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

## Big Money • Big Water • Big Fight



Augustin Plains basin (top) / Ray Pittman on his ranch (left) / Staff Attorney, Bruce Frederick at a community meeting on the water grab in Datil, NM (right)

This was supposed to be a story about an appeal in a case that's been underway since 2008. But this summer, Augustin Plains Ranch, LLC and the State Engineer tried to make the case evaporate. You're making sure we can challenge them.

On September 22, 2014, Law Center Staff Attorney Bruce Frederick asked the state Supreme Court to order the State Engineer to deny a second water grab application filed by Augustin Plains Ranch, LLC. (His petition for a writ of mandamus can be found at nmelc.org.)

Background: In August, the Ranch and the State Engineer backed out of the court appeal over the biggest private water grab attempt in New Mexico history. The Ranch seeks to acquire 54,000 acre-feet of water per year (afy)-enough water for Albuquerque for six months-to sell to some unknown entity sometime in the future.

Under normal circumstances, this would be good news for our clients and for New Mexico's water. But the machinations underway suggest that this is a tactic to ditch a legal process that likely would end the Ranch's bid and affirm our state's laws against water speculation.

## inside

#### **Industrial Dairies**

Here's what you're doing to defend water protections that are under attack from PAGES 2-3 industry.

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How you're taking a stand for a healthier environment in NM's biggest city.

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It's time to get together to celebrate!

See the back page for details.



## Client Spotlight: Rio Valle Concerned Citizens

The drive from Anthony, NM to Santa Fe is about four and a half hours. Imagine driving there and back just so you could talk to the people who will decide what happens in your backyard. That's what Maria Elena Bejarano and Betty Gonzalez did just to be a part of the public process and to have their voice heard. They wanted to tell those people what it's like to live near a mega-dairy with hundreds of cows just across the road.

"Most meetings take place in Albuquerque or Santa Fe," says Betty, "and we are at the southern end of the state. Trying to get people to go up there...it's hard. We don't have the resources. When we go, we make the trip all in one day. We take our own car, we pay for our own gas, you know? But we feel that it's..." "...important enough," says Maria Elena.

They were the only community members available to go to the public hearing back in the Spring, but the dairies, "they're well represented at these meetings," says Betty.

Other community members, Maria Elena explains, "are concerned, but they feel they can't do anything. That's one of the basic things that I hear from them: 'What can we do? They got more than what we can fight them with."

These women, both proud grandmothers, have been living in this community for over thirty years each. They moved here to Anthony to be close to their families, to raise their children in a rural environment and have them close to their generational roots. Their neighborhood wasn't always such a hard place to live. "When I moved here in 1978, I didn't even know there was a dairy," says Maria Elena. "It didn't smell. Then they

started increasing the number of cows and that's what caused it to get bad."

"I will be here," pointing to her

kitchen sink, "peeling chiles, washing dishes, all that good stuff and there it is," the overwhelming stench of manure. Maria Elena goes on to explain how the flies got so bad last year. "One time my cousin came over and out of three doors she didn't know where to come in. It was just packed with flies. They were on everything."

"That's the thing," adds Betty. "We can't enjoy anything outside."

The Del Oro Dairy is about 600 feet from Maria Elena's home and stretches about a half mile long. It is one of several mega-dairies in the area and is one of the smaller operations. A short drive down Interstate 10 past Las Cruces shows why the area is called "Dairy Row".

Law Center Attorney Jon Block represents Rio Valle Concerned Citizens in its efforts to get existing groundwater contamination along Dairy Row cleaned up. Rio Valle Concerned Citizens is also working with the Law Center and other communities around New Mexico that are impacted by dairies to protect the existing "Dairy Rule." The Rule, which was adopted in 2010, has



## "I try to pep her up and she tries to pep me up...It just feels like we all have our hands tied, so what do you do?"

proactive pollution control and monitoring provisions to keep dairy waste out of water. The Dairy Industry has tried to overturn it since 2011, and has now petitioned in the Water Quality Control Commission to gut it. (Please see "Here's How You Can Help" next to this profile).

"The NMED can only control what happens with the groundwater," says Maria Elena. "We thought we could do something about the flies and different things but it was only about groundwater and we didn't know. We were very naive."

But they've learned that the dairies threaten their groundwater as well. "We want to know that our well water is going to be protected," says Betty. "Everything depends on water, so we've GOT to do something." "We're trying," says Maria Elena.

"I try to pep her up and she tries to pep me up..." says Betty and they laugh. "It just feels like we all have our hands tied and so what do you do? What do you do? But at the same time you can't just let it continue to happen! And I think that's why we just feel like we can't let it continue."

While the industry and the State continue to haggle, Betty and Maria Elena, along with their neighbors, live their day to day lives.

When thinking back on the time spent living with swarms of flies and the smell, Maria Elena reflects, "To me, we let it go on far enough, because of our ignorance, because we did not know what we could and could not do. We need to make [the dairies] accountable for what they are doing and not doing. They need to be good neighbors. Water is precious here in this state and it seems like it's being abused."

## by Juana Colón

© Photo "Dairy Row", courtesy of thefern.org

#### Big Dairy wants to pollute more of our water. Here's how you can help:

The dairy industry is trying to gut our state's "Dairy Rule," which protects water from dairy pollution. A hearing on the dairy industry's petition is tentatively scheduled for December.

You can be an important part of the process, because decision-makers and the public need to hear from residents concerned about protecting water supplies and public health.

- Submit comments to the Water Quality Control Commission
- Attend hearings
- Write letters to the editor
- Make a financial contribution to support our dairy work

If you've already signed up to help, thank you! If you would like more information, please contact us at info@nmelc.org or call (505) 989-9022 and we'll get you details!

> "[Dairies] need to be good neighbors. Water is precious here in this state, and it seems like it's being abused."





General dispatches from

Law Center Attorney Eric Jantz presents to United Nations Committee on the Elimination of Racial Discrimination

As a Law Center member, you've been supporting our work to bring international attention to environmental injustice in New Mexico for years. This summer, you helped us appear before the United Nations' Committee on the Elimination of Racial Discrimination (CERD).

As chair of the Environmental Justice Working Group of the U.S. Human Rights Network, Eric was one of three New Mexicans who traveled to Geneva, Switzerland, to present on environmental injustice to the CERD during its quadrennial review of the United States' progress towards racial equality. Here are a few of his Facebook posts:

August 11 "Great day at the U.N.! I was able to talk to several committee members and they were VERY sympathetic to both the uranium mining and Albuquerque air pollution issues. Tomorrow is the big day – our formal presentation to the full Committee. We have a very good presentation and I think we can go a long way to making the world aware of what's going on in New Mexico."

August 13 "It's been a MONSTER 48 hours! Yesterday morning, we had our "formal intervention", which was a statement to the CERD committee about the U.S.'s human rights violations as they relate to environmental rights...The Committee member from Pakistan was very interested in the environmental iustice issues..."

August 15 "Now that the U.S. compliance review is over, it's time for the real work to begin! ...Whatever happens, we must now use this information to continue to fight for New Mexico communities. The U.S. knows the world is watching now, and if we do our job, our governments will no longer have a curtain of secrecy to hide behind."

See the full recommendation of the CERD for the U.S., as well as the "shadow reports" filed by the Law Center on behalf of the Multicultural Alliance for a Safe Environment (uranium mining) and the SouthWest Organizing Project (air quality in Bernalillo Co.) at nmelc.org. See Eric's posts at facebook.com/NMELC.

## Clean Air & Clean Water are Human Rights

As a Law Center supporter, you're helping accomplish nationally and internationally important work at the intersection of human rights and environmental justice, including:

- 1) Meaningful recommendations from the U.N. Committee on the Elimination of Racial Discrimination to the United States. For instance, the Commission recommended that the U.S. "undertake an independent and effective investigation into all cases of environmentally polluting activities and their impact on the rights of affected communities, bring those responsible to account, and ensure that victims have access to appropriate remedies."
- 2) NMELC's subsequent filing of a human rights report on behalf of the Multicultural Alliance for a Safe Environment to the U.N. Human Rights Council for its quadrennial Universal Periodic Review of the United States.
- **3)** A federal civil rights complaint filed by the Law Center on behalf of the SouthWest Organizing Project. The complaint calls on the Environmental Protection Agency to take to task the City of Albuquerque and Bernalillo County for discriminating against communities of color and low-income communities when making decisions about where to site air-polluting facilities.

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You're making it possible for us to represent communities in over 50 critical cases around the state. Thank You!

continued from pg. 1

"They say that water flows uphill to money," says Bruce Frederick, the Law Center Staff Attorney who has represented more than eighty individuals and families in this case since 2008. "This case challenged that idea. Law Center members made it possible for us to demonstrate that the application was illegally speculative under the New Mexico Constitution because it said nothing about how, when or by whom the water would be used. Based on that argument, the State Engineer denied the Ranch's application in 2012. Six months later, a state District Court Judge upheld the State Engineer's decision."

But in July, less than a month before the state Court of Appeals was scheduled to hear arguments in the case, the Ranch submitted a second application to the Office of the State Engineer. Just as before, the Ranch lists no specific end use or buyer for the 54,000 afy of water it seeks. The second application is essentially the same

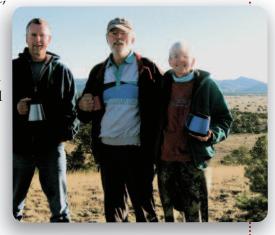
application as before, and therefore just as illegal as the first application.

Still, seemingly confident that its second application will be accepted, the Ranch withdrew its first application and dropped its appeal two days before its court date.

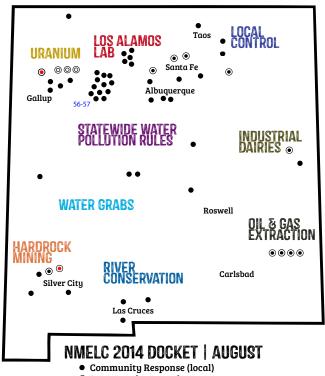


"The Ranch has obviously spent a lot of money and time weaving a colorful story about what it might do with this water," says Frederick. "But no matter how elaborate its story, the Ranch has not satisfied the first requirement for appropriating water: showing that it has any actual purpose or place of beneficial use for the water. Our clients and New Mexico's taxpayers are being penalized by having to start the process over again just because the Ranch put a different shade of lipstick on this pig."

We'll keep you apprised of the next steps that the Law Center and its clients take to prevent this water grab.



Bruce with clients, Ray and Carol Pittman.



State-Level casework

National-level casework

Items in red = cases closed in 2014

Your support has made it possible to take on several new cases this summer.

#### **SANTOLINA DEVELOPMENT** Albuquerque

We represent the SouthWest Organizing Project (SWOP) as it challenges the 40,000 Santolina development proposed for the Westside of Albuquerque. One of our client's fears is that the 100,000+ person subdivision will suck water out of communities and acequias in the South Valley.

#### **HONSTEIN BULK FUEL DEPOT** Albuquerque

We also represent SWOP to prevent the issuance of an air quality permit to the Honstein Oil Co. for a bulk fuel storage facility located in the San Jose neighborhood of the South Valley.

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# GREEN BUSINESS PARTNER Potlight Bernard Ewell ART DETECTIVE

Art detective, veteran appraiser, expert witness for the FBI, world traveler, lecturer, blogger, TV host, professor, passionate conservationist, and long-time Law Center supporter, Bernard Ewell is an interesting character indeed.

BERNARD EWELL ART APPRAISALS, LLC THE INTERNATIONAL SALVADOR DALÍ EXPERT

Now he can add "published author" to his long list of accomplishments with the

recent publication of his nonfiction book entitled *Artful Dodgers:* Fraud and Foolishness in the Art Market.

Bernard tells all in this tale of the international art market, highlighting "the crooks and their victims" in what he calls "the most unregulated market on earth". Having spent more than four decades in the business as an expert on Salvador Dalí, this book is an exposé from the agile mind of an insider.

From his home bases in Santa Fe and San Miguel de Allende, Mexico, Bernard travels the globe as the authority on Dalí's work. Having traveled since the age of 7, he's now set foot in 49 countries (and counting) on five continents via 1,135 airplanes. He hitch-hiked back and forth across West Africa while doing some of his doctoral studies at the University of London and the University of Ghana. He's been a guest lecturer at the National Museum in Beijing, and frequently travels to Europe on Salvador Dalí assignments.

Bernard makes his annual contribution to the Law Center a priority because, in his words, "they are the gold standard when it comes to professionalism and significant results, and their priorities are always right."

Artful Dodgers: Fraud and Foolishness in the Art Market is available at Collected Works Bookstore in Santa Fe, or through Bernard's website at www.bernardewell.com.

## Long-time Member Leaves Bequest

The Law Center was saddened to learn of the passing of another friend and loyal supporter, Andrew Nowak. Andy was a member of the Law Center for many years, and was also a friend to many other environmental, community and social service organizations in New Mexico and nationally.

He served as an expert advisor for the Law Center on air quality issues and also offered a series of lectures on the topic to Law Center staff. Though Andy had worked closely with us, we were surprised – and humbly gratified – to learn that he had made provisions for the New Mexico Environmental Law Center in his will. We will put his gift to good use fighting for cleaner air (as well as water and land), for all New Mexicans.

## Thank you Green Business Partners!

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











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Andy's photo provided courtesy of the Santa Fe Center for Spiritual Living





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#### Just in time for the holidays!

Fresh, indulgent, New Mexico organic chocolate recipes: milk chocolate + pecan; dark chocolate + red chile; *and* all new pure dark chocolate! Order at **nmelc.org**, or pick some up at our November 8th event! (Environmental justice never tasted so good.)



This newsletter project was printed on a 100 lbs. of NEW LEAF Reincarnation Matte paper, made with 100% recycled fiber and 100% post-consumer waste and manufactured with electricity that is offset with Green-E® certified renewable energy certificates.

## Upcoming EVENTS

Saturday, November 8th



Santa Fe Farmers Market Pavilion

## MEMBERS-ONLY PRE-PARTY

4:30-6:00 pm | free

## **SILENT AUCTION & RAFFLE**

Great Food + Drinks

Music by
Greg Butera & the
Aces of Santa Fe

#### **FILM FESTIVAL**

Starts at 6:00 pm \$10 pre-purchase \$12 at door \$25 ticket includes

membership



Jickets at www.nmelc.org/filmfest

## Southwest Seminars

southwestseminars.org

#### **Mother Earth, Father Sky:**

Perspectives on the Environment and Science in the West • Monday nights, 6pm at Hotel Santa Fe

\$12 at the door

#### **October**

- 20 Estevan Arellano :: New Mexico's Lifeblood: Acequias and their Origins
- 27 Steve Fadden (Akwesasne Mohawk) & Robin Easton: Storytelling from Our Tribal Oral Tradition and My Life Down Under

#### November

- 3 Hampton Sides::In the Kingdom of Ice: A Forgotten Tragedy of American Arctic Exploration
- 10 Dr. James Snead :: Ancient Stone Pathways of Micronesia
- 17 Dr. Kirt Kempter:: Geology of the Lands Down Under: Australia and New Zealand
- 24 Dr. Richard I. Ford::The Fossil Record of Human Brain Evolution

#### **December**

- I Charles Mann::Natural Beauty Beyond Santa Fe: Gardens, Art, and Photography
- 8 Craig Varjabedian :: Eloquent Photographs of the Enchanted Lands and Peoples of the American West
- 15 Dr. Tom Chavez:: New Mexico's Cultural History Lesson to the World