

Hector Balderas
Office of the New Mexico Attorney General
Consumer and Environmental Protection Division
P.O. Drawer 1508
Santa Fe, NM 87504-1508

Dear Attorney General Balderas —

The University of New Mexico Foundation (UNMF), a non-profit public charitable institution, is bound by the laws of the state to promote the well-being of the University of New Mexico's students and community and to further the University's statutory commitment to "provide the inhabitants of the state of New Mexico with the means of acquiring a thorough knowledge of the various branches of literature, science and arts." Under the New Mexico Uniform Prudent Management of Institutional Funds Act, the UNMF has a fiduciary duty to invest with consideration for its own and the University's "charitable purposes" — a duty that distinguishes non-profit institutions from other investors. Instead, the Foundation has invested a portion of the University's \$579 million endowment in the fossil fuel industry — damaging the world's natural systems, disproportionately harming youth, historically underserved communities, Indigenous populations, and communities of color, and imperiling the University's financial and physical condition. In the midst of the climate crisis, powerful institutions must take responsibility for their contributions to global warming. As concerned students, faculty, alumni, political leaders, civic groups, and community members, we ask that you investigate this conduct and that you use your enforcement powers to order the UNMF to cease its investments in fossil fuels.

New Mexico law provides rules that charitable managers and investors must follow in managing institutional funds. As stewards of the University of New Mexico endowment, the UNMF is required to act in good faith and with loyalty, taking care that its investments further the purposes of the University. The UNMF may not simply seek profit at any cost: the privileges that the Foundation enjoys as a non-profit institution, and its obligation to support the public purposes of the state's flagship institution of higher education, come with the responsibility to ensure that its resources are put to socially beneficial ends. The obligation to consider the charitable purposes of an institution when making investments is a "fundamental duty"; fiduciaries such as the directors of the UNMF are bound by a stringent standard of loyalty to these purposes and to society at large. By investing an estimated \$23.3 million in fossil fuel stocks, the UNMF has violated these duties to the University and the public.

The values that should guide the UNMF's investments are clear. According to the University's mission statement, "UNM will provide students the values, habits of mind, knowledge, and skills that they need to be enlightened citizens, to contribute to the state and national economies, and to lead satisfying lives. Faculty, staff, and students . . . provide services that enhance New Mexicans' quality of life and promote economic development; and they advance our understanding of the world, its peoples, and cultures." The University espouses a commitment to "to improve our future through thoughtful stewardship of our cultures and environment"; claims to be "a pioneer in sustainability and a committed steward of the Earth's

natural resources”; and “aims to improve performance in all areas of operations thereby meeting the needs of current generations without compromising the prospects of future generations.” And yet, despite the demonstrable financial and social benefits of institutional fossil fuel divestment, the UNMF has remained steadfast in its support of an industry whose business model is based on environmental destruction and social injustice.

The oil, gas, and coal industries have been historically integral to New Mexico’s economy. Even as many New Mexicans benefit from employment in the sector, the need to shift from fossil fuels toward renewable energy sources is pressingly clear. This is not only for reasons of avoiding catastrophic climate change; mines, wells, pipelines, and other fossil fuel infrastructure in the state cause serious damage to public health, and many of the companies in which the UNMF invests have problematic worker safety records in the state. Furthermore, the fossil fuel sector’s promotion of unproven and expensive technologies and its failure to address the environmental impacts of its operations make it difficult for New Mexico to build a thriving renewable energy economy. Whatever the state and the University’s past reliance on the industry, the time for a transition towards safer alternatives has come, a point made clear in Governor Lujan Grisham’s 2019 executive order on climate change, which directed state institutions such as the University to “further New Mexico’s responsibility and opportunity to build a clean energy future for our people.”

Climate change is an existential threat to humanity and our environment. In addition to water scarcity, extreme weather events, and species die-off, climate change causes injuries to all members of society, and particularly to the most vulnerable. Pollution from the combustion of fossil fuels results in about twenty-four thousand premature deaths daily on a global basis.. Communities of color disproportionately suffer pollution and health detriments from fossil fuel extraction and combustion. Vulnerable populations bear the brunt of climate-based economic disruption, as illustrated by the plight of climate migrants and refugees already forced from their homes by drought, flooding, and social conflict. Indigenous communities are regularly invaded and harmed by the spread of fossil fuel infrastructure. Women suffer more from the economic precarity and increased burdens of care work caused by climate disruption. Many of these phenomena are compounded in New Mexico, which is among the fastest-warming and most water-stressed states in the nation. Impacts such as severe drought and increased heat are already causing havoc for the state’s farmers and ranchers, even as other side-effects of oil and gas development, such as leaks of fracking fluid and wastewater, affect the region. The state’s large Indigenous and Hispanic populations already experience disproportionate negative effects from fossil fuel air pollution, leading to increased rates of asthma, lung and cardiovascular disease, and birth problems. New Mexico’s high rate of childhood poverty makes the state particularly vulnerable to the impact of climate change on essential services.

The need to refrain from promoting such outcomes is obvious for any institution that calls itself a charity. Yet the UNMF has repeatedly refused to apply University’s values to its investment activity. This conduct is especially galling for managers of an institution of higher education. Fossil fuel companies have long engaged in a well-documented campaign to undermine climate science and distort public debate about how to deal with the climate crisis. The industry’s spread of scientific misinformation undermines the work of University faculty and students who are researching and designing solutions for a sustainable future. Likewise, the

flow of fossil fuel money to politicians and think tanks has diverted or delayed government action to address the climate crisis, placing a special burden on young people whose futures will be most impacted by these investments. Even as it recognizes its “unique ability to . . . incorporate the values of sustainability into all aspects of operations,” the University, via the UNMF, channels funds to an industry dedicated to winning short-term profits at the expense of the public good.

A similar inversion of values underlies the UNMF’s funding of climate degradation despite its duty to protect the University’s physical property. In the coming decades, higher temperatures, increased wildfire activity, more severe storms, and flooding will pose serious threats to University land and buildings in Albuquerque and elsewhere. Administrators will be forced to retrofit facilities and manage infrastructure disruptions, even as air quality on campus deteriorates and cooling costs increase. Instead of facilitating such injuries, the UNMF should be doing everything in its power to prevent them.

This reckless support of a dangerous industry is compounded by conflicts of interest involving members of the UNMF Board of Trustees and the University Board of Regents, on the one hand, and the fossil fuel sector, on the other. Several of these fiduciaries work for major fossil fuel companies or derive significant business income from their ties with the industry. These connections raise serious questions regarding the UNMF’s duty of loyalty to the University, especially in light of the severe threat posed by the fossil fuel industry to the university.

The UNMF is bound by an additional legal duty: the requirement to manage the University’s assets with prudence. Prudent investment practice simply cannot be squared with the ownership of fossil fuel assets. Investment in the oil, gas, and coal sectors has become excessively risky thanks to increased government regulation and the fossil fuel industry’s own failure to diversify its operations and to avoid capital-intensive extraction. The domestic coal sector has nearly collapsed, and natural gas likewise stands to lose much of its value as cheaper, more sustainable energy sources become more readily available. For any prudent investor, these signs clearly indicate that continued investment in fossil fuels is a losing proposition.

Exacerbating the industry’s poor financial performance is a well-documented pattern of alleged fraud. Fossil fuel companies such as ExxonMobil have allegedly misled investors by concealing the anticipated impact of climate change and energy regulation on the value of assets such as untapped oil reserves. The UNMF continues to invest in the sector despite its legal duty to exercise care and prudence in avoiding dangerous securities. In fact, the UNMF’s Investment Policy contains a prohibition on the use of screening to evaluate climate-related and other environmental, social, and governance (ESG) risks to companies’ business. This prohibition makes it impossible for the UNMF to take into account the clear conflicts between its own fiduciary duties and investments in fossil fuel companies.

The UNMF cannot plead ignorance of its duty to divest. For years, University students and faculty have pushed for investment practices that align with the University’s mission. This pressure was instrumental in the University and the Foundation’s decision in 1986 to withdraw investments from companies doing business in apartheid South Africa: an acknowledgment that

its investment activity must comport with the University's missions and values. In recent years, various student, staff, retiree, and faculty bodies have voted for fossil fuel divestment. Repeated rallies, reports, and requests for negotiation have alerted the UNMF to its fiduciary responsibility. Nonetheless, the UNMF has spurned all efforts at persuasion. Such behavior cannot be squared with the duty to manage the university's assets in good faith.

It is too late for the UNMF to deny the relation between its investments and climate change. Its obligations under New Mexico law and its own governing documents are clear, and fossil fuel investment is incompatible with those obligations.

We have included below a comprehensive description of the UNMF's violations, along with documents and reports supporting the claims made in this complaint. Under New Mexico Statute 57-22-9, your office is empowered to investigate such matters and to take enforcement action to address them; we would appreciate the opportunity to have members of our group meet with your staff to discuss legal avenues toward a resolution.

Sincerely,

UNM Leaders for Environmental Action and Foresight (LEAF)
University of New Mexico Coalition on Climate

Additional signatories are listed below (for individual signatories, institutional affiliation is for identification purposes only).

Elected Officials

State Representative Patricia Roybal Caballero, HD 13, (UNM MPA, MCRP 2012; PHD candidate in Chicana and Chicano Studies) member of Piro-Manso-Tiwa tribal, Guadalupe Pueblo in New Mexico; LULAC National Parliamentarian at League of United Latin American Citizens

Diane Denish, former NM Lieutenant Governor 2003-2010 (UNM BA 1971)

State Senator Antoinette Sedillo Lopez, SD16 (Emeritus UNM Professor of Law)

State Representative Marian Matthews, HD27 (UNM School of Law 1974)

Senator Gerald Ortiz y Pino, SD 12 (UNM BA 1965)

State Representative Harold Pope Jr., HD 23 (UNM BS 2002, Current UNM Student in EMBA Program)

Ray Powell, former New Mexico Commissioner of Public Lands, 1993-2003 and 2011-2015 (UNM BS 1977, MA 1980)

State Representative Andrea Romero, HD46 (UNM School of Law 2022)

State Senator President Pro Tempore Mimi Stewart SD 17, State Representative (1995-2014) (graduate courses at UNM)

State Senator Bill G. Tallman, SD18

Frontline Community Members

Citizens Caring for the Future

Don Schreiber, owner of Devil's Spring Ranch (UNM BBA 1971)

San Juan Citizens Alliance (1000 members)

Siihasin Nazbaa Diné, Nakaii/Chicanx & Mescalero Apache Two Spirit, Water Protector

Climate Science, Energy and Policy Community

Paul Biderman, JD, Former NM Secretary of the Department of Energy and Minerals and Natural Resources and Former Director UNM Institute of Public Law

Dr. David Gutzler, Professor Emeritus, Earth & Planetary Sciences, University of New Mexico

Dr. Mark Z. Jacobson, Professor of Civil and Environmental Engineering and Director of the Atmosphere/Energy Program, Stanford University

Dr. Nathan Phillips, Professor in the Department of Earth and Environment, Boston University

Dr. Jennifer Francis, Acting Deputy Director, Senior Scientist, Woodwell Climate Research Center

UNM Faculty and Staff

Mario Pablo Atencio, Adjunct Faculty of Native American Studies (UNM BA Native American Studies and English 2010)

Mansoor Sheik-Bahae, PhD, Distinguished Professor, Physics and Astronomy

Mark Boslough, PhD, Adjunct Professor, Earth and Planetary Sciences

Kathy Z Chang, MD, Assistant Clinical Professor of Family and Community Medicine, Associate Program Director, Department of Family and Community Medicine,

Joseph A. Cook, PhD, Distinguished Professor of Biology, Curator of Mammals, Museum of Southwestern Biology (UNM PhD Biology 1990, MS Biology 1982)

Ben Daitz, MD, Professor of Family and Community Medicine

Michael Dougher, PhD, Professor Emeritus of Psychology and former Vice President for Research

John Geissman, PhD, Professor Emeritus of UNM, Earth and Planetary Sciences (Fellow of the American Geophysical Union and the Geological Society of America.)

Walter Gerstle, PhD, Professor Emeritus of Civil Engineering

Moises Gonzales, MUD, MCRP, Associate Professor of Urban Design in the Community and Regional Planning Program, Board of Trustees of the Carnué Land Grant (UNM MCRP, 1997, UNM BA, Political Science, 1993)

Nina Greenberg, MS, MPH, Principal Lecturer of Mathematics and Statistics (UNM MS, MPH)

Joseph Galewsky, PhD, UNM Professor of Earth and Planetary Sciences

Ravinder K Jain, PhD, Professor of Electrical and Computer Engineering and Physics

Jerica Johnson, MD, Assistant Professor Department of Family and Community Medicine

Norty Kalishman, MD, past UNM Adjunct Professor of Pediatrics

Summers Kalishman, PhD, Associate Professor Emerita of Family and Community Medicine (UNM PhD COE 1997)

Joanna Katzman, MD, MSPH, Professor of Neurosurgery with secondary appointments in Psychiatry, Nursing and Population Health, UNM Health Sciences Center

Gabriel Lopez, PhD, Professor of Chemical and Biological Engineering, past Vice President for Research

Kevin J. Malloy, PhD, Professor Emeritus of Physics and Astronomy, former President of UNM Retiree Association

Leslie D. McFadden, PhD, Professor Emeritus Earth and Planetary Sciences

Seth Newsome, PhD, Associate Professor of Biology and Associate Director, Center for Stable Isotopes

Leola Tsinnajinnie Paquin, Ph.D., Assistant Professor, Native American Studies (UNM PhD COE)

Christina Salas, PhD Assistant Professor in the Department of Orthopaedics and Rehabilitation with a joint appointments in the Department of Civil Engineering and Department of Mechanical Engineering (UNM alumna 2014 and 2008)

Nancy Shane, PhD, Research Scientist, Past President of UNM Staff Council, Parent of Alumnus

Zachary Sharp, PhD, Distinguished Professor Earth and Planetary Sciences, Director of the Center of Stable Isotopes

Julie Shigekuni, PhD, Professor, Dept of English Language & Literature

Angelo Tomedi, MD, UNM Visiting Associate Professor; coordinator for the UNM HSC Climate Group

Nina Wallerstein, DrPH, MPH, Distinguished Professor of Public Health; College of Population Health, Director, Center for Participatory Research

Clifford Villa, JD, Professor of Law, (UNM BA 1990)

Karen Ziegler, PhD, Senior Research Scientist, UNM Institute of Meteoritics

Students and Graduate Faculty

Alana Bock, United Grad Workers of UNM, PhD candidate in the American Studies

Stephanie Fox, PhD Candidate, UNM Department of Anthropology

Kelsey Treviño, UNM Graduate Worker, Ph.D. student in Spanish and Portuguese

Jessica Newman - UNM Communications major 2023

Anna Linn, UNM Environmental Science and Sociology dual major

Phylicia Garcia, UNM Emergency Medical Science Major

Noah Dowling-Lujan, President UNM College Democrats, Political Science Candidate 2022

Alexa Moore, UNM NMPirg intern, College of Arts and Sciences

Alice Main, New Mexico for Good Project Assistant; UNM MBA Candidate 2023

Caroline Muraida, UNM Medical School Student

Eileen O'Shaughnessy, UNM Instructor Women, Gender, and Sexuality Studies, PhD Candidate Language, Literacy, and Sociocultural Studies Program

Bethany Sanchez, UNM Medical School student; President of CCHEC (UNM BA Spanish Language and Literature and BS Biology 2016)

Kelsey Treviño, United Grad Workers of UNM, PhD candidate in Spanish and Portuguese

Sarah Worland, Teaching Assistant, PhD candidate UNM English (BA 2014, MA 2017)

Alumni

Athena Christodoulou, President, CSolPower (UNM Professional Science Masters 2012)

Samantha Dicker, EMT student Central New Mexico Community College, Running Medicine leader, (UNM BS Earth and Planetary Sciences, Math minor 2020)

Lee Tilford Davis, Lee Tilford Advertising Agency, (UNM BA 1969, PhD 1990)
 Celia Einhorn, Supercomputing Challenge, program manager (UNM MA COE 1973)
 Anni Hanna, Activist, Teacher (UNM MA COE 2006)
 Philip B. Davis, Attorney (UNM Law 1978)
 Raena Garcia, Fossil Fuels and Lands Campaigner, Friends of the Earth, (UNM BS, Biology, BA Psychology 2017)
 Abbigayle Hanoch, Financial Planning Assistant at West Coast Financial Wealth Management, Inc. (BBA Anderson School of Management 2021)
 Matthew B. Jenkins, Associate Professor of Art at Metropolitan State University, Denver (UNM MA 2003)
 Alejandría Lyons, Environmental Justice Organizer, Southwest Organizing Project (UNM BA Economics and Political Science 2020)
 Ann T. McCartney, Attorney. (UNM Law School 1983)
 Shannon Miller Jones, Education Coordinator, The Yerba Mansa Project, (UNM BS Environmental Science, MS Earth and Planetary Science 2014)
 Richard Moody, State Department Contractor, retired (UNM BBA 1996)
 Holly W. Newman, Licensed Educational Diagnostician, Albuquerque Public Schools; (UNM MA COE 1995)
 Adriana P. Nieto, PhD, Chair of the Chicana/o Studies Department at Metropolitan State University, Denver (UNM BA 1999, MA 2003)
 Richard Obenauf, PhD, part-time faculty, (UNM BA English, BA French, 2006)
 Holly Olivarez, PhD Candidate Environmental Studies, University of Colorado, Boulder (UNM B.S. Earth and Planetary Sciences 2019;)
 Nicole Olonovich, MSW/MBA/OIF Vet, (UNM BA Communications 2007)
 Melora Palmer, MeloraPalmer.com, (BBA Anderson School of Management, 1985)
 Joshua Parks, UNM LEAF Alumnus and Founding Member (UNM BS, Earth and Planetary Sciences, Sustainability Studies Minor 2020)
 Vicki Plevin, attorney, (UNM School of Law 1998)
 Jeffrey C. Sims (BA History 2013)
 Andrew C. Stone, founder Stone Design Corporation , PACE Fund NM (UNM 1977 SAAP)
 Katie Stone, Executive Director, The Children's Hour, UNM's flagship NPR station, KUNM (non-degree 1990-1992, UNM parent, Foundation donor)
 Nancy Weeks Singham, retired teacher (UNM MA COE 1975)

Community Members

Marcos Balido
 Katherine Breen
 Rosemary Casey
 Krishna Chari, PsyD, psychologist
 Diana Cochran, Analyst
 Dylan Connelly, PE, solar energy development manager
 Stephanie Haan-Amato, Communications and Development Director, Environmental Education of New Mexico
 Paul Haidle, attorney
 Elaine Kelly
 Dr. Edna Loehman, retired agricultural economist

Karen Metchis
Daran Moon
Ward McCartney, electric car owner
Ruth Anne O'Keefe, MD-Former UNM Clinical Instructor
Claudia Risner, PhD, CAPT (ret.) US Navy
Jessica Rowland, Sustainability Lecturer
Martha A. Phillips
Antia Sanchez
Saverio Sava
Eileen Shendo, Founder Seeded Sisters, Jemez Pueblo
Eric Silva, Director, Pathways to the Possible
Sharon D. Stanley
Gail M. Stephens
Lance H. Woeltjen
Ralph Wrons, Board of Directors Middle Rio Grande Water Advocates, Retired Sandia
National Labs engineer
Linda Zipp, MD, retired pediatrician

Organizations

350 New Mexico
350 Santa Fe
Climate Change and Health Equity Coalition
Democratic Party of New Mexico Veterans and Military Families Caucus
Diné Citizens Against Ruining our Environment* (CARE)
Do Good LLC
Earth Care
First Congregational Church
First Congregational United Church of Christ, Albuquerque
Friends of the Earth
Global Warming Express
Green Amendments For The Generations
Indivisible Albuquerque
The New Mexico Green Amendment Movement
Land Witness Project*
Progressive Democrats of America Central New Mexico
The Middle Rio Grande Water Advocates*
NDN Collective*
New Energy Economy
New Mexico Climate Justice
New Mexico Environmental Law Center
New Mexico Interfaith Power and Light
New Mexico Women's March
Physicians for Social Responsibility, New Mexico chapter

ProgressNow New Mexico Education Fund
Pueblo Action Alliance*
Retake our Democracy
Seeded Sisters*
Sierra Club - Rio Grande Chapter
Southwest Coalition for Palestine
SouthWest Organizing Project
Tewa Women United*
The Children's Hour Inc.
The Red Nation*
Think Like a Bee
Tree School
United Graduate Workers of UNM
UNM College Democrats
UNM Committee of Interns and Residents/Services Employees International Union Healthcare
UNM HSC Climate Group
UNM Wilderness Alliance
Valencia Renewables
Valencia Water Watchers*
Veterans for Peace
White Coats for Black and Indigenous Lives (UNM)
WildEarth Guardians
Youth United For Climate Crisis Action (YUCCA)

*Frontline Organizations

Prepared with assistance from attorneys at Climate Defense Project.

SUPPORTING DOCUMENTATION

Table of Contents

I.	The University of New Mexico Foundation's violation of New Mexico law	1
II.	The UNMF's social and environmental commitments	5
III.	The scientific reality and risks of climate change	9
IV.	The societal effects of climate change and fossil fuel extraction	15
V.	The poor environmental and safety records of fossil fuel companies in which the UNMF invests	21
VI.	The failure of fossil fuel companies to address climate risks	25
VII.	The financial risk of fossil fuel investments	29
VIII.	Industry fraud and the fiduciary duty to avoid fraudulent investments	33
IX.	The financial prudence of fossil fuel divestment	35
X.	Divestment by peer institutions	36
XI.	The UNMF's ties to the fossil fuel industry and conflicts of interest	40
XII.	The UNMF's refusal to consider divestment from fossil fuels	41
	Conclusion	44
	Appendix A	A1
	Appendix B	A2
	Appendix C	A3
	Appendix D	A4
	Appendix E	A5
	Appendix F-1	A6
	Appendix F-2	A7
	Appendix G	A8

I. The University of New Mexico Foundation's violation of New Mexico law

The University of New Mexico Foundation, Inc. (UNMF) is a 501(c)(3) non-profit corporation organized under New Mexico Statute 53-8-4. It was established in 1979 for the “support of the University of New Mexico.”¹ Its memorandum agreement with the University of New Mexico states that it was “created by the University for the sole purpose of soliciting, receiving, and managing private voluntary support for the benefit of the University.”² The Board of Trustees of the UNMF exercises “fiduciary oversight of the assets and programs of the Foundation,” including “effective oversight of assets of the Foundation and assets held and/or administered by the Foundation for or on behalf of The University of New Mexico.”³ According to the UNMF’s Consolidated Investment Fund Investment Policy, the University of New Mexico Board of Regents exercises oversight authority over the UNMF’s investment practices through performance reviews and annual approval of investment practices.⁴

The charitable purpose of the University of New Mexico is defined by statute: “The object of the university shall be to provide the inhabitants of the state of New Mexico with the means of acquiring a thorough knowledge of the various branches of literature, science and arts.”⁵ According to the University’s mission statement, this purpose includes the following goals: “UNM will provide students the values, habits of mind, knowledge, and skills that they need to be enlightened citizens, to contribute to the state and national economies, and to lead satisfying lives. Faculty, staff, and students create, apply, and disseminate new knowledge and creative works; they provide services that enhance New Mexicans’ quality of life and promote economic development; and they advance our understanding of the world, its peoples, and cultures.”⁶

- Continued investment in fossil fuels by the UNMF *violates the fiduciary duties spelled out in the New Mexico Uniform Prudent Management of Institutional Funds Act (NUPMIFA)*.
 - NUPMIFA states that, “[s]ubject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.”⁷
 - The model UPMIFA drafting committee describes consideration of “charitable purposes” as a “fundamental duty,” and notes that “the decision maker must consider the charitable purposes of the institution and the purposes of the institutional fund for which decisions are being made. These factors are specific

¹ [Articles of Incorporation](#), Art. III(a), University of New Mexico Foundation (1979).

² [Restated and Amended Memorandum Agreement Between the Regents of the University of New Mexico and the University of New Mexico Foundation, Inc.](#) at 1, University of New Mexico Foundation (2012).

³ [Policy Manual](#) at 2, University of New Mexico Foundation (2018).

⁴ [Consolidated Investment Fund Investment Policy](#) (Exhibit A of the Memorandum Agreement) at 6, University of New Mexico Foundation (2010).

⁵ NMSA 1978, § 21-7-2.

⁶ [UNM’s Mission](#), University of New Mexico (2021).

⁷ NMSA 1978, § 46-9A-3(a).

- to charitable organizations.”⁸ This requirement distinguishes charitable investors, including the UNMF, from other entities, such as pension funds.
- NUPMIFA further requires that, “[i]n addition to complying with the duty of loyalty imposed by law other than the Uniform Prudent Management of Institutional Funds Act, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.”⁹
 - NUPMIFA lists several factors that must be considered in managing and investing an institutional fund, including: “general economic conditions . . . the role that each investment or course of action plays within the overall investment portfolio of the fund . . . the expected total return from income and the appreciation of investments . . . [and] an asset’s special relationship or special value, if any, to the charitable purposes of the institution.”¹⁰
 - Although the directors of charitable institutions may delegate investment authority to an external agent, such delegation does not suspend the duty of each director to act “in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances,”¹¹ and the directors must ensure that this delegation is “consistent with the purposes of the institution and the institutional fund.”¹²
 - The appointment of an investment advisory committee and an investment manager must be done in accordance with investment regulations that provide for the “application of the standard of loyalty” in NUPMIFA.¹³
 - The UNMF has *failed to consider the charitable purposes of the institution and the purposes of the institutional fund* by financially supporting the degradation of the climate, widespread damage to ecological and human health, and massive injuries to environmental and social equity. The UNMF is distinguished from more traditional investors by its obligation to invest in accordance with its mission and that of the University of New Mexico; this obligation imposes a special legal responsibility to screen assets for their possible interference with the Foundation’s and University’s goals. Yet the outcomes of the UNMF’s fossil fuel investments — as well as the scientific misinformation campaigns of the fossil fuel industry — are directly contrary to the University of New Mexico’s mission to “provide students the values, habits of mind, knowledge, and skills that they need to be enlightened citizens” and to “provide services that enhance New Mexicans’ quality of life and promote economic development.”¹⁴ As such, continued investment in fossil fuel holdings *violates the UNMF’s duty to consider an asset’s special relationship or special value, if any, to the charitable purposes of the institution.*

⁸ National Conference of Commissioners on Uniform State Laws, [Uniform Prudent Management of Institutional Funds Act, with Prefatory Notes and Comments](#) at (2006).

⁹ NMSA 1978, § 46-9A-3(b).

¹⁰ NMSA 1978, § 46-9A-3(e).

¹¹ NMSA 1978, § 46-9A-5(a).

¹² NMSA 1978, § 46-9A-5(a)(2).

¹³ NMSA § 21-1-38(b)(1)(a).

¹⁴ [UNM’s Mission](#), University of New Mexico (2021).

- The UNMF has *violated its duty of loyalty* to the University of New Mexico community by funding activity that directly imperils the lives and prospects of young people and that poses a physical threat to University of New Mexico property, thus failing to act in the best interests of the institution. Members of the UNMF have also violated their duty of loyalty by indulging conflicts of interest with the fossil fuel industry, maintaining personal, professional, and financial ties to oil, gas, and coal companies even as these companies harm the University of New Mexico.
- The UNMF has *violated its duty to act in good faith* by refusing to abide by its previous commitment to socially responsible investing, as demonstrated by its divestment from businesses in apartheid South Africa; by ignoring the warnings of students, faculty, alumni, and legal experts that investments in fossil fuel companies are immoral, financially risky, and based on fraudulent information; and by spurning efforts by campus groups to push the university's investment practices toward a more consistent and sustainable approach.
- The UNMF has *violated its duty of care* by investing the university's endowment in financially risky fossil fuel stocks, which have underperformed for years and are currently at risk of a general collapse in value. This violation is exacerbated by the UNMF's failure to follow the lead of peer institutions who, in a like position under similar circumstances, have recognized the prudence of divestment.
- Former Securities and Exchange commissioner Bevis Longstreth, whose scholarship on non-profit investment helped inform the drafting of the model UPMIFA, has called for the application of the prudence standard to the threats of climate change. As Longstreth writes, the risks posed by fossil fuel investments are so serious that institutional investors will be hard-pressed to justify continued holdings in the industry: "The prudence standard of the Act can easily support a decision not to continue to hold or invest in fossil fuel companies. The risks and rewards now offered by such securities are asymmetric, in the sense that the foreseeable rewards are not likely to be equal to the foreseeable risks. The risk that, at some unknown and unknowable, yet highly likely, point in the future, markets will begin to adjust the equity price of fossil fuel company securities downward to reflect the swiftly changing future prospects of those companies, is as serious as it is immense. Moreover, the possibility of that adjustment being a swift one is also a serious risk. A decision to linger in an investment with such an overhanging risk, and expect to time one's exit before the danger is recognized in the market, is a strategy hard to fit within the concept of prudence."¹⁵
- In a report analyzing fiduciary duties owed by public pension funds, the Center for International Environmental Law concludes that "climate change should be considered an independent risk variable when making investment decisions, and it will trigger the obligations of pension fund fiduciaries . . . If pension fund fiduciaries do not take the financial risks posed by climate change seriously, they may be subject to liability. A failure to properly consider climate change as a risk factor could result in lawsuits under various theories of liability for breaches of fiduciary duties."¹⁶
 - The report identifies four categories of risk to the value of fossil fuel assets: 1) impact risk (the risk of loss due to the physical effects of global warming, such as

¹⁵ Bevis Longstreth, [Outline of Possible Interpretative Release by States' Attorneys General Under The Uniform Prudent Management of Institutional Funds Act](#) (Jan. 26, 2016).

¹⁶ [Trillion Dollar Transformation](#), Center for International Environmental Law at 1-2 (Dec. 2016).

sea level rise and wildfires); 2) carbon asset risk (the risk that fossil fuel reserves will never be exploited and remain unprofitable; 3) transition risk (the risk that regulation and the growth of renewable energy will render fossil fuel products too expensive for or unappealing to consumers); and 4) litigation risk (the risk of financial penalties from lawsuits and other legal actions, such as the Attorney General's action against ExxonMobil).

- As a result of these risks, the report concludes that fossil fuel investments may violate the fiduciary duties of inquiry, monitoring, loyalty, diversification, impartiality, and acting with reasonable care. The report concludes that “[t]he cleanest and simplest way to avoid climate vulnerability in a portfolio is to divest or, at minimum, dramatically reduce exposure to fossil fuel and other highly climate-vulnerable holdings.”¹⁷
- The public benefit purpose of non-profits like the UNMF distinguishes charitable corporations from private trusts and makes the fiduciary duties of loyalty and care more tailored and specific. As the Restatement of the Law for Charitable Nonprofit Organizations states: “. . . in the case of a private trust, property is devoted to the use of specified or described persons who are designated as beneficiaries of the trust, whereas in the case of a charitable trust, property is devoted to purposes the law deems appropriately beneficial to the public . . . unlike in the case of a private trust in which fiduciary duties are owed to the beneficiaries, *in the case of a charity, fiduciary duties are owed to the charity’s purposes rather than to a specific person or persons* . . . the fiduciaries of a charity owe the duty of loyalty to the charity’s purposes rather than the entity.”¹⁸
- In the context of investment, the standard prudent investor rule carries the additional burden of considering charitable purposes. “[T]he test of prudence evaluates the care, diligence, and skill demonstrated by the actor considering the relevant circumstances, as well as whether the person acted in good faith . . . *In the case of charities, however, the most relevant circumstance is the purpose to which the funds must be devoted.*”¹⁹
- The joint investment policy of the University and the UNMF contains a prohibition on the use of screening to evaluate climate-related and other environmental, social, and governance (ESG) risks to companies’ business.²⁰ This prohibition makes it impossible for the UNMF to take into account the clear conflicts between its own fiduciary duties and investments in fossil fuel companies.
 - The relevant policy provision states that “‘Responsible Investing’ prescribes adopting investment policies and practices such as socially responsible investing (SRI) which avoids certain securities or industries through negative screening according to defined ethical guidelines and/or environmental, social and governance investing (ESG) which integrates those factors into the investment analysis to the extent that they impact investment performance . . . The Investment Committee considers the endowment to be an economic resource in advancing UNM’s mission and defines its fiduciary responsibility as investing and managing the endowment assets as set forth in the Policy . . . Investment

¹⁷ *Id.* at 5-7, 12-17, 19

¹⁸ Restatement of the Law for Charitable Nonprofit Organizations, § 2.02, cmt. (2021) (emphasis added).

¹⁹ *Id.* at § 2.04 (“Management, Investment, and Expenditure of a Charity’s Assets”), cmt. (emphasis added).

²⁰ [Consolidated Investment Fund Investment Policy](#) at 6, University of New Mexico Foundation (2020).

strategies shall not be altered or modified for reasons unrelated to achieving this objective.”²¹

- This prohibition on considering the environmental and social impacts of its investments evinces a grave misunderstanding of the UNMF’s fiduciary duties. The fiduciary obligation of “advancing UNM’s mission” extends to — and is not distinct from — the manner in which the endowment is invested. By forbidding consideration of how its investments might undermine the University’s mission, the UNMF has effectively blocked any assessment of whether it is satisfying its fiduciary duties.
 - In proposing this prohibition to the Board of Regents of the University of New Mexico, outgoing Chair of the UNMF Board of Trustees Carl Alongi stated that the “Foundation’s foremost responsibility is to act exclusively on behalf of its beneficiaries, to maximize returns and minimize risks in order to support the work of the University. Targeted divestment or investment of institutional funds will have little impact on issues or companies but may impact funding available for UNM.”²² This statement ignores the fact that the beneficiaries of the UNMF include its charitable purposes and the public at large (*see above*) as well as the ongoing harm that the *failure to divest* causes to UNM, its community, and the public (*see below*).
- Under the Enabling Act of 1910 and the Ferguson Act of 1898, the University, along with other state educational institutions, receives revenue from the leasing of fossil fuel reserves on state public trust lands.²³ This *passive* public trust revenue — mandated by statute — should be distinguished from fiduciaries’ *active* investment in fossil fuel holdings.
- The UNMF’s fossil fuel holdings are estimated to be \$28.95 million.²⁴

II. The UNMF’s social and environmental commitments

In addition to their general duties to the public as managers of a charity, the UNMF is legally bound to uphold the particular *charitable purposes* and values of the University of New Mexico, which include commitments to social justice and environmental well-being. The UNMF has clearly acknowledged in the past that this legal duty extends to the manner in which it invests the university’s assets.

- The UNMF’s charitable mission is explicitly aligned with that of the University of New Mexico. According to its website, the UNMF’s vision is “[e]mpowering The University of New Mexico to advance education, research and health for the benefit of our

²¹ *Id.*

²² [Minutes of the Regular Meeting of the Board of Regents of the University of New Mexico](#) at 6, Board of Regents of the University of New Mexico (June 12, 2015).

²³ [Trust Beneficiaries](#), New Mexico State Land Office (2021).

²⁴ The UNMF Consolidated Investment Fund was valued at \$579 million as of June 30, 2021. [University of New Mexico Board of Regents Agenda Book-- Fundraising Performance Report of June 30, 2021](#) at 10, University of New Mexico Board of Regents (Oct. 19, 2021). Private communications with UNF staff suggest that the Fund’s energy investments make up approximately 5% of the total.

community and the world” and its mission is to “[c]reate powerful engagements and partnerships that lead to increased philanthropy, investment, innovation and support for The University of New Mexico.”²⁵ The UNMF’s Memorandum of Agreement with the University states that “all gifts and donations received by the Foundation are given for the benefit of the University and, therefore, shall be managed, distributed, and utilized in accordance with policies and procedures established by the University and the Foundation to assure accountability to the donor and to the public that supports the University.”²⁶

- Under the investment policy agreed to by the two organizations, the University delegates investment oversight to the UNMF, in accordance with New Mexico Statute 21-1-38; the combined endowment assets of the two organizations are known as the Consolidated Investment Fund.²⁷
- The “Investment Philosophy” for the Consolidated Investment Fund mandates a “long-term investment horizon” that is implemented to further the University’s “educational mission”; the Fund should preserve its purchasing power “for future generations.”²⁸
- The Board of Regents of the University of New Mexico has promulgated a set of policies applicable to “all members of the University community.”²⁹ They include the following mission statements:
 - “Integrity, trust, the pursuit and dissemination of knowledge, and public service are essential elements of the University’s character and guide our decisions.”
 - “Freedom of Inquiry: We encourage, protect, and respect the exploration of ideas and their free expression.
 - “Responsibility to Community: We reflect upon our past, serve our present, and *strive to improve our future through thoughtful stewardship of our cultures and environment.*”³⁰
- On the “Sustainability” section of its website, the University claims that it “is a pioneer in sustainability and a committed steward of the Earth’s natural resources. We encourage sustainable practices that support the University’s academic, research, health care, and community service mission.”³¹
- The University’s Draft Sustainability Five Year Plan states that “[t]he mission at the University of New Mexico is to develop the campus as a hub of sustainability in Albuquerque and New Mexico and to implement sustainability into the learning outcomes and consciousness of the UNM community . . . Sustainability establishes a system of behavior that allows current and future generations to enjoy the same quality of social, environmental, and economic wellbeing.”³²
- The Plan’s third Strategic Goal is to “Invest and reinvest into sustainability,” envisioning the use of donations to invest in academic and facilities initiatives that promote

²⁵ [About the Foundation](#), University of New Mexico Foundation (2021).

²⁶ [Memorandum Agreement](#) at 1, University of New Mexico Foundation (2012).

²⁷ [Consolidated Investment Fund Investment Policy](#) at 2, University of New Mexico Foundation.

²⁸ *Id.* at 2.

²⁹ [Regents’ Policies](#) at § 2.18, University of New Mexico (2015).

³⁰ *Id.* (emphasis added).

³¹ [Sustainability](#), University of New Mexico (2021).

³² [Draft Sustainability Five Year Plan](#) at 2, University of New Mexico (n.d.).

sustainability. The “owner” of this Strategic Goal is the UNMF³³ — a clear acknowledgment by the University and the Foundation that its investment activity must conform to charitable purposes that promote environmental sustainability.

- The University’s Administrative Policies also include a policy on sustainability, which states: “The University of New Mexico recognizes its profound relations with other entities both near and far; past, present and future. The University encourages a diverse campus culture that harmonizes *UNM’s sustainable goals of environmental protection, social equity, and economic opportunity within the context of its education, research, and public service missions. The University aims to improve performance in all areas of operations thereby meeting the needs of current generations without compromising the prospects of future generations.* In all activities present and future, the University shall develop systems to manage environmental, social, and economic wellbeing with specific goals, objectives, priorities, processes, and milestones by which to verify performance. This policy applies to all University property and activities, including branch campuses.”³⁴
 - The University ascribes to a series of Sustainability Principles, which are based on the concept of “holism,” “in which the system as a whole determines in an important way how the parts behave. The system includes physical, biological, chemical, social, economic, and cultural elements among others.” According to the University’s policies:
 - “Holism includes accounting for environmental and social impacts beyond the geographic confines of the campus. Ecologically ethical practices that may entail relatively long payback periods are favored over decisions based solely on up-front costs alone.”
 - “Holism requires transparency via participatory planning practices, open documentation, visible implementation, and effective communication to students, faculty, staff, and the public.”³⁵
 - The policy on sustainability also clearly indicates that the University’s educational mission involves environmental responsibility: “Colleges and universities have the unique ability to not only incorporate the values of sustainability into all aspects of operations, but they are also positioned to educate and prepare future leaders, employers, and workers in sustainable values and practices that are critical to the future of society and the environment.”³⁶
 - This responsibility extends to the social consequences of environmental problems: “UNM should consider the principles of environmental justice in its operations, activities, and research, and avoid inequitable and disparate impact where possible.”³⁷
 - The University promises to model sustainable practices for society “UNM will serve students, faculty, and staff, as well as the community at large, by providing

³³ *Id.* at 6.

³⁴ [Administrative Policies](#) at § 2100, University of New Mexico (2017) (emphasis added).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

leadership and setting an example of how to achieve the triple bottom line of environmental protection, social equity, and economic opportunity.”³⁸

- The University is a founding signatory and current member of the University Climate Change Coalition (UC3), a coalition of research universities “committed to climate action” and “to mobilizing their resources and expertise to accelerate local and regional climate action in partnership with businesses, cities and states, foundations, and other organizations.”³⁹ The Coalition’s strategic plan acknowledges that “[c]limate change is an urgent, global issue that requires immediate and accelerated action to not only limit global average temperature increase to below 1.5°C by the end of the century, but also avoid irreversible and catastrophic impacts.”⁴⁰
- The University released a Climate Action Plan in 2009 that states the institution is “committed to reducing energy usage and our impact on the environment . . . UNM has stepped up to the plate and has the capacity to use its influence as an anchor institution to promote climate-action and sustainability on a regional scale. At the same time, it has the potential to drastically reduce its long-term energy and resource costs while improving the well-being of its community members. Enacting carbon neutrality is a long-term strategic interest and in the best interest of the University and the climate.”⁴¹
- In 2019, Governor Michelle Lujan Grisham issued Executive Order 2019-003⁴² on addressing climate change and energy waste prevention. The Order — which the University, as a state institution, is bound to follow — aims to “further New Mexico’s responsibility and opportunity to build a clean energy future for our people, limit adverse climate change impacts that harm our natural and cultural heritage, prevent the waste of New Mexico energy resources and reduce pollution that threatens human health” and mandates that “[t]he State of New Mexico will support the 2015 Paris Agreement Goals by joining the U.S. Climate Alliance. New Mexico’s objective is to achieve a statewide reduction in greenhouse gas emissions of at least 45% by 2030 as compared to 2005 levels.”
- As a state institution with charitable status, the University is bound to promote the environmental objectives enshrined in the New Mexico Constitution: “The protection of the state’s beautiful and healthful environment is hereby declared to be of fundamental importance to the public interest, health, safety and the general welfare.”⁴³
- In 1985, the University of New Mexico Board of Regents voted to fully divest the UNMF of investments in companies that did business with South Africa in protest against the country’s apartheid regime. By October 1986, it had sold approximately \$1.23 million of its holdings in the country.⁴⁴ That decision evinced the Board of Regents’ understanding that investment decisions must not be made solely in pursuit of profit but are constrained by state law and the mission of the university.

³⁸ *Id.*

³⁹ [University Climate Change Coalition \(UC3\)](#), Second Nature (2021).

⁴⁰ [2020-2025 Strategic Plan](#) at 2, University Climate Change Coalition (2020).

⁴¹ [Climate Action Plan](#) at iii, 7, University of New Mexico Office of Sustainability (2009).

⁴² [N.M. Executive Order 2019-003](#), 1, 3 (Jan. 29, 2019).

⁴³ N.M. Const., Art XX, § 21.

⁴⁴ William E. Davis, [Gerald May - Biography](#) at 4, University of New Mexico Office of the President (2006).

III. The scientific reality and risks of climate change

The current and future effects of climate change jeopardize the physical integrity of the University of New Mexico's campuses, its research and collections throughout the state, and the safety and health of students, faculty, and staff, undermining the UNMF's *charitable purposes*. UNMF's investments in companies disproportionately responsible for the climate crisis exacerbate water shortages, economic stresses, and other harms to the University of New Mexico community and society at large. These investments are not in the best interests of the institution, violating UNMF's *duty of loyalty*.

- Climate change is a result of global warming, produced primarily by increased anthropogenic releases of carbon dioxide, methane, and other greenhouse gases. The primary contributor to these releases is the combustion of fossil fuels.⁴⁵
- According to the Intergovernmental Panel on Climate Change (IPCC), the leading global authority on climate science, human-caused emissions of greenhouse gases have unequivocally warmed the climate at a rate that is unprecedented in at least the last 2,000 years.⁴⁶ In 2019, atmospheric carbon dioxide concentrations were higher than at any time in at least 2 million years, and concentrations of methane and nitrous oxide were higher than at any time in at least 800,000 years.⁴⁷
 - A small number of fossil fuel producers have been disproportionately responsible for greenhouse gas emissions since the Industrial Revolution — for instance, just twenty companies account for nearly thirty percent of all emissions between 1751 and 2010.⁴⁸ A 2017 report by the Carbon Disclosure Project found that seventy-one percent of all global greenhouse gas emissions since 1988 “can be traced to just 100 fossil fuel producers.”⁴⁹
 - There is a very nearly one-to-one linear relationship between the cumulative amount of carbon dioxide emitted and the amount of global warming it causes.⁵⁰ Every one-half degree Celsius of global warming in models results in “clearly discernible increases in the intensity and frequency of hot extremes, including heat waves . . . and heavy precipitation . . . as well as agricultural and ecological droughts in some regions.”⁵¹
- As a result of human-caused warming, climate change is already affecting every inhabited region across the globe, leading to observed changes in weather and climate extremes.⁵²

⁴⁵ D.R. Reidmiller, *et al.*, eds., [Fourth National Climate Assessment, Volume II: Impacts, Risks, and Adaptation in the United States](#) at 73, U.S. Global Change Research Program (2018).

⁴⁶ IPCC, [Summary for Policymakers](#) at 7. In: Climate Change 2021: The Physical Science Basis, Working Group I Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (Aug. 2021).

⁴⁷ *Id.* at 9.

⁴⁸ Richard Heede, [Tracing anthropogenic carbon dioxide and methane emissions to fossil fuel and cement producers, 1854–2010](#), 122 *Climatic Change* 229, 234 (2014). These companies include Chevron, ExxonMobil, BP, Shell, ConocoPhillips, and Peabody. *Id.* at 237.

⁴⁹ Carbon Disclosure Project, [New report shows just 100 companies are source of over 70% of emissions](#) (July 2017).

⁵⁰ IPCC, [Summary for Policymakers](#), *supra* note 46, at 37.

⁵¹ *Id.* at 19.

⁵² *Id.* at 10.

- The Fourth National Climate Assessment, released in 2018 by thirteen federal agencies comprising the U.S. Global Change Research Program (USGCRP), noted that “[t]he impacts of climate change are already being felt in communities across the country. More frequent and intense extreme weather and climate-related events, as well as changes in average climate conditions, are expected to continue to damage infrastructure, ecosystems, and social systems that provide essential benefits to communities. Future climate change is expected to further disrupt many areas of life, exacerbating existing challenges to prosperity posed by aging and deteriorating infrastructure, stressed ecosystems, and economic inequality.”⁵³ The USGCRP report concluded that, as a result of climate change, “annual losses in some economic sectors are projected to reach hundreds of billions of dollars by the end of the century — more than the current gross domestic product (GDP) of many U.S. states.”⁵⁴
- Continued global warming is projected to further intensify the global water cycle, including the severity of wet and dry events.⁵⁵ Many changes due to past and future greenhouse gas emissions are irreversible for centuries to millennia, especially changes in the ocean, ice sheets, and global sea level.⁵⁶
- Global warming will exceed two degrees Celsius by the end of this century unless drastic reductions in carbon dioxide and other greenhouse gas emissions occur in the coming decades.⁵⁷ To limit warming, cumulative carbon dioxide emissions must reach net zero, along with strong reductions in other greenhouse gases.⁵⁸
- Climate change has already caused extreme heat and drought in New Mexico and across the Southwest, and these impacts are projected to worsen in the coming decades.
 - New Mexico is the second-fastest-warming state after Alaska, according to a report by Climate Central using data from NOAA.⁵⁹
 - Average annual temperatures in New Mexico have already warmed by two degrees Fahrenheit since the 1970s,⁶⁰ and future projections “represent with high likelihood a staggering increase in temperature that would have profound consequences for life (and water resources) in New Mexico.”⁶¹
 - An upcoming report by the New Mexico Bureau of Geology and Mineral Resources concludes that New Mexicans should expect a hotter, more arid climate for at least the next half century, with annual state-wide temperatures likely to rise by five degrees Fahrenheit by 2050, assuming a higher emissions scenario.⁶² (See Appendix G.)

⁵³ U.S. Global Change Research Program, [Fourth National Climate Assessment, Volume II](#) at 25 (2018).

⁵⁴ *Id.* at 26.

⁵⁵ *Id.* at 25.

⁵⁶ *Id.* at 28.

⁵⁷ *Id.*

⁵⁸ *Id.* at 36.

⁵⁹ Climate Central, [American Warming: The Fastest-Warming Cities and States in the U.S.](#) (Apr. 17, 2019).

⁶⁰ NOAA National Centers for Environmental Information, [State Climate Summaries \(Revised 2019\), New Mexico](#) (last visited Oct. 4, 2021).

⁶¹ Nelia W. Dunbar, *et al.*, [Climate Change in New Mexico over the Next 50 Years: Impacts on Water Resources](#) (Draft for Public Comment) at 12, New Mexico Bureau of Geology and Mineral Resources (Sept. 2021).

⁶² David S. Gutzler & David DuBois, [In-Depth Leap Ahead Analysis Webinar August 3 2021 - Projected Climate Change through 2070](#), New Mexico Bureau of Geology and Mineral Resources (Aug. 2021).

- According to the World Resources Institute, New Mexico is the most water-stressed state in the nation, on par with the United Arab Emirates, the 10th most water-stressed country in the world.⁶³
- Climate change will affect nearly every sector of New Mexico's economy. New Mexico is projected to be among U.S. states with significant losses in income, employment, and population between 2010 and 2050.⁶⁴ Climate change's burden on the New Mexico economy, from fire suppression to heat wave deaths and increased energy costs for air conditioning, is projected to double between 2020 and 2040 to \$3.3 billion per year.⁶⁵
- A study by the National Oceanic and Atmospheric Administration estimates that the economic cost to New Mexico from the 2020 drought and wildfire season alone was \$100 million to \$250 million.⁶⁶
- Regionally, the warming associated with human-caused climate change has driven the Southwest, including New Mexico, now in its twenty-first year of drought, into a "megadrought," rivaling the worst in 1,200 years.⁶⁷ In a positive feedback loop, rising temperatures create increased drying, which in turn increases surface heat.⁶⁸
- According to the U.S. Drought Monitor, as of October 2021, 1.8 million people in New Mexico, or eighty-six percent of the population, were affected by drought.⁶⁹ Nearly half of the state was in the "severe" drought category (pasture yield limited; producers sell livestock, irrigated crops are stunted; dryland crops are brown; wildfires may increase; fuel mitigation practices in effect), and nineteen percent was in the "extreme" category (producers sell livestock; feed costs are high; emergency Conservation Reserve Program (CRP) grazing authorized; crop yields are low; fire danger is extreme; irrigation allotments decrease).⁷⁰
- Rising temperatures in New Mexico will result in less water for plants, animals, and humans even if precipitation remains the same. Impacts include:
 - More evaporation from reservoirs and streams. Elephant Butte (EB) Reservoir, for instance, will lose eight inches per year for every degree Celsius increase in annual average daily maximum temperature.⁷¹ In October 2021 it was at 5.6 percent capacity.⁷²
 - Reduced snowpack, earlier spring melt out of sync with the growing season, and reduced water in the Rio Grande,⁷³ affecting agriculture, outdoor recreation and

⁶³ Rutger Willem Hofste, Paul Reig, & Leah Schleifer, [17 Countries, Home to One-Quarter of the World's Population, Face Extremely High Water Stress](#), World Resources Institute (Aug. 6, 2019).

⁶⁴ George Backus, *et al.*, [Assessing the Near-Term Risk of Climate Uncertainty: Interdependencies among the U.S. States](#) at 22, Sandia National Laboratories (May 2010).

⁶⁵ Robert Repetto, [New Mexico's Rising Economic Risks from Climate Change](#) at 3, Dēmos (July 2012).

⁶⁶ Justin S. Mankin, *et al.*, [NOAA Drought Task Force Report on the 2020-2021 Southwestern U.S. Drought](#) at 7, NOAA (Sept. 2021).

⁶⁷ A. Park Williams, *et al.*, [Large contribution from anthropogenic warming to an emerging North American megadrought](#), 368:6488 *Science* 314, 314 (Apr. 2020).

⁶⁸ NOAA, [Climate change to make hot droughts hotter in the US southern plains](#) (July 2019).

⁶⁹ [Current U.S. Drought Monitor Conditions for New Mexico](#), Drought.gov (last visited Oct. 4, 2021).

⁷⁰ *Id.*

⁷¹ Dunbar, *supra* note 61, at 20.

⁷² Water Data for Texas, [Elephant Butte Lake](#) (last visited Oct. 5, 2021).

⁷³ Dunbar, *et al.*, *supra* note 61, at 8-9, 10, 37, 99.

the skiing industry. This year, farmers in the EB Irrigation District only received one four-inch allotment of water when they typically get several such allotments throughout the growing season,⁷⁴ and farmers to the north had their season cut short for the second year.⁷⁵

- Reduced soil moisture and thirstier plants. By 2050, average annual water evaporation from vegetation will be three to nine inches greater.⁷⁶
- Plant die-off, erosion, and desertification in south-central and eastern New Mexico, making agriculture and ranching precarious and potentially creating Dust Bowl-like conditions.⁷⁷
- Sand dune migration over roads and infrastructure, which is already affecting the Navajo Nation in northeastern Arizona,⁷⁸ and may soon affect New Mexico as well.
- Increased frequency, ferocity, burn area, and season length of wildfires.⁷⁹ Wildfires are likely to change the vegetative composition of landscapes, reducing forest cover.⁸⁰
- More debris flow and flash flooding after fires, which cause erosion and can damage roads, reservoirs, and other infrastructure.⁸¹ After the Las Conchas fire, debris-filled flash floods pouring into the Rio Grande prevented Albuquerque water managers more than 60 miles downstream from drawing water from the river for 2 months.⁸²
- Erosion down to the bedrock in parts of forested mountains.⁸³ Soil formation can take thousands of years.⁸⁴ As a result, even plants that are adapted to warmer temperatures may be unable to recolonize these areas.⁸⁵
- Ranchers and farmers in New Mexico will be particularly affected.
 - Climate change already causes estimated minimum losses of seventy-three million dollars annually in the agriculture and ranching sectors.⁸⁶
 - Climate change will reduce forage quality and quantity,⁸⁷ forcing ranchers to either purchase additional feed or sell off their herds.⁸⁸ Some ranchers and

⁷⁴ Telephone interview by Stefi Weisbud with Gary Esslinger, Manager-Treasurer, Elephant Butte Irrigation District in Las Cruces, New Mexico (June 29, 2021).

⁷⁵ AP News, [New Mexico farmers along Rio Grande face early water cutoff](#) (Aug. 23, 2021).

⁷⁶ Dunbar, *supra* note 61, at 19.

⁷⁷ *Id.* at 65, 76.

⁷⁸ *Id.* at 76; U.S. Climate Resilience Toolkit, [Navajo Nation: Hotter, Drier Climate Puts Sand Dunes on the Move](#) (last visited Oct. 20, 2021).

⁷⁹ *Id.* at 51.

⁸⁰ *Id.* at 52; The Nature Conservancy, [Replanting Forests after Mega-Fires in NM's Jemez Mountains](#) (July 19, 2020) (describing difficulty of forest regeneration and necessity of human intervention following Las Conchas fire of 2011).

⁸¹ Dunbar, *supra* note 61, at 115-116.

⁸² *Id.* at 138.

⁸³ *Id.* at 148.

⁸⁴ *Id.* at 67.

⁸⁵ *Id.*

⁸⁶ Repetto, *supra* note 65, at 4.

⁸⁷ Jeanne Chambers, *et al.*, [Southwest Regional Climate Hub and California Subsidiary Hub Assessment of Climate Change Vulnerability and Adaptation and Mitigation Strategies](#) at 30-31 (Aug. 2015).

⁸⁸ Sarah Gibbens, [Historic drought in the West is forcing ranchers to take painful measures](#), National Geographic (June 29, 2021).

farmers have already sold their herds or let their fields lay fallow.⁸⁹ Appendix F shows the amount of the alfalfa crop and cattle inventory impacted by drought over time in New Mexico.

- Heat stress is one of the major causes of loss in the dairy and beef industry, decreasing the animals' forage intake and nutrient utilization, milk production, reproduction rates, and resistance to disease.⁹⁰
- Wildfire smoke reduces dairy cow milk production and is correlated with increased disease risk and mortality.⁹¹
- Heat stress increases the water needs of livestock,⁹² even as the reliability of existing water sources is already threatened. To make up for depleted surface water, farmers and ranchers may require extra energy to pump groundwater.⁹³
- New Mexico climate scientists warn of accelerating, non-linear, and irreversible impacts from climate change, some of which are already occurring.⁹⁴ For example, an irreversible tripping point is reached when water is pumped out of the pore spaces in some aquifers so they permanently collapse and no more water can be stored in those rocks, diminishing the amount of water the aquifer can hold.⁹⁵
- The New Mexico Public Regulation Commission recently issued an order granting a Joint Motion to take administrative notice of climate change and its likely consequences, including these facts: (a) climate change is caused by human activity resulting in an accumulation of greenhouse gases such as carbon dioxide and methane, (b) a predominant source of gas emissions is the combustion of fossil fuels by power plants, (c) the direct consequences of climate change have been and will be wildfires and drought, and (d) "[u]nless the emission of greenhouse gases into the atmosphere is quickly and substantially curtailed the adverse consequences for public health, welfare and safety, the economy and the environment, and for all living things, is likely to be severe, widespread and irreversible."⁹⁶
- The oil and gas company practice of injecting wastewater into southeastern New Mexico and Texas wells has triggered a dramatic increase in the number of small earthquakes in the area, which is also home to the Waste Isolation Pilot Plant — a 10,000 year repository

⁸⁹ Kyle Land & Theresa David, [New Mexico ranchers face historic drought](#), Albuquerque Journal (Nov. 15, 2020); Cody Nelson, [Megadrought: New Mexico Farms Face Uncertain Future](#), High Country News (Mar. 12, 2021).

⁹⁰ M. Melissa Rojas-Downing, *et al.*, [Climate change and livestock: Impacts, adaptation, and mitigation](#), *Climate Risk Management*, 16 *Climate Risk Management* 145, 149 (2017).

⁹¹ Kylie Mohr, [For dairy cows, where there's smoke, there's less milk](#), High Country News (Aug. 16, 2021).

⁹² Rojas-Downing, *supra* note 90, at 148.

⁹³ Scott Wyland, [Drought dents growing season for New Mexico farmers](#), Santa Fe New Mexican (July 3, 2021). It is worth noting that Elephant Butte Irrigation District farmers pay into the surface water system regardless of how little river water they are allocated. Veronica Martinez, [EBID predicts dire 2021 water season: 'Perhaps, the worst in \(Rio Grande\) project history.'](#) Las Cruces Sun News (Oct. 18, 2020).

⁹⁴ Dunbar, *supra* note 61, at 2.

⁹⁵ *Id.* at 3.

⁹⁶ [Order Granting Joint Motion re Administrative Notice of Climate Change, Its Causes and Its Likely Consequences](#), In the Matter of the Joint Application of Avangrid, Inc., *et al.*, for Approval of the Merger of NM Green Holdings, Inc. with PNM Resources, Inc.; Approval of a General Diversification Plan; and All Other Authorizations and Approvals Required to Consummate This Transaction, Case No. 20-00222-UT (2021).

for highly toxic radioactive waste — and three other existing and planned nuclear facilities.⁹⁷

- The UNM campus, buildings, and infrastructure are also vulnerable to climate impacts. Climate change-related threats to UNM’s infrastructure include extreme heat, drought, fires, thunderstorms, and flooding.⁹⁸
 - UNM’s infrastructure oldest buildings are particularly vulnerable; some buildings on the main campus date to 1889.⁹⁹
 - Albuquerque, the location of UNM’s main campus, is already experiencing record-breaking heat waves, with over seventeen days per year at or above 100 degrees Fahrenheit.¹⁰⁰ Rising temperatures will increase energy costs, and extreme heat events can spur catastrophic losses to irreplaceable experiments, specimens, and art should air conditioning fail.¹⁰¹
 - UNM has four branch campuses spread across six counties in predominantly rural areas.¹⁰² Rural campuses are uniquely vulnerable to drought conditions and may need to find alternative water supplies.¹⁰³
 - Bernalillo County, to which Albuquerque belongs, contains areas at high risk of wildfires, raising the prospect of evacuations, health issues, and loss of property affecting the UNM community.¹⁰⁴
 - All UNM branch campuses, Main Campus and the Sevilleta Long Term Ecological Research (LTER) Field Station are at high risk of damage from thunderstorms, lightning and hail.¹⁰⁵
 - While all UNM campuses are vulnerable to fire damage,¹⁰⁶ the branch campuses at Gallup, Los Alamos, Taos, and Sevilleta are most vulnerable because they are located in a wildland-urban interface.¹⁰⁷
 - In 2009, lighting ignited a 12,000-acre fire at Sevilleta, damaging and destroying many experiments.¹⁰⁸ A 2008 fire came within feet of UNM’s Capilla Peak Observatory.¹⁰⁹
 - Major fires have threatened the Los Alamos community more than six times, including the Cerro Grande fire, which burned 48,000 acres and

⁹⁷ Jerry Redfern, [Rise in New Mexico earthquakes likely triggered by oil industry](#), Capital & Main (Sept. 29, 2021). The number of small quakes of magnitude 1 or greater rose from about 40 in 2018 to nearly 500 in 2020, and from 0 to 158 for magnitude 2 or greater. *Id.*

⁹⁸ [Hazard Mitigation Plan](#) at 47, University of New Mexico (Nov. 2015).

⁹⁹ *Id.* at 82.

¹⁰⁰ [Climate Action Plan](#) at 29, City of Albuquerque (2021).

¹⁰¹ [Hazard Mitigation Plan](#), *supra* note 98, at 90.

¹⁰² *Id.* at 1, 6.

¹⁰³ *Id.* at 64.

¹⁰⁴ *Id.* at 202.

¹⁰⁵ [Pre-Disaster Mitigation Plan](#) at 178, University of New Mexico (Dec. 2010).

¹⁰⁶ *Id.* at 91.

¹⁰⁷ *Id.* at 89.

¹⁰⁸ *Id.* at 85-87.

¹⁰⁹ *Id.* at 87.

- caused more than one billion dollars in damage,¹¹⁰ and the Las Conchas fire, which destroyed 156,000 acres.¹¹¹
- Almost every part of New Mexico experiences flooding.¹¹² Only UNM Valencia resides in a flood zone, but all locales are susceptible to storm runoff and some are sitting next to flood-prone areas.¹¹³
 - The Los Alamos and Taos campuses are prone to flooding after fires.¹¹⁴
 - At UNM's main campus in Albuquerque, flooding has typically occurred in the past from heavy precipitation and stormwater runoff in buildings located underground or at ground level.¹¹⁵ Between June 30, 2010 and August 1, 2014, Main Campus sustained nearly \$1.7 million in flooding-related damage from thirty-nine separate events.¹¹⁶
 - UNM lost property used for anthropological field research in 2011, when the Las Conchas fire damaged four buildings and subsequent heavy rains filled the buildings with four feet of water, mud and debris.¹¹⁷

IV. The societal effects of climate change and fossil fuel extraction

Fossil fuel investments, through their contribution to climate change, pollution, and environmental injustice, harm UNM property and the health of its employees, students, and alumni, violating the UNMF's duties to *consider the charitable purpose* of the UNMF and to act with *loyalty* toward its community and property. Oil and gas operations in New Mexico pose a threat to the health and safety of New Mexico's communities and to the wildlife and environmental quality of the state.

- In general, those who have contributed the least to the climate crisis by virtue of their economic position stand to suffer the most from increased warming. Climate change creates heavy burdens on so-called frontline communities, including communities of color and Indigenous communities, which disproportionately experience the effects of air pollution, sea level rise, drought, and other consequences of climate change.¹¹⁸
 - Climate change exacerbates racial inequality by focusing health and economic injuries on people of color, who tend to have fewer economic resources to adjust to rising temperature, are more likely to live in flood-prone and high-heat areas, and tend to receive less government assistance to deal with emergencies.¹¹⁹

¹¹⁰ Scott Wyland, [Cerro Grande Fire remains burned into New Mexico's memory 20 years later](#), Santa Fe New Mexican (May 10, 2020).

¹¹¹ [Devastating Floods Still Plague Santa Clara Pueblo Stemming From 2011 Las Conchas Fire](#), Indian Country Today (Oct. 3, 2014).

¹¹² [Hazard Mitigation Plan](#), *supra* note 98, at 110.

¹¹³ *Id.* at 111.

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 110.

¹¹⁶ *Id.* at 52-54.

¹¹⁷ *Id.* at 100.

¹¹⁸ [The Geography of Climate Justice](#), Mary Robinson Foundation (last visited Feb. 10, 2021).

¹¹⁹ Steven Hiseh, [People of Color Are Already Getting Hit the Hardest by Climate Change](#), The Nation (Apr. 22, 2014); Office of Health Equity's Climate Change and Health Equity Program, [Racism Increases Vulnerability to Health Impacts of Climate Change](#), California Department of Public Health (Aug. 17, 2020).

- According to a study from the Program for Environmental and Regional Equity at the University of Southern California, racial minorities will disproportionately suffer from an inability to pay for basic necessities and from decreased job prospects in sectors such as agriculture and tourism as the climate crisis accelerates.¹²⁰
- According to the United Nations, “[c]limate change exacerbates the difficulties already faced by Indigenous communities, including political and economic marginalization, loss of land and resources, human rights violations, discrimination and unemployment.”¹²¹
- Environmental degradation caused by climate change uniquely affects tribal communities because many depend directly on fishing, farming, gathering, hunting, and forestry for food and medicine, on tourism and recreation for income, and on seeds, plants, animals, and land for sacred practices.¹²²
- Indigenous communities are also vulnerable to climate change impacts because of the enduring legacy of colonialism, forced relocations, the loss of cultural practices, and other harms, which create health burdens.¹²³
- Throughout the world, migration due to climate change has increased in recent years and is anticipated to increase further as areas of the globe become inhospitable to human habitation, leading to political and social instability.¹²⁴ However, migration for tribes is often difficult: “[i]n the past, tribes could move more freely and even relocate in response to changes in climate. However, the

¹²⁰ Rachel Morello Frosch, Manuel Pastor, Jim Sadd, & Seth Shonkoff, [The Climate Gap: Inequalities in How Climate Change Hurts Americans & How to Close the Gap](#), University of Southern California Program on Environmental and Regional Equity (May 2009).

¹²¹ United Nations Department of Economic and Social Affairs — Indigenous Peoples, [Climate Change](#) (last visited Oct. 5, 2021).

¹²² Jantarasami, L.C., *et al.*, [Chapter 15: Tribes and Indigenous Peoples](#) at 578. In Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II, U.S. Global Change Research Program (2018).

¹²³ *Id.* at 582 (“A number of health risks are higher among Indigenous populations due in part to historic and contemporary social, political, and economic factors that can affect conditions of daily life and limit resources and opportunities for leading a healthy life. Many Indigenous peoples still experience historical trauma associated with colonization, removal from their homelands, and loss of their traditional ways of life, and this has been identified as a contributor to contemporary physical and mental health impacts. Other factors include institutional racism, living and working circumstances that increase exposure to health threats, and limited access to healthcare services. Though local trends may differ across the country, in general, Indigenous peoples have disproportionately higher rates of asthma, cardiovascular disease, Alzheimer’s disease or dementia, diabetes, and obesity. These health disparities have direct linkages to increased vulnerability to climate change impacts, including changes in the pollen season and allergenicity, air quality, and extreme weather events. For example, diabetes prevalence within federally recognized tribes is about twice that of the general U.S. population. People with diabetes are more sensitive to extreme heat and air pollution, and physical health impacts can also influence mental health.”). For an example of how climate change can exacerbate existing environmental and health injustice issues in New Mexico, with its history of uranium mining and weapons development, consider the Kha’p’oo Owingeh (Santa Clara Pueblo), located near Los Alamos National Laboratories (LANL). In addition to living in the vicinity of chemical and radioactive waste plumes from the lab and test explosions on the sacred Pajarito Plateau, the pueblo discovered that firefighters had diverted the 2011 Las Conchas fire away from a LANL nuclear waste dump and into the pueblo’s watershed, destroying eighty percent of the 1.5 million trees that had been planted to replace those destroyed in the 2000 Cerro Grande fire. The pueblo had recently won control of their watershed after a 140-year struggle. Land Witness Project, [Beata Tsosie-Peña](#) (last visited Oct. 5, 2021).

¹²⁴ Michael Werz & Laura Conley, [Climate Change, Migration, and Conflict: Addressing complex crisis scenarios in the 21st century](#) at 3-5, 12-14, Center for American Progress (Jan. 2012).

historic aboriginal land base of tribes has, through treaties and other means, shrunk to a loose patchwork of scattered reservation boundaries that now represent a fraction of those aboriginal lands, making relocation a difficult or entirely infeasible adaptation strategy.”¹²⁵

- In addition to the impacts of climate change, the spread of fossil fuel infrastructure and other extractive industries has harmed Indigenous communities by displacing them, degrading their environments, and creating conditions in which human rights violations have taken place.¹²⁶
- New Mexico is a high-poverty state with significant racial health disparities and low child well-being rankings.¹²⁷ The population of New Mexico is eleven percent American Indian and 49.3 percent Hispanic.¹²⁸ Climate change and fossil fuel extraction create disproportionate burdens on these and other communities of color, and on vulnerable populations.
 - University of New Mexico law professor Cliff Villa points out that exposure to air pollution among minority and low-income populations, caused by living close to fossil fuel infrastructure, makes them more susceptible to COVID-19.¹²⁹
 - The increased number and intensity of heat waves in New Mexico has created a corresponding increase in heat-related illness, hospitalizations, and death.¹³⁰ People of color and those living in poverty — who often lack air conditioning, live in substandard housing, and work outdoors — are more exposed to extreme heat.¹³¹
 - Tribal communities in New Mexico are especially vulnerable to climate extremes.¹³² For instance, rising temperatures are causing migrations of sand that are threatening housing, grazing lands, health, and transportation in the Navajo nation.¹³³
- Oil and gas emissions contribute to poor air quality. The burning of fossil fuels releases particulate matter, among other pollutants, which resulted in 8.7 million deaths globally and 13.1 percent of deaths in the U.S in 2018.¹³⁴

¹²⁵ Susan Wotkins & Cristina González-Maddux, [Climate Change Adaptation Planning: Training, Assistance, and Resources for Tribes](#) at 4, Institute for Tribal Environmental Professionals, Northern Arizona University (May 2014).

¹²⁶ [Pitfalls & Pipelines: Indigenous Peoples and Extractive Industries](#), Introduction at xxi (2012).

¹²⁷ Rachel Moskowitz, [Poverty in New Mexico: 2019](#), Labor Market Rev. (Feb. 2021) (noting that New Mexico has a poverty rate of 18.2 percent, the third highest of all U.S. states); Annie E. Casey Foundation, [2020 Kids Count Data Book](#) (June 22, 2020) (noting that New Mexico ranks fiftieth for overall child well-being).

¹²⁸ U.S. Census Bureau, [QuickFacts: New Mexico](#) (last visited Oct. 5, 2021).

¹²⁹ Clifford J. Villa, *et al.*, [Environmental Justice: Law, Policy & Regulation, Third Edition, Teachers Manual](#) at 4, Carolina Academic Press (2020).

¹³⁰ See generally U.S. Environmental Protection Agency, [Climate Change Indicators: Heat Waves](#) (Apr. 2021); Brian Woods, *et al.*, [Heat Related Illness in New Mexico 2013-2017](#), 2019:6 New Mexico Epidemiology (2019).

¹³¹ Angel Hsu, *et al.*, [Disproportionate exposure to urban heat island intensity across major US cities](#), 12:2721 *Nature Comm's* 1, 2 (2021); see also Tik Root, [Heat and smog hit low-income communities and people of color hardest, scientists say](#), The Washington Post (May 25, 2021).

¹³² National Wildlife Federation, [Facing the Storm: Indian Tribes, Climate-Induced Weather Extremes, and the Future for Indian Country](#) at 2 (2011).

¹³³ Nelia W. Dunbar, *et al.*, [Climate Change in New Mexico over the Next 50 Years: Impacts on Water Resources](#) (Draft for Public Comment) at 76, New Mexico Bureau of Geology and Mineral Resources (Sept. 2021).

¹³⁴ Karn Vohra, *et al.*, [Global mortality from outdoor fine particle pollution generated by fossil fuel combustion: Results from GEOS-Chem](#), 195 *Env'tl. Res.* 1, 5 (Apr. 2021).

- Exposure to oil and gas operations appears to increase the risk of prostate cancer, infertility, preterm birth, miscarriage, and birth defects,¹³⁵ and oil and gas chemicals disrupt hormone receptors.¹³⁶
- Oil and gas operations expose New Mexicans to unacceptable health and pollution burdens, which again fall disproportionately on those least able to bear them.
 - An analysis by the Environmental Defense Fund found that more than 337,500 metric tons of volatile organic compounds are emitted each year by oil and gas operations in New Mexico.¹³⁷ These activities contribute to smog and ozone and can cause respiratory illness and other health problems, particularly among children and the elderly.¹³⁸
 - Eddy, Lea, and San Juan counties are the top oil and gas producers in New Mexico.¹³⁹ All three were given an “F” grade for ozone pollution by the American Lung Association.¹⁴⁰ Eddy and Doña Ana counties rank among the twenty-fifth most polluted counties in the nation for ozone levels.¹⁴¹ New Mexico’s most polluted counties include Chaves, Doña Ana, Rio Arriba, Sandoval, and Valencia, where poverty rates are higher than the national average and where nearly 800,000 New Mexicans (thirty-eight percent of the state population) reside, a majority of whom are Hispanic and Latino.¹⁴²
 - The Greater Chaco region of northwestern New Mexico, home of the Chaco Culture National Historical Park, has experienced worsening air quality from oil and gas extraction. High levels of particulate matter and volatile organic compounds have been found in Chaco communities near well pads.¹⁴³ Exposure to particulate matter is linked to increased morbidity and mortality from respiratory and heart disease and may play a role in the unusually high rates of illness severity and death from COVID-19 in the Navajo Nation population.¹⁴⁴
- Climate change causes an increase in the frequency of pandemics such as COVID-19: according to the Intergovernmental Platform on Biodiversity and Ecosystem Services, climate change “will likely cause substantial future pandemic risk by driving movement of people, wildlife, reservoirs, and vectors, and spread of their pathogens”¹⁴⁵

¹³⁵ Victoria D. Balise, *et al.*, [Systematic review of the association between oil and natural gas extraction processes and human reproduction](#), 106(4) *Fertility & Sterility* 795, 795 (2016); Ellen Webb, *et al.*, [Developmental and reproductive effects of chemicals associated with unconventional oil and natural gas operations](#), 29(4) *Reviews on Env'tl. Health* 307, 307 (2014).

¹³⁶ Balise, *et al.*, *supra* note 135, at 795.

¹³⁷ Environmental Defense Fund, [New Analysis Reveals Persistent Methane Problem](#) (Nov. 2020).

¹³⁸ *Id.*

¹³⁹ New Mexico Bureau of Geology & Mineral Resources, [Oil & Gas Program](#) (last visited Oct. 7, 2021); Adrian Hedden, [Data: Eddy County oil production gaining on Lea as oil prices begin to climb](#), *Carlsbad Current-Argus* (Jan. 10, 2019).

¹⁴⁰ American Lung Association, [Report Card: New Mexico](#) (last visited Oct. 6, 2021).

¹⁴¹ American Lung Association, [Most Polluted Places to live](#) (last visited Oct. 6, 2021).

¹⁴² New Mexico Environment Department, [Ozone Precursor Fact Sheet](#) at 2 (May 2021).

¹⁴³ Kendra Chamberlain, [For Greater Chaco communities, air pollution compounds COVID-19 threat](#), *NM Political Report* (Apr. 15, 2020).

¹⁴⁴ *Id.*; Xiao Wu & Rachel C. Nethery, *et al.*, [Exposure to air pollution and COVID-19 mortality in the United States: A nationwide cross-sectional study](#), Department of Biostatistics, Harvard T.H. Chan School of Public Health (Apr. 2020).

¹⁴⁵ Intergovernmental Platform on Biodiversity and Ecosystem Services, [IPBES Workshop on Biodiversity and Pandemics: Workshop Report](#) at 3 (Oct. 2020).

- A recent paper published in The New England Journal of Medicine concludes that the climate crisis exacerbates the effects of COVID-19, as heat, wildfire smoke, and high pollen counts worsen underlying health conditions such as pulmonary disease, and as emergency responses to events such as hurricanes and fires reduce the ability to mitigate COVID-19 spread. These effects are felt particularly by underserved communities.¹⁴⁶
- Elevated levels of particulate pollution due to increased wildfires in the West have led to thousands more cases of COVID-19 and more deaths,¹⁴⁷ during a time in which COVID-19 has already put a strain on UNM's health system.¹⁴⁸
- Children bear especially heavy burdens from the impacts of climate change and fossil fuel extraction.
 - According to UNICEF, one billion children live at extreme risk of climate and environmental hazards, shocks, and stresses.¹⁴⁹ The United States ranks among the countries in which children face at least five major climate and environmental shocks (extremely high category).¹⁵⁰
 - Children are more vulnerable than adults to extreme weather. They are less able to regulate their body temperature during heat waves,¹⁵¹ breathe at twice the adult rate,¹⁵² and are at crucial stages of brain and organ development.¹⁵³ Exposure to toxins has more potential to harm their cognitive ability and lung capacity,¹⁵⁴ and they suffer these deficits their entire lives. Climate change-caused disasters, air pollution extremes, and environmental degradation also disrupt education,¹⁵⁵ and excessive heat interferes with learning capacity.¹⁵⁶
 - UNICEF ranks the United States in the medium category for child vulnerability to climate risks.¹⁵⁷ However, many New Mexican children face somewhat worse circumstances. New Mexico ranks second after Alaska for its proportion of the population without access to running water.¹⁵⁸ The annual Kids Count survey ranks New Mexico forty-ninth for child well-being, thirty-seventh for health and fiftieth for education.¹⁵⁹ In 2019, twenty-five percent of New Mexican children

¹⁴⁶ Renee N. Salas, James M. Shultz, & Caren G. Solomon, [The Climate Crisis and Covid-19 — A Major Threat to the Pandemic Response](#), New Eng. J. Med. (2020).

¹⁴⁷ Xiaodan Zhou, *et al.*, [Excess of COVID-19 cases and deaths due to fine particulate matter exposure during the 2020 wildfires in the United States](#) at 3, 2021:7 Sci. Adv. (Aug. 2021) (“The overall number of COVID-19 cases and deaths attributable to daily increase in PM2.5 from wildfires is 19,742 (95% CI, 7062 to 31,310) and 748 (95% CI, 398 to 1102), respectively.”)

¹⁴⁸ Ryan Boetel, [COVID patients stretch hospitals beyond capacity](#), Albuquerque Journal (Nov. 16, 2020); Dan McKay, [Some NM Hospitals ‘well beyond capacity.’](#) Albuquerque Journal (Aug. 19, 2021).

¹⁴⁹ UNICEF, [The climate crisis is a child rights crisis: Introducing the Children’s Climate Risk Index](#) (Aug. 2021).

¹⁵⁰ *Id.* at 80.

¹⁵¹ *Id.* at 110.

¹⁵² *Id.*

¹⁵³ *Id.* at 20.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at 110.

¹⁵⁶ Joshua Goodman, Michael Hurwitz, Jisung Park, & Jonathan Smith, [Heat and Learning](#), National Bureau of Economic Research (May 2018).

¹⁵⁷ [The climate crisis is a child rights crisis](#), *supra* note 149, at 80.

¹⁵⁸ U.S. Water Alliance, [Closing the Water Access Gap in the United States: A National Action Plan](#) at 23 (2019).

¹⁵⁹ Cedar Attanasio, [New Mexico ranks 49th in child well-being, an improvement](#), AP News (June 21, 2021) (referencing data from the Annie E. Casey Foundation).

were living in poverty versus seventeen percent nationally.¹⁶⁰ In 2018, forty-one percent of Native American children in New Mexico were living in poverty versus thirty-one percent nationally.¹⁶¹ Not only do these conditions make children more vulnerable to the impacts of climate change, but climate change itself can make it more difficult to obtain access to the services they need in emergencies.¹⁶²

- UNICEF concludes that “the climate crisis affects or will affect all children, everywhere, in often significant, life-changing ways, throughout their lives” and “undermines the effective enjoyment of the rights enshrined in the Convention on the Rights of the Child.”¹⁶³
- Finally, just as climate change impacts UNM’s physical campus, it also impacts UNM students, staff, and faculty.
 - Many UNM employees live in or near wildland-urban interfaces, and fires in these areas are the top natural hazard in New Mexico.¹⁶⁴
 - Hotter, drier conditions brought on by climate change have increased the frequency and intensity of fires and the length of the fire season in the United States and globally, and the effects can be felt far away.¹⁶⁵
 - At UNM’s main campus in Albuquerque, wildfire smoke has already created unhealthy conditions for days at a time for people with heart and lung diseases or diabetes, as well as children and pregnant women.¹⁶⁶ Wildfire smoke is linked to low birth weights and preterm births.¹⁶⁷
 - In Albuquerque, recent air pollution alerts were triggered by wildfires in Phoenix and Tucson.¹⁶⁸
 - Other sources of Albuquerque air pollution include gasoline-powered vehicles, the Four Corners plant, and other power plants.¹⁶⁹ Ozone levels in Albuquerque’s Bernalillo county were unhealthy on twenty-three days from 2017 to 2019, threatening the health of the twelve percent of Bernalillo residents who suffer from lung disease.¹⁷⁰

¹⁶⁰ Annie E. Casey Foundation, [Kids Count Data Book: New Mexico Child Poverty Report](#) (Oct. 7, 2021).

¹⁶¹ *Id.* The year 2018 is the last year data are available.

¹⁶² See [The climate crisis is a child rights crisis](#), *supra* note 149, at 111 (describing, *inter alia*, effects of climate change on housing and school access, and noting that, “[b]ecause of the inter-connected . . . nature of rights, the realization of one right often depends, wholly or in part, upon the realization of others”).

¹⁶³ *Id.*

¹⁶⁴ University of New Mexico, [Hazard Mitigation Plan](#) at 89 (Nov. 2015).

¹⁶⁵ The Global Climate & Health Alliance, [The Limits of Livability: the emerging threat of smoke impacts on health from forest fires and climate change](#) at 10-11 (2021).

¹⁶⁶ Theresa Davis, [Smoky skies raise health concerns](#), Albuquerque Journal (Aug. 9, 2021).

¹⁶⁷ [The Limits of Livability](#), *supra* note 165, at 6; Sam Heft-Neal, *et al.*, [Associations between wildfire smoke exposure during pregnancy and risk of preterm birth in California](#), *Envtl. Res.* 203 (2022).

¹⁶⁸ IQAir, [Air Quality in Albuquerque](#) (last visited Oct. 7, 2021).

¹⁶⁹ Ilias G. Kavouras, *et al.*, [Monitoring, Source Identification and Health Risks of Air Toxics in Albuquerque, New Mexico, U.S.A.](#), *Aerosol and Air Quality Res.* 556, 557, 569 (2015).

¹⁷⁰ Theresa Davis, [Ozone pollution rises across New Mexico](#), Albuquerque Journal (Apr. 21, 2021).

V. The poor environmental and safety records of fossil fuel companies in which the UNMF invests

Through its public equity holdings, the UNMF invests in approximately twenty-eight fossil fuel companies (plus subsidiaries) operating in New Mexico.¹⁷¹ These companies have contributed to the release of toxins and pollutants, threatening environmental and water quality as well as the health of people and wildlife. Continued investment in these companies contravenes the *charitable purposes* of UNM and violates UNMF's *duty of loyalty*.

- Over the last five years, companies in which UNMF invested extracted an average of 166.6 million barrels of oil and 867.8 million Mcf (*i.e.*, thousand cubic feet) of natural gas annually from New Mexico wells, as well as 5.12 million metric tons of coal.¹⁷² Assuming these fuels were burned, they have contributed an additional 129.6 million metric tons of carbon dioxide to the atmosphere for each of the last five years.¹⁷³ Those emissions are roughly equivalent to operating thirty-three coal plants over a five-year period.¹⁷⁴
- Nearly 140,000 people live within a half mile radius of oil and gas wells in New Mexico.¹⁷⁵ Most vulnerable to health risks are those who live in rural areas,¹⁷⁶ Native American and Hispanic residents,¹⁷⁷ and unborn babies, children, and the elderly.¹⁷⁸

¹⁷¹ To estimate this number, we consulted public equity funds listed on the Foundation's [Endowment website](#) and the schedule of investments for the two index funds listed in their annual reports: [iShares Total US Stock Market Index Fund](#) and [iShares MSCI ACWI ex US ETF](#). The Fossil Free Funds [website](#) also lists fossil fuel companies and their weightings in the domestic funds. Annual reports and 10-K filings with the Securities Exchange commission were used to derive a list of subsidiaries for all companies. Several sources were used to determine if these companies had a history of or were currently operating in New Mexico, including company websites, news stories, and oil and gas databases such as [Drillingedge](#) and the New Mexico Oil Conservation Division [Permitting Database](#). The New Mexico Environment Department [Emissions Analysis Tool](#) helped identify non-well infrastructure such as processing plants, compressor stations, and refineries and their emissions through 2019. The [EPA FLIGHT database](#) provides similar information. The companies with the most significant operations during 2021 include APA Corp, Chevron, Cimarex, Concho Resources, ConocoPhillips, Devon Energy Corp, EOG Resources, Exxon Mobil, HollyFrontier Corp, Kinder Morgan, Occidental Petroleum, Peabody Energy, Inc., Marathon Oil Corp, Matador Resources, Targa Resources Corp., and Xcel Energy. The Foundation likely invests in additional fossil fuel companies through its private equity holdings, but these holdings are not publicly available.

¹⁷² Oil and gas production amounts compiled from the New Mexico Oil Conservation Division [Annual Production Reports](#), summed for a five-year period, and then divided by five to find the annual average for that period. Average annual coal production derived from [Peabody Energy annual reports](#) from 2016 through 2020. Peabody operates the El Segundo and Lee Ranch (no longer in operation) mines near Grants.

¹⁷³ Converted to metric tons using the EPA [Greenhouse Gas Equivalencies Calculator](#) (last visited Oct. 20, 2021).

¹⁷⁴ Calculated using the EPA [Greenhouse Gas Equivalencies Calculator](#) (last visited Oct. 20, 2021).

¹⁷⁵ FracTracker Alliance, [Oil & Gas Threat Map](#) (last visited Oct. 20, 2021).

¹⁷⁶ Earthworks & Clean Air Task Force, [Country Living: Dirty Air](#) at 4, 10 (July 2018) (describing case study of San Juan County, New Mexico on page 10).

¹⁷⁷ Moms Clean Air Force, [Indigenous People and Air Pollution in the United States](#) (Apr. 2021); Lesley Fleischman, Declan Kingland, Christopher Maxwell, & Elena Rios, [Latino Communities at Risk: The Impact of Air Pollution from the Oil and Gas Industry](#), Clean Air Task Force, League of United Latin American Citizens, & National Hispanic Medical Association (Sept. 2016).

¹⁷⁸ Julia Conley, [Babies Born Near Oil and Gas Wells Are 40 to 70% More Likely to Have Congenital Heart Defects, New Study Shows](#), EcoWatch (July 22, 2019); Environmental Defense Fund, [New Data: New Mexico's Oil and Gas Methane Problem Persists, Proposed Rules Need Improvement to Protect State's Health and Climate](#) (Nov. 20, 2020).

- In addition to wells, UNMF-invested companies operate pipelines, processing plants, refineries, mines, power plants, and other fossil fuel infrastructure, which produce additional emissions. According to the New Mexico Environment Department and the U.S. Environmental Protection Agency, oil and gas facilities and power plants emitted over 9.7 million tons of carbon dioxide equivalent to the atmosphere in 2019.¹⁷⁹ These facilities were also responsible for over 61,000 tons of nitrogen dioxide, 2,282 tons of volatile organic compounds, 257 tons of hazardous air pollutants, and 594 tons of particulate matter in nine New Mexico counties in 2019.¹⁸⁰
- A study conducted in Las Cruces, New Mexico found that adult cardiovascular emergency room visits increased by roughly twelve percent and respiratory emergency room visits increased by roughly five percent between April and September when levels of particulate matter were high.¹⁸¹
- Foundation-supported companies have reported or been cited for more than 17,000 major and minor spills as of August 1, 2021, according to data from the New Mexico Oil Conservation Division.¹⁸² Companies with the most spills in New Mexico include ExxonMobil (2,497), ConocoPhillips (2,310), Occidental Petroleum (2,268), and Chevron (1,651).
- Together, Foundation-invested companies also operate 15,000 pits — which contain toxins such as arsenic, benzene, chromium, and lead¹⁸³ — and 15,600 active wells.¹⁸⁴ In the last five years, these companies have generated tens of millions of gallons of wastewater.¹⁸⁵
- According to the Center for Western Priorities, in 2020 alone, five producers — all UNMF-invested companies — were responsible for 42.2 percent of New Mexico’s oil- and gas-related spills: ExxonMobil’s XTO Energy (10.5 percent), Chevron (9.2 percent), COG Operating LLC (nine percent), Devon Energy Inc. (6.8 percent), and OXY USA Inc. (6.7 percent).¹⁸⁶

¹⁷⁹ Compiled on October 8, 2021 using the [EPA FLIGHT database](#) and the New Mexico Environment Department’s [Emissions Data Analysis Tool](#).

¹⁸⁰ Compiled on October 11, 2021 using the New Mexico Environment Department’s [Emissions Data Analysis Tool](#).

¹⁸¹ Sophia Rodopoulou, *et. al*, [Air pollution and hospital emergency room and admissions for cardiovascular and respiratory diseases in Doña Ana County, New Mexico](#), 129 *Envtl. Res.* 39, 43 at Table 4 (2014).

¹⁸² Data compiled by the UNM Coalition on Climate using the Oil Conservation Division’s [Searchable Database](#). Foundation-invested companies (including subsidiaries) were listed in the Schedule of Investments in the July 31, 2020 Annual Reports of the Foundation’s Public Equity Funds — the [BlackRock U.S. Equity Market Index \(BASMEX\)](#) and the [BlackRock ACWI ex USA Index \(ACWX\)](#) — and in the March 2021 Schedule of Investments of [iShares North American Natural Resources ETF \(IGE\)](#), which the Foundation sold in March 2021.

¹⁸³ Lisa Sumi, [Pit Pollution: Backgrounder on the Issues, with a New Mexico Case Study](#), Oil and Gas Accountability Project at 5 (May 2004).

¹⁸⁴ Data compiled by the UNM Coalition on Climate using the Oil Conservation Division’s [Pit Search](#) and [Well Search](#) databases.

¹⁸⁵ Data compiled using the Oil Conservation Division’s [Annual Production Report](#) database. This wastewater, also known as “produced” water, can include naturally occurring radioactive materials at levels harmful to workers, Justin Nobel, [America’s Radioactive Secret](#), *Rolling Stone* (Jan. 21, 2020), along with hydraulic fracturing fluids that contain sand, acids, gelling agents, biocides, solvents, surfactants, corrosion inhibitors, and a host of other chemicals, some known to be hazardous to human health, Melissa Denchak, [Fracking 101](#), *Natural Resources Defense Council* (Apr. 19, 2019).

¹⁸⁶ Center for Western Priorities, [2020 New Mexico Oil and Gas Spills Tracker](#) (last visited Oct. 8, 2021).

- Methane is a potent greenhouse gas.¹⁸⁷ Industry-wide oil and gas methane emissions are estimated to exceed 1.1 million metric tons per year in New Mexico.¹⁸⁸ XTO Energy was responsible for 89.7 percent of New Mexico’s total methane emissions in 2020.¹⁸⁹
- The International Energy Agency roadmap shows that the pathway to net zero carbon emissions by 2050 requires an end to all new oil and gas exploration this year.¹⁹⁰ Nonetheless, Foundation-invested companies have applied for 5,400 new permits rather than alter their business model.¹⁹¹ In the last half of 2020, two Foundation-invested companies submitted huge numbers of permit applications on federal land: EOG Resources (2,700 applications) and Devon Energy (1,100).¹⁹²
- Some companies in which the UNM Foundation invests have particularly problematic environmental and worker safety records.
 - HollyFrontier’s Navajo Refinery in Artesia and its Lovington facility are among thirteen refineries nationally that exceeded the EPA’s “action level” for benzene.¹⁹³ At the Navajo Refinery, 2018 levels measured 100 times the safe concentration at a school less than a quarter mile away.¹⁹⁴ Upon inspection, the EPA also found high levels of volatile organic compounds.¹⁹⁵
 - Of the 3,318 people who live within a one-mile radius of the Navajo Refinery, fifty-six percent live below the poverty line; seventy-eight percent are Hispanic, African American, or Indigenous; twelve percent are seniors; and nine percent are children.¹⁹⁶ While the Artesia plant reduced its emissions from 2019 to 2020 by fifty-five percent, those emissions still exceeded the Environmental Protection Agency’s “action level” for benzene, and the company’s Lovington plant increased its emissions by 230 percent.¹⁹⁷
 - The Navajo Refining Company paid a fine in 2010 after two employees were killed and two injured when a gas leak caused an explosion.¹⁹⁸ Twenty-two fires had been reported at the company in the fifteen months leading up to the

¹⁸⁷ U.S. Environmental Protection Agency, [Importance of Methane](#) (last visited Oct. 20, 2021) (“Methane is more than 25 times as potent as carbon dioxide at trapping heat in the atmosphere.”).

¹⁸⁸ Environmental Defense Fund, [New analysis reveals persistent methane problem](#), New Mexico Oil & Gas Data (Nov. 2020).

¹⁸⁹ [2020 New Mexico Oil and Gas Spills Tracker](#), *supra* note 186. XTO Energy is a subsidiary of Exxon. See [XTO Energy](#) (last visited Oct. 8, 2021).

¹⁹⁰ International Energy Agency, [Net Zero by 2050: A Roadmap for the Global Energy Sector](#) at 20 (May 2021).

¹⁹¹ Data compiled from the New Mexico Oil Conservation Division’s [Well Search Database](#) for August through October 2021.

¹⁹² Jerry Redfern, [New Mexico Drilling Permits Skyrocketed Under Trump, State’s Climate Future at Risk](#), Capital & Main (Aug. 20, 2021).

¹⁹³ The Environmental Integrity Project, [Environmental Justice and Refinery Pollution: Benzene Monitoring Around Oil Refineries Found More Communities at Risk in 2020](#) (April 28, 2021)

¹⁹⁴ Adrian Hedden, [Artesia’s Navajo Refinery listed among nation’s most benzene polluting oil and gas sites](#), Carlsbad Current Argus (Feb. 7, 2020).

¹⁹⁵ *Id.*

¹⁹⁶ Environmental Integrity Project, [Monitoring Benzene at Refinery Fencelines](#) at 11 (Feb. 6, 2020).

¹⁹⁷ Environmental Integrity Project, [Environmental Justice and Refinery Pollution: Benzene Monitoring Around Oil Refineries Showed More Communities at Risk in 2020](#) at 4 (Apr. 2021).

¹⁹⁸ [Navajo fined over safety violations stemming from 2010 explosion](#), Artesia Daily Press (Oct. 31, 2012).

accident,¹⁹⁹ and the company has been responsible for thirteen major spills that affected groundwater.²⁰⁰

- Enbridge subsidiary DCP Midstream will shut down its Eunice Plant as part of a settlement with the New Mexico Environment Department (NMED) announced September 15, 2021.²⁰¹ DCP is accused of illegally emitting nearly 3.8 million tons of pollutants from May 2017 through June 2019.²⁰²
- Other UNMF-invested oil and gas companies that have been fined, cited or noted for environmental violations include Western Refining Company,²⁰³ Western Refining Southwest, Inc.,²⁰⁴ Matador,²⁰⁵ and Kinder Morgan.²⁰⁶
- In January 2020, a burst pipe operated by WPX Energy soaked a Carlsbad-area residence for an hour in wastewater laden with benzene, chloride, and other chemicals; the owners of the residence were later forced to euthanize their chickens and dog.²⁰⁷
- Despite a drop in production in 2020 due to COVID-19, New Mexico recorded twice as many spills of oil, produced water, and other drilling-related substances as Wyoming and 3.5 times as many as Colorado.²⁰⁸ WPX Energy's record is particularly concerning, with 4.71 toxic wastewater spills per million gallons of oil and gas produced.²⁰⁹ The company has had 157 major and 117 minor wastewater releases over the last two decades.²¹⁰ WPX was recently sued by the State of New Mexico for failing to remediate a well site in Eddy county.²¹¹
- In a June 2021 letter, WildEarth Guardians alerted the New Mexico Oil Conservation Division of more than 3,350 inactive wells that threaten the state's air, water, and public health because their operators had not complied with rules requiring them to be plugged or placed in temporary abandonment status.²¹² Three hundred fifty companies were involved, including UNMF-invested companies

¹⁹⁹ Center for Public Integrity, [Regulatory Flaws, Repeated Violations Put Oil Refinery Workers at Risk](#) (Feb. 28, 2011).

²⁰⁰ Data compiled on August 2, 2021 using Oil Conservation Division's [Spill Search](#) with "Groundwater impact" selected.

²⁰¹ Hannah Grover, [Eunice Gas Plant to shutter as part of settlement agreement](#), New Mexico Political Report (Sept. 15, 2021).

²⁰² *Id.*

²⁰³ [Western Refining Fined \\$350,000 for Emissions Violations](#), Albuquerque Journal (June 10, 2011).

²⁰⁴ U.S. Environmental Protection Agency, [EPA Fines Western Refining Southwest, Inc. for Illegally Disposing Hazardous Waste and Improper Sampling](#) (Nov. 23, 2010).

²⁰⁵ New Mexico Environment Department, [Environment Department issues Notices of Violation to two Permian Basin oil and gas producers for air quality regulatory violations](#) (Nov. 4, 2019).

²⁰⁶ New Mexico Environment Department Hazardous Waste Bureau, [Notice of Violation](#) (July 7, 2020); Shelby Montgomery, [A year later, cause still unknown for 250,000-gallon gas pipeline spill in Anthony](#), Kvia.Com News (Nov. 26, 2019).

²⁰⁷ Kendra Chamberlain, ['Dereliction of duty': 1.6 million gallons of produced water spilled so far in 2020](#), NM Political Report (Aug. 19, 2021).

²⁰⁸ [2020 New Mexico Oil and Gas Spills Tracker](#), *supra* note 186.

²⁰⁹ Kendra Chamberlain, [Produced Water Bill Dies in Committee](#), NM Political Report (Feb. 16, 2021).

²¹⁰ Data compiled on October 8, 2021 using the New Mexico Oil Conservation Division [Spill Search database](#).

²¹¹ [WPX Energy sued by state of New Mexico](#), OK Energy Today (Dec. 7, 2020).

²¹² WildEarth Guardians, [Re: Notice of Intent to Sue Operators if Oil Conservation Division Does Not Address Widespread Violations of Regulations Requiring Plugging and Abandonment of Inactive Oil and Gas Wells](#) at 1 (June 22, 2021).

Apache, Chevron, XTO Energy (Exxon), ConocoPhillips, Cimarex, Cross Timbers, DCP Operating (Enbridge), Devon Energy, Diamond S Energy, EOG, Matador, OXY USA (Occidental), Marathon Oil, Prime Energy, and WPX Energy. According to a WildEarth Guardians press release, many of the 3,350 inactive wells — found largely in Lea, Eddy and San Juan counties — have not produced oil or gas for decades and are effectively abandoned, “posing serious environmental, health, and safety risks. Inactive wells are more likely to fall into disrepair, leading to leaks, spills, and other harmful releases.”²¹³

VI. The failure of fossil fuel companies to address climate risks

The fossil fuel industry remains resolutely committed to a business model that produces and exacerbates climate change, and to the violent suppression of protest against the industry. The UNMF’s *charitable purposes* are directly contravened by investment in the fossil fuel industry. By funding the industry’s activities, the UNMF exposes the UNM community and society at large to severe injury, violating its *duty of loyalty*.

- Fossil fuel companies knew about the connection between their products and climate change decades before the general public, “as early as the 1950s and no later than 1968.”²¹⁴
 - Coal industry publications suggested as early as 1966 that the release of fossil fuels could cause “vast changes in the climates of the earth.”²¹⁵ By 1968, the American Petroleum Institute, an industry trade group, was familiar with a study concluding that the burning of fossil fuels was likely to create significant environmental consequences.²¹⁶
 - As early as 1977, Exxon scientists had privately concluded that “there is general scientific agreement that the most likely manner in which [hu]mankind is influencing the global climate is through carbon dioxide release from the burning of fossil fuels.”²¹⁷
 - Shell internally reached similar conclusions by at least the 1980s,²¹⁸ as did Mobil (then separate from Exxon).²¹⁹ By the 1980s, major fossil fuel companies had “internally acknowledged that climate change was real, it was caused by fossil

²¹³ WildEarth Guardians, [WildEarth Guardians to file suit over thousands of illegal oil and gas wells in New Mexico](#) (June 22, 2021).

²¹⁴ Brief of Amici Curiae Robert Brulle, Center for Climate Integrity, Justin Farrell, Benjamin Franta, Stephan Lewandowsky, Naomi Oreskes, and Geoffrey Supran in Support of Appellees and Affirmance, [County of San Mateo v. Chevron Corporation, et al., County of Imperial Beach v. Chevron Corporation, et al., County of Marin v. Chevron Corporation, et al., County of Santa Cruz, et al., v. Chevron Corporation, et al.](#), Nos. 18-15499, 18-15502, 18-15503, 18-16376 at 2 (9th Cir. 2019).

²¹⁵ Elan Young, [Exxon knew -- and so did coal](#), Grist (Nov. 29, 2019).

²¹⁶ Oliver Milman, [Oil industry knew of ‘serious’ climate concerns more than 45 years ago](#), The Guardian (Apr. 13, 2016).

²¹⁷ Shannon Hall, [Exxon Knew about Climate Change almost 40 years ago](#), Sci. Am. (Oct. 26, 2015).

²¹⁸ John H. Cushman Jr., [Shell Knew Fossil Fuels Created Climate Change Risks Back in 1980s, Internal Documents Show](#), Inside Climate News (Apr. 5, 2018).

²¹⁹ Nicholas Kusnetz, [Exxon Turns to Academia to Try to Discredit Harvard Research](#), Inside Climate News (Oct. 20, 2020).

fuel consumption, and it would have significant impacts on the environment and human health.”²²⁰

- A 2017 report by the Carbon Disclosure Project found that “71% of all global [greenhouse gas] emissions since 1988 can be traced to just 100 fossil fuel producers.”²²¹
- No major fossil fuel company has established itself as a willing participant in the transition to renewable energy.
 - In 2018, all fossil fuel majors approved projects that were noncompliant with the Paris Agreement goals.²²² That same year, the fossil fuel industry as a whole spent only about one percent of capital expenditures on renewable energy initiatives.²²³
 - A study by the London School of Economics found that no fossil fuel major had carbon-reduction plans that are Paris-compliant as of October 2020.²²⁴ A September 2020 report by climate research group Oil Change International concluded that “[n]one of the evaluated oil majors’ climate strategies, plans, and pledges come close to alignment with the Paris Agreement.”²²⁵
- Fossil fuel companies continue to bet on long-term fossil fuel reliance.
 - Approximately half of the oil under BP’s financial control is excluded from the company’s decarbonization commitments.²²⁶ As recently as November 2020, BP was buying up Canadian offshore oil parcels.²²⁷
 - According to leaked internal documents, ExxonMobil is betting on increases in future carbon emissions.²²⁸ The 2018 investment plan by ExxonMobil, one of the world’s largest oil companies, predicted that the firm’s expanded oil and gas production would release an additional twenty-one million tons of carbon dioxide annually by 2025. When added to the emissions released by “end uses” of the company’s products, the total additional emissions of ExxonMobil’s growth strategy would amount to around 100 million tons of carbon dioxide per year. This figure — which represents only the anticipated *expansion* of ExxonMobil’s business — is roughly equivalent to the entire annual emissions of the country of Greece.²²⁹

²²⁰ Brief of Amici Curiae Robert Brulle, *et al.*, *supra* note 214, at 15.

²²¹ [New report shows just 100 companies are source of over 70% of emissions](#), Carbon Disclosure Project (July 2017).

²²² [Breaking the Habit - Why none of the large oil companies are “Paris-aligned”, and what they need to do to get there](#), Carbon Tracker Initiative (Sept. 2019).

²²³ Ron Bousso, [Big Oil spent 1 percent on green energy in 2018](#), Reuters (Nov. 11, 2018).

²²⁴ Anjali Raval, [Big fossil fuel groups all failing climate goals, study shows](#), Financial Times (Oct. 6, 2020).

²²⁵ [Big Oil Reality Check: Assessing Oil and Gas Company Climate Plans](#), Oil Change International (Sept. 2020).

²²⁶ Kelly Trout, [The Loopholes Lurking in BP’s New Climate Aims](#), Oil Change International (Mar. 11, 2020) (“BP’s accounting of its production excludes any oil and gas that it produces but does not sell . . . BP also excludes the production related to its 20% stake in Russia-based oil company Rosneft. We estimate that these accounting loopholes exclude from BP’s net zero aim 46% of the total carbon that the company invested in extracting in 2018 . . .”).

²²⁷ Julianne Geiger, [From Billions To Millions: Canada’s Offshore Oil Disappointment](#), OilPrice.com (Nov. 5, 2020).

²²⁸ Kevin Crowley & Akshat Rath, [Exxon Carbon Emissions and Climate: Leaked Plans Reveal Rising CO₂ Output](#), Bloomberg Green (Oct. 5, 2020); Emily Pontecorvo, [Exxon’s ‘emission reduction plan’ doesn’t call for reducing Exxon’s emissions](#), Grist (Dec. 15, 2020).

²²⁹ Crowley & Rath, *supra* note 228. ExxonMobil’s growth strategy has since changed in light of the Covid-19 pandemic.

- Several leading executives from Shell’s renewable energy sectors recently quit in response to the company’s lackluster efforts to decarbonize.²³⁰ In December 2020, the company was actively engaged in litigation in the Netherlands in which it argued that emissions reduction commitments should not be legally binding.²³¹ In February 2021, the company revealed that it planned significant expansion of its gas export and production operations.²³²
- Chevron plans to increase spending on exploration and extraction in the Gulf of Mexico and the Lower 48 states in 2021.²³³
- The American Petroleum Institute recently asserted that the oil industry remains essential to the American economy and promised to resist President Biden’s climate agenda.²³⁴
- In May 2021, the Hague District Court ordered Shell to reduce its emissions by forty-five percent by 2030, finding that the company had violated its standard of care by allowing its business to contribute to dangerous climate change.²³⁵
- Given the commitment of the fossil fuel industry to increased emissions, their business practices are incompatible with international targets to reduce greenhouse gas emissions. In a recent report, the International Energy Agency concluded that, in order to reach net zero emissions by 2050, “[t]here is no need for investment in new fossil fuel supply in our net zero pathway.”²³⁶
- Shareholder engagement has not been an effective tactic for changing the industry’s core business model, with recent attempts by shareholders to persuade fossil fuel companies to address climate risks going largely unheeded.
 - The Interfaith Center on Corporate Responsibility found that “150 requests from various responsible shareholders asking fossil fuel companies to evaluate financial risk from climate change regulation [between 1992 and 2015] were ignored or met with a dismissive reply,” with leaders of companies including ExxonMobil and Shell explicitly stating their intentions to continue producing fossil fuels without interruption.²³⁷
 - Shareholder engagement group As You Sow noted in a 2018 report that, although oil and gas companies are disproportionate targets of shareholders’ attempts to engage and intervene, the companies have been singularly unresponsive to requests to reduce greenhouse gas emissions.²³⁸

²³⁰ Anjali Raval & Leslie Hook, [Shell Executives Quit Amid Discord Over Green Push](#), Financial Times (Dec. 8, 2020).

²³¹ Laurel Wamsey, [Climate Case Against Shell Begins In The Netherlands](#), NPR (Dec. 1, 2020).

²³² Jillian Ambrose, [Shell to expand gas business despite pledge to speed up net zero carbon drive](#), The Guardian (Feb. 11, 2021).

²³³ Carolyn Davis, [Chevron Sharply Reduces '21 Spending, but Permian, Gulf of Mexico Still Priorities - Natural Gas](#), Natural Gas Intelligence (Dec. 3, 2020).

²³⁴ Nicholas Kusnetz, [American Petroleum Institute Chief Promises to Fight Biden and the Democrats on Drilling, Tax Policy](#), Inside Climate News (Jan. 14, 2021).

²³⁵ *Milieudefensie, et al. v. Royal Dutch Shell plc.*, Hague Dist. Ct., Netherlands, No. C/09/571932 / HA ZA 19-379 (May 26, 2021).

²³⁶ [Net Zero by 2050: A Roadmap for the Global Energy Sector](#) at 21, International Energy Agency, (July 2021).

²³⁷ Taavi Tillmann, Jonny Currie, Alistair Wardrobe, & David McCoy, [Fossil fuel companies and climate change: the case for divestment](#), 350 Brit. Med. J. (June 2015).

²³⁸ [2020: A Clear Vision for Paris-Compliant Shareholder Engagement](#), As You Sow (Sept. 2018). The report urges fiduciaries to divest from the oil and gas sector so as to “protect their beneficiaries” if the companies do not adopt

- The fossil fuel sector continues to undermine climate-friendly policymaking, including in New Mexico.
 - In the three years following the 2015 Paris Agreement, the five largest public fossil fuel companies “invested over \$1 [billion] of shareholder funds on misleading climate-related branding and lobbying.”²³⁹ Each year, “the world’s five largest publicly owned oil and gas companies spend approximately \$200 million on lobbying designed to control, delay or block binding climate-motivated policy.”²⁴⁰
 - In a leaked interview, an ExxonMobil lobbyist admitted that the company continues to use scientific misinformation and political pressure to undermine efforts to address climate change, including targeting the current administration’s efforts to reduce greenhouse gas emissions.²⁴¹
 - In 2018, the industry spent nearly \$100 million to stymie three proposed climate initiatives in Western states: a carbon emissions fee in Washington, restrictions on hydraulic fracturing in Colorado, and improved renewable energy standards in Arizona.²⁴²
 - A joint report by Common Cause New Mexico and New Mexico Ethics Watch found that the oil and gas industry spent more than \$11 million on political activities in New Mexico from 2017 to 2020.²⁴³ Contributions surpassed all other top donor sectors in the 2018 election cycle.²⁴⁴ The number of oil industry lobbyists (90) dwarfs that of the health industry lobbyists (23) and approaches the number of New Mexico’s legislators (112), who serve without salary.²⁴⁵
 - Seventy percent of all oil and gas contributions in 2020 came from out of state, as do the majority of the oil and gas companies operating in New Mexico.²⁴⁶
 - Foundation-invested companies have sixty-two contracts with lobbyists in New Mexico.²⁴⁷ In 2020, California-based Chevron “was the top source of political money for New Mexico politicians” and spent nearly \$1.8 million.”²⁴⁸
 - UNMF-held companies that have made contributions to legislative candidates and committees in New Mexico include Devon Energy, Occidental Petroleum, Concho Resources, ConocoPhillips, Exxon Mobil, Marathon Petroleum, Tesoro,

Paris-compliant plans by the close of the 2020 proxy season. *Id.* at 25. That deadline has now passed without any meaningful change of course by the industry. Raval, [Big fossil fuel groups all failing](#), *supra* note 224.

²³⁹ [Big Oil’s Real Agenda on Climate Change](#), InfluenceMap (Mar. 2019).

²⁴⁰ Niall McCarthy, [Oil and Gas Giants Spend Millions Lobbying to Block Climate Change Policies](#), Forbes (Mar. 25, 2019). BP spends approximately \$53 million, Shell \$49 million, and ExxonMobil \$29 million per year. *Id.*

²⁴¹ Lawrence Carter, [Inside Exxon’s playbook: How America’s biggest oil company continues to oppose action on climate change](#), Unearthed (June 30, 2021).

²⁴² Amy Harder, [With deep pockets, energy industry notches big midterm wins](#), Axios (Nov. 7, 2018).

²⁴³ [The New Mexico Oil and Gas Industry and Its Allies: Oceans of Oil, Oceans of Influence](#) at 1, Common Cause New Mexico and New Mexico Ethics Watch (Mar. 2020). The report states the total amount would be dramatically higher if lobbyist compensation were included; currently, New Mexico law does not require this disclosure.

²⁴⁴ *Id.* at 7.

²⁴⁵ *Id.*

²⁴⁶ [The Continuing Influence of the Oil and Gas Industry in New Mexico in 2020](#), New Mexico Ethics Watch (Feb. 2021).

²⁴⁷ See [The New Mexico Oil and Gas Industry and Its Allies: Oceans of Oil, Oceans of Influence](#), *supra* note 243, at 21-24.

²⁴⁸ [The Continuing Influence of the Oil and Gas Industry in New Mexico in 2020](#), *supra* note 246, at 3.

Enbridge, BP North America, Encana, HollyFrontier, Halliburton, WPX Energy, Western Refining, Western Refining Southwest, Apache Corp, DCP Midstream, XTO Energy, and Phillips 66.²⁴⁹

- Fossil fuel companies and trade associations have developed sophisticated, targeted, and misleading messaging designed to prolong the use of oil and gas via Facebook and social media platforms.
 - Research by InfluenceMap found 25,147 ads in 2020 from twenty-five organizations on Facebook’s U.S. platforms, which were seen over 431 million times and cost \$9.6 million.²⁵⁰ Common narratives promoted the benefits of oil and gas including affordability, the role of oil and gas in local communities and the “green/low-carbon” aspects of the fossil fuel industry.²⁵¹ New Mexico was one of the key states targeted, and the New Mexico Oil and Gas Association is ranked number fifteen among the top twenty-five advertisers.²⁵²

VII. The financial risk of fossil fuel investments

As an asset manager, the UNMF has violated its *duty of care* by failing to divest from fossil fuels despite ample evidence of the industry’s financial precarity. The increasingly untenable value thesis of fossil fuel investments is especially for investors at charitable institutions. As a public charity that “provide[s] students the values, habits of mind, knowledge, and skills that they need to be enlightened citizens” and to “provide services that enhance New Mexicans’ quality of life and promote economic development,” UNM is ostensibly committed to mitigating the worst effects of climate change.²⁵³ Such mitigation requires government regulation to reduce greenhouse gas emissions and the growth of the green technology sector — developments threaten the future of the fossil fuel industry. In other words, the UNMF’s fiduciary duties oblige it to promote the financial non-viability of the fossil fuel sector, making any continued investment in the sector unreasonable on its face.

- Fossil fuel companies face an extremely uncertain financial future due to mismanagement, the failure to prepare for a renewable energy economy, social pressures and unrest created by the unequally distributed health and economic burdens of fossil fuel products, and the pressures of COVID-19.
 - Oil and gas stocks have greatly underperformed other investments over the last ten years. While the S&P 500 Index has increased approximately 360 percent in value since 2011, the S&P Oil & Gas Exploration & Production Index has lost approximately forty-three percent of its value over the same time period,²⁵⁴ and the S&P Oil & Gas Equipment & Services Select Industry Index has lost

²⁴⁹ Based on the Foundation’s public equity holdings as of August 1, 2021 and data on political contributions from followthemoney.org (Sept. 29, 2021).

²⁵⁰ [Climate Change and Digital Advertising - The Oil & Gas Industry's Digital Advertising Strategy](#), at 13, InfluenceMap (Aug. 2021).

²⁵¹ *Id.* at 12.

²⁵² *Id.* at 30-31, 32.

²⁵³ University of New Mexico, [UNM’s Mission](#) (2021).

²⁵⁴ Data from [S&P Dow Jones Indices](#) (S&P Global, Sept. 29, 2021).

approximately eighty-four percent of its value.²⁵⁵ Even prior to the COVID-19 crisis, leading financial analyst Jim Cramer stated that fossil fuel stocks were “just done” as profitable investments, thanks to falling demand and the impact of divestment campaigns.²⁵⁶

- From the fourth quarter of 2019 to August 2020, seven of the world’s largest oil companies lost eighty-seven billion in value as a result of increased emissions regulations and collapsing demand during the COVID-19 pandemic.²⁵⁷
- In January 2021, the S&P rating agency warned leading fossil fuel companies that they were at risk of imminent credit downgrades due to economic pressures resulting from the energy transition.²⁵⁸
- In August 2020, ExxonMobil was dropped from the Dow Jones stock index, a reflection of the company’s rapidly declining business: since 2008, its market capitalization has shrunk from \$500 billion to around \$175 billion.²⁵⁹ The UNMF holds ExxonMobil in its public equity portfolio.
- In February 2021, ExxonMobil reported quarterly losses of \$20.1 billion.²⁶⁰
- Since 2010, and in the midst of this financial crisis, the world’s five oil “supermajors” — ExxonMobil, BP, Chevron, Shell, and Total SA — have spent far more on dividends and stock buybacks (\$556 billion) than they have earned from business operations (\$340 billion), indicating an unsustainable reliance on borrowing and asset sales to inflate their financial performance.²⁶¹ Four of these five companies (ExxonMobil, BP, Chevron, and Shell) are held in the UNMF’s public equity portfolio.
- The coal industry, especially in the United States, is collapsing: the share of U.S. electricity produced by coal has declined from forty-five percent in 2008 to twenty-four percent in 2020, while eight coal companies, including the largest private coal firm, declared bankruptcy in 2019.²⁶²
- As outlined in “The Financial Case for Fossil Fuel Divestment” by the Sightline Institute and the Institute for Energy Economics and Financial Analysis, investment in the fossil fuel sector is now unacceptably risky thanks to price volatility, the rise of renewable energy sources, and government climate regulations. The traditional value thesis that justified investment in the sector — based on the assumptions that demand for oil, gas, and coal will continue to grow and that companies’ extensive untapped reserves represent a sure source of future profits — are no longer tenable.²⁶³

²⁵⁵ Data from [S&P Dow Jones Indices](#) (S&P Global, Sept. 29, 2021).

²⁵⁶ Kevin Stankiewicz, [There’s no more money to be made in oil and gas stocks, Jim Cramer says](#), CNBC (Feb. 3, 2020).

²⁵⁷ Jillian Ambrose, [Seven top oil firms downgrade \\$87bn in nine months](#), The Guardian (Aug. 14, 2020).

²⁵⁸ Ben Butler, [Rating agency S&P warns 13 oil and gas companies they risk downgrades as renewables pick up steam](#), The Guardian (Jan. 27, 2021).

²⁵⁹ Avi Salzman, [Why Exxon Is Being Dropped From the Dow](#), Barron’s (Aug. 25, 2020).

²⁶⁰ [ExxonMobil reports results for fourth quarter 2020 and provides perspective on forward plans](#), ExxonMobil (Feb. 2, 2021).

²⁶¹ Clark Williams-Derry, Tom Sanzillo, & Kathy Hipple, [In Q1, Four of Five Oil Majors Paid More Cash to Investors Than They Made From Operations](#), Institute for Energy Economics and Financial Analysis (May 2020).

²⁶² Fred Pearce, [As Investors and Insurers Back Away, the Economics of Coal Turn Toxic](#), Yale Environment 360 (Mar. 10, 2020).

²⁶³ Tom Sanzillo, Kathy Hipple, & Clark Williams-Derry, [The Financial Case for Fossil Fuel Divestment](#), Sightline Institute and the Institute for Energy Economics and Financial Analysis (July 2018).

- There are various reasons for the fossil fuel industry’s transformation from a secure source of investment returns to a dangerously speculative risk sector: “The world economy is shifting toward less energy-intensive models of growth, fracking has driven down commodity and energy costs and prices, and renewable energy and electric vehicles are gaining market share. Litigation on climate change and other environmental issues is expanding and campaigns in opposition to fossil fuels have matured. They are now a material risk to the fossil fuel sector and a force for the reallocation of capital to renewable energy and electric vehicles as a source of economic growth. The risks, taken cumulatively, suggest that the investment thesis advanced by the coal, oil and gas sector that worked for decades has lost its validity.”²⁶⁴
- The report notes that “[t]he financial case for fossil fuel divestment is strong. Over the past three and five years [prior to 2018], respectively, global stock indexes without fossil fuel holdings have outperformed otherwise identical indexes that include fossil fuel companies. Fossil fuel companies once led the economy and world stock markets. They now lag . . . Fossil fuel stocks, once prime blue-chip contributors to institutional funds, are now increasingly speculative. Revenues are volatile, growth opportunities are limited, and the outlook is decidedly negative.”²⁶⁵
- Comparing fossil fuel-free funds to traditional funds, the report concludes that divesting endowments of oil, gas, and coal holdings poses no risk to future returns: “Over the past five years, the MSCI-All Country Global Index without fossil fuels has outperformed the Index that includes fossil fuels.”²⁶⁶
- The Carbon Tracker Initiative calculates the remaining amount of carbon dioxide that may be released into the atmosphere if international warming limits are to be met. As of November 2019, the world could continue to release carbon dioxide at current rates for only thirteen more years in order to have a fifty percent chance of meeting the 1.5 degree Celsius target. Under this limited “carbon budget,” fossil fuel majors would need to reduce emissions from oil and gas production forty percent below 2019 levels by 2040. Such reductions would render the majority of oil and gas reserves unexploitable and unprofitable.²⁶⁷
- According to a 2019 study by the Mercer consulting firm, investment portfolios will be greatly affected by future global warming. If warming is kept below two degrees Celsius — the target set by the 2015 Paris Agreement, one which will still result in widespread climate-related harms — the global economy will suffer significantly while also transitioning to a renewable energy base. In a scenario involving two degrees of warming, according to the study, portfolio assets in the coal industry will suffer cumulative impacts of 58.9 percentage points by 2030 and 100 percentage points by 2050, while assets in oil and gas will suffer cumulative impacts of 42.1 and 95.1 percentage points, respectively.²⁶⁸ Other studies have concluded that major energy

²⁶⁴ *Id.* at 4.

²⁶⁵ *Id.* at 1.

²⁶⁶ *Id.* at 38.

²⁶⁷ Carbon Tracker Initiative, [Balancing the Budget: Why deflating the carbon bubble requires oil & gas companies to shrink](#), (Nov. 1, 2019).

²⁶⁸ [Investing in a Time of Climate Change: The Sequel 2019](#) at 34, Mercer LLC (2019).

companies who continue to rely on fossil fuels would lose between thirty and sixty percent of their value.²⁶⁹

- In its most recent financial stability report, the Federal Reserve reported that “climate change, which increases the likelihood of dislocations and disruptions in the economy, is likely to increase financial shocks and financial system vulnerabilities that could further amplify these shocks.”²⁷⁰
- A wave of litigation against companies responsible for climate change damages poses an additional risk to investment in the fossil fuel sector. A report from the law firm Clyde & Co LLP concludes that “[o]il majors are currently facing threatened or pending litigation on a number of fronts and across a number of jurisdictions. Their liability insurers and reinsurers will undoubtedly be watching these cases with keen interest . . . Companies in a number of sectors may find themselves exposed not just to damages claims for climate change, but also the cost of defending litigation, the reputational harm of being associated with such litigation and the consequential impacts on operations and value.”²⁷¹
- In a sign of the growing consensus that fund managers have a duty to assess climate risks in their portfolios, the multibillion-dollar Australian Retail Employees Superannuation Trust (REST) recently settled a beneficiary lawsuit that faulted the fund for failing to disclose how it would manage the risks posed by climate change and the plummeting value of fossil fuel stocks. REST acknowledged that “climate change is a material, direct and current financial risk” and committed to manage its investments in a way that would support net-zero greenhouse gas emissions by 2050 and the Paris Agreement goal of 1.5 degrees Celsius warming.²⁷²
- In an August 2020 open letter, over 100 leading economists, including Nobel Prize laureate Joseph Stiglitz, former Secretary of Labor Robert Reich, and Harvard faculty members Dani Rodrik, Richard Parker, Stephen Marglin, and John Womack, described the continued existence of the fossil fuel economy as “fundamentally incompatible” with long-term social and economic well-being and cited divestment as an essential tactic for bringing about systemic change: “When our largest banks, most influential investors and most prestigious universities place bets on the success of the fossil fuel industry, they provide it with the economic and social capital necessary to maintain the dangerous status quo. Instead, these institutions should divest from fossil fuel companies and end financing of their continued operations while reinvesting those resources in a just and stable future.”²⁷³
- In New Mexico, irresponsible behavior by fossil fuel companies has burdened taxpayers.
 - Fossil fuel companies are required to plug wells, remediate well sites, and post bonds to pay for the clean-up of wells in case of abandonment,²⁷⁴ but there are currently over 600 orphan wells, leaving costs of over \$8 billion mostly to

²⁶⁹ [The Carbon Bubble: The financial risk of fossil fuels and need for divestment](#) at 7, European Green Party (2020).

²⁷⁰ [Investing in a Time of Climate Change: The Sequel 2019](#) at 34, Mercer LLC (2019).

²⁷¹ [Climate change: Liability risks](#) at 37, Clyde & Co LLP (Mar. 2019).

²⁷² Michael Slezak, [Rest super fund commits to net-zero emission investments after Brisbane man sues](#), ABC News (Nov. 2, 2020).

²⁷³ Jeffrey Sachs, Joseph Stiglitz, *et al.*, [Letter from economists: to rebuild our world, we must end the carbon economy](#), The Guardian (Aug. 4, 2020).

²⁷⁴ Plugging and Abandonment of Wells, Oil Conservation Commission, 19.15.25 NMAC (Dec. 1, 2008).

taxpayers.²⁷⁵ Seventy percent of New Mexico’s 57,000 active wells are considered marginal and at risk of abandonment in an economic downturn.²⁷⁶ Compounding the problem is the industry practice of selling off low-production wells to smaller, less financially resilient operators more likely to go bankrupt.²⁷⁷ When this occurs, the wells are often orphaned and taxpayers assume responsibility for their reclamation.”²⁷⁸

- Taxpayers bailed out some UNMF-held fossil fuel companies operating in New Mexico through the CARES and Payroll Protection Acts, but these companies nonetheless eliminated jobs that the acts were designed to protect.²⁷⁹ For example, Marathon Petroleum accepted \$2.1 billion but laid off 1,920 workers, including 220 at its Gallup refinery, which it shut down permanently.²⁸⁰ Marathon effectively received \$1.1 million for every job it eliminated.²⁸¹

VIII. Industry fraud and the fiduciary duty to avoid fraudulent investments

Despite well-known facts regarding the fossil fuel industry’s alleged efforts to defraud investors, the UNMF has persisted in buying industry securities, violating its *duty of care*.

- Fossil fuel companies have allegedly long engaged in a fraudulent attempt to hide the financial risks associated with emissions regulations and future fossil fuel extraction. This alleged fraud has been a matter of public record since at least 2015²⁸² and a matter of common knowledge for investors since at least 2019, when the Massachusetts Attorney General sued ExxonMobil for misleading consumers and investors.
 - In 2019, the Massachusetts Attorney General sued ExxonMobil, one of the world’s leading oil companies, for three alleged violations of the Massachusetts Consumer Protection Act.
 - The state’s Second Amended Complaint alleges that “[f]or many years, Exxon Mobil Corporation . . . the world’s largest publicly traded oil and gas company, systematically and intentionally has misled New Mexico

²⁷⁵ Adrienne Sandoval, [OCD Bonding Requirements and Orphan Wells](#) at 4, New Mexico Oil Conservation Division of the Energy, Minerals and Natural Resources Department (June 15, 2021); *see also* [An Analysis of the Adequacy of Financial Assurance Requirements for Oil and Gas Infrastructure Located on State Trust and Private Lands in New Mexico](#), The Center For Applied Research, Inc. (Apr. 30, 2021).

²⁷⁶ Adrienne Sandoval, [Reclaiming Orphaned Oil and Gas Wells—Creating Jobs and Protecting the Environment by Cleaning Up and Plugging Wells](#), Subcommittee on Energy and Mineral Resources, House Committee on Natural Resources (June 1, 2020).

²⁷⁷ Kelly O’Donnell, [The Economic Impact of Oil Field Remediation in New Mexico](#) at 2, O’Donnell Economics and Strategy (June 2021).

²⁷⁸ *Id.*

²⁷⁹ [Fossil Fuel Firms Slashed Nearly 60,000 Jobs In 2020 While Pocketing \\$8.2 Billion Tax Bailout](#), Bailout Watch (Apr. 2, 2021). These companies include Phillips66, Valero, Occidental, Devon Energy, EQT, Marathon Petroleum, Targa, SM Energy and Apache.

²⁸⁰ Chris Keller, [More than 200 will lose jobs in Gallup as oil giant idles refinery](#), Albuquerque Business First (Aug. 6, 2020).

²⁸¹ [Fossil Fuel Firms Slashed Nearly 60,000 Jobs](#), *supra* note 279.

²⁸² Neela Banerjee, Lisa Song, & David Hasemyer, [Exxon’s Own Research Confirmed Fossil Fuels’ Role in Global Warming Decades Ago](#), Inside Climate News (Sept. 16, 2015).

investors and consumers about climate change. In order to increase its short-term profits, stock price, and access to capital, ExxonMobil has been dishonest with investors about the material climate-driven risks to its business and with consumers about how its fossil fuel products cause climate change—all in violation of Massachusetts law.”²⁸³

- According to the Complaint, ExxonMobil scientists in the 1970s accurately predicted the rate of global warming that would be caused by fossil fuel use. The company was well aware of how its business activity would damage the planet; for example, a company scientist told management in 1981 that climate change will “produce effects which will indeed be catastrophic” and that it would be necessary to sharply reduce fossil fuel use.²⁸⁴
- Despite this knowledge, ExxonMobil — like many of its peers in the industry — persisted in a “highly misleading” campaign to spread doubt about climate science and to prevent measures that would decrease the use of fossil fuels. As late as 2015, ExxonMobil’s CEO was publicly disputing the scientific consensus that rising atmospheric carbon dioxide levels produce catastrophic warming.²⁸⁵
- The Attorney General concluded that ExxonMobil’s value will fall precipitously in coming years, thanks in large part to an expected transition to renewable energy that will make the companies’ oil and gas reserves valueless: “When those reserves cease to have future value, other things being equal, ExxonMobil securities are likely to decline in value as well, perhaps dramatically, much as the market value of coal companies has collapsed in recent years as the deployment of cleaner, more efficient fuel sources has reduced expected future coal demand.”²⁸⁶
- According to the Complaint, “[t]he systemic risk climate change poses to the world’s financial markets is comparable to, and could well exceed, the impact of the 2008 global financial crisis . . . The risks of climate change and regulatory responses to it pose an existential threat to [the company’s] business model and therefore to investments in ExxonMobil securities, including by New Mexico investors.”²⁸⁷
- The Attorney General explicitly stated that investment in companies like ExxonMobil puts investors like the UNMF in danger of serious financial damage: “ExxonMobil’s omissions and misrepresentations put its New Mexico investors at increased risk of losses in the future, as greater recognition of the physical and transition risks of climate change to ExxonMobil, other fossil fuel companies, and the global economy increasingly diminishes the market valuation of ExxonMobil securities, potentially under sudden, chaotic, and disorderly circumstances.”²⁸⁸

²⁸³ Second Amended Complaint, New Mexico v. ExxonMobil, No. 1984-CV-03333-BLS1 (Mass. Sup. Ct. June 5, 2020) at 1.

²⁸⁴ *Id.* at 5.

²⁸⁵ *Id.* at 9, 50-51.

²⁸⁶ *Id.* at 8.

²⁸⁷ *Id.* at 65, 80-81.

²⁸⁸ *Id.* at 138.

- A former senior accounting analyst for ExxonMobil has alleged in a whistleblower complaint to the Securities and Exchange Commission that the company has repeatedly overstated the value of its U.S. oil and gas assets — which will likely prove unprofitable due to the collapse of the fracking boom — fraudulently inflating the company’ worth to investors by as much as \$56 billion.²⁸⁹
- An ongoing lawsuit against accounting firm KPMG alleges that the firm assisted Miller Energy in fraudulently inflating the value of its fossil fuel holdings, in a pattern of “oil reserves fraud” common across the industry.²⁹⁰
- The State of New Mexico has filed legal briefs supporting the right of states to bring various state law claims against fossil fuel producers for climate change harms.²⁹¹
- Despite the revelation of this alleged fraudulent behavior, and in the face of existential threats to their business models, oil companies continue to refuse to provide investors with any assurances that they are preparing for the effects of climate change. ExxonMobil and Chevron, for example, have blocked shareholder proposals that ask the companies to describe how they will adjust their operations to satisfy the warming targets established under the Paris Agreement.²⁹²

IX. The financial prudence of fossil fuel divestment

Despite the frequent claim that removing an asset class like fossil fuels from an endowment would violate the fiduciary duty to maintain a diverse portfolio, fossil fuel divestment poses no risk to a portfolio’s diversity and flexibility, nor does it impact returns. The UNMF has violated its *duty of care* and its *duty of loyalty* by failing to embrace a divestment strategy that would both improve the endowment’s performance and cure the fiduciary violations created by fossil fuel investment.

- A 2018 London School of Economics analysis led by Jeremy Grantham, one of the world’s leading asset managers, concluded that removing any one of ten major asset classes such as technology or utilities from a portfolio produced no discernible impact on overall long-term returns. The analysis states that the purported financial peril of fossil fuel divestment was “mythical,” and that “[i]nvestors with long-term horizons should avoid oil . . . on investment grounds.”²⁹³
- Divestment from fossil fuels does not threaten the profitability of invested funds and thus does not violate a fiduciary’s duty to ensure the prudent management of an endowment. In recent years, investment portfolios lacking fossil fuel holdings have matched or outperformed funds still containing the risky investments.

²⁸⁹ Nick Cunningham, [Exclusive: Whistleblower Accuses Exxon of ‘Fraudulent’ Behavior for Overvaluing Fracking Assets For Years](#), Desmog Blog (Feb. 2, 2021).

²⁹⁰ Justin Mikulka, [How Third-Party Auditors Make Oil Industry Fraud Possible](#), DeSmog Blog (June 3, 2021).

²⁹¹ These briefs were filed jointly with other states. See, e.g., [Amicus Curiae Br. States of Washington, California, et. al.](#), Minnesota v. Am. Petrol. Inst., No. 21-1752 (8th Cir. 2021); [Supp. Br. Massachusetts, et. al.](#), Rhode Island v. Shell Oil Prod. Co., 979 F.3d 50 (1st Cir. 2020), No. 19-1818, [cert. granted, judgment vacated](#), 210 L. Ed. 2d 830 (May 24, 2021).

²⁹² Dana Drugman, [Exxon, Chevron, Chase Reject Shareholder Requests to Address Climate Risk](#), The Climate Docket (Jan. 29, 2020).

²⁹³ Jeremy Grantham, [The mythical peril of divesting from fossil fuels](#), London School of Economics (June 13, 2018).

- The most comprehensive study to date of the endowment performance at universities that have divested from fossil fuels concludes that divestment does not have a negative effect on investment returns.²⁹⁴ Other research indicates that fossil fuel divestment does not significantly limit portfolio diversification opportunities, allowing investors to satisfy their fiduciary duty to maintain balanced holdings even as they avoid the risks posed by stranded assets and the energy transition.²⁹⁵
- A 2019 study of university endowments that adopt “socially responsible investment” [SRI] policies concludes that such policies benefit the universities. Surveying SRI endowment returns from 2010 to 2019, the study reports that “donations are 33.3% per year higher among universities that incorporate SRI policies into their endowments” and that “SRI policies predict greater university donations, higher student enrollment, and more extensive risk management practices by the endowment fund.”²⁹⁶
- In 2020, the financial research agency Morningstar reported that European sustainable investment funds — defined as “funds that use environmental, social, and governance criteria as a key part of their security selection and portfolio-construction process, and/or indicate that they pursue a sustainability-related theme, and/or seek a measurable positive impact alongside financial return” — had outperformed traditional funds over the past ten years, generally posting higher returns and surviving longer than traditional funds.
- A 2018 analysis concluded that the New York State Common Retirement Fund would have earned an additional \$22.2 billion (\$137 billion versus \$114.8 billion) from 2008 to 2018 had it divested from fossil fuels.²⁹⁷

X. Divestment by peer institutions

Hundreds of large institutional investors have opted in recent years to divest from fossil fuel producers, including many universities situated similarly to the University of New Mexico. Their reasoning applies to the University of New Mexico’s circumstances as well as their own. The UNMF has failed to *invest with the care that an ordinarily prudent person in a like position would exercise under similar circumstances*.

- Institutional divestment from the fossil fuel industry has become increasingly common. Many institutions have pointed to the moral and financial imperative of abandoning

²⁹⁴ Christopher Ryan & Christopher Mariscano, [Examining the Impact of Divestment from Fossil Fuels on University Endowments](#), 17 NYU J. L. and Business, Roger Williams Univ. L. Studies Paper No. 195 (June 23, 2020).

²⁹⁵ Auke Plantinga and Bert Scholtens, [The financial impact of fossil fuel divestment](#), 21 Climate Policy 1 (2020).

²⁹⁶ George O. Aragon, Yuxiang Jiang, Juha Joenväärä, and Cristian Ioan Tiu, [Socially Responsible Investments: Costs and Benefits for University Endowment Funds](#) at 5, (July 21, 2020).

²⁹⁷ Toby A.A. Heaps, [Divestment would have made NY pension fund \\$22B richer](#), Corporate Knights (Oct. 4, 2018).

holdings in oil, gas, and coal, and there is broad consensus that fossil fuel divestment is both necessary and effective as a means of mitigating climate disaster.²⁹⁸

- Institutional investment in fossil fuel firms “provid[es] [them] with the capital to continue oil and gas production, to persuade members of Congress to provide industry-specific tax breaks and other favors, and to thwart carbon taxes and new public-transportation projects and other policies — actions that ultimately delay the transition from the greenhouse gas-emitting fuels.”²⁹⁹
- In its lawsuit against ExxonMobil, the Massachusetts Attorney General concluded that institutional divestment is effective in reducing the fossil fuel industry’s harmful effects on the climate: “Insofar as they damage companies’ reputations for their social responsibility and environmental stewardship, and thus their societal ‘license to operate,’ divestment efforts pose an additional climate-related risk to oil and gas companies. In 2018, an oil major that competes with ExxonMobil acknowledged that divestment campaigns and related efforts pose a material risk to its business and the price of its securities.”³⁰⁰
 - The Attorney General was referencing an investor disclosure by Shell, in which the company stated that the divestment movement “could have a material adverse effect on the price of our securities and our ability to access equity capital markets . . . other financial institutions also appear to be considering limiting their exposure to certain fossil fuel projects. Accordingly, our ability to use financing for future projects may be adversely impacted.”³⁰¹
 - Other fossil fuel companies have likewise acknowledged the effects of investors’ decisions to pull their funds: Prior to its bankruptcy declaration, for example, Peabody Energy stated in SEC filings that “[t]here have also been efforts in recent years affecting the investment community, including investment advisors, sovereign wealth funds, public pension funds, universities and other groups, promoting the divestment of fossil fuel equities and also pressuring lenders to limit funding to companies engaged in the extraction of fossil fuel reserves. The impact of such efforts may adversely affect the demand for and price of securities issued by us, and impact our access to the capital and financial markets.”³⁰²

²⁹⁸ See, e.g., [How falling demand for oil is set to transform international relations](#), World Economic Forum (Aug. 20, 2019) (citing the “global campaign in support of divestment from fossil fuels” as one of the key factors in the ongoing energy transition worldwide); Gunther Thallinger, [The zero that every investment portfolio needs](#), World Economic Forum (Jan. 14, 2021) (“To address climate change effectively, investors must steer their entire portfolios towards climate neutrality. . . . [I]t could become necessary to reduce assets with a non-satisfactory sustainability approach. In the extreme case of non-existence of such approaches, divestment is the ultima ratio.”).

²⁹⁹ Prem Thakkar, [Reading the Fine Print of University Fossil Fuel Divestment Pledges](#), The American Prospect (Mar. 1, 2021).

³⁰⁰ Second Amended Complaint, [Massachusetts v. ExxonMobil](#), *supra* note 283, at 108-109.

³⁰¹ [Annual Report and Form 20-F 2017 — Strategic Report](#) at 13, Royal Dutch Shell PLC (2017).

³⁰² Peabody Energy Corporation, [Form 10-K: Annual Report](#) at 30, Securities and Exchange Commission (2014).

- In addition to “hasten[ing] the [fossil fuel] industry’s decline,” divestment commitments from large institutions create pressure on governments to take action and make political space for the shift away from fossil fuels.”³⁰³
- Other universities have pledged to abandon their fossil fuel assets, citing the financial and ethical obligation to divest. Such institutions have often chosen divestment *in addition* to a suite of other policies, including producing climate- and sustainability-related research, reducing on-campus environmental impact through emissions reductions and other measures, and engaging in shareholder advocacy with companies that have demonstrated their real commitment to the goals of the Paris Agreement and whose core business model is not at odds with those goals.
- Of UNM’s 16 U.S. UC3 partner signatory universities,³⁰⁴ six have committed to fossil fuel divestment,³⁰⁵ and another (the University of Utah) is currently considering divestment after its Academic Senate voted in favor of such a move.³⁰⁶
 - The University of California system announced divestment of its over eighty-three billion dollar endowment and pension fund from fossil fuels in September 2019.³⁰⁷
 - In an op-ed in the Los Angeles Times, fund managers cited their fiduciary duty to the long-term financial wellbeing of the institution, writing that “[t]he reason we sold some \$150 million in fossil fuel assets from our endowment was the reason we sell other assets: They posed a long-term risk to generating strong returns for UC’s diversified portfolios.”³⁰⁸
 - The fund managers also pledged to take the opportunity to reinvest in climate change solutions, writing that “[w]e have been looking years, decades and centuries ahead as we place our bets that clean energy will fuel the world’s future. That means we believe there is money to be made.”³⁰⁹
 - In March 2021, the University of Michigan Board of Regents voted to divest from fossil fuels.³¹⁰ University President Mark Schlissel explained that the university’s divestment “is informed by the growing risk of investments in fossil fuels during the essential transition to a lower carbon economy.”³¹¹

³⁰³ Emma Howard, [A beginner’s guide to fossil fuel divestment](#), The Guardian (June 23, 2015) (quoting Jamie Henn, of 350.org); *see also* Naomi Oreskes, [Harvard and Other Schools Make a Choice on Fossil Fuels](#), The New York Times (Oct. 2, 2021) (“Where investors put their money reflects their expectations of how the future will unfold, and those expectations, when acted upon, shape our future.”).

³⁰⁴ *See* [University Climate Change Coalition Members](#), Second Nature (last visited Oct. 25, 2021).

³⁰⁵ UC3 public universities that have divested include the University of California system, Rutgers University, Boston University, the University of Maryland, and the University of British Columbia (Canada, partial divestment). [Full List of Divestment Commitments](#), GoFossilFree.org (last visited September 29, 2021). Additionally, the University of Michigan announced that it will divest in March 2021. David Jesse, [U-M disinvests in fossil fuel as part of goal to have net zero carbon investment portfolio](#), Detroit Free Press (Mar. 25, 2021).

³⁰⁶ [Senate Committee for Divestment & Reinvestment Investigation](#), The University of Utah (June 8, 2021).

³⁰⁷ Jagdeep Singh Baccher & Richard Sherman, [Opinion: UC investments are going fossil free. But not exactly for the reasons you may think](#), Los Angeles Times (Sept. 17, 2019).

³⁰⁸ *Id.*

³⁰⁹ *Id.*

³¹⁰ Calder Lewis, Christian Juliano, & Jared Dougall, [Regents Disinvest from Fossil Fuels, Commit to Net-Zero Endowment by 2050 and Invest \\$140 Million into Renewable Energy](#), The Michigan Daily (Mar. 25, 2021).

³¹¹ *Id.*

- At Rutgers, the State University of New Jersey, the Board of Governors and Board of Trustees approved a plan in March 2021 to stop all future fossil fuel investments and withdraw from its \$1.6 billion endowment’s index funds and private investments in the industry.³¹² “This decision aligns with Rutgers’ mission to advance public health and social justice,” said President Jonathan Holloway in a statement. “While the university has taken steps recently to limit investments in this area, approving a policy of divestment from fossil fuels is a significant expression of the values of our institution and our broader community.”³¹³
- Boston University’s President Brown announced the school’s divestment from fossil fuels in September 2021, saying that “[divestment] is putting us on the right side of history.”³¹⁴
- Many other universities have also committed to fossil fuel divestment. These include Brown University,³¹⁵ Cornell University,³¹⁶ Harvard University,³¹⁷ Georgetown University,³¹⁸ Oxford University,³¹⁹ Cambridge University,³²⁰ the University of Massachusetts system,³²¹ and others.
- Aside from universities, many other large-scale charitable funds with similar fiduciary duties have divested. Pension funds that have divested from fossil fuels include the California Public Employees’ Retirement System (coal), the California State Teachers’ Retirement System (coal), the country of Ireland, the New York City Employees Retirement System, the New York State Common Retirement Fund, the Teachers Retirement System of the City of New York, and the City of Providence, Rhode Island (partial).³²²
- Other major funds that have divested include the eight-billion-dollar MacArthur Foundation,³²³ the five-billion-dollar Rockefeller Foundation,³²⁴ Norway’s \$1.1 trillion sovereign wealth fund (oil and gas exploration and production)³²⁵ and the ninety-billion Storebrand hedge fund (ExxonMobil, Chevron, and other environmental bad actors).³²⁶

³¹² Joe Hernandez, [Rutgers to divest its \\$1.6 billion endowment from fossil fuels](#), WHYY PBS (Mar. 9, 2021).

³¹³ *Id.*

³¹⁴ Jessica Colarossi, [Boston University to Divest from Fossil Fuel Industry](#), BU Today (Sept. 23, 2021).

³¹⁵ Christina Paxson, [Letter from President Paxson: Brown’s actions on climate change](#), Brown University (Mar. 4, 2020).

³¹⁶ Kathryn Stamm, [Cornell to Effectively Divest from Fossil Fuels, Trustees Vote](#), Cornell Daily Sun (May 22, 2020).

³¹⁷ Jasper G. Goodman & Kelsey J. Griffin, [Harvard Will Move to Divest its Endowment from Fossil Fuels](#), The Harvard Crimson (Sept. 10, 2021).

³¹⁸ [Fossil Fuels Divestment Continues Georgetown’s Commitment to Sustainability](#), Georgetown University (Feb. 6, 2020).

³¹⁹ [University of Oxford cuts ties to fossil fuels industry](#), BBC News (Apr. 28, 2020).

³²⁰ Matthew Taylor, [Cambridge University to divest from fossil fuels by 2030](#), The Guardian (Oct. 1 2020).

³²¹ [UMass Becomes First Major Public University to Divest from Direct Fossil Fuel Holdings](#), University of Massachusetts (May 25, 2016).

³²² [1000+ Divestment Commitments](#), GoFossilFree.org (updated Dec. 9, 2020).

³²³ MacArthur Foundation, [Aligning Our Investments With Our Mission, Values, and Programs](#) (Sept. 22, 2021).

³²⁴ *Id.*

³²⁵ Terje Solsvik, [Norway sovereign wealth fund to divest oil explorers, keep refiners](#), Reuters (Oct. 1, 2019).

³²⁶ Jillian Ambrose, [Major investment firm dumps Exxon, Chevron and Rio Tinto stock](#), The Guardian (Aug. 24, 2020).

XI. The UNMF's ties to the fossil fuel industry and conflicts of interest

Members of the UNMF Board of Trustees and the UNM Regents maintain significant financial ties to the fossil fuel industry. These apparent conflicts of interest violate the *duty of loyalty* owed by UNMF and the Board of Regents because fossil fuel companies' business models are in fundamental tension with the University's mission and UNMF's espoused values.

- Several members of the current UNMF Board of Trustees currently maintain or have recently maintained ties to the fossil fuel industry.
 - Current Board of Trustees member and immediate Past-Chair Randy Velarde is the Founder and President of The Plaza Group, a provider of marketing and related services for customers and suppliers in the petrochemical, refining and plastics industries. The Plaza Group markets refining, petrochemical, and polymer products for companies such as Delek, Husky Energy (part of Cenovus Energy Inc.), Marathon, Mitsui, Shell Valero and CEPESA.³²⁷ He was appointed by the former Secretary of Energy, Bill Richardson, to serve on the National Petroleum Council. In 2016 he joined the board of the Consumer Energy Alliance (CEA) a fossil fuel and related industry front group funded by corporations such as BP, ExxonMobil, Shell, and Chevron.³²⁸
 - Tommy Roberts is a past President of the Board of Directors of the Independent Petroleum Producers of New Mexico (IPAPM) and remains an active member of IPANM.³²⁹ According to its website, IPANM “advances and preserves the interests of independent oil and gas producers while educating the public to the importance of oil and gas to the state and all our lives... IPANM continues to grow and provide the services that protect, defend, and promote the industry that is the very foundation of our way of life.”³³⁰
 - Chair Ryan Mummert is a Senior Partner with the Horizon Group at Morgan Stanley. The Horizon Group has a long history of working regionally in the oil and gas sector.³³¹
 - Brad Preber is the CEO of Grant Thornton LLP, which has a large energy division that serves oil and gas companies.³³²
- A member of the UNM Board of Regents also has ties to the fossil fuel industry. Regent William H. Payne was the state co-chair for the American Legislative Exchange Council (ALEC) and a member of ALEC's Energy, Environment and Agriculture Task Force.³³³ ALEC is a corporate-funded organization that writes so-called model bills for state legislators, which often directly benefit these corporations.³³⁴ Payne has received

³²⁷ [Supplier Partners](#), The Plaza Group (last visited Oct. 25, 2021).

³²⁸ See [Consumer Energy Alliance](#), Energy and Policy Institute (last visited Oct. 25, 2021).

³²⁹ [Board of Directors](#), Independent Petroleum Association of New Mexico (last visited Oct. 25, 2021).

³³⁰ [Homepage](#), Independent Petroleum Association of New Mexico (last visited Oct. 6, 2021).

³³¹ [Trustee - Ryan Mummert](#), The University of New Mexico Foundation (last visited Oct. 25, 2021).

³³² Loretta Cross & John Baumgarner, [Building a durable oil and gas company](#), GrantThornton (May 17, 2021).

³³³ Pat Davis, [Three New Mexico Legislators Outed as Alec Members](#), New Mexico Mercury (Aug. 14, 2013); [New Mexico ALEC Politicians](#), The Center for Media and Democracy (last visited Oct. 25, 2021).

³³⁴ [ALEC Exposed](#), The Center for Media and Democracy (last visited Aug. 30, 2021).

campaign donations from oil and gas companies operating in New Mexico, including companies in which the UNMF invests.³³⁵

XII. The UNMF's refusal to consider divestment from fossil fuels

Members of the UNM community and concerned New Mexico citizens have regularly argued that investment in fossil fuels is inconsistent with the university's values and with its mission as a public charity, a research center, and an institute of higher education. However, despite strong support for fossil fuel divestment among students and other community stakeholders, the UNMF has refused to engage meaningfully with the question of fossil fuel divestment. By ignoring repeated efforts by UNM students, faculty, and staff to align the university's investment practices with its charitable mission, the UNMF has failed to act in *good faith* or with *due care*.

- Throughout 2013 and 2014, a group composed of UNM students and members of 350 New Mexico repeatedly asked university officials to divest from fossil fuels.³³⁶
- Letters calling for fossil fuel divestment appeared in the UNM Newspaper, the *Daily Lobo*, in 2013 and 2014.³³⁷
- A Go Fossil Free Campaign petition begun during President Frank's tenure (2012-2017) has garnered 4,079 signatures.³³⁸ In April 2015, UNM faculty member Tomás Radcliffe wrote that "the fact that UNM's fossil-free petition has more signatures of support than any other fossil-fuel divestment campaign in the world makes clear our campus community's commitment to divestment."³³⁹
- On May 1, 2015, while accepting the award for becoming UNM's Presidential Teaching Fellow, Associate Professor Tema Milstein urged the UNM Administration to divest from fossil fuels.³⁴⁰
- On May 5, 2015, a coalition composed of UNM students, 350 New Mexico members, and New Mexico Senator Jerry Ortiz y Pino urged the UNM Regents to divest from fossil fuels and presented the Regents a petition for divestment. Senator Ortiz y Pino told the Regents that divestment "would not in any way hurt the university financially" and would be "a clear statement that this research university ... recognizes the hard scientific facts," concluding that "it's time to make that kind of statement."³⁴¹
- In 2015, fossil fuel divestment was rated the second most important issue among UNM students.³⁴²

³³⁵ [William H. Payne Top Donors](#), Followthemoney.org, (last visited Aug. 30, 2021).

³³⁶ Benjamin Covey, [UNM investments in fossil fuel companies criticized](#), Daily Lobo (Nov. 12, 2013); Marielle Dent, [Frank urged to divest from fuel companies](#), Daily Lobo (Oct. 1, 2014).

³³⁷ Kenneth Bergeron, [Letter: UNM should rethink investments in big oil](#), Daily Lobo (Mar. 9, 2013); Tomás Radcliffe, [Letter: Ease climate change by starving fuel companies](#), Daily Lobo (Apr. 7, 2014).

³³⁸ [University of New Mexico: Go Fossil Free Campaign](#), Fossil Fuel Divestment: Colleges & Universities (last visited Oct. 25, 2021).

³³⁹ Tomas Radcliffe, [Letter: Divestment in fossil fuels needs Daily Lobo's support](#), Daily Lobo (Apr. 17, 2015).

³⁴⁰ Arianna Sena, [Professor Calls For UNM To Divest From Fossil Fuels](#), KUNM (May 1, 2015).

³⁴¹ Mike Bush, [UNM urged to divest fossil fuel investments](#), Albuquerque Journal (Apr. 15, 2015).

³⁴² Matthew Reisen, [Being a Lobo: Top five issues to concern students](#), Daily Lobo (July 20, 2015).

- In 2015, the Foundation instituted a policy prohibiting environmental, social, and governance (ESG) investing.³⁴³
- On December 6, 2019, student groups UNM Leaders for Environmental Action and Foresight (LEAF) and Fight For Our Lives held a march and delivered a letter to UNM President Stokes. The letter asked President Stokes to declare a climate emergency, divest from fossil fuels, and reach carbon neutrality and zero waste by 2030. President Stokes did not engage with students.³⁴⁴
- LEAF campaigners attempted to arrange a meeting with President Stokes in January 2020. Campaigners were not granted a meeting for four months.
- In February 2020, LEAF members met with Mary Clark, Office of Sustainability Manager, and urged the creation of an effective climate task force at UNM.
- In spring 2020, LEAF members sent emails attempting to engage members of the administration in discussions about divestment. In response to one such email, Regent Begay claimed that it was “not the right timing for an energy discussion.”
- On May 18, 2020, UNM physicians and nursing staff sent a letter to President Stokes urging her to divest the endowment from fossil fuels.³⁴⁵
- On May 19, 2020, the UNM Staff Council unanimously passed a resolution calling on UNM leadership to take immediate action on climate change, including investigating how to divest the endowment from fossil fuels.³⁴⁶ The UNM Staff Council President presented the resolution to the UNM Board of Regents.
- In May 2020, LEAF leaders and Professor Bruce Milne met with President Stokes about divestment and other climate issues. President Stokes expressed steadfast opposition to divestment, stating UNM could not afford to divest.
- On November 13, 2020, a UNM staff member, a LEAF student member, and a physician from the UNM Coalition on Climate requested to present on divestment to the Finance and Facilities Committee of the Board of Regents meeting on December 1, 2020. The group sought to present to the entire Board of Regents in December.
 - The Vice President for Finance and Facilities asked the group to “tone down” their presentation. Though the group altered their presentation, their request to present their altered version was also denied.
 - The group presented to the President’s Senior Leadership Team on December 16, 2020, but were not permitted to present to the Board of Regents or its Finance and Facilities Committee.
 - The President’s Senior Leadership Team failed to act on the presentation. The administration also failed to schedule follow-up discussions despite stating the intention to do so.
- At most of the UNM Board of Regents meetings in 2020 and 2021, members of the UNM community and the UNM Coalition on Climate (including students, staff, and physicians) have used the public comment time to ask the UNM Board of Regents to divest the endowment from fossil fuels.

³⁴³ The UNM Foundation Board of Trustees, Letter to the University of New Mexico Board of Regents and President Robert G. Frank (June 1, 2015) (on file with UNM LEAF).

³⁴⁴ Amanda Britt & Liz Pritchard, [Climate strike demands UNM call state of climate emergency](#), Daily Lobo (Dec. 7, 2019).

³⁴⁵ Angelo Tomedi, *et. al.*, UNMH Faculty Letter to President Stokes (May 12, 2020) (on file with UNM LEAF).

³⁴⁶ Stefi Weisburd, *et. al.*, [UNM Staff Council Resolution 2020 #2: Addressing Climate Change at UNM](#), UNM Staff Council (May 19, 2020).

- At the April meeting a LEAF student played a recording of United States Senator Martin Heinrich asserting that leadership at New Mexico universities are responsible for acting on climate change on all fronts.³⁴⁷
- At the May 11, 2021 meeting, after the presentation of the Faculty Senate divestment resolution, Regent Begay stated that any movement on “philanthropy” would be “a hard lift.”
- Throughout the 2020-2021 academic year, members of UNM LEAF and the Coalition repeatedly reached out to Regents and Board of Trustee members via email.
 - Many of these emails did not receive replies, or received replies that were not responsive to their contents.
 - Similarly, emails to the President’s Chief of Staff and discussions with the Vice President for Finance and Facilities did not result in any action on divestment or any meaningful conversations with investment decision makers.
- In September 2020, the UNM Faculty Senate passed a resolution calling for divestment by 2022.³⁴⁸
- On October 28, 2020, the Associated Students of the University of New Mexico passed a resolution encouraging UNM to divest from fossil fuels.³⁴⁹
- On February 22, 2021, LEAF members published an op-ed calling for divestment in the Daily Lobo.³⁵⁰
- On March 30, 2021 LEAF met with Terry Babbitt, Chief of Staff of the Office of the President.
 - Mr. Babbitt explained that LEAF would not be permitted to engage with the Regents, but should work with the Office of the President instead, despite the fact that the Office of the President does not hold power over investment decisions. He stated that the administration does not view fossil fuel divestment as an appropriate response to the climate emergency.
 - Mr. Babbitt has not yet provided information requested by LEAF about UNM’s current investments.
- On April 22, 2021, LEAF organized a march to the UNM Presidents’ Office to ask UNM to act on climate change, including divesting from fossil fuels.³⁵¹
- On April 28, 2021, a letter to the editor from LEAF members calling for fossil fuel divestment appeared in the Daily Lobo.³⁵²
- In 2021, the UNM Faculty Senate passed a resolution calling for divestment.³⁵³ Faculty Senate President Finnie Coleman presented the resolution to the UNM Board of Regents.³⁵⁴
- In response to the Faculty Senate divestment resolution, the Albuquerque Journal, which is owned by UNMF Board of Trustees member William Lang, published a highly critical

³⁴⁷ [Board of Regents April 13, 2021 Meeting](#), UNM Board of Regents (last visited Oct. 25, 2021).

³⁴⁸ University of New Mexico Faculty Senate, [Resolution to Divest from Fossil Fuel Use and Fossil Fuel Investments](#) (revised Sept. 10, 2020).

³⁴⁹ [ASUNM Full Senate Minutes](#) (Oct. 28, 2020).

³⁵⁰ Walter Gerstle, *et. al.*, [Op-ed: Climate Justice at UNM](#), Daily Lobo (Feb. 22, 2021).

³⁵¹ Avery Rogers, [UNM LEAF calls for climate action at Earth Day Rally](#), Daily Lobo (Apr. 26, 2021).

³⁵² Walter Gerstle, *et. al.*, [Letter: UNM must lead the way in addressing climate crisis](#), Daily Lobo (Apr. 28, 2021)

³⁵³ [Resolution on Divestment](#), University of New Mexico Faculty Senate (Feb. 10, 2021).

³⁵⁴ Theresa Davis, [UNM Faculty Senate seeks fossil fuel divestment](#), Albuquerque Journal (May 15, 2021).

editorial.³⁵⁵ The UNM Coalition on Climate responded with a letter laying out the rationale for divestment.³⁵⁶

- On September 10, 2021, the UNM Retirees Association Board published a statement on its website asserting that the Board “joins with current students (ASUNM and GPSA), faculty (United Academics and the Faculty Senate) and staff (Staff Council) in requesting UNM’s Leadership establish specific steps and timelines that move UNM’s Endowment toward investments that help rebuild the climate.”³⁵⁷

Conclusion

Under New Mexico Statute 57-22-9, the Attorney General is responsible for ensuring that charitable assets are allocated appropriately and for investigating charitable managers’ violations of fiduciary duties. We ask that you investigate the violations described above and that you take action to ensure that the investment activity of the UNMF no longer harms the University of New Mexico community, the state, and the public.

³⁵⁵ Albuquerque Journal Editorial Board, [Editorial: UNM should reject oil and gas divestment](#), Albuquerque Journal (May 24, 2021).

³⁵⁶ Stefi Weisburd, [Editorial on UNM Fossil Fuel Divestment Misguided](#), Albuquerque Journal (June 12, 2021).

³⁵⁷ [UNMRA and Climate](#), The University of New Mexico Retiree Association (Sept. 10, 2021).

Appendix A

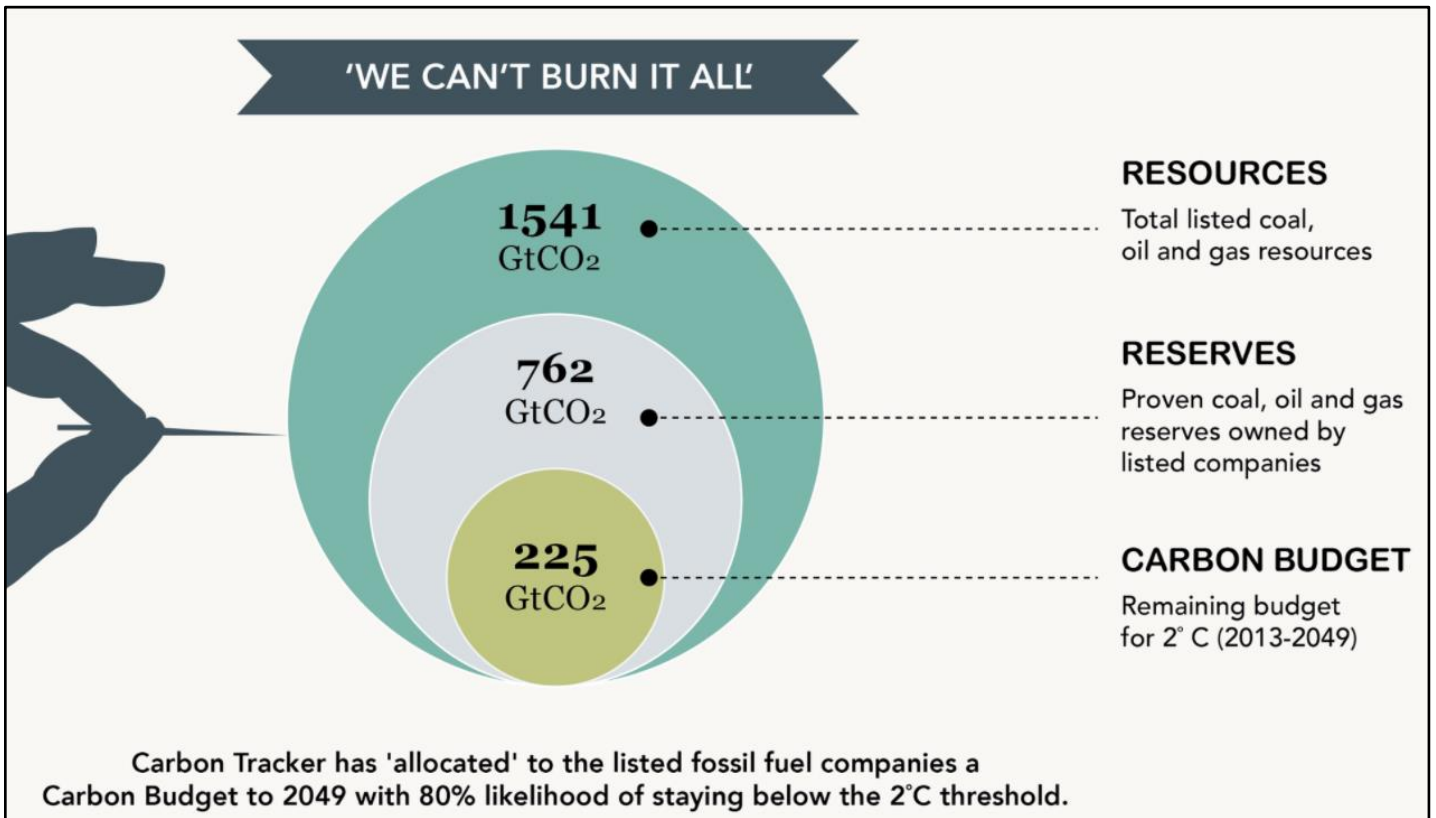


Illustration of Carbon Bubble, as reprinted in Katharine Earley, [Carbon Tracker measures oil and coal risk for investors](#), The Guardian (Apr. 30, 2015). Source: Carbon Tracker Initiative.

Appendix B



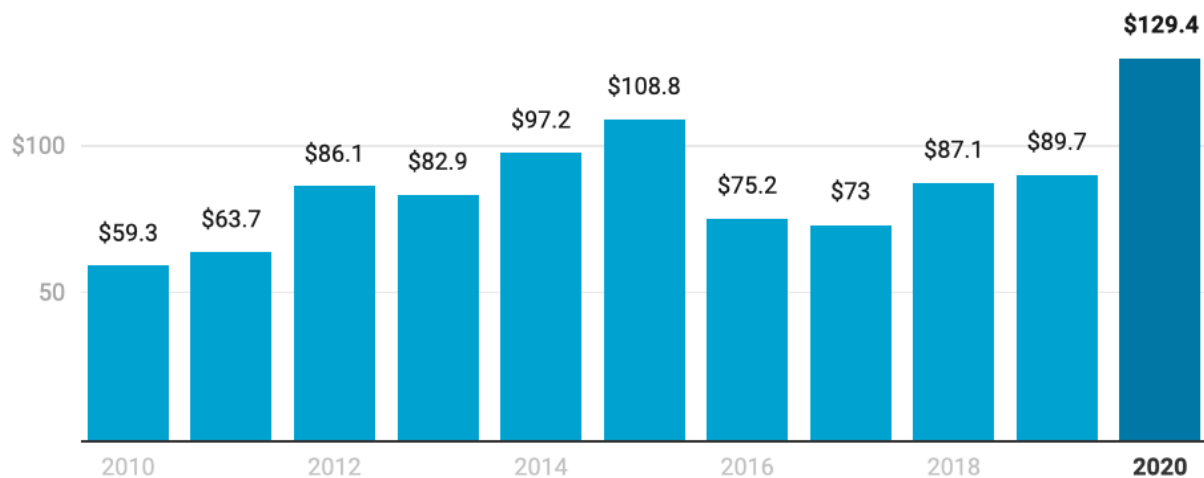
Comparison of ten-year performance of S&P 500 Energy Index³⁵⁸ (white) with S&P 500 Index (blue).³⁵⁹ Created using comparison tool at [S&P 500 Dow Jones Indices](#) (last visited Oct. 19, 2021).

³⁵⁸ The S&P 500 Energy Index includes only fossil fuel companies and does not encompass renewable energy.

³⁵⁹ The energy sector's recovery in late 2020 came in part thanks to a large bailout of corporate debt markets by the federal government. *See* Lukas Ross, Alan Zibel, Dan Wagner & Chris Kuveke, [Big Oil's \\$100 Billion Bender](#), Public Citizen (Sept. 30, 2020).

Appendix C

U.S. Energy Sector Debt Issuance Through Q3 (\$Billions)

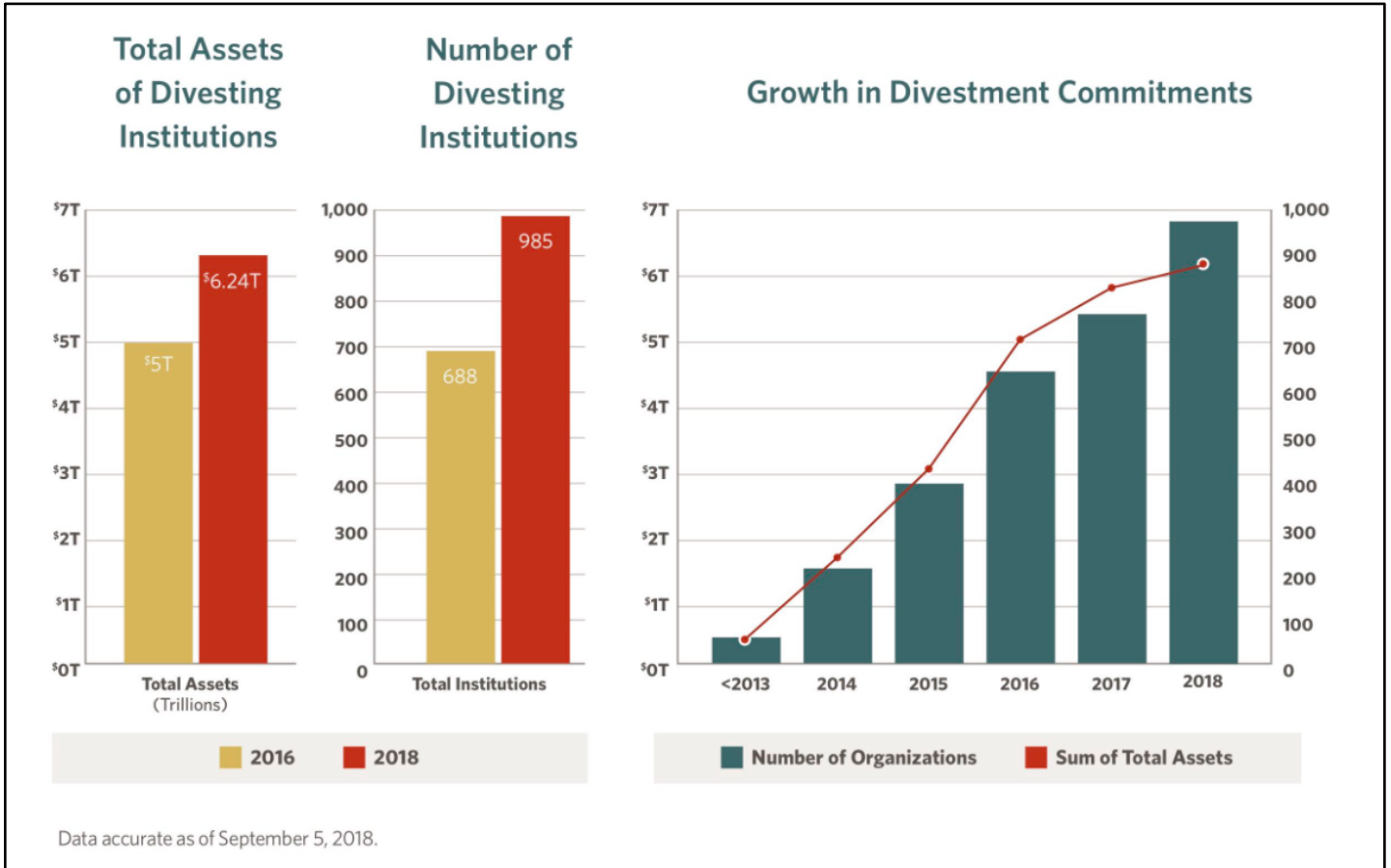


2020 data is through Sept 18

Source: Bloomberg • [Get the data](#) • Created with [Datawrapper](#)

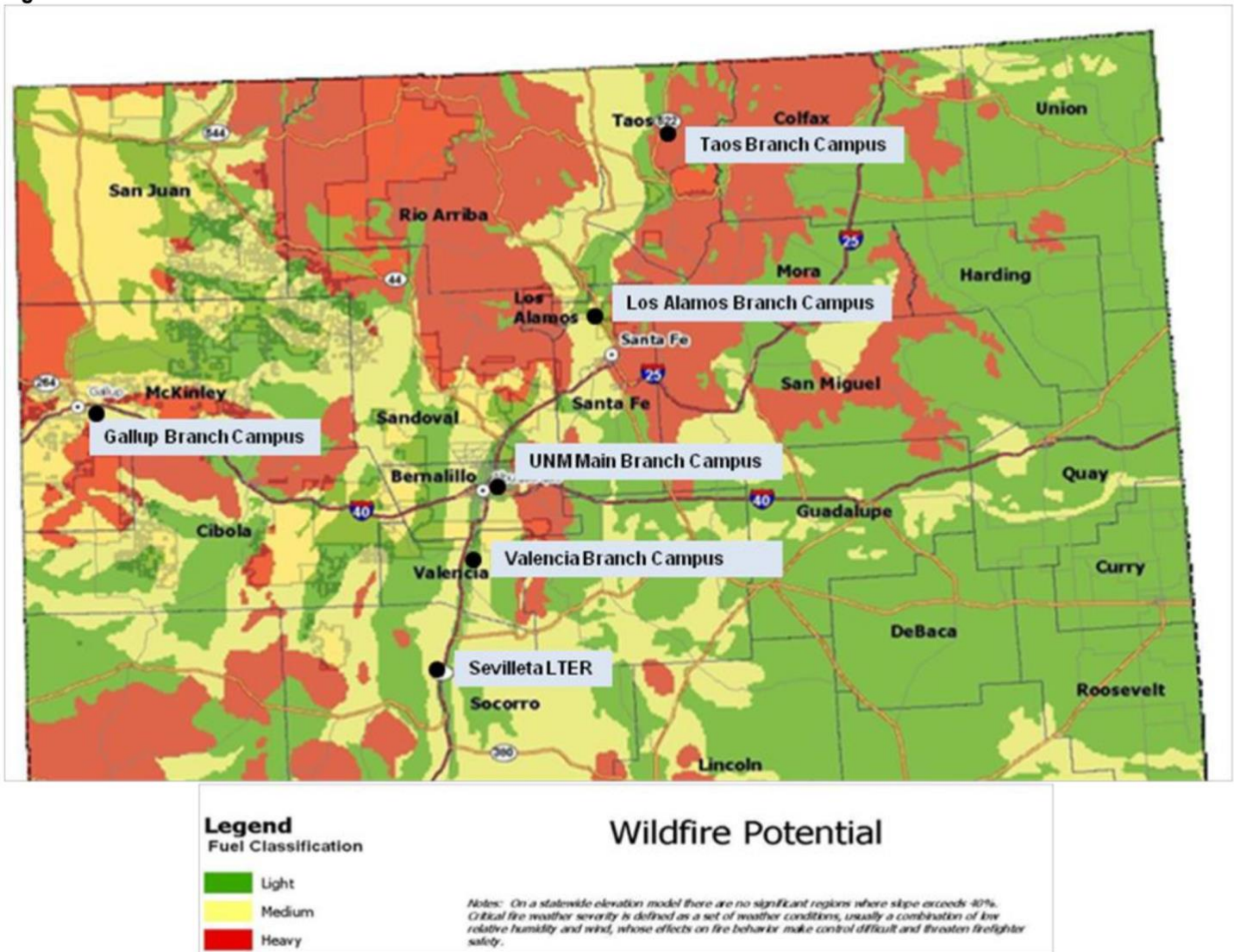
U.S. Energy Sector Debt Issuance Through Q3 (\$Billions), as reprinted in Lukas Ross, Alan Zibel, Dan Wagner & Chris Kuveke, [Big Oil's \\$100 Billion Bender](#), Public Citizen (Sept. 30, 2020). Source: Bloomberg.

Appendix D



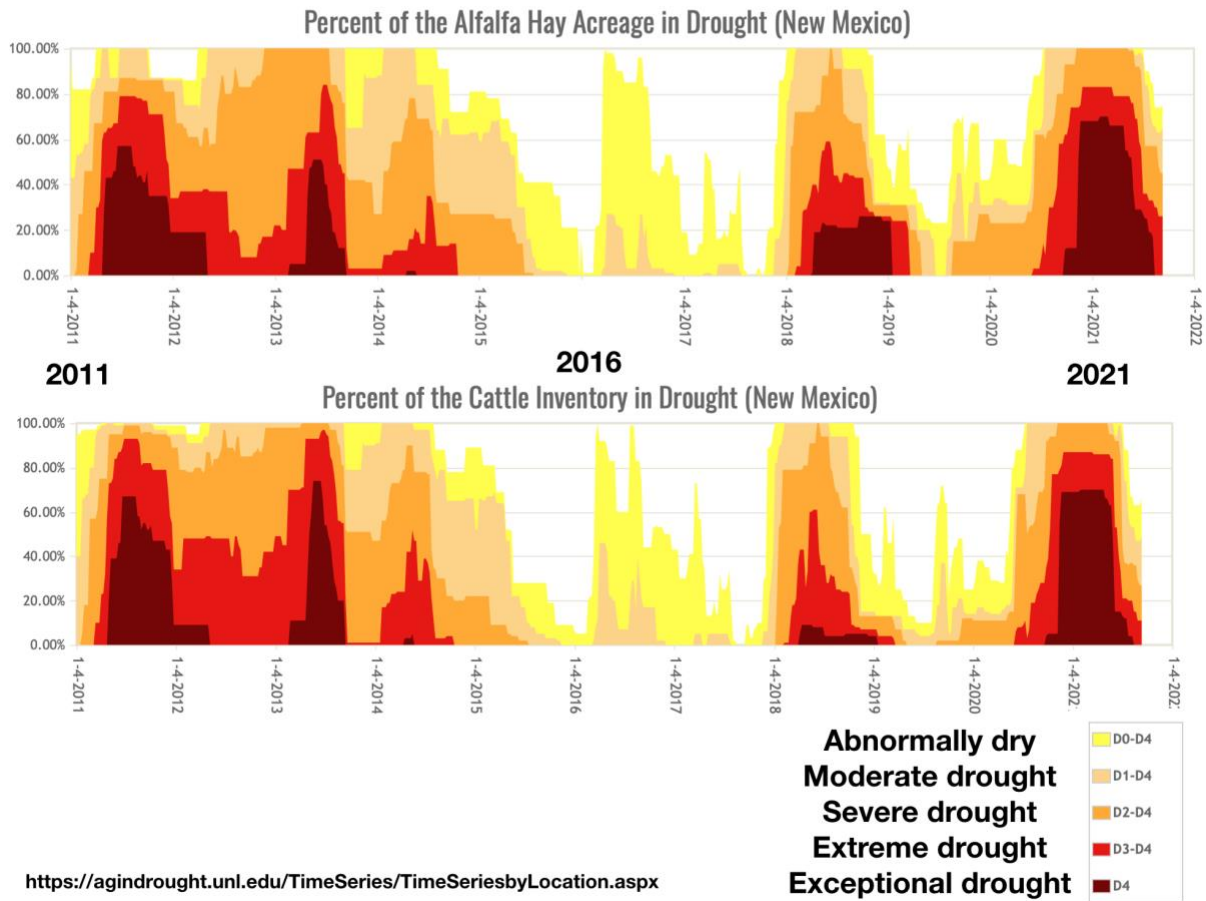
Institutional Divestment Pledges as of 2018. Source: [The Global Fossil Fuel Divestment and Clean Energy Investment Movement](#) (2018 Report), Arabella Advisors.

Appendix E



Wildfire Potential. Source: [Pre-Disaster Mitigation Plan](#) at 89, University of New Mexico (Dec. 2010).

Appendix F-1



Agriculture In Drought in New Mexico: Amounts of Crops and Livestock in New Mexico Experiencing Drought from 2011 to 2021. Source: [Time Series by Location](https://agindrought.unl.edu/TimeSeries/TimeSeriesbyLocation.aspx), U.S. Agricultural Commodities in Drought, National Drought Mitigation Center, University of Nebraska-Lincoln (2021).

Appendix F-2

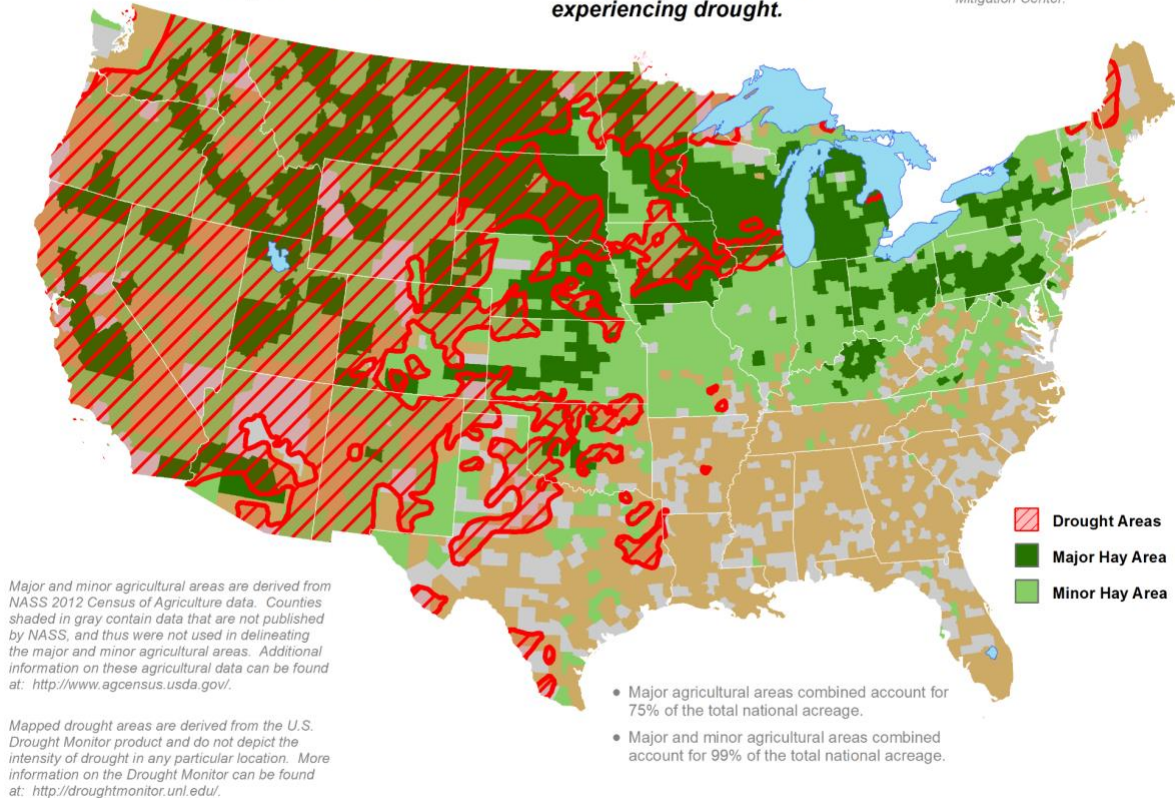
U.S. Alfalfa Hay Areas Experiencing Drought

Reflects **October 19, 2021**
U.S. Drought Monitor data

Approximately **58%** of alfalfa hay
acreage is within an area
experiencing drought.



This product is prepared jointly by the
USDA World Agricultural Outlook
Board and the UNL National Drought
Mitigation Center.



U.S. Alfalfa Hay Areas Experiencing Drought. Source: U.S. Agricultural Commodities in Drought, National Drought Mitigation Center, University of Nebraska-Lincoln (2021).

Appendix G

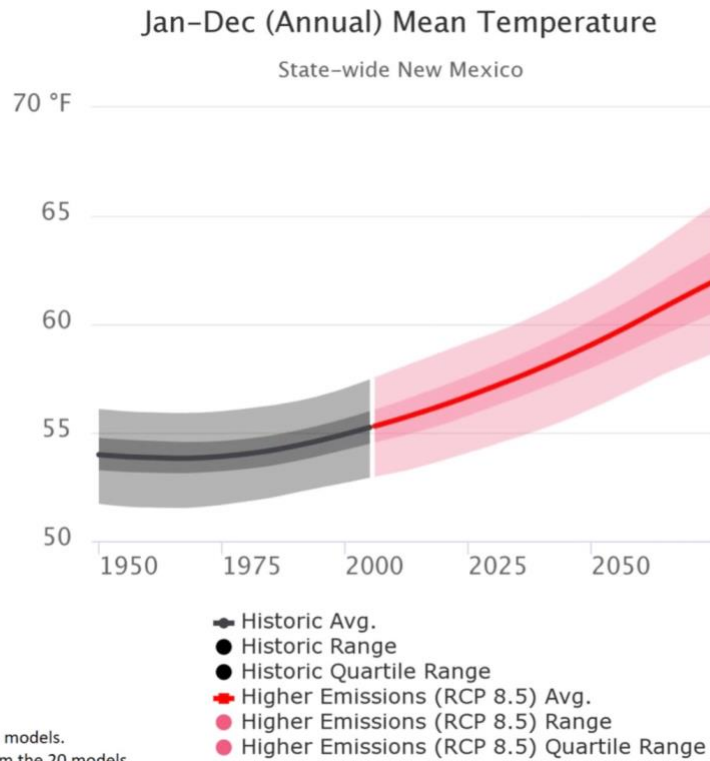
NM Temperature Projection

A strong scientific consensus indicates that New Mexico should plan for a hotter, more arid climate for at least the next half-century

Increase in annual state-wide temperature is about 5°F by mid-century

'Range' between the minimum and maximum value from the 20 models.

'Quartile Range', or the 25th to 75th percentile of the values from the 20 models.



NM Temperature Projection. Source: Projected Climate Change Through 2070, Presentation by David Dubois, [Interstate Stream Commission](#) (Aug. 3, 2021).