

GreenFireReport

WINTER 2013

25 years

A publication of the New Mexico Environmental Law Center, a non-profit, public interest law firm dedicated to protecting New Mexico's environment and communities.

nmelc.org

Martinez Administration Continues Attacks

Copper Rule Latest Target

If you live near a dairy, a dry cleaner, or a gas station (to name a few types of facilities that pollute groundwater), what is happening today in the Copper Rule case may impact your community tomorrow.

The Copper Rule was intended to help protect water beneath open-pit copper mines. Over eight months in 2012, draft language was hammered out by a working group comprised of regulators, representatives from the state's copper companies (primarily Freeport McMoRan, the largest publicly-traded copper company in the world) and advocates for the public interest, including our own Staff Attorney Bruce Frederick. The draft included

concessions to the mining industry but also preserved critical, hard-won protections for groundwater.

Then the political appointees got their hands on it.

Ignoring the recommendations of their own technical staff, upper-level managers at the New Mexico Environment Department (NMED) revamped the draft Copper Rule to reflect comments made by

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Second Major Victory in Water Grab Case

Law Center leads way to court victory: Judge affirms no permit for San Augustin Ranch, LLC

With the help of our members and donors, we've been winning the fight against a massive water grab in beautiful west-central New Mexico!

Our second major victory came on November 15, 2012, when a state district court judge upheld a decision to deny a 54,000 acre-feet appropriation by the Augustin Plains Ranch. The ruling affirms the State Engineer's decision in April 2012 to deny the Ranch's application.

Under the Western water system, big appropriations are legal – but the applicant must show, among other things, that it has an actual use for all of the water it seeks and that the water will be used in a timely manner. In spite of these requirements, the Ranch offered no specific plans in its application for what it would do with 17.5 billion gallons per year.

Since 2008, the Law Center has provided free representation to more than 80 families in Catron and Socorro Counties in this case. But the outcome of this case would be felt far beyond Catron County: approval of the Ranch's proposal would open the door to wide-scale water speculation throughout New Mexico.

In January, the Ranch appealed the decision. Yet in our arid state, the story is far from over even if the Ranch's appeal is unsuccessful. The Albuquerque *Journal* reports that D.L. Sanders, lead attorney for the State Engineer, has urged the Ranch to submit a new application, stating, "We're in favor of promoting innovative ideas like this."

As a supporter of the Law Center, you ensure that we can continue to fight speculation in water and promote equitable access and use of water for all of us who depend upon New Mexico's water.

The Augustin Plains water grab is one of the cases highlighted in our new short film, A Big Damn Deal. Check it out at nmelc.org.

[Martinez Administration, continued from page 1]

Big Copper. "This draft, which purports to be a statewide regulation to prevent water pollution," wrote Frederick in a scathing letter to agency Secretary David Martin, "is now specifically designed to accommodate Freeport McMoRan's desire to pollute groundwater..."

Should the copper industry receive such a regulatory gift from the Martinez Administration, we anticipate that other industries will line up for similar treatment.

"The interests of protecting public health and safety and our state's natural resources appear to have been overridden by the one company with the most to gain from revising these regulations."

—Letter to Secretary Martin

The pro-pollution Copper Rule language went to the Water Quality Control Commission in November 2012 for consideration. In December, the Law Center and its co-counsel, Tracy Hughes, of High Desert Energy + Environment Law Partners asked the Commission to dismiss the petition on the grounds that the Rule would violate the state's Water Quality Act.

You can see Bruce Frederick's letter, along with our case documents at nmelc.org. We represent the Gila Resources Information Project, Amigos Bravos, and Turner Enterprises in this case.



© photo courtesy of Lighthawk

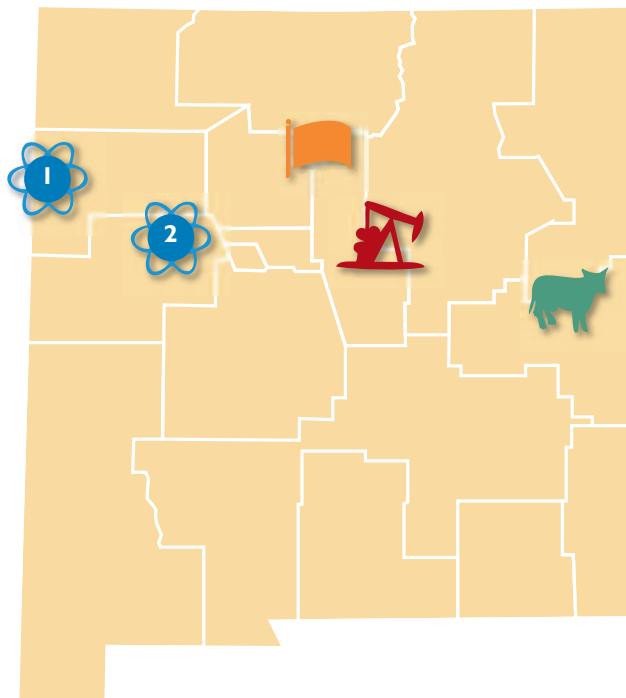
Want to dig deeper into our cases? Find out more at nmelc.org.

Uranium: In January, Uranium Resources, Inc. had to conduct a "reverse stock split" so that its stock wouldn't be delisted from the NASDAQ due to its low price.

Dairy: Groundwater beneath 57% of New Mexico's dairies is already contaminated.

Administrative: Governor Martinez's administration has attacked regulations (existing and pending) meant to protect water quality, air quality, and energy conservation.

Oil & Gas: NM has more than 100,000 oil and gas wells (active and abandoned) with less than 100 State inspectors to regulate them.



Navajo Mining Ban Under Threat:

Uranium Resources (formerly Hydro Resources) has hired former Navajo Nation President Albert Hale to lobby for the repeal of the Navajo Nation's ban on uranium mining and milling. Hale served as President of the Navajo Nation from 1994-1998, when he was forced to step down after his indictment on dozens of federal charges. The Law Center is working with ENDAUM to defend this landmark law.



Historic Settlement:

The Navajo Nation and mining company Uranium Resources inked a historic deal in 2012, settling a case in which tribal police cited the company for trespass (the company must cross a strip of tribal land in order to access its private property.) The deal calls for the company to remediate Cold War-era waste at its first proposed minesite before it can begin mining. With the Law Center at its side, the Eastern Navajo Diné Against Uranium Mining (ENDAUM) will be an ardent advocate for effective reclamation in those efforts.



◀ The Chino copper mine near Silver City is the nation's 4th largest open-pit mine. A weak Copper Rule is being advocated by its owner, Freeport McMoRan.



2 Mount Taylor Mine Goes to Court:

The Cold War-era Mount Taylor Mine won its fourth mining permit renewal in 2012. The Law Center and its clients, the Multicultural Alliance for a Safe Environment and Amigos Bravos, argued that the State should require the uranium mine, shuttered since 1990, to begin reclamation in order to mitigate ongoing contamination. Now we are in district court, arguing that the state Mining and Minerals Division shut the public out of the permit hearing process. We've already won one victory to date: our efforts pressured the agency to require the mining company to update its financial assurance and closeout plan for the first time in nearly 15 years.



© Photo by Rod Ventura



Dairy Update:

For the third time in three years, we are at work to protect groundwater from factory farm waste. The dairy industry has petitioned the Water Quality Control Commission to weaken several provisions in New Mexico's new dairy groundwater regulations. Unfortunately for our water supplies, the Commission is circumventing several laws by considering the petition. The hearing begins in July.



© Photo by Juana Colón



Oil & Gas Pit Rule:

Since 2008, the Law Center has defended the Pit Rule – regulations that protect water from toxic oil and gas drilling wastes. For the past year, we have represented the Oil and Gas Accountability Project in a public hearing process before the Oil Conservation Commission, whose Martinez appointees were sympathetic to industry. In February, the Commission adopted four key industry amendments with some modifications. We anticipate that we will appeal its decision.



© Photo by Juana Colón



2013 Legislative Session:

For its 25th time, the Law Center is defending New Mexico's environment and communities during the state legislative session. With a 60-day session in progress, we're up to our necks in late nights and long hearings as we work to convince legislators that water quality, public health, and civic participation are issues they should support.



Who is Making Decisions for Our Environment?

With your support, the Law Center is opposing many of the decisions made by Governor Martinez's appointees – especially those who have potential biases in favor of policies that would benefit clients of their current or former employers. Some of the conflicts we are challenging:

RYAN FLYNN, ESQ. Prior to heading the legal department at the New Mexico Environment Department, Mr. Flynn worked as an Associate Attorney for the Modrall Sperling law firm. The Modrall firm represents Freeport McMoRan (and its predecessor Phelps Dodge). For years, its attorneys have argued strenuously, albeit unsuccessfully, to undermine the Water Quality Act at the Tyrone, Chino and Cobre copper mines.

ELIZABETH RYAN, ESQ. Ms. Ryan is a Martinez appointee to the Environmental Improvement Board. In 2011, she was hired by Beatty & Wozniak, a law firm that represents major oil and gas companies. Shortly thereafter, Ms. Ryan voted to kill the State's new greenhouse gas limits, which were opposed by the oil & gas industry.

ROBERT BALCH, PH.D. Before joining the Oil Conservation Commission, Dr. Balch told members of the oil and gas industry, "The new [Pit Rule] makes it harder for you to operate, makes wells more costly...I hope we can form a dialogue that will genuinely improve the situation." Commissioner Balch voted to adopt amendments that would gut the Pit Rule.

Thank You Green Business Partners!

For more information, please contact Elizabeth Lee at elee@nmelc.org.

2013 New Mexico Environmental Law Center
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A Big Damn Deal:

The New Mexico Environmental Law Center kicks off the celebration of its 25th Anniversary with the short original film "A Big Damn Deal," created by Emmy-award winning filmmaker Debra Anderson (director and producer of the documentary "Split Estate"). When you watch it, you'll catch a glimpse of a few of the compelling stories from the communities where we work. Find it at nmelc.org/25years.

We were thrilled to present Marcy Leavitt with the Karl Souder Water Protection Award in December. It was a bittersweet moment in which we also noted the loss of Karl's father, Arnold Souder, who passed away earlier in the week.

(Left: Karl's daughter Emily Souder and widow Jennifer Pruett make the presentation to Marcy.)

Twenty-fifth Anniversary Kick-off



It is my pleasure to welcome new staff member Elizabeth Lee to the Law Center. Elizabeth (who also answers to Liz) holds the title of Director of Philanthropy, filling the position left vacant by the passing of Sebia Hawkins last year. Elizabeth has spent more than 30 years in the communications field (including stints in advertising and journalism) covering diverse activities, organizations, and cultures. One of her main areas of focus was the nexus of environment, population and women's health issues.

Elizabeth moved to Santa Fe from Washington, DC in 1995, and has spent the past nine years dedicated to nonprofit fundraising. She earned her certification as a Certified Fundraising Executive in 2012.

Prior to joining the Law Center, Liz was the Prospect Research and Management Associate at the School for Advanced Research in Santa Fe. Previous to that she served as Director of Development for Las Cumbres Community Services, a social services agency serving northern New Mexico.

Elizabeth has traveled to and worked in many different countries, including Madagascar, Morocco, Bolivia, Brazil, Jordan, Thailand, and Nepal. She has a deep love of the natural world, and before having her two children, she spent many hours outdoors hiking, biking and climbing.

She looks forward to getting to know you. If you have any questions for her, or would just like to say hello, please email her at elee@nmelc.org, or give her a call at (505) 989-9022, extension 27.

Yours truly,
Doug Meiklejohn
Executive Director

Thank you to our honorary benefit committee: U.S. Senator Tom Udall and Mrs. Jill Cooper, N.M. Representative Antonio Lujan, Gay Dillingham and Andrew Ungerleider, Tony Abeyta, Sadaf Cameron, Bernard and Melinda Ewell, Jim and Suzanne Gollin, Kimi Ginoza Green, Lynda Taylor and Robert Haspel, Jennifer Marshall, Michelle Mosser, and Katie Zemlick.

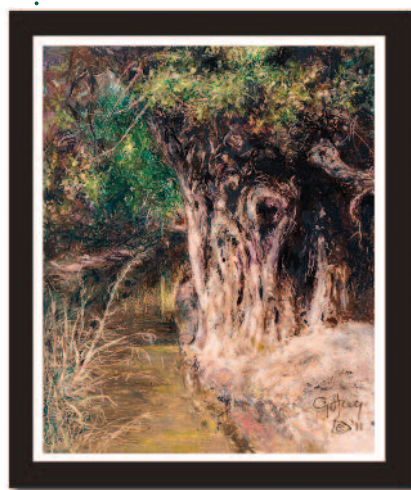
NMELC Board President Stuart Bluestone introduces Mrs. Jill Cooper-Udall



Host Gay Dillingham kicks off the festivities and Doug with Communications Officer, Juana Colón (right).



© photo courtesy of Jamie Douglass



We'll be auctioning off Dan Godfrey's beautiful original oil painting *El Sendero* later this year. If you would like to contribute goods or services to our auction, please contact Elizabeth Lee at elee@nmelc.org, or call (505) 989-9022; find more of Dan's work at dangodfrey.com.

Thanks to Southwest Seminars for the best lecture series yet! We're grateful for ten wonderful years of Mother Earth, Father Sky: *Perspectives on the Environment and the West* in our honor. **And special thanks to lecturer Kirt Kempter** for the donation of his beautiful photo canvases for our benefit!

IN MEMORIAM

Client, Board member and friend David Henderson passed away in August.



David served on the Law Center's Board of Directors for 23 years, bringing to us his knowledge and passion as one of New Mexico's most ardent conservationists. We remember not only his sage counsel, but the infectious laughter that he shared with us. David is greatly missed.

Thank You

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Vision: The New Mexico Green Chamber of Commerce (NMGCC) and its local chapters are a coalition of businesses and organizations dedicated to building healthy economies in New Mexico's diverse communities. nmgreenchamber.com

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- Creating Economic Development with Clean Energy

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See page 4 for our complete roster.**

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"We reached the old wolf in time to watch a fierce green fire dying in her eyes."

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