
# New Mexico

*By: Sharon Shaheen and Kaitlyn Luck*†

## I. State Case

### A. *Enduro Operating LLC v. Echo Prod., Inc.*

In this case, the New Mexico Supreme Court considered the nature and scope of activities that would be considered "adequate," as a matter of law, to satisfy a joint operating agreement's ("JOA") commencement clause.[1] The New Mexico Supreme Court held that the failure to obtain an approved drilling permit within the period allowed to commence drilling is not dispositive.[2] The Court concluded that an operator can prove that it has "commenced drilling operations" by showing a commitment of resources, on-site or off-site, that demonstrate a "present good-faith intent to diligently carry on drilling activities until completion."[3] The New Mexico Supreme Court reversed the court of appeals, which had held as a matter of law that the operator breached its obligation under the commencement clause.[4] The New

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1. Enduro Operating LLC v. Echo Prod., Inc., 413 P.3d 866, 868 (N.M. 2018).
2. *Id.*
3. *Id.*
4. *Id.*; *see also* Enduro Op'g LLC v. Echo Prod., Inc., 388 P.3d 990 (N.M. Ct. App. 2016) (reversing the district court's summary judgment in favor of the operator,

Mexico Supreme Court determined that a question of fact remained as to whether the operator had entered into a "binding" drilling contract prior to the commencement deadline.[5]

This case arose from a dispute between the operator, Echo, and a non-consenting party, Enduro,[6] over whether the operator had timely commenced the operation and completed it with due diligence such that the non-consenting party was subject to a 400% risk penalty.[7] Almost four years after notice of the well proposal and approximately three years after the operator spudded the well and began production, Enduro brought this action against Echo for breach of contract, trespass, conversion, violations of the Oil and Gas Proceeds Payment Act, and declaratory relief, on the grounds that Echo did not timely commence operations.[8] Enduro contended that Echo should have resubmitted its well proposal, which would have given Enduro the opportunity to consent.[9]

The Supreme Court's analysis began by likening the commencement clause in the subject JOA to commencement clauses in oil and gas leases.[10] The Court considered the majority rule in the context of lease agreements, which provides that "a party has commenced where 'modest preparations for drilling have been made' so long as the preparations are 'part of a good-faith effort to obtain production.'"[11] The Court recognized that the majority rule does not actually require drilling.[12]

The *Enduro* court relied on the reasoning in a Texas case, *Gray v. Helmerich & Payne, Inc.*, to conclude that the existence of a drilling permit is not dispositive.[13] Both courts reasoned that the meaning of "commencement" type language in the context of administrative regulations should not be imputed to similar language in a JOA because the purposes served by the regulations and the parties' contract are different.[14] This reasoning led to the Supreme Court's conclusion that the language in the JOA was not only designed to serve a different purpose than the language in section 19.15.14.6 of the New Mexico Administrative Code, but it was also likely used with a different in-

based on Echo's lack of on-site activity at the proposed well site, other than surveying and staking, and the lack of a permit to commence drilling).

5. *Enduro*, 413 P.3d 866, 874.

6. Enduro acquired its pertinent assets from ConocoPhillips ("Conoco"), subsequent to Conoco's election to go non-consent. *Enduro*, 388 P.3d 990, 992.

7. *Enduro*, 413 P.3d 866, 868.

8. *See id.* at 872; *see also Enduro*, 388 P.3d 990, 994.

9. *Enduro*, 388 P.3d 990, 993.

10. *Enduro*, 413 P.3d 866, 869 (citing Valence Operating Co. v. Anadarko Petroleum Corp., 303 S.W.3d 435, 438–41 (Tex. App. 2010)).

11. *Id.* at 869.

12. *Id.*

13. *Id.* at 870 (citing Gray v. Helmerich & Payne, Inc., 834 S.W.2d 579, 582 (Tex. App. 1992).

14. *Id.* at 871.

tended meaning.[15] Even if Echo had obtained an approved drilling permit prior to the deadline, the Court concluded it would have said little about its concurrent good-faith intent to diligently carry on drilling activities until completion because the permit did not require spudding within any particular time period.[16]

The Court considered whether the off-site commitment of resources could ever be adequate evidence of the parties' present good-faith intent to carry on drilling activities until completion where the only on-site activity was the surveying and staking of the well.[17] The Court looked to the terms of the JOA, which lacked any provisions requiring on-site physical activities to suffice for actual commencement, to conclude that off-site evidence could suffice.[18] In this case, Echo produced verifiable evidence that it surveyed and staked the well site, entered into a contract for drilling services, prepared and submitted a drilling permit, and consulted with its geologist regarding the design of the well.[19] However, a genuine issue of material fact existed regarding whether Echo entered into a binding contract before the deadline imposed by the JOA.[20]

In sum, the following principles may be applied in determining whether an operator has commenced drilling operations unless the parties include language in their contract indicating otherwise: (1) actual drilling is conclusive proof but is not a necessity; (2) a permit is not required; (3) activities that include leveling the well location, digging a slush pit, or conducting other good-faith commitment of resources at the drilling site will sufficiently show the parties' present intent to diligently carry on drilling activities until completion; and (4) the off-site commitment of resources, such as an enforceable drilling contract that requires the diligent completion of a well, will also show that the operator began drilling operations.

## II. Federal Cases

### A. *Anderson Living Trust v. Energen Resources Corp.*

In this appeal, the Tenth Circuit revisited an issue previously addressed in *Elliott Industries Limited Partnership v. BP America Production Co.* of whether New Mexico's implied covenant to market gas includes the marketable condition rule.[21] The Court reaffirmed *Elliott*, holding that the plaintiff's conception of the implied duty to market,

15. *Id.*
16. *Id.*
17. *Id.* at 873.
18. *Id.*
19. *Id.*
20. *Id.* at 20 (stating that the court would have concluded as a matter of law that drilling operations were timely commenced, if it were undisputed that a binding drilling contract had been entered before the commencement period ended).
21. Anderson Living Tr. v. Energen Res. Corp., 886 F.3d 826, 830 (10th Cir. 2018).

which would prohibit the operator from deducting post-production costs, finds no support within New Mexico case law.[22] The Tenth Circuit explained that there was no reason to depart from *Elliott* because the New Mexico Supreme Court and New Mexico's legislature subsequently had the opportunity to adopt the marketable condition rule, but did not do so.[23]

Energen owned and operated oil and gas wells in northwestern New Mexico under leases that required it to pay royalties on production to the Anderson Living Trust, as well as other trusts (collectively, "Trusts").[24] Energen paid the Trusts, as royalty, a portion of the downstream sales price, which was calculated by deducting the Trusts' proportionate share of the fees that Energen pays to third-party companies, including the natural gas processors' tax.[25] The Trusts brought their putative class action alleging that Energen was systematically underpaying royalties by using this method to calculate royalties.[26] The Trusts argued this deduction was improper because New Mexico law imposes an implied duty on Energen to market the gas for the benefit of the royalty owners and that duty necessarily prohibits Energen from deducting post-production costs from their royalty payments, which is generally referred to as the marketable condition rule.[27] The Trusts also alleged Energen had not timely paid royalties or interest as required by the New Mexico Oil and Gas Proceeds Payments Act.[28] Two of the plaintiffs made additional claims that Energen was wrongfully failing to pay the royalty on gas it used as fuel.[29]

The district judge dismissed the Trusts' marketable condition rule claim for failure to state a claim under Fed. R. Civ. P. 12(b)(6) and entered summary judgment for Energen on the remaining claims.[30] The Trusts appealed. These claims required the Court to construe the language of the leases at issue in accordance with prevailing New Mexico law.[31] The Trusts' leases provided for royalty payments based on "market value at the well" or "prevailing field market price."[32] In its analysis, the Court recognized that determining those amounts, however, is not straightforward because Energen did not sell the gas it

22. *Id.* at 834, 839–40.
23. *Id.* at 839–40 (citing Conoco Phillips Co. v. Lyons, 299 P.3d 844 (N.M. 2012); Ideal v. Burlington Res. Oil & Gas Co. LP, 233 P.3d 362(N.M. 2010); Davis v. Devon Energy Corp., 218 P.3d 75 (N.M. 2009)).
24. *Id.* at 830.
25. *Id.* at 830, 832.
26. *Id.* at 830.
27. *Id.* at 832.
28. *Id.* at 830.
29. *Id.*
30. *Id.* at 831.
31. *Id.* at 829–30.
32. *Id.* at 832.

produces on these leased properties "at the well."[33] The Court discussed the "netback" method of determining wellhead value and recognized the propriety of using such a method "to effectuate the intention of the parties as it is expressed in" the lease.[34]

The Court also considered whether Energen must pay royalties for fuel gas. The Court construed lease language requiring royalties to be paid on "'gas marketed from each well' (sold gas)" to allow a deduction of fuel gas, both on and off the lease.[35] The Court relied in part on *ConocoPhillips v. Lyons* to support its decision in this regard.[36] The Court held differently with respect to a lease that had no free use clause and required payment of royalties on "all oil and gas produced."[37] It concluded that Energen must pay a royalty on the wellhead value of the fuel gas consumed, but that under the royalty provision "field market price," Energen could deduct the value of the fuel gas consumed as a post-production cost.[38]

Finally, with respect to New Mexico law, the Court considered whether Energen owed one of the Trusts interest under section 70-10-4 of the New Mexico Statutes Annotated as a result of late payments made of monies held in suspense due to a title issue.[39] The Court concluded that interest was due on the suspended funds.[40]

### B. *San Juan Citizens Alliance v. U.S. Bureau of Land Management*

Plaintiffs in this case, a collective of citizens groups, sued to challenge the joint decision of the United States Bureau of Land Management ("BLM") and the United States Forest Service ("USFS") (collectively "Agencies") to lease mineral interests on thirteen parcels in the Santa Fe National Forest, claiming that the decision violated the National Environmental Policy Act ("NEPA").[41] On Plaintiffs' Petition for Review of Agency Action and Plaintiffs' Opening Merits Brief, the court conducted a review under the Administrative Procedures Act[42] to determine whether the Agencies' decision was arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with the law.[43]

33. *Id.*
34. *Id.* at 832–33.
35. *Id.* at 843–44.
36. *Id.* at 844–46 (discussing *inter alia* a North Dakota case relied on by the *Lyons* court, *Bice v. Petro-Hunt, L.L.C.*, 758 N.W.2d 495 (N.D. 2009).
37. *Id.* at 846–47.
38. *Id.* at 847.
39. *Id.* at 850–51.
40. *Id.* at 851.
41. San Juan Citizens All. v. U.S. Bureau of Land Mgmt., 326 F. Supp. 3d 1227, 1232 (D.N.M. 2018).
42. *Id.* at 1239 (citing 5 U.S.C. §§ 551 to 59; Wyoming v. U.S. Dep't of Agric., 661 F.3d 1209, 1226 (10th Cir. 2011)).
43. *Id.* at 1256 (quoting Silverton Snowmobile Club v. U.S. Forest Serv., 433 F.3d 772, 779–80 (10th Cir. 2006)).

Following a consensus by BLM and USFS that the Final Environmental Impact Statement ("EIS") and a supplement were adequate to issue oil and gas leases, the BLM issued a Decision Record and Environmental Assessment approving for the lease of the thirteen parcels of federal minerals at issue that were subject to USFS mandated surface use stipulations.[44] The EA incorporated the USFS's 2003 resource management plan, the 2008 Final EIS, and the USFS's 2012 supplement in its analysis of the effects that the proposed action would have on wildlife, special status species and migratory birds, air quality and climate, water quality, soil resources, dark sky resources, cultural resources and landscapes, socioeconomics, environmental justice, and the Old Spanish Trail.[45] Based on all of the information compiled and analyzed since 1987, the BLM determined that preparation of another EIS was not warranted and issued a finding of no significant impact ("FONSI").[46]

Plaintiffs filed suit claiming that (1) BLM violated NEPA by failing to take a hard look at the environmental impacts of oil and gas development; (2) BLM violated NEPA by allegedly failing to provide a convincing statement of reasons to justify its decision that an EIS was unwarranted; (3) BLM and USFS violated NEPA by issuing leases during a pending resource management plan amendment and forest plan revision; and (4) USFS violated NEPA by failing to take a hard look at the impacts of oil and gas development and failing to consider significant new information and circumstances.[47]

Plaintiffs argued that USFS and BLM failed to look at the direct, indirect, and cumulative impacts of oil and gas leasing.[48] Plaintiffs contended that BLM failed to consider the impacts of granting the leases on (1) greenhouse gas emissions and climate change; (2) air quality; (3) water resources—including the impacts to water quantity, groundwater quality, and surface water quality; and (4) cumulative impacts of lease development.[49] Plaintiffs sought a declaration that the leasing decisions violated NEPA. They further sought to enjoin USFS and BLM from authorizing any other leases in the Santa Fe National Forest pending "full compliance" with NEPA and to have the leases vacated and remanded. The Court retained full jurisdiction until it provided remedies for the alleged violations.[50]

The Court set aside the BLM's FONSI determination and leases at issue for several reasons. First, the Court found that BLM failed to take a hard look at the impacts of greenhouse gas emissions, including

44. *Id.* at 1237.
45. *Id.* at 1238.
46. *Id.*
47. *Id.*
48. *Id.* at 1239.
49. *Id.* at 1240.
50. *Id.* at 1238.

quantifying and analyzing impacts of foreseeable downstream greenhouse gas emissions from combustion of produced oil and gas likely to be developed from leases.[51] Next, the Court found that BLM failed to conduct the analysis required by title 40 section 1508.7 of the Code of Federal Regulations with regard to downstream greenhouse gas emissions, and its failure to take a hard look at the cumulative effects of selling oil and gas leases was arbitrary.[52] Thus, on remand, the Court required BLM to utilize the best available scientific evidence to quantify and analyze the impacts of downstream greenhouse gas emissions on the environment.[53]

Second, the Court rejected Defendants' arguments that the amount of water well that operators may use is too speculative to quantify at the leasing stage, and the Court found that BLM failed to take a hard look at the impacts of agency action on water quantity or the effect of such water use on the environment.[54] Finally, the Court concluded that BLM adequately considered the cumulative air quality effects of the oil and gas lease sale and that it met its obligation to take a hard look at the impact of proposed action on surface water quality in analyzing the quality of groundwater and reporting no verified instances of adverse effects to groundwater in the San Juan Basin as a result of oil and gas drilling.[55]

### C. *Cibola Energy Corp. v. United States Dep't of Interior*

Plaintiff, Cibola Energy Corp. ("Cibola"), filed this action for judicial review of a decision by the United States Department of the Interior's Board of Land Appeals ("IBLA") pursuant to the Administrative Procedures Act.[56]

Cibola was the operator of a well on a federal lease that was completed in 1990 but never produced. The well was last tested for production in 1990 and subsequently shut-in.[57] Cibola conducted a casing integrity test and applied for temporary abandonment ("TA") status in 2002, which was granted for a period of one year. Although Cibola did not apply for TA status again until 2011, it continued to pay shut-in royalties to BLM.[58] In June 2011, BLM's Las Cruces District Office sent Cibola a decision and a Notice of Written Order, citing 43 C.F.R. § 3162.4-2(b), following Cibola's Sundry Notice seeking to continue the Well's TA status.[59] The BLM's decision noted that the well had

51. *Id.* at 1244.
52. *Id.* at 1242–48.
53. *Id.* at 1249, 1249 n.8.
54. *Id.* at 1254.
55. *Id.* at 1252, 1254–55.
56. Cibola Energy Corp. v. U.S. Dep't of Interior, No. 12-CV-1099 MCA/LFG, slip op. at 1 (D.N.M. May 23, 2018).
57. *Id.* at 2–3.
58. *Id.* at 3–4.
59. *Id.* at 4–5.

been shut-in since the last casing integrity test, and the BLM required additional testing to determine if the TA status could continue given the significant number of years that passed without any further testing to confirm the casing integrity or the well's capability of production.[60] It further ordered Cibola to conduct a production test if the casing integrity test was positive.[61] On request by Cibola, the State Director reviewed and upheld the BLM's Decision and Order on the ground that federal regulations provide BLM with authority to require testing to determine whether they should continue a well's TA status.[62] Cibola then appealed the State Director's Review to the IBLA, which was also upheld.[63]

This case required the Court to consider BLM regulations to determine whether the IBLA acted arbitrarily when it affirmed the BLM's decision ordering Cibola to conduct casing integrity and production tests on the well.[64] Cibola asked the Court to allow the well to continue in TA status without further testing, despite BLM's authority to order testing pursuant to regulation. Cibola's theory was that IBLA failed to consider its assertion that it was impossible for there to have been any change in the condition of the well, which the IBLA previously found to be capable of production in paying quantities, when the well had not produced and there was no drilling in the area.

The Court recognized several general principles and requirements. To maintain an oil and gas lease, a well must be in production.[65] Even where a well was shut-in for lack of a pipeline, it still must be capable of production to avoid the expiration of the lease.[66] To meet the definition of a well capable of production in paying quantities, a well must be physically capable of producing a sufficient quantity of oil or gas to yield a reasonable profit after the payment of the day-to-day costs incurred after the initial drilling and equipping of the well, including the costs of operating the well, rendering the oil or gas marketable, and transporting and marketing the product.[67] Under title 42 section 3162.4-2 of the Code of Federal Regulations, BLM may require a well operator, after completion, to conduct periodic well tests, which would be specified in appropriate notices or orders, to determine the quantity and quality of oil and gas and to demonstrate the mechanical integrity of the downhole equipment.[68] The BLM issued the order to

60. *Id.*
61. *Id.* at 5.
62. *Id.*
63. *Id.* at 7.
64. *Id.* at 1, 3–4.
65. *Id.* at 4.
66. *Id.* at 9.
67. *Id*. at 10.
68. *See id.* at 2.

conduct testing pursuant to section 3162.4-2 in response to Cibola's Sundry Notice requesting an extension of the well's TA status.[69]

The Court found that given the passage of time, the casing integrity and production tests were necessary to demonstrate the present condition of the well.[70] Cibola pointed to no evidence in the record to support its contention that changes in the well in twenty years are impossible, and thus it failed to carry its burden to establish facts showing the well was capable of producing in paying quantities.[71] According to the Court, given the fact that the productive capacity of the Well remained unknown, the IBLA's decision that the BLM reasonably required testing of the Well to determine the Well's current condition was not arbitrary and capricious.[72] Because the IBLA considered all of the facts before it, provided reasoned bases for its conclusion, and was not otherwise arbitrary and capricious, the Court affirmed the IBLA's decision.[73]

### D. *Dine Citizens Against Ruining Our Env't v. Jewell*

This case arises from oil and gas development in the San Juan Basin of the Four Corners Region in northwestern New Mexico.[74] Plaintiffs, an organization of Navajo community activists and environmental organizations, brought an action against the BLM, among others,[75] challenging the BLM's approval of over 300 applications for permits to drill ("APD") in the Mancos Shale formation.[76] Plaintiffs alleged, *inter alia*, that BLM violated the National Environmental Policy Act ("NEPA")[77] by failing: (1) to analyze the direct, indirect, and cumulative effects on the environment and human health caused by hydraulic fracturing and horizontal drilling, including the effects of greenhouse gas emissions;[78] to consider the impacts from foreseeable development as well as past development;[79] and to prepare an Environmental Impact Statement ("EIS") for the proposed 3,960 Mancos Shale wells.[80] The plaintiffs also alleged that the BLM violated the National Historic Preservation Act ("NHPA")[81] because it did not consider the indirect and cumulative effects on Chaco Park and its satellites.[82]

69. *Id.* at 4.
70. *Id.* at 16.
71. *Id.* at 13.
72. *Id.* at 16.
73. *Id.* at 16–17.
74. Dine Citizens Against Ruining Our Env't v. Jewell, 312 F. Supp. 3d 1031 (D.N.M. 2018).
75. *Id.* at 1044, 1050.
76. *Id.* at 1050.
77. *Id.* at 1043 (citing 42 U.S.C. §§ 4321 to 4370m–12).
78. *Id.* at 1054–55.
79. *Id.*
80. *Id.* at 1055.
81. *Id.* at 1043 (citing 16 U.S.C. §§ 470 to 470x–6).
82. *Id.* at 1055–56.

The Court comprehensively addressed numerous issues raised by the parties. Some of the primary issues before the court included whether the plaintiffs had standing to pursue their claims under NEPA and NHPA; whether the BLM violated NEPA by failing to adequately consider the environmental impacts of hydraulic fracturing and horizontal drilling in developing the Mancos Shale in the San Juan Basin; whether the BLM adequately involved the public in its NEPA process; and whether the BLM violated NHPA for failing to consider the indirect effects that well pads would have on Chaco Park and its satellites.[83]

The Court found a sufficient geographical nexus to the plaintiffs' alleged increased risk of environmental harm and aesthetic injury from the BLM's approval of applications of permits to drill for oil and gas in the area and therefore concluded the plaintiffs had standing to assert claims under NEPA and NHPA.[84] The Court then concluded that the BLM's approval of the APDs did not violate NEPA because the BLM complied with NEPA's requirements.[85] The Court then considered whether the BLM satisfied NEPA's minimal public notice requirements.[86] NEPA's regulations require that agencies "involve environmental agencies, applicants, and the public, to the extent practicable," and the Court found that the defendant complied with these requirements based on the availability of "NEPA logs" on the BLM's website.[87] In addition, the Court concluded that the BLM did not violate the NHPA by failing to consider the effects of wells in Chaco Park and its satellites.[88] Ultimately, the Court denied the permanent injunction requested by the plaintiffs and dismissed all of their claims with prejudice.[89] The plaintiffs' appeal is pending before the Tenth Circuit.[90]

### E. *SDF, L.L.C. v. ConocoPhillips Co.*

On removal by ConocoPhillips Company ("COP") and Hilcorp San Juan, L.P. ("Hilcorp") (collectively "Defendants"), the District of New Mexico considered whether New Mexico would recognize an "illegal recoupment" claim when a party wrongfully invoked the doctrine of equitable recoupment.[91]

83. *Id.* at 1043.
84. *Id.* at 1085.
85. *Id.* at 1091–95.
86. *Id.* at 1095–99 (citing 40 C.F.R. §§ 1501.4(b), 1506.6).
87. *Id.*
88. *Id.* at 1099–1111.
89. *Id.* at 1114.
90. Dine Citizens v. Zimke, No. 18-cv-02089 (10th Cir. June 18, 2018).
91. SDF, L.L.C. v. ConocoPhillips Co., No. CV 17-00720 RB-KBM, 2018 WL 1183360, at *1–2 (D.N.M. Mar. 6, 2018).

SDF, L.L.C. ("SDF") owned an overriding royalty interest in federal leases in Rio Arriba County, New Mexico.[92] Since 1990, COP had paid royalties to SDF.[93] In May 2016, COP stopped paying royalties because COP claimed it was only contractually obligated to pay royalties for the months when it extracted, on average, more than 500,000 cubic feet (500 Mcf) of gas per well each day.[94] It was undisputed that COP had never met the 500 Mcf threshold, so from its perspective, it had unnecessarily paid royalties since 1990.[95] Following the decision to halt royalty payments, COP sold its interest in the federal leases to Hilcorp, which then took over COP's obligation to pay royalties.[96] Like COP, Hilcorp believed that, under the terms of the subject leases, royalty payments were due only for the months when it extracts a daily average of 500 Mcf of gas per well.[97] SDF sued the Defendants in New Mexico state court, asking the court to declare that the Defendants must pay the royalties regardless of whether they met the 500 Mcf threshold. SDF also alleged that the Defendants were guilty of breach of contract and "illegal recoupment."[98] After removal, the Defendants asked the Court to dismiss SDF's illegal recoupment claim.[99]

The Court looked to how New Mexico courts have treated the doctrine of equitable recoupment for guidance on whether New Mexico would recognize a cause of action for illegal recoupment. In New Mexico, equitable recoupment is a judicial doctrine designed to "avoid the inequity that would otherwise result from strict adherence to statutes of limitations"[100] by allowing a party to assert a time-barred claim as a defense against another party's factually-related claims.[101] Equitable recoupment is an established defense, despite being barred by the statute of limitations, to another party's timely claim where the two claims arise out of the same transaction or event, but it cannot be used to circumvent the statute of limitations by affirmatively asserting a time-barred claim.[102]

SDF claimed that the Defendants "illegally" invoked the defense of equitable recoupment after having withheld payments without first

92. *Id.*
93. *Id.*
94. *Id.*
95. *Id.*
96. *Id.*
97. *Id.*
98. *Id.*
99. *Id.* at *2–4.
100. *Id.* (quoting City of Carlsbad v. Grace, 966 P.2d 1183 (N.M. Ct. App. 1998)).
101. *Id.* at 1 (citing Crown, Cork & Seal Co., Inc. v. Parker, 462 U.S. 345, 352 (1983) (Statutes of limitations are legally-imposed time limits on when a plaintiff may bring certain claims and "are intended to put defendants on notice of adverse claims and to prevent plaintiffs from sleeping on their rights.") (internal citations omitted)).
102. *Id.* at 2–4 (citing City of Carlsbad v. Grace, 966 P.2d 1178, 1183 (N.M. Ct. App. 1998)).

obtaining judicial permission to do so. Here, the Court found that the Defendants' unjust enrichment claims were time barred thereby prohibiting them from seeking judicial permission to withhold payments by way of a declaratory judgment. Accepting SDF's theory of illegal recoupment would prohibit oil and gas lessees, such as the Defendants, from seeking a declaratory judgment or turning to self-help. Moreover, there were no grounds to support Plaintiff's argument that equitable recoupment must be judicially authorized, nor was there any prohibition of the equitable recoupment defense in New Mexico's Oil and Gas Proceeds Payment Act.[103] Thus, the Court found no good reason to recognize SDF's proposed illegal recoupment claim because that theory would eviscerate New Mexico's equitable recoupment doctrine.[104]

103. *Id.* at 4 (discussing N.M. STAT. ANN. §§ 70-10-1 to 70-10-6 (West 1978)).
104. *Id.*