

GreenFireReport

SPRING 2014

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

Copper Rule Saga Continues

You're ensuring that we can challenge the Rule in Court!

© Photo courtesy of Lighthawk

In September 2013, the New Mexico Water Quality Control Commission (WQCC) adopted the egregious Copper Rule. For the first time ever, the State is permitting an entire industry to pollute New Mexico's water resources.

As a Law Center member, you made it possible for the Law Center to build a damning record against the regulations during the rulemaking. Now you're making it possible for us to challenge the Rule in the second highest court in New Mexico. Staff Attorney Bruce Frederick is lead counsel on the case, and filed the appeal in November.

Your support built the record on which that appeal is based. It shows:

- State collusion with Freeport McMoRan, the world's largest publicly traded copper mining company.
- A shoddy defense of the Rule by the New Mexico Environment Department (NMED). The agency did not present

even one qualified technical staffer in support of the Rule.

- Willful violation of the state's Water Quality Act, which requires that groundwater be protected from pollution. For the first time ever, the State is permitting an entire industry to pollute New Mexico's water resources.

The Copper Rule exempts water beneath and around copper mines from water quality standards. It allows mining companies to forego pollution prevention measures and monitoring within these exempt areas. All mining companies have to do? Promise to contain contaminated water. Forever.

"For more than twenty years, New Mexico has reaped the rewards of its Mining Act, including cleaner water and meaningful mine reclamation," says Brian Shields, Executive Director of Amigos Bravos, a watershed protection organization. "In one fell swoop, the Copper Rule will reverse existing

protections for the water we drink and play in. And it opens the door for other industries, like the dairy industry, to seek similar permission to dump in our state's aquifers."

"Every New Mexican who cares about water should thank a Law Center member," says Allyson Siwik, Executive Director of the Gila Resources Information Project (GRIP), which is represented by the Law Center. "You have made it possible for GRIP – and the public interest – to have robust legal representation in one of the most critical legal fights over water protection in New Mexico's history. Thank you."

table of contents

Case Updates.	pages 2–5
NMELC Supporters.	pages 5–8
Green Business Partners.	page 7

Flynn Fact Check

Ryan Flynn was confirmed by the New Mexico Senate as Secretary of the New Mexico Environment Department (NMED) in February, 2014.

Ryan Flynn was confirmed by the New Mexico Senate as Secretary of the New Mexico Environment Department (NMED) in February 2014. Prior to his appointment Mr. Flynn served as the lead attorney at the agency. He came to NMED from the Modrall Sperling law firm, which represents several of New Mexico's largest polluting corporations.

Law Center Executive Director Douglas Meiklejohn joined other conservation groups in publicly opposing the confirmation in a hearing before the Senate Rules Committee.

Several of Mr. Flynn's statements at the hearing gave us pause. For instance:

1. In response to the allegation that Flynn "basically let copper companies rewrite the [Copper Rule] regulations," Flynn responded "I disagree with that suggestion."

Fact Check: Documents show that the attorneys who represent Freeport McMoRan wrote the bulk of the "Statement of Reasons" adopted by the Water Quality Control Commission; the Commission relied upon this Statement when it adopted the Copper Rule. NMED submitted the Statement as its own, until the Law Center provided the proof of collusion.

2. In response to allegations that Mr. Flynn sought to intimidate NMED contractor William Olson in order to keep him from testifying against the Copper Rule at the public hearing, "No threats were made. No intimidation occurred... [T]he Environment Department did not seek to strike Mr. Olson's testimony or in any way prevent him from participating in the proceeding."

Fact Check: William Olson was head of NMED's Groundwater Bureau from 2004-2010. After he retired, he was tapped by the agency to lead the Copper Rule development process. He ended his contract after NMED's upper management added Freeport McMoRan's pollution clauses to the draft Rule; he then announced that he would oppose the adoption of the Rule. Olson sent a letter to NMED Secretary David Martin asserting that Flynn threatened him with legal action to keep him from testifying. When Olson



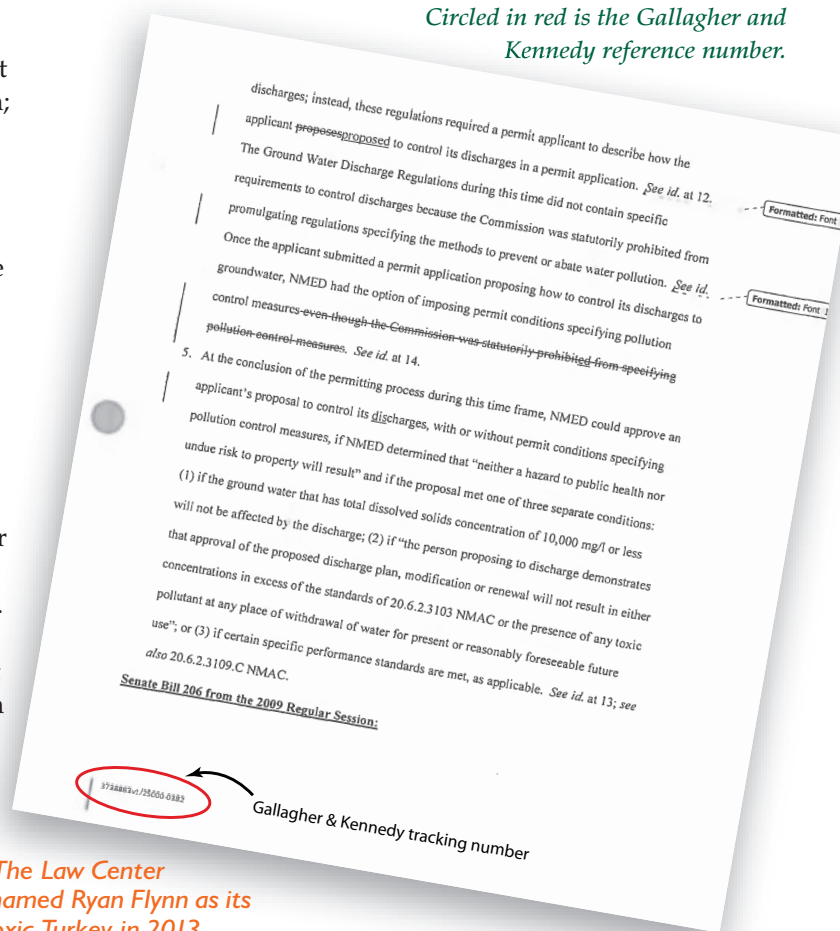
The Law Center named Ryan Flynn as its Toxic Turkey in 2013.

didn't back down, NMED attorneys filed a motion intended to discredit Olson. The Hearing Officer not only denied the motion, but struck it from the record.

3. When asked if he is proud of the Copper Rule, Flynn responded, "Absolutely. I believe this Rule is the most protective rule for copper mining in the country. And we've compared this Rule against all the other jurisdictions where copper mining occurs."

Fact Check: Despite Secretary Flynn's assertions that it is protective of groundwater, the Copper Rule does not provide the protection that was assured under the regulations it replaced. In many instances, regulations in Arizona and Nevada are more protective of groundwater than the Copper Rule as well.

This page is from the draft Statement of Reasons for the Copper Rule, obtained by the Law Center from NMED through a public records request. While we expected the agency to work with Freeport McMoRan to draft the document, the agency did not originally disclose that Gallagher and Kennedy, P.A. (which represents Freeport) wrote substantially all of the 214 page order that NMED proposed as its own, and that the Water Quality Control Commission adopted verbatim. Circled in red is the Gallagher and Kennedy reference number.





Humate Mine Victories

How you helped stymie a company that tried to game the system

If you're a mining company in violation for exceeding your permit size, you could pay your fine and fix the problem. Or, if you're Mineras Vitae LLC, you:

- 1) Hire a high powered legal/lobbying firm.
- 2) Ask the State to change mining regulations to better accommodate your needs.
- 3) Work to pass legislation that would change the Mining Act to accommodate your company.

Fortunately for New Mexico's environment, our members made sure that the Law Center was on the case.

Humate is decomposed organic matter that is used as a soil amendment. Mineras Vitae strip mines the material in McKinley County. Representing Amigos Bravos, we persuaded the New Mexico Mining Commission that it should not give the company everything it wanted – primarily an expansion of the definition of “minimal impact mine” from 10 acres to 60 acres. Rather, the Commission rewrote the regulations to allow humate producers to operate “minimal impact” mines of up to 20 acres.

Like the Copper Rule, this is a story of a company trying to rewrite the rules for its own gain, albeit on a smaller scale. Without Law Center members standing in its way, Mineras Vitae may very well have succeeded.

*Clodbuster humate mine
near Cuba. By Rod Ventura, NMELC*



Uranium Company “End Runs” Navajo Nation

Law Center fights on behalf of residents to challenge scheme

During the fall session of the Navajo Tribal Council, there was an unsuccessful effort to insert a pro-uranium amendment into the Navajo Nation Energy Bill. It would have allowed Uranium Resources, Inc. (URI) to conduct an *in situ* leach uranium mining “demonstration project” in Churchrock. Due to efforts by members of the Eastern Navajo Diné Against Uranium Mining (ENDAUM) and several allies, the amendment failed by a vote of 2-11.

Undaunted, Tribal Councilman Leonard Tsosie and URI circumvented the Tribal Council. Along with Katherine Benally, chair of the Navajo Resources Development Committee, Tsosie pushed the same language through his Committee on a vote of 3-0. The committee hearing was held two days before Christmas in an Arizona town 150 miles away from Churchrock.

“Especially after its defeat in October, URI knows that it can’t get the Navajo ban on uranium mining overturned by the Tribal Council. But given the company’s financial straits, it was not surprising that it would work with a few Tribal Council members to perform an illegal end run like this,” says Eric Jantz, lead NMELC attorney on the case.

“Fortunately, we have many members who support ENDAUM and its mission to keep new uranium mining out of Navajo communities.

If the Navajo Nation doesn’t overturn the legislation, we’ll be there to challenge the efforts of the Committee and the mining company.”



Staff Attorney Eric Jantz

A Faint Stench is Slowly Coming in...



Law Center client Maria Elena Bejarano lives in Anthony, NM. Her home is in the midst of “Dairy Row,” where more than a dozen industrial-scale dairies have spread through Dona Ana County to the Texas border. She and her neighbors, along with a coalition of public-interest groups and concerned citizens affected by dairies, are working to keep dairy pollution out of New Mexico’s communities and drinking water supplies.

This is an excerpt from an email she sent during the 2014 legislative session. She wrote to oppose House Bill 51, which weakened language under which residents can file nuisance lawsuits against dairies.

Representatives of the House Judiciary Committee:

I live less than 500 feet from a dairy, since 1978. My house has been here since the early 1900s and occupied continuously since it was built. When I moved here, the dairy was small and not an issue. Now it has grown to over 3,000 cows, in about the same amount of space and most definitely a big issue.

Here I am at 6:21 a.m. today, everything closed and a faint stench is slowly coming in. I opened my door and sure enough, it stinks outside from the dairy. This is one of the real issues affecting community residents!

The pollution/contamination does not stop at the dairies’ fences. It goes far beyond their fences and it goes into my home affecting me with all the flies, stink, stench, and dust that engulfs my home and the community! How can a quality of life be had with all this happening daily and a number of times a day? And this is JUST what is seen!

There is the unseen: ground water /pollution that not even the NM Environment Department seems to be able to stop. This ground water pollution does NOT stop at these dairies’ fences either. This pollution plume travels wherever the ground water travels, and into communities’ water systems contaminating our groundwater as identified by a NM Environment Department Stage 2 Abatement letter sent to me in December 2013...And this has been going on for years with no end in sight.

Let’s talk about what we are breathing: manure dust. It most assuredly has germs and bacteria; particulates that are so minute they go in through your nose and your skin pores. How healthy can this be I ask you? Ammonia, methane gas, hydrogen sulfide and the list goes on. How healthy can THIS be I ask you?

Hundred of flies are around just about all year. Relief from flies may be about two months, may be. These flies also do not stop at the dairies’ fences either. They like doors that if you open them, they zoom right in no matter how fast you open and close the door. My granddaughter and I have to run inside, or run outside, in tandem, trying to close the door as fast as possible so the least possible amounts of flies enter my house! Again I ask you: how healthy can THIS be?

Last March (2013), my granddaughter, a 3rd grader, was told about a meteor that she could view around 6:00 p.m. The stink/acrid stench coming from the dairy was so bad she and I could not stand to be out there even for a minute! We actually ran back into the house because the stench was burning my nose.

Needless to say, the stink came into the house since we opened and closed the door and the stink was so strong. And this is typical of our lack of quality of life because of the dairy. So needless to say, we did not look for the meteor. Again, I ask you: how healthy can THIS be and in how many ways?

I have not tried to sell my house, but I’m sure I would have a heck of time trying to sell it; especially when the wind blows across from the dairy side and over to my property and the flies are at their best and most!

Where a number of these contamination, polluting and irresponsible operations, as is, are in poor communities where citizens do not have the resources to defend their rights.

Bottom line on this legislation is the denial of citizens’ and communities’ rights to protection from these contamination, polluting, and irresponsible operations! It’s about NUISANCES; if dairies were more responsible, maybe this conversation would not even be happening....

Thank you,
Maria Elena Bejarano



The Law Center gears up for the Dairy Industry's next Assault on the DAIRY RULE

In recent decades, economic pressures have left many U.S. dairy farmers with a choice: expand or go out of business. As a result, New Mexico now has the largest herds in the country, averaging 2,088 cows per dairy. Each of those cows produces around 120 gallons of wet manure every day. That means at each of these “megadairies”, New Mexico dairy farmers have to deal with more than 250,000 gallons of waste every day.

It is no surprise, then, that groundwater beneath 57% of New Mexico's dairies was already polluted in 2010 when the State adopted groundwater regulations specifically targeted at protecting groundwater from dairy waste.

Now, the dairy industry wants to overturn those protections. As a Law Center member, you make it possible for us to mount a strong defense of the existing Dairy Rule. In this case, we represent Maria Elena, the Sierra Club Rio Grande Chapter, Amigos Bravos and others. But the outcome will affect thousands who use water in our parched dairy regions.

The dairy industry is following in the footsteps of the copper mining industry in asking for regulations that allow groundwater pollution. The hearing on the dairy industry's petition has been postponed until the week after the November election. The Law Center will work throughout the year to defend our state's protections from this attack.



“The shift in administration in New Mexico has allowed massive corporate influence on decisions that have a long-term impact on groundwater quality, among other environmental matters.”

– Jonathan Block, Staff Attorney



© CC "Cows" Ted Bigham, flickr

We asked, and you answered.

Here are some of the results of the Law Center's first *members-only* online poll:

What environmental issues are the most important to you? Top 3:

- 1) Water quantity/quality
- 2) Climate Change
- 3) Oil and gas drilling/fracking

“Water is the most critical resource in New Mexico. The lack of competence in the state's regulatory agencies is appalling and the influence and power of the State has created a crisis for the environment.”

How well do you think environmental regulations protect your community's health?

“In this state it's all about how regulations impact economics – not about anyone's health.”

In the next 5 years, what is your hope regarding environmental issues facing New Mexico? Top 3:

- 1) The development of a plan for dealing with the growing water shortage
- 2) To see concrete moves to address the coming effects of climate change
- 3) To see a commitment from decision-makers to protection future drinking water sources from pollution

Why do you give to local New Mexico non-profits? Top 3:

- 1) I believe supporting local non-profits positively affects my life and my loved ones. (57.3%)
- 2) I believe that local grassroots organizations are more effective than national organizations. (44.2%)
- 3) I volunteer and I give to the nonprofits for which I volunteer. (39.3%)

Please rate how effective the Law Center is at protecting New Mexico's environment and communities.

67% of you said we're doing a great job, 19% said we're doing pretty well, and 14% of you said we could be doing better. Here's a sampling of some of your comments:

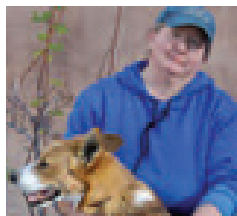
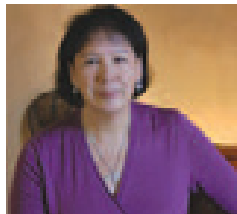
We'll work hard to do a better job of staying in touch about what we're working on, and we'll continue to strive to be our state's best legal advocates for a healthy environment and for communities where we all want to live. We appreciate the honest input from everyone who helped with our survey!

Thank You!

Super Members

A wonderful benefit of working at the Law Center is meeting amazing members who want to help us succeed! When we got a call from long-time member Julia Takahashi in October asking if we'd like help getting our first "crowdfunding" campaign off the ground, we couldn't say yes fast enough. Working on a class project, she and her classmate Victoria Erhart helped us create a video about the Copper Rule, launch it online and exceed our goal in no time! *We started with a \$3,500 goal and raised \$5,275.*

That success also earned us an additional \$3,000 challenge grant from a board member! Thank you Julia, Vicki and everyone who made this campaign a success! See the video at crowdrise.com/nmelc.

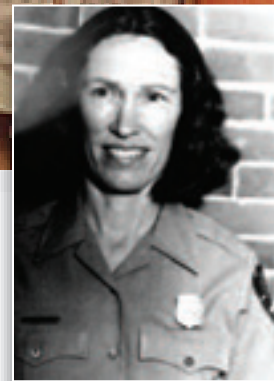


*Super Members:
From top: Julia and Vicki*



Long-time Member Leaves Bequest

The Law Center staff were saddened to learn of the passing of long-time member and supporter Elaine Anne Hounsell last September, at the age of 72.



Elaine had a long career with the National Park Service, working as a seasonal or permanent employee in 14 parks, including the Everglades, North Cascades, and Bandelier. Initially she worked as a field interpreter, later moving into management positions. In the National Park Service's Employees and Alumni Association newsletter "Arrowhead", the notice of her passing says she was "always known as one for breaking barriers". It remembers her as an avid hiker who "loved birds, the pet cats she had over the years and all aspects of nature, and was a member and supporter of many conservation and environmental groups." Thank you Elaine.

If you would like to name the Law Center in your estate plans, we fervently hope you'll let us know. We'd like to know your story, honor the intentions of your gift and thank you directly. (You have the option to remain anonymous, or to be publicly acknowledged for your support.) Please contact Elizabeth Lee at (505) 989-9022.

Thank you, Kyla!

Everyone at NMELC wants to thank Kyla van Buren for a wonderful semester. Kyla, who visited from Oberlin College, did a great job helping us get the word out about Law Center accomplishments. *We wish Kyla well in her future endeavors.*



Congratulations to William Olson, winner of the 2013 Karl Souder Water Protection Award

William (Bill) Olson was a significant defender of groundwater quality when he worked in state government, including seven years as Ground Water Quality Bureau Chief. Fortunately for New Mexicans, he remains a strong advocate for groundwater protection in his retirement. For his important work as a regulator and his courageous challenge of the Copper Rule, we were pleased to present Bill with the Karl Souder Water Protection Award in 2013.



Souder Award: From left: Leavitt, Olson and NMELC Director Doug Meiklejohn

Congratulations to Eleanor Wootten, winner of the first David Henderson Award for Conservation

New Mexico lost an environmental champion in 2012 with the passing of David Henderson, a long-time Law Center board member and former Director of Audubon New Mexico. In honor of his work to protect our state's environment, the Law Center instituted the David Henderson Award for Conservation.

The first recipient of the award was Eleanor Wootten, an activist and philanthropist who has generously supported conservation efforts across New Mexico and the Law Center's work. Thank you, Eleanor!

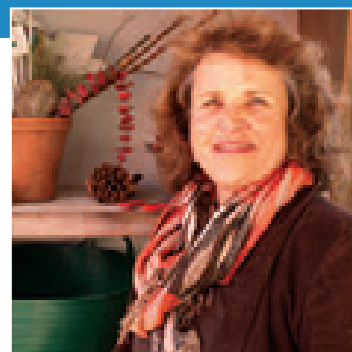


The Mad Potter Plays Many Roles

Jamie Douglass loves to get her hands dirty. Usually it's the result of potting unique combinations of flowers and plant materials – and the occasional unexpected statuary – as owner of Mad Potter Container Gardens. But it also happens when she shows up to volunteer once a week at the Law Center, where she takes on any task in front of her.

Jamie's love of horticulture led her to leave a 15-year career in investment banking back in Chicago. She took a degree in Horticulture/ Landscape design, then went to work for the Chicago Botanic Garden. She managed 45 inner city gardens in an outreach program serving impoverished neighborhoods in the inner city, working with horticulture therapy sensory gardens, school gardens, and senior centers. "In my investment career I worked with Chicago's wealthiest citizens but I felt the inner city gardeners were the richest," she recalls of those years.

Ready for another change, Jamie moved to Denver, where she worked for several non-profit organizations including a micro economic project with homeless and those living on the margins of society, and Grounds for Learning, a school garden program utilizing school grounds as an outdoor classroom.



Jamie says she was drawn to the Law Center because she "wanted to learn more about the environment in New Mexico and how the law can be part of protecting our natural resources. I wanted to know what's going on with issues like the dairy industry, water, mining, and other issues." For more information on Jamie's Mad Potter Container Gardens, visit her website at Madpotter.net.



From left to right: Elizabeth Lee, Ouida MacGregor, Jamie Douglass, Katie Rountree, Doug Meiklejohn, Joan Murphy

Thanks to the Women Who Care!

To receive the vote of confidence of 100 women who care – literally, 100 Women Who Care – made our day, our month, our year. At their quarterly meeting in November 2013, the philanthropic group 100 Women Who Care Santa Fe (a local chapter of the national movement), voted to distribute their proceeds from the meeting to the New Mexico Environmental Law Center after executive director Doug Meiklejohn gave a presentation on the health impacts of uranium mining on Native land and the Law Center's efforts to continue fighting it. Find more information on the group at 100womenwhocaresantafe.com.

Thank You Green Business Partners!

For more information about our Green Business Partner program, contact Elizabeth Lee at 505.989.9022 x18, or elee@nmelc.org.

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**“Every New Mexican who cares about water
should thank a Law Center member.”**

–Allyson Siwik,
*Executive Director of the Gila Resources
Information Project (GRIP) / Law Center client*

GreenFireReport spring 2014 issue

Bequests and other gifts made through a will or estate plan...

...play a critical role in ensuring that the New Mexico Environmental Law Center can continue fighting on your behalf for cleaner water, safer air, and protected lands for years to come. Every gift makes a difference, no matter the size. For information on how you can make a lasting legacy gift, please contact Elizabeth Lee at (505) 989-9022, ext 18, or elee@nmelc.org.

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

– Aldo Leopold
A Sand County Almanac

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Thank you Sweetwater!

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