration, internal quotation marks, and citation
20 omitted)). These duties exist independently of any contractual duties imposed by the

1 Leases, and therefore may be properly raised as tort claims. *See Cottonwood Enters.*,
2 1991-NMSC-044, ¶¶ 10-12, 14; *see also McNeill v. Burlington Res. Oil & Gas Co.*,
3 2008-NMSC-022, ¶¶ 13, 32-34, 38, 143 N.M. 740, 182 P.3d 121 (explaining that “a
4 mineral lease carries with it the right to use as much of the surface area as is
5 reasonably necessary to extract the minerals below,” and recognizing that a
6 negligence claim may be brought against a mineral lessee for their “unreasonable,
7 excessive or negligent use of the surface estate” (internal quotation marks and
8 citation omitted)); *Bernalillo Cnty. Deputy Sheriffs Ass’n*, 1992-NMSC-065, ¶ 13
9 (providing that a “breach of a contractual duty may give rise to an independent action
10 in tort”).

11 {16} Marathon contends that “the existence of an independent duty in tort does not
12 entitle a party to assert tort claims where a contractual obligation speaks to the same
13 duty.” Clearly, however, Marathon is mistaken. Our Supreme Court has rejected this
14 very argument. *See State ex rel. Udall v. Colonial Penn Ins. Co.*, 1991-NMSC-048,
15 ¶ 37, 112 N.M. 123, 812 P.2d 777 (rejecting the argument that “a cause of action
16 [for negligent misrepresentation and fraud] cannot be maintained where the
17 misrepresentation is the same conduct upon which the claim for breach of contract
18 is premised”).

19 {17} Accordingly, the district court erred by dismissing the Commissioner’s
20 common law tort claims on this ground. *See Cottonwood Enters.*, 1991-NMSC-044,

¶¶ 10-12, 14 (holding that a statutory duty of reasonable care existed “independent of any duties or obligations arising out of the contract” between the parties, and reversing the district court for dismissing the complaint for failure to state a claim for negligence).

B. The Commissioner’s Per Se Tort Claims

{18} The Commissioner’s per se tort claims arise from an alleged violation of Section 19-6-3, which provides, in relevant part, that “any lessee of lands who shall not vacate [the] same within thirty days after expiration or cancellation of [their] lease . . . or any person, association of persons or corporation, whether lessee or not, committing waste upon any state lands . . . shall be guilty of a misdemeanor.”³ It is clear that Section 19-6-3’s legal duties are also independent of the Leases’ contractual duties. Section 19-6-3 sets forth duties “imposed by law,” whereas duties under the Leases are “imposed by agreement.” *Kreischer*, 1994-NMCA-118, ¶ 6 (internal quotation marks and citation omitted). The duty not to commit waste imposed by Section 19-6-3 does not arise from Marathon’s contractual relationship with the Commissioner; the duty is owed instead by “any person, association of

³In her brief in chief, the Commissioner argues that she has sufficiently pled the four elements of negligence per se. Because it appears the district court did not engage in any analysis of the negligence per se elements, we decline to consider them in the first instance as it is unnecessary to our disposition. *See OR&L Constr., L.P. v. Mountain States Mut. Cas. Co.*, 2022-NMCA-035, ¶ 46, 514 P.3d 40 (“It is not our practice to address issues unnecessary for the disposition of an appeal.”).

1 persons or corporation, *whether lessee or not.*” Section 19-6-3 (emphasis added).

2 And Section 19-6-3’s requirement that a lessee vacate the land within thirty days of
3 the lease expiring or being cancelled imposes an extra-contractual duty upon a lessee
4 only once their lease ends. Accordingly, we conclude the district court also erred by
5 dismissing the Commissioner’s per se tort claims.

6 {19} In the alternative, Marathon argues that we should affirm the district court’s
7 dismissal of the Commissioner’s per se claims as right for any reason. When
8 appropriate, we may affirm “on a ground not relied upon by the district court if (1)
9 reliance on the new ground would not be unfair to the appellant, and (2) there is
10 substantial evidence to support the ground on which the appellate court relies.”
11 *Freeman v. Fairchild*, 2018-NMSC-023, ¶ 30, 416 P.3d 264. Marathon presents five
12 alternative grounds for affirmance, none of which persuade us.

13 {20} Marathon first argues that Section 19-6-3 “only imposes an obligation on the
14 lessee to protect the leased premises from trespass and waste *committed by others.*”
15 We agree with the Commissioner that this argument is unavailing because it relies
16 on the language of a different statute, NMSA 1978, Section 19-6-5 (1912). Marathon
17 does not explain why the language in Section 19-6-5 applies to Section 19-6-3, and
18 we will not speculate as to what Marathon’s argument might be. *See Headley v.*
19 *Morgan Mgmt. Corp.*, 2005-NMCA-045, ¶ 15, 137 N.M. 339, 110 P.3d 1076 (“We
20 will not review unclear arguments, or guess at what [a party’s] arguments might

1 be.”). We therefore decline to further consider this unclear and undeveloped
2 argument. *See Elane Photography, LLC v. Willock*, 2013-NMSC-040, ¶ 70, 309 P.3d
3 53.

4 {21} Marathon’s second argument—that Section 19-6-3 imposes criminal, not
5 civil, liability—fails for the same reason. Marathon again relies on Section 19-6-5,
6 arguing that because Section 19-6-5 provides that “the attorney general may bring
7 suit for damages caused by any such waste or trespass,” only the attorney general
8 can bring suit under Section 19-6-3. But Marathon does not articulate why Section
9 19-6-5 is relevant to our analysis of Section 19-6-3, and we therefore decline to
10 further consider this argument. *See Elane Photography, LLC*, 2013-NMSC-040,
11 ¶ 70; *Headley*, 2005-NMCA-045, ¶ 15.

12 {22} We are similarly unpersuaded by Marathon’s third alternative ground for
13 affirmance: that Section 19-6-3 does not apply here because Tesoro held valid leases
14 to the land. Section 19-6-3, however, does apply to lessees. It prohibits waste by
15 “any person, association of persons or corporation, *whether lessee or not*,” and
16 prohibits trespass by “*any lessee* of lands who shall not vacate the same within thirty
17 days after expiration or cancellation of [their] lease.” *Id.* (emphasis added). It is thus
18 not apparent why, as Marathon asserts, Tesoro would be relieved of its obligation to
19 comply with Section 19-6-3 based on its status as a former lessee. *See Headley*,

1 2005-NMCA-045, ¶ 15 (“We will not review unclear arguments, or guess at what [a
2 party’s] arguments might be.”).

3 {23} We decline to address the merits of Marathon’s fourth alternative ground for
4 affirmance—its contention that the statute of limitations on bringing a claim under
5 Section 19-6-3 has “long since expired.” Marathon asserts, in conclusory fashion,
6 that the two-year statute of limitations found in NMSA 1978, Section 30-1-8(C)
7 (2022), precludes the Commissioner’s per se claims. Marathon assumes, without
8 explanation, that the statute of limitations for criminal trespass applies to the
9 Commissioner’s civil claim. This does not amount to a developed argument, and we
10 decline to review it. *See Headley*, 2005-NMCA-045, ¶ 15 (declining to review an
11 argument that was less than one page long and lacked an “explanation of [the party’s]
12 argument”).

13 {24} Finally, Marathon argues that the complaint does not allege that Tesoro and
14 Marathon failed to vacate the land. But the Commissioner *does* claim that “[b]y
15 leaving improvements such as tank batteries, pump jacks, surface flowlines, and
16 other abandoned infrastructure on the [s]ubject [l]ands, by leaving wells unplugged,
17 and by failing and refusing to reclaim well pads, [the d]efendants are committing an
18 ongoing trespass.” It is not clear from Marathon’s argument why terms in the Leases
19 that “(1) prohibit the lessee from removing materials or fixtures placed on the leased
20 premises until obligations due the lessor are satisfied, and (2) provide that any

1 materials or fixtures remaining after 60 days are deemed abandoned” would bar the
2 Commissioner’s per se claims, and we decline to consider it further. *See, e.g., id.*
3 (providing that appellate courts do not review undeveloped or unclear arguments).

4 {25} Having concluded that the Commissioner’s common law and per se tort
5 claims arise from duties independent of the Leases, we hold that the district court
6 erred by dismissing these claims on the ground that “the Commissioner’s tort claims
7 are based upon the same facts and seek the same relief as her contract claims, which
8 the Commissioner conceded should be dismissed.”

9 **II. The Effect of Tesoro’s Lease Assignments**

10 {26} We now turn to the central issue in this appeal: whether the former
11 Commissioner’s approval of Tesoro’s assignment of the Leases absolved Tesoro,
12 and therefore Marathon, of its legal liability for damage to the leased land allegedly
13 caused by Tesoro’s operations. We begin by reviewing the parties’ arguments
14 regarding the language of the Leases, and then turn to their arguments addressing
15 Section 19-10-13 and 19.2.100.43 NMAC.

16 **A. Limited Tort Liability Must Be Expressly Bargained For**

17 {27} We must first address the parties’ dispute over whether a party must expressly
18 contract for limited tort liability. On appeal, the Commissioner argues that it is
19 “black letter law” in New Mexico “that a contract only precludes tort claims related
20 to contractual duties where the contract in question expressly limits such tort

1 liability.” The Commissioner contends that the district court erred in dismissing her
2 tort claims because the terms of the Leases do not expressly limit a lessee’s tort
3 liability. We agree.

4 {28} It is settled law in New Mexico that parties must specifically and clearly
5 contract for limited liability. *See State ex rel. Udall*, 1991-NMSC-048, ¶ 37 (“[T]he
6 concept of freedom of contract and notions of contractually assumed duties and
7 liabilities can act to limit general tort liability in certain circumstances when limited
8 liability is expressly bargained for.”); *Acquisto v. Joe R. Hahn Enters., Inc.*, 1980-
9 NMSC-126, ¶ 7, 95 N.M. 193, 619 P.2d 1237 (“While the law allows one to
10 exculpate [them]self by contract, it will do so only if the exculpation is set forth with
11 such clarity that the intent to negate the usual consequences of tortious conduct is
12 made plain.”), *overruled on other grounds by C.R. Anthony Co. v. Loretto Mall*
13 *Partners*, 1991-NMSC-070, ¶¶ 13-15, 112 N.M. 504, 817 P.2d 238; *see also Cobb*
14 *v. Gammon*, 2017-NMCA-022, ¶¶ 41-42, 389 P.3d 1058 (concluding that a negligent
15 misrepresentation claim was not precluded by a sales agreement because the contract
16 did not specifically limit the party’s tort liability for the conduct at issue). In the
17 absence of an express limited liability or exculpatory clause, a party is not barred
18 from asserting independent tort claims. *See State ex rel. Udall*, 1991-NMSC-048,
19 ¶¶ 17, 35-39; *Cobb*, 2017-NMCA-022, ¶¶ 41-42.

1 {29} Relying primarily on two Tenth Circuit cases—*Isler v. Texas Oil & Gas*
2 *Corp.*, 749 F.2d 22 (10th Cir. 1984), and *Elliott Industries Ltd. Partnership v. BP*
3 *America Production Co. (Elliot Industries)*, 407 F.3d 1091 (10th Cir. 2005)—
4 Marathon argues for a contrary result. For the following reasons, Marathon’s
5 argument does not persuade us.

6 {30} First, even if we were to agree with Marathon that these federal cases
7 contradict our state case law, we may not stray from our Supreme Court’s holdings
8 in *State ex rel. Udall and Acquisto. See State v. Mares*, 2024-NMSC-002, ¶ 33, 543
9 P.3d 1198 (“It is axiomatic that our justice system requires strict adherence to
10 vertical stare decisis, which is the principle that lower courts are bound by the
11 precedent of reviewing courts.”); *Hovey-Jaramillo v. Liberty Mut. Ins.*, 2023-
12 NMCA-068, ¶ 18, 535 P.3d 747 (“[W]e are not bound by federal court decisions
13 purporting to interpret New Mexico state common or statutory law.”), *cert. denied*
14 (S-1-SC-40020, Sept. 12, 2023).

15 {31} Moreover, we disagree with Marathon’s interpretation that either *Isler* or
16 *Elliott Industries* set forth a meaningfully different standard than *State ex rel. Udall*
17 and *Acquisto*. The Tenth Circuit in *Isler* observed that the parties had expressly
18 bargained for limited liability in their agreement. 749 F.2d at 24. Because of this, the
19 Tenth Circuit concluded that it was error to allow the plaintiff to assert a negligence
20 claim against the defendant that would impose tort liability when it had been

1 “expressly negated by the parties themselves.” *Id.* at 23. In the absence of an express
2 agreement to limit liability, however, the Tenth Circuit has recognized that “[a] party
3 may be liable in tort for breaching an independent duty towards another, even where
4 the relationship creating such a duty originates in the parties’ contract.” *Hess Oil*
5 *Virgin Islands Corp. v. UOP, Inc.*, 861 F.2d 1197, 1201-02 (10th Cir. 1988). *Elliott*
6 *Industries* even quotes *State ex rel. Udall* for the proposition that, “[t]he rule in New
7 Mexico is that ‘the concept of freedom of contract and notions of contractually
8 assumed duties and liabilities can act to limit general tort liability in certain
9 circumstances when limited liability is expressly bargained for.’” 407 F.3d at 1116
10 (quoting *State ex rel. Udall*, 1991-NMSC-048, ¶ 37). We conclude that *Isler* and
11 *Elliott Industries* provide no reason to affirm the district court on this point.

12 {32} In addition to *Isler* and *Elliott Industries*, Marathon relies on *Rio Grande*
13 *Jewelers Supply, Inc. v. Data General Corp.*, 1984-NMSC-094, 101 N.M. 798, 689
14 P.2d 1269, and *Continental Potash, Inc. v. Freeport-McMoran, Inc.*, 1993-NMSC-
15 039, 115 N.M. 690, 858 P.2d 66, to argue that “liability cannot be premised upon
16 extra-contractual tort duties.” But the holding in *Rio Grande Jewelers Supply, Inc.*
17 is simply an illustration of the rule that limited liability must be expressly bargained
18 for. *See Rio Grande Jewelers Supply, Inc.*, 1984-NMSC-094, ¶ 8 (providing that “a
19 claim of pre-contract negligent misrepresentation in suits concerned with sale of
20 goods under the [Commercial] Code” was precluded because “[t]he contract

1 between the parties . . . specifically provided, in bold-face type, that no warranties
2 except those specifically listed in the contract were granted”).

3 {33} Like *Rio Grande Jewelers Supply, Inc.*, *Continental Potash, Inc.* provides no
4 basis to deviate from *State ex rel. Udall* and *Acquisto*. Our Supreme Court’s
5 discussion of implied covenants in *Continental Potash, Inc.* never addressed the
6 question posed by this appeal: whether, absent an express limitation on tort liability,
7 a party may assert tort claims arising out of extra-contractual duties. *See Continental*
8 *Potash, Inc.* 1993-NMSC-039, ¶¶ 52-67. Because “cases are not considered
9 authority for propositions not considered,” *Britton v. Off. of Att’y Gen.*, 2019-
10 NMCA-002, ¶ 24, 433 P.3d 320, we agree with the Commissioner that *Continental*
11 *Potash, Inc.* does not support Marathon’s position on appeal.

12 {34} Accordingly, we reiterate that parties seeking limited liability must expressly
13 contract for it, and any exculpation must be “set forth with such clarity that the intent
14 to negate the usual consequences of tortious conduct is made plain.” *See Acquisto*,
15 1980-NMSC-126, ¶ 7; *accord State ex rel. Udall*, 1991-NMSC-048, ¶ 37; *Cobb*,
16 2017-NMCA-022, ¶¶ 41-42. Absent such an express bargain for limited liability, we
17 will find no such limitation, and an injured party may pursue a claim for such
18 “tortious conduct.”

B. The Leases Do Not Contain an Express Limitation on Tort Liability

{35} Marathon argues that an express limitation on an assignor’s extra-contractual tort liability can be found in the lease terms addressing lease assignments. The Leases provide:

Upon approval in writing by the lessor of an assignment, *the assignor shall stand relieved from all obligations to the lessor with respect to the lands embraced in the assignment* and the lessor shall likewise be relieved from all obligations to the assignor as to such tract, and 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 lessor as to such tracts.

(Emphasis added.) Marathon takes the position that “relieved from all obligations” unambiguously means that, upon the Commissioner’s approval of the lease assignments, Tesoro was released from its duty to comply with “all obligations with respect to the leased premises regardless of their source,” including obligations arising under New Mexico common law and statutes. The Commissioner counters that this language does not constitute an express bargain for limited liability, and the Leases therefore do not preclude her common law and per se tort claims. *See State ex rel. Udall*, 1991-NMSC-048, ¶ 37; *Acquisto*, 1980-NMSC-126, ¶ 7; *Cobb*, 2017-NMCA-022, ¶¶ 41-42. To resolve this dispute, we review the language of the Leases.

{36} “Our appellate courts have long maintained that oil and gas leases are to be interpreted on appeal under the same rules as other contracts.” *Smith & Marrs, Inc. v. Osborn*, 2008-NMCA-043, ¶ 10, 143 N.M. 684, 180 P.3d 1183; *see also Leonard*

1 *v. Barnes*, 1965-NMSC-080, ¶ 26, 75 N.M. 331, 404 P.2d 292 (“An oil and gas lease
2 is merely a contract between the parties and is to be tested by the same rules as any
3 other contract.”). We therefore review the lease terms de novo. *See, e.g., Rivera*,
4 2011-NMSC-033, ¶ 27 (“Contract interpretation is a matter of law that we review de
5 novo.”).

6 {37} “As with other leases, the primary consideration when construing an oil and
7 gas lease is to give effect to the intention of the parties.” *Owens v. Superior Oil Co.*,
8 1986-NMSC-093, ¶ 5, 105 N.M. 155, 730 P.2d 458; *see also C.R. Anthony Co.*,
9 1991-NMSC-070, ¶ 15 (“It is important to bear in mind that the meaning the court
10 seeks to determine is the meaning one party (or both parties, as the circumstances
11 may require) attached to a particular term or expression at the time the parties agreed
12 to those provisions.”). “The purpose, meaning and intent of the parties to a contract
13 is to be deduced from the language employed by them; and where such language is
14 not ambiguous, it is conclusive.” *ConocoPhillips Co. v. Lyons*, 2013-NMSC-009,
15 ¶ 23, 299 P.3d 844 (internal quotation marks and citation omitted). “A contract term
16 may be ambiguous if it is reasonably and fairly susceptible to different
17 constructions.” *Id.* (alteration, internal quotation marks, and citation omitted). If we
18 determine that a contract “is reasonably and fairly open to multiple constructions,
19 then an ambiguity exists,” and dismissal as a matter of law is improper. *See id.* ¶¶ 9-
20 10 (internal quotation marks and citation omitted); *see also Mark V, Inc. v. Mellekas*,

1 1993-NMSC-001, ¶ 13, 114 N.M. 778, 845 P.2d 1232 (“Once the agreement is found
2 to be ambiguous, the meaning to be assigned the unclear terms is a question of
3 fact.”).

4 {38} Contrary to Marathon’s position, our Supreme Court has reviewed very
5 similar contract language and found it was ambiguous. In *Mark V, Inc.*, the Court
6 considered whether the phrase “all obligations are hereby canceled” unambiguously
7 meant that “all obligations of the parties, past and future, were rescinded.” 1993-
8 NMSC-001, ¶ 17 (internal quotation marks omitted). The Court acknowledged that
9 “[a] full and complete mutual release from all obligations under the contract quite
10 possibly may have been the actual effect intended by the parties to this contract, and
11 if so their contract should be interpreted and enforced accordingly.” *Id.* ¶ 19.
12 However, the Court determined that the language “all obligations are hereby
13 canceled” was ambiguous. *Id.* It was not apparent whether the parties “agreed to a
14 complete discharge of any right to compensatory damages for past as well as future
15 nonperformance,” *id.*, because the parties to the contract did not clearly express this
16 intent.

17 {39} The assignment term in the Leases suffers from a similar ambiguity. It is
18 possible that, as the Commissioner argues, the parties intended “all obligations” to
19 mean all the contractual obligations created by the Leases, and nothing more. It is
20 also possible, as Marathon argues, that the parties intended an assignor to be relieved

1 of all conceivable legal obligations, including common law and statutory tort duties.
2 Additionally, like the language used in *Mark V, Inc.*, it is unclear whether such a
3 release would apply only prospectively or also retroactively, encompassing liability
4 for tortious conduct occurring prior to the Commissioner’s approval of an
5 assignment. This portion of the Leases is therefore “reasonably and fairly open to
6 multiple constructions.” *ConocoPhillips Co.*, 2013-NMSC-009, ¶ 9 (internal
7 quotation marks and citation omitted).

8 {40} We acknowledge that when such an ambiguity is found in a contract, typically
9 “the jury (or [trial] court as the fact[-]finder in the absence of a jury) resolves the
10 ambiguity as an issue of ultimate fact.” *C.R. Anthony Co.*, 1991-NMSC-070, ¶ 11;
11 *see also Mark V, Inc.*, 1993-NMSC-001, ¶ 13 (“The factual issues, if any, presented
12 by an ambiguity must be resolved by the jury (or by the judge as fact[-]finder in the
13 case of a bench trial) with the benefit of a full evidentiary hearing.”). But because
14 we have determined that the lease assignment term is ambiguous, we are able to
15 conclude—as a matter of law—that the Leases do not express a clear intent to waive
16 an assignor’s extra-contractual tort liability in the manner proposed by Marathon.
17 “While the law allows one to exculpate [them]self by contract, it will do so *only* if
18 the exculpation is set forth with such clarity that the intent to negate the usual
19 consequences of tortious conduct is made plain.” *Acquisto*, 1980-NMSC-126, ¶ 7
20 (emphasis added). Here, the parties failed to unambiguously convey this intent, and

1 the lease assignment term therefore does not relieve an assignor of extra-contractual
2 liability.⁴ *See id.*; *State ex rel. Udall*, 1991-NMSC-048, ¶ 37.

3 **C. Section 19-10-13 Does Not Relieve an Assignor of Tort Liability**

4 {41} Much like the language in the Leases relieving an assignor from “all
5 obligations,” Section 19-10-13 provides that upon the Commissioner’s approval of
6 the assignment, assignors are “relieved from all obligations to the state with respect
7 to the lands embraced in the assignment.” Marathon argues that “all obligations”
8 includes duties arising under the common law and New Mexico statutes. We review
9 questions of statutory interpretation de novo. *E.g.*, *Marbob Energy Corp.*, 2009-

⁴The inclusion of a term in Lease X0-0662 requiring lessees to comply with applicable law and regulations does not change our conclusion. The term provides that “[l]essees, including their heirs, assigns, agents and contractors shall at their own expense fully comply with all laws, regulations, rules, ordinances and requirements of the city, county, state, federal authorities and agencies, in all matters and things affecting the premises and operations thereon.” Section 19-10-4.1. Marathon takes the position that Tesoro’s assignment of the Leases relieved it of any obligation to comply with this contractual provision, and accordingly, also relieved it of its obligation to comply with all applicable laws, regulations, rules, ordinances and requirements. It is not clear that the parties’ inclusion of this term altered Tesoro’s legal responsibilities, because “[a] contract incorporates the relevant law, whether or not it is referred to in the agreement.” *See State ex rel. Udall*, 1991-NMSC-048, ¶ 30. We are not persuaded that a contract term incorporating applicable law could have the dual effect of extinguishing a party’s imperative to otherwise abide by that law once the party’s contractual obligations cease. But we decline to further consider Marathon’s argument because it fails to cite any legal authority that supports such an extraordinary construction of the term. *See State v. Casares*, 2014-NMCA-024, ¶ 18, 318 P.3d 200 (“We will not consider an issue if no authority is cited in support of the issue, because absent cited authority to support an argument, we assume no such authority exists.”).

1 NMSC-013, ¶ 5. “When interpreting a statute, our primary goal is to ascertain and
2 give effect to the intent of the Legislature.” *First Baptist Church of Roswell v. Yates*
3 *Petroleum Corp.*, 2015-NMSC-004, ¶ 9, 345 P.3d 310 (internal quotation marks and
4 citation omitted). We achieve this by first looking to the “plain language of the
5 statute, giving the words their ordinary meaning, unless the Legislature indicates a
6 different one was intended.” *N.M. Indus. Energy Consumers v. N.M. Pub. Regul.*
7 *Comm’n*, 2007-NMSC-053, ¶ 20, 142 N.M. 533, 168 P.3d 105.

8 {42} We heed our Supreme Court’s warning that the plain meaning rule’s
9 “beguiling simplicity may mask a host of reasons why a statute, apparently clear and
10 unambiguous on its face, may for one reason or another give rise to legitimate (i.e.,
11 nonfrivolous) differences of opinion concerning the statute’s meaning.” *State ex rel.*
12 *Helman v. Gallegos*, 1994-NMSC-023, ¶ 23, 117 N.M. 346, 871 P.2d 1352. “In such
13 a case, it can rarely be said that the legislation is indeed free from all ambiguity and
14 is crystal clear in its meaning.” *Id.* “[W]e must [therefore] examine the context
15 surrounding a particular statute, such as its history, its apparent object, and other
16 statutes in pari materia, in order to determine whether the language used by the
17 Legislature is indeed plain and unambiguous.” *State v. Cleve*, 1999-NMSC-017, ¶ 8,
18 127 N.M. 240, 980 P.2d 23.

1 **1. Section 19-10-13’s Plain Language Is Ambiguous**

2 {43} Neither party provides this Court with a rigorous, plain meaning analysis of
3 Section 19-10-13, although both parties argue that the statute is unambiguous. Much
4 like the Leases, the statute provides that after an oil and gas lease assignment is
5 approved by the Commissioner,

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

13 Section 19-10-13 (emphasis added). For its part, Marathon cites numerous out-of-
14 state authorities for the proposition that “all means all,” and therefore, according to
15 Marathon, “the phrase ‘all obligations’ necessarily includes obligations under tort
16 law to conduct operations non-negligently or without waste and the statutory
17 obligation under . . . Section 19-6-5 to protect the leased lands from waste or
18 trespass.” The Commissioner responds that “nothing in the plain language of Section
19 19-10-13 . . . provides that the assignee indemnifies the assignor for the assignor’s
20 tortious conduct during the assignor’s tenure as lessee.” We agree with the
21 Commissioner.

22 {44} Even accepting Marathon’s argument that “all” is unambiguous, we are still
23 left with the question of what “obligations to the state with respect to the lands

embraced in the assignment” means. Because “obligations” is not defined by statute, we “consult common dictionary definitions” to identify the word’s ordinary meaning. *State v. Vest*, 2021-NMSC-020, ¶ 14, 488 P.3d 626 (providing that “[w]hen words are not otherwise defined in a statute, we give those words their ordinary meaning absent clear and express legislative intention to the contrary” (alteration, internal quotation marks, and citation omitted)).

{45} Our review of dictionaries in publication at the time Section 19-10-13 was enacted in 1929⁵ does not reveal an unambiguous plain meaning. The 1910 edition of *Black’s Law Dictionary* sets forth a number of definitions for “obligation,” but the primary definition it provides is “a legal duty, by which a person is bound to do or not to do a certain thing.” Henry Campbell Black, *A Law Dictionary* 842 (2d ed. 1910). It additionally defines “obligation” as “[t]he binding power of a vow, promise, oath, or contract, or of law, civil, political, or moral, independent of a promise; that which constitutes legal or moral duty, and which renders a person liable to coercion and punishment for neglecting it.” *Id.* at 842-43. The relevant

⁵Although Section 19-10-13 has been amended since it was enacted in 1929, these amendments did not affect the language at issue in this case. We therefore review dictionaries in use in 1929 to determine the ordinary meaning of “obligation” at that time. See *Pirtle v. Legis. Council Comm. of N.M. Legislature*, 2021-NMSC-026, ¶ 47, 492 P.3d 586 (quoting *Wis. Cent. Ltd. v. United States*, 585 U.S. 274, 284 (2018) for the proposition that it is a “fundamental canon of statutory construction that words generally should be interpreted as taking their ordinary meaning at the time [the legislature] enacted the statute” (omissions and internal quotation marks omitted)).

1 edition of *Webster’s New International Dictionary* defines “obligation” as “[t]hat
2 which a person is bound to do or forbear; any duty imposed by law, promise, or
3 contract, by the relations of society, or by courtesy, kindness, etc.” and “[t]hat which
4 obligates or constrains; the binding power of a promise, contract, oath, or vow, or of
5 law; that which constitutes legal or moral duty.” *Webster’s New International
6 Dictionary*, 1483 (1st ed. 1923).

7 {46} Nothing in these definitions clearly reveals whether the Legislature intended
8 Section 19-10-13 to broadly relieve assignors of “all obligations with respect to the
9 leased premises regardless of their source,” as Marathon argues, or whether it
10 intended to relieve assignors only of their contractual obligations under the Leases,
11 as the Commissioner argues. The statute is therefore ambiguous. *See, e.g., State v.*
12 *Adams*, 2022-NMSC-008, ¶ 10, 503 P.3d 1130 (“A statute is ambiguous when it can
13 be understood by reasonably well-informed persons in two or more different senses.”
14 (internal quotation marks and citation omitted)).

15 {47} In our view, however, Marathon’s proposed plain-meaning interpretation is
16 unreasonable and contradictory. *See Vest*, 2021-NMSC-020, ¶ 20 (providing that
17 appellate courts must review “the purpose, background, and history of the statute to
18 ensure that [a] plain-meaning interpretation does not lead to injustice, absurdity, or
19 contradiction” (internal quotation marks and citation omitted)). First, we observe
20 that Section 19-10-13 is one of approximately seventy statutes governing oil and gas

1 leases on public lands. *See* NMSA 1978, §§ 19-10-1 to -70 (1925, as amended
2 through 1999). Considered in this context, it is doubtful that the phrase “all
3 obligations to the state with respect to the lands embraced in the assignment” in
4 Section 19-10-13 refers to obligations beyond those arising under an oil and gas
5 lease. *See, e.g., Baker v. Hedstrom*, 2013-NMSC-043, ¶ 26, 309 P.3d 1047 (applying
6 the “fundamental rule of statutory construction that all provisions of a statute,
7 together with other statutes in pari materia, must be read together to ascertain the
8 legislative intent” (omission, internal quotation marks, and citation omitted)).

9 {48} Second, as the Commissioner argues, under Marathon’s interpretation, an
10 assignor could “avoid any ongoing duty to comply with the common-law rules or
11 statutes applying to the leased state trust land.” This would include, for example, the
12 statutory prohibitions found in Section 19-6-3 against trespassing upon, or using,
13 state trust land without a lease or approval from the Commissioner, as well as the
14 prohibition found in NMSA 1978, Section 19-6-4 (1912) against removing timber,
15 stone, minerals, oil, gas, salt or other natural products or deposits without approval
16 from the Commissioner. Additionally, under Marathon’s interpretation, an assignor
17 who remains the operator of record for one or more wells would be relieved from its
18 duty to operate the wells in accordance with the common law and applicable
19 regulations.

1 {49} Marathon claims that Section 19-10-13's release "necessarily includes
2 obligations under tort law to conduct operations non-negligently or without waste
3 and the statutory obligation under . . . Section 19-6-5 to protect the leased lands from
4 waste or trespass." But in direct response to the hypothetical consequences posed by
5 the Commissioner, Marathon concedes that it is "not arguing that a release of 'all
6 obligations' means that an assignor can return to land it previously leased and use it
7 for any purpose." Marathon suggests that an assignor could still be held liable if it
8 were to violate Section 19-6-4. But this is irreconcilable with the plain-language
9 interpretation Marathon otherwise urges us to adopt. If "all obligations" truly means
10 *all* obligations, there is nothing in the plain language of Section 19-10-13 indicating
11 that the release is limited to only *some* extra-contractual obligations.

12 {50} Given our conclusion that Section 19-10-13 is ambiguous, and our concerns
13 regarding Marathon's plain-meaning interpretation, we proceed to consider the
14 statute's purpose. *See Baker*, 2013-NMSC-043, ¶ 11 ("[I]f the plain meaning of the
15 statute is doubtful, ambiguous, or if an adherence to the literal use of the words
16 would lead to injustice, absurdity or contradiction, we will construe the statute
17 according to its obvious spirit or reason." (alteration, internal quotation marks, and
18 citation omitted); *see also van Buskirk v. City of Raton*, 2022-NMCA-040, ¶ 17, 516
19 P.3d 185 (providing that "[i]t is exceedingly rare to find statutory language crystal
20 clear in its meaning, not vague, uncertain, ambiguous, or otherwise doubtful," and

1 that it is therefore “part of the essence of judicial responsibility to search for and
2 effectuate the legislative intent—the purpose or object—underlying the statute”
3 (alterations, internal quotation marks, and citations omitted)).

4 **2. Section 19-10-13’s Purpose**

5 {51} “When called upon to interpret statutory provisions giving rise to genuine
6 uncertainty as to what the Legislature was trying to accomplish, we look beyond the
7 language to the purpose of the statute to ascertain legislative intent.” *Pirtle v. Legis.*
8 *Council Comm. of N.M. Legislature*, 2021-NMSC-026, ¶ 17, 492 P.3d 586
9 (alteration, internal quotation marks, and citation omitted). We “ascertain[] a
10 statute’s spirit or reason . . . [by] consider[ing] its history and background, and we
11 read the provisions at issue in the context of the statute as a whole, including its
12 purposes and consequences.” *See Lujan Grisham v. Romero*, 2021-NMSC-009, ¶ 23,
13 483 P.3d 545 (internal quotation marks and citation omitted).

14 {52} Neither party presents a comprehensive analysis of Section 19-10-13’s
15 purpose, background, or history. The core of Marathon’s argument is simply that
16 “all means all,” and that “[n]othing suggests that the release is limited to contractual
17 obligations owed ‘under the lease’ or even ‘with respect to the lease.’” However, as
18 already discussed, Section 19-10-13 is part of a statutory scheme governing oil and
19 gas leases on public lands, not torts. *See* §§ 19-10-1 to -70. Reading Section 19-10-
20 13 in context, as we must, provides support for the Commissioner’s position that the

1 Legislature intended to release assignors of their contractual obligations arising
2 under oil and gas leases, and nothing more. *See Baker*, 2013-NMSC-043, ¶ 26
3 (providing that it is a “fundamental rule of statutory construction that all provisions
4 of a statute, together with other statutes in pari materia, must be read together to
5 ascertain the legislative intent” (omission, internal quotation marks, and citation
6 omitted)).

7 {53} We begin our analysis by reviewing the legal landscape in 1929 to ascertain
8 how lease assignments were understood in New Mexico at the time Section 19-10-
9 13 was enacted. *See Sims v. Sims*, 1996-NMSC-078, ¶ 24, 122 N.M. 618, 930 P.2d
10 153 (“[A]ny law is passed against the background of all the law in effect at the
11 time.”).

12 {54} When it comes to lease assignments, “[t]he general rule is that, without an
13 express release of the lessee by the lessor, the fact that a lease is assigned does not
14 relieve the lessee of its express covenant[s].” *See Jacob v. Spurlin*, 1999-NMCA-
15 049, ¶¶ 10-11, 127 N.M. 127, 978 P.2d 334. Although no New Mexico cases from
16 before 1929 clearly articulate this rule, it had already been settled in other
17 jurisdictions. *See, e.g., Wilson v. Gerhardt*, 13 P. 705, 705 (Colo. 1887) (“[A] release
18 is not to be implied from the mere fact of [a lessor’s] assent to the assignment. A
19 lessee who assigns [their] lease does not thereby discharge [them]self of [their]
20 obligation under it. [They] remain[] liable upon [their] express covenants to pay rent

1 in an action by the lessor.”); *McFarland v. Mayo*, 162 P. 753, 755-56 (Okla. 1916)
2 (collecting cases from other jurisdictions for the proposition that a lessee cannot
3 avoid liability under express covenants by assigning their lease); *see also* 5 C.J.S.
4 *Assignments* § 45 (1916) (“It is . . . a general rule that a party to a contract may not,
5 unless authorized by the other party, either in the contract itself, or otherwise, so
6 assign the contract as to escape liability for the performance of acts or duties imposed
7 upon [them] by its terms.”).

8 {55} By 1929, courts in other jurisdictions had applied this principle in cases
9 addressing the assignment of oil and gas leases and sale contracts. *See Sanders v.*
10 *Sharp*, 25 A. 524, 527 (Pa. 1893) (providing that it cannot “be successfully
11 maintained that the mere assignment of [an oil and gas] lease by the appellant to the
12 Ten Mile Oil & Gas Company discharged him from liability on his covenants
13 therein”); *W. Oil Sales Corp. v. Bliss & Wetherbee*, 299 S.W. 637, 638 (Tex.
14 Comm’n App. 1927) (“When a contract is assignable, a party may assign the benefits
15 of [their] contract to another, and delegate to [their] assignee the performance of
16 [their] obligations under the contract; but [they] remain[] liable for the proper
17 performance of those obligations, unless the other party to the contract consents for
18 the assignment to have the effect of releasing [them].”).

19 {56} We assume our Legislature was aware that, absent an express release, our
20 courts could—and likely would—rule that an assignor of an oil and gas lease would

1 retain responsibility for their express contractual obligations post-assignment. *See*
2 *Inc. Cnty. of Los Alamos v. Johnson*, 1989-NMSC-045, ¶ 4, 108 N.M. 633, 776 P.2d
3 1252 (“We presume that the [L]egislature is well informed as to existing statutory
4 and common law.”). The Legislature’s use of “all obligations” appears to indicate
5 that it was seeking to avoid the application of this common law rule and provide for
6 such a release of obligations imposed by state oil and gas leases. *See id.* (providing
7 that appellate courts will “presume that the [L]egislature intends to change existing
8 law when it enacts a new statute”). Therefore, we are drawn to the conclusion that
9 “all obligations” conveys the Legislature’s intent that, upon approval by the
10 Commissioner, an assignor would no longer be bound by either implied or express
11 covenants under the lease—i.e., the assignor would be relieved of *all* of their
12 contractual obligations. But this says nothing about an assignor’s obligations under
13 the common law or statute.

14 {57} Marathon argues that this interpretation would render the release of
15 obligations “meaningless.” We disagree. Under our interpretation, an assignor
16 benefits from no longer being liable for express covenants, such as paying royalties
17 and rent, in the event their assignee fails to satisfy those obligations. *See, e.g., Jacob*,
18 1999-NMCA-049, ¶¶ 9-12. An assignor would also no longer be obligated under the
19 Leases to “pay for all damages to the range, livestock, growing crops or
20 improvements caused by [their] operations.” Instead, as applicable here, the

1 Commissioner may only recover for damages resulting from Tesoro’s negligence,
2 not for “all damages,” as the Leases would have permitted. Reasonable use of the
3 land, even that which damages the land, will not afford the Commissioner relief. *See*
4 *McNeill*, 2008-NMSC-022, ¶¶ 33-35 (providing that “only those damages alleged to
5 have resulted from a lessee’s unreasonable, excessive, or negligent use are
6 actionable in a negligence claim”).

7 {58} We also consider Marathon’s concession at oral argument that its
8 interpretation of Section 19-10-13 would, at times, result in the State needing to fund
9 the remediation of damage done to state trust land as a result of tortious conduct.
10 *See, e.g., Santillo v. N.M. Dep’t of Pub. Safety*, 2007-NMCA-159, ¶ 17, 143 N.M.
11 84, 173 P.3d 6 (providing that “[w]e may . . . consider the policy implications of the
12 differing constructions urged on us by the parties . . . as long as we do not second-
13 guess the clear policy of the Legislature” (internal quotation marks and citation
14 omitted)). This is because larger oil and gas companies tend to assign their leases to
15 smaller and less profitable companies, which then reassign the leases to even smaller
16 and less profitable operations. Under Marathon’s interpretation, the burden of paying
17 for a former lessee’s tortious conduct would be shifted to these assignees, even
18 though they are less likely to have the resources to remediate the land. Marathon
19 acknowledged that this may lead to situations where the State would need to fund
20 such remediation. There is no evidence before this Court that the Legislature

1 intended to subsidize the tortious conduct of oil and gas companies at the expense
2 of New Mexico’s taxpayers.

3 {59} We therefore hold that Section 19-10-13’s release of “all obligations to the
4 state with respect to the lands embraced in the assignment” indicates the
5 Legislature’s intent to deviate from the common law rule that an assignor remains
6 bound by express covenants under a lease even after they assign the lease. Thus,
7 under Section 19-10-13, an assignor does not retain *any* contractual obligations
8 under an oil and gas lease once the Commissioner approves their assignment, and an
9 assignee becomes solely responsible for fulfilling those obligations. But this does
10 not relieve an assignor from extra-contractual obligations or liability for past
11 misconduct. The statute simply does not go that far.^{6, 7}

⁶Marathon also argues that a SLO regulation supports dismissal of the Commissioner’s claims, but does not provide any additional analysis beyond the arguments it makes in support of its interpretation of the Leases and Section 19-10-13. Although the language of 19.2.100.43 NMAC differs somewhat from Section 19-10-13 and the Leases, Marathon does not argue that this difference is significant. Because we employ the same principles used in statutory construction when construing a regulation, *see, e.g., Marckstadt v. Lockheed Martin Corp.*, 2010-NMSC-001, ¶ 14, 147 N.M. 678, 228 P.3d 462, and because we have already rejected Marathon’s statutory interpretation arguments, we are not persuaded that 19.2.100.43 NMAC provides a basis for dismissing the Commissioner’s claims.

⁷Marathon briefly argues that we should affirm because, according to Marathon, the Leases were necessarily deemed to be in good standing when the former Commissioner approved Tesoro’s lease assignments. It is unclear from Marathon’s argument why this is relevant to the outcome of this appeal. Under Section 19-10-13, it is the Commissioner’s approval of a lease assignment—not a lease’s “good standing” status—that triggers the release of an assignor’s obligations to the State. Given Marathon’s failure to present a more developed argument, we

1 **D. The Canon Against Surplusage**

2 {60} Section 19-10-13 also addresses the responsibilities of an assignee after the
3 Commissioner approves a lease assignment. It provides that “the assignee shall
4 succeed to all of the rights and privileges of the assignor with respect to such tracts
5 and *shall be held to have assumed all of the duties and obligations of the assignor*
6 to the state as to such tracts.” Section 19-10-13 (emphasis added). We acknowledge
7 that our interpretation of the phrase “all obligations,” as it relates to assignors,
8 renders superfluous the Legislature’s subsequent use of the word “duties” in the
9 phrase “assumed all of the duties and obligations of the assignor.” Section 19-10-13.

10 {61} Generally, when engaging in statutory interpretation, we apply the canon
11 against surplusage and “construe words and phrases as used in the context of the
12 whole statute and ensure that no part of the statutory language is rendered
13 superfluous.” *Coal. for Clean Affordable Energy v. N.M. Pub. Regul. Comm’n*,
14 2024-NMSC-016, ¶ 24, 549 P.3d 500. But “our preference for avoiding surplusage
15 constructions is not absolute,” *Lamie v. U.S. Tr.*, 540 U.S. 526, 536 (2004), and
16 “canons are not mandatory rules,” *State v. Gutierrez*, 2023-NMSC-002, ¶ 41, 523
17 P.3d 560 (internal quotation marks and citation omitted). Instead, they are “guides
18 designed to help [appellate courts] determine the Legislature’s intent as embodied

decline to further consider it. *See Headley*, 2005-NMCA-045, ¶ 15; *Elane Photography*, 2013-NMSC-040, ¶ 70.

1 in particular statutory language.” *Gutierrez*, 2023-NMSC-002, ¶ 41 (alteration,
2 omission, internal quotation marks, and citation omitted).

3 {62} Here, the canon against surplusage is of no assistance in our task of
4 ascertaining legislative intent because, at the time Section 19-10-13 was enacted,⁸
5 “duty” and “obligation” were synonymous and dictionaries defined the words in
6 reference to one another. “Obligation” was defined as “a legal duty, by which a
7 person is bound to do or not to do a certain thing,” *Black*, *supra*, at 842, while “duty”
8 was defined as “[a]n obligation to do a thing,” *id.* at 405. More specifically, the 1910
9 edition of *Black’s Law Dictionary* defined a “legal duty” as “[a]n obligation arising
10 from contract of the parties or the operation of the law.” *Id.* at 405. A similar issue
11 arises with *Webster’s New International Dictionary*. See *Webster’s New*
12 *International Dictionary*, 1483 (1st ed. 1923) (providing that “obligation” and
13 “duty” are synonyms, and defining “obligation” as “any duty imposed by law,
14 promise, or contract, by the relations of society, or by courtesy, kindness, etc.” and
15 “that which constitutes legal or moral duty”). At oral argument, when specifically

⁸Because subsequent amendments to Section 19-10-13 have not modified the relevant language, we review dictionaries in use at the time the statute was enacted in 1929. See *Pirtle*, 2021-NMSC-026, ¶ 47 (quoting *Wis. Cent. Ltd.*, 585 U.S. at 284 for the proposition that it is a “fundamental canon of statutory construction that words generally should be interpreted as taking their ordinary meaning at the time [the legislature] enacted the statute” (omissions and internal quotation marks omitted)).

1 asked about the applicability of the canon against surplusage, both parties took the
2 position that there is no meaningful distinction between the two words.

3 {63} Other courts have recognized that “the presumption against surplusage does
4 not apply to doublets—two ways of saying the same thing that reinforce its
5 meaning.” *Doe v. Boland*, 698 F.3d 877, 881 (6th Cir. 2012); *accord United States*
6 *v. Bronstein*, 849 F.3d 1101, 1110 (D.C. Cir. 2017) (recognizing that “sometimes
7 drafters *do* repeat themselves and *do* include words that add nothing of substance,
8 either out of a flawed sense of style or to engage in the ill-conceived but lamentably
9 common belt-and-suspenders approach” (alteration, internal quotation marks, and
10 citation omitted)); *Milwaukee Dist. Council 48 v. Milwaukee Cnty.*, 2019 WI 24,
11 ¶¶ 24-25, 385 Wis. 2d 748, 924 N.W.2d 153.

12 {64} “[R]edundancies are common in statutory drafting—sometimes in a
13 [legislative] effort to be doubly sure, sometimes because of [legislative]
14 inadvertence or lack of foresight, or sometimes simply because of the shortcomings
15 of human communication.” *Barton v. Barr*, 590 U.S. 222, 239 (2020). In this case,
16 we agree with the parties that “the better overall reading” of Section 19-10-13
17 contains such a redundancy. *See Barton*, 590 U.S. at 239 (internal quotation marks
18 and citation omitted).

1 **CONCLUSION**

2 {65} For the forgoing reasons, we reverse the district court’s dismissal of the
3 Commissioner’s common law and per se tort claims and remand for further
4 proceedings consistent with this opinion.⁹

5 {66} **IT IS SO ORDERED.**

6
7 **RICHARD C. BOSSON, Justice,**
8 **Retired, Sitting by Designation**

9 **WE CONCUR:**

10
11 **KRISTINA BOGARDUS, Judge**

12
13 **ZACHARY A. IVES, Judge**

⁹ We affirm the district court’s dismissal with prejudice as to the Commissioner’s breach of contract claim, which the Commissioner does not contest.