

GreenFireReport

Winter / Spring 2009

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

New Ordinance Out of the Ordinary

After more than a year of work, Santa Fe County is now home to the best oil and gas ordinance in the nation.

Throughout the process, Law Center Staff Attorneys Eric Jantz and Bruce Frederick represented Drilling Santa Fe, a grassroots organization based in the Galisteo Basin. We worked with dozens of concerned individuals and organizations to advocate for the new ordinance, which was drafted by the County and national land-use experts.

"This Ordinance is testament to what can happen when you bring together determined citizens, organizations that are knowledgeable in the law and science of an issue, and a government that does not bow and scrape to industry," says Jantz.

Not everyone is happy with the new law, however. "You can't let some county commission mandate that you're gonna drive on paved roads and pay for police and fire," Bob Gallagher, President of the NM Oil and Gas Association (NMOGA), told the *Albuquerque Journal*. He maintains that the ordinance will make it impossible for oil and gas development to occur in the Galisteo Basin, and has promised that NMOGA will sue to overturn the Ordinance, although that lawsuit has yet to materialize.

"This will not make it impossible to drill," rebuts Jantz. "What it will do, for the first time in New Mexico, is ensure that oil and gas drillers will have to be good neighbors.

It is just common sense that it will take several layers of protection to guarantee that an inherently toxic industry can operate as a good neighbor."

Jantz does not believe that the fight is over, however. In addition to a future possible lawsuit, Law Center attorneys



© 2008 Peter Ogilvie: Tecton Black Farrell Well #1

Check out <http://www.ogilviephoto.com/go/Oil/> and <http://www.ogilviephoto.com/go/Tecton/> for more oil and gas photos. This print is a part of the Galisteo Basin Photography Project; see page 4 to learn more.

worked vigorously to defeat bad legislation and support good bills, such as the *Free Market in Energy Restoration Act*, sponsored by Brian Egolf, which would have provided new protections for land-owners who do not own their mineral rights.

> For updates on this case, see our website www.nmelc.org as well as our client's site, drillingsantafe.blogspot.com



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Anatomy of the Ordinance

The Santa Fe County Oil and Gas Ordinance seeks to "promote the health, safety and welfare of the County, its residents, and its environment by regulating adverse public nuisance and / or land use impacts and effects resulting from the exploration, drilling, operation, and transportation of oil and gas."

Some precedent-setting aspects of the Ordinance:

- Significant baseline studies and modeling will be required before permits are issued.
- Ecologically- and culturally-sensitive areas have been identified, and will be closed to drilling.
- Companies will be required to use non-toxic fluids to fracture underground rock strata in order to release oil and gas for pumping to the surface.
- Drillers, rather than taxpayers, will be required to pay for new County services such as road paving and public safety that would accompany the growth of the industry.
- Drillers must keep surface disturbance to a minimum.

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

— Aldo Leopold
A Sand County Almanac

Hard-Fought Victory at Tyrone Copper Mine



PHOTO—
*Attorney Bruce Frederick and
Freeport McMoRan's Tyrone pit
from the air, April 2008.*
Courtesy of GRIP.

In a case that traces its roots back to a 2003 groundwater discharge permit, the Law Center and client Gila Resources Information Project (GRIP), and the NM Environment Department (NMED) prevailed in our efforts to force Freeport McMoRan (formerly Phelps Dodge Mining Co.) to clean up the contaminated groundwater under its massive Tyrone pit – the 5th largest open-pit mine in the U.S.

On January 13, 2009, the NM Water Quality Control Commission upheld two key disputed conditions in the discharge permit that require the company to re-grade

and cover thousands of acres of waste rock piles that would otherwise generate acid rock drainage and contaminate groundwater. “In an arid state like New Mexico that is so dependent on groundwater supplies, we cannot afford to use our aquifers as waste dumps,” says Allyson Siwik, Executive Director of GRIP. “We need every drop. NMED issued a solid permit back in 2003, and the Commission made the right decision in supporting it.”

The company had argued that groundwater supplies under the Tyrone copper mine are not required to be protected under

the NM Water Quality Act because they would not be used in the foreseeable future. Further, the company posited that it could count on “institutional controls” such as signs and zoning laws to

prevent people from using the contaminated water for centuries to come.

The Commission made several important determinations that were directly contrary to the company's arguments. Most importantly, it unequivocally rejected the assertion that land ownership and control of the land surface are relevant to determining whether groundwater will be used in the future. Instead, it directed the NMED to only consider objective factors, such as pre-mining water quality, aquifer characteristics and whether or not the water beneath the mine may be needed in the foreseeable future.

In March, Freeport McMoRan appealed the ruling. The Law Center and our client are preparing to defend the decision before the NM Court of Appeals later this year.

Toxic Drilling Wastes are the Pits

The ink was barely dry on the New Mexico's new Oil Pit Rule when the NM Independent Petroleum Association, ConocoPhillips and others sued to overturn it NM District Court. The new Rule, for which the Law Center ardently advocated in 2007, is the most stringent in the nation; it governs the management and disposal of toxic drilling by-products at drilling sites.

Some requirements:

- All temporary disposal pits must be permitted by the State, and all pits must have heavy-duty liners.
- Drillers must use “closed-loop” tanks near water resources, rather than storing wastes in open pits that can leak into nearby wells, rivers or groundwater.

- A significant amount of contamination must be hauled to licensed disposal sites; waste disposed of on-site must meet groundwater quality standards before being buried.

On behalf of the Oil and Gas Accountability Project, the Law Center intervened in the appeal in order to defend the Rule. We are also working to fight industry-backed efforts to weaken the Pit Rule through other channels; this case is unfolding as we go to press, so please see our website for updates.

> Please see our website for Jantz's brief, March 2008 testimony before the NM Oil Conservation Commission about the toxic chemicals associated with oil and gas drilling, and for a study that demonstrates economic benefits of closed-loop waste management systems.

Facts

- There are an estimated 100,000 active and inactive pits in New Mexico.
- Industry is required to report any release of more than 210 gallons.
- As of December 2008, the Oil Conservation Division is aware of more than 500 self-reported groundwater contamination instances related to pits.

Work Heats Up on Climate Change Case

In January, Law Center Staff Attorney Bruce Frederick overcame strong industry opposition to convince the NM Environmental Improvement Board (EIB) to grant a hearing on reducing the state's greenhouse gas emissions. On behalf of our client, New Energy Economy, we are petitioning the Board to adopt new regulations that would dramatically reduce global warming pollution over the next decade. "The science is clear that global warming is underway, and we must take immediate action," says Dr. John Fogarty, Executive Director for New Energy Economy.

We based the petition on the findings of the Intergovernmental Panel on Climate Change, a scientific entity composed of more than 1,200 international scientists. The Panel has concluded that developed nations must reduce global warming pollution by at least 25% below 1990 levels by 2020 to avoid catastrophic changes.

If we are successful in our efforts, New Mexico will lead the nation with the most significant and strongest regulations in the United States.

Other states, including California,



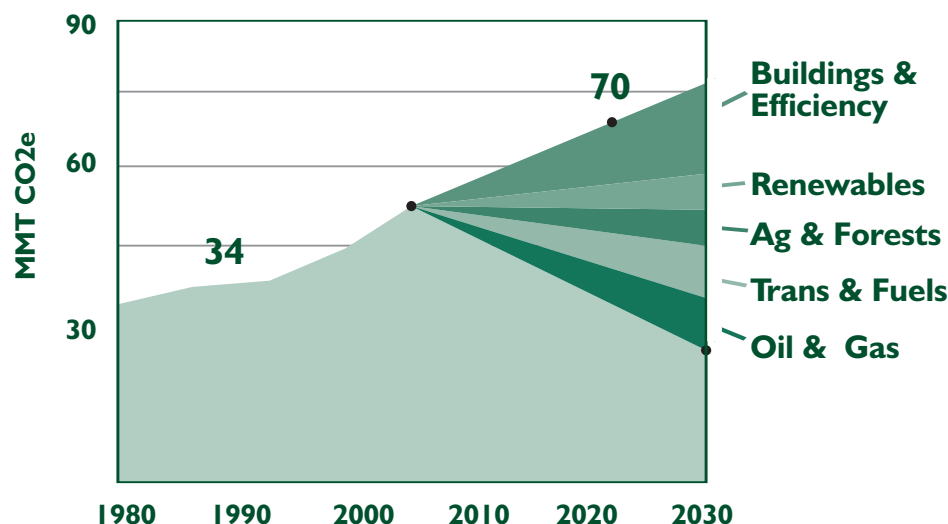
Photo courtesy Ossy Werner

John Fogarty, M.D., Executive Director of New Energy Economy, speaks about New Mexico's imperative to be a leader in addressing climate change.

Washington, and Massachusetts, have adopted legislation to reduce emissions in their states, but all targets thus far fall short of what scientists say is necessary to protect the planet from dangerous climate change.

A hearing before the EIB will be held in April; if we succeed, a hearing on the merits of the petition will be scheduled in front of the EIB in August. (newenergyeconomy.org)

Climate Change Advisory Group Recommendations to Reduce Emissions



This chart was developed by New Energy Economy using data compiled the New Mexico Climate Change Advisory Group. It gives a sector-by-sector breakout of how New Mexico can reduce its carbon emissions by 20% by 2020.

Uranium Notes

The Law Center continues to be a national leader on uranium issues:

- We submitted comments on the Nuclear Regulatory Commission's (NRC's) nearly 500-page draft Generic Environmental Impact Statement (GEIS) for in situ leach (ISL) uranium mining in Nebraska, New Mexico, South Dakota and Wyoming – all states that have significant indigenous populations living near uranium deposits. The GEIS would make it easier for companies to obtain ISL mining licenses.

Check our website to see our comments and the draft GEIS.

- We are still awaiting a decision from the U.S. 10th Circuit Court of Appeals in our lawsuit to overturn the NRC license issued to Hydro Resources, Inc. The license would allow the company to mine uranium in the sole-source drinking water aquifer for 15,000 citizens, most of whom are Navajo. The case was heard in Denver, CO, in May 2008.

- In addition to the GEIS, above, we represent the Haaku Water Office of Acoma Pueblo on two cases. 1) We represent the Water Office in government-to-government consultations with federal and state agencies on uranium matters. 2) We oppose the granting of the state's first non-minimal exploration permit for uranium. Neutron Energy, the applicant, seeks to drill near Mt. Taylor, a place of significant cultural import to the Acoma people.

- We published an economic impact study by resource economist Thomas Power, Ph.D., showing that a new uranium boom will not be a boon to New Mexico's economy.

[see our website to read more]

Galisteo Basin Photography Project



The online gallery can be found at www.GalisteoBasinPhotoProject.com.

© 2008 Linda Spier, *Witness, Petroglyph Hill, Galisteo Basin*

27 photographers illustrated what would be irretrievably lost if oil and gas development were allowed in Santa Fe County's Galisteo Basin in The Galisteo Photography Project.

50% of all Special Edition benefit print sales along with 25% of the sale of Exhibition prints will be donated to Drilling Santa Fe, NMELC, and the Oil and Gas Accountability Project.

Thank you to the McCune Charitable Foundation and Verve Gallery for donating a portfolio to the Photography Archives at the Palace of the Governors. And thank you to the photographers and curators whose vision and generosity made this exhibit possible!



Host Phil Cook and Doug Meiklejohn



Law Center Board Member Pablo Padilla, Jr. chats with host Q Cook



Rick Abeles and Margo Cutler (above); Karen Loud with D.D. Van Soelen (below)

Member Gatherings

Phil and Quarrier Cook of Santa Fe graciously opened their home to the Law Center for a ***"No Drilling Is Thrilling"*** party, in order to inform Santa Feans about efforts to protect the Galisteo Basin from irresponsible oil and gas drilling.

(below) Former Board member Mike Lilley and his wife Diane hosted a membership gathering in Las Cruces in October, where we were able to meet up with long-time members and meet some new friends!



Long-time supporter Bishop Ramirez of the Las Cruces diocese with Meg Heard and Donna Tate



Doug Meiklejohn catches up with host Diane Lilley



Host Mike Lilley shares a laugh with member Paul Mitchell



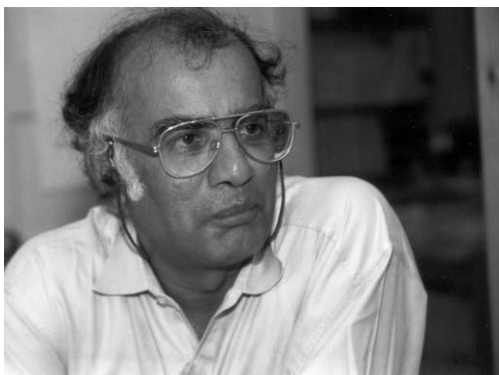
Unsung Heroes

“WANTED: summer interns to handle ridiculously large workload using technology from before you were born. You must have a strong constitution, as you will not be paid but you will be bombarded by the strange humor and manic pace exhibited by non-profit lawyers.”



Alice meets with client Larry King in Church Rock. Larry, an ENDAUM board member, is a veteran uranium activist who lives and ranches in Church Rock.

Once again, despite all of our demands and few rewards, the Law Center interns accomplished amazing things. Lissa Crocker, who graduated from Colorado College in May, has been working with us since then to develop a much-needed interactive map that will layer data about industrial facilities with information on New Mexico communities. Alice Segal, now a senior at the University of Chicago, had the daunting task of compiling reams of data on uranium in the Four Corners region for use on our website.



Educational Events

For the sixth year, **Alan Osborne** (below) and Connie Eichstaedt of **Southwest Seminars** produced **Mother Earth, Father Sky: Perspectives on the Environment and the West** as a benefit for the Law Center. Once again, the speakers captivated the audience, on topics ranging from plant management by Puebloan cultures to the history of photography in the West. Later this year, check out our 2009 series lineup at southwestseminars.org; lectures will be held October 26 – December 14th at the Hotel Santa Fe.



The Law Center and the Environmental Law Society at UNM School of Law were privileged to host **Dr. Arjun Makhijani** at the law school in September. Dr. Makhijani, President of the Institute for Energy and Environmental Research, is a world renowned expert on nuclear issues and sustainable energy use; find a link to his new book, *Carbon-Free and Nuclear-Free: A Roadmap for U.S. Energy Policy*, at our website.

Photos courtesy of: IEER. (Arjun); Ossy Werner (Alan)



Farewells

The Law Center would like to express its heartfelt gratitude to Jeanie Cragin, Corrine Sanchez and Peter Stacey, who served on our board of directors for 12, 10 and 3 years, respectively.

We were guided by their insight, made better through their talents, and inspired by their passion to protect the communities of New Mexico. Thank you, Jeanie, Corrine and Peter, and we wish you well in your other endeavors!



Jeanie Cragin, who headed Friends of Santa Fe County, helped christen the Ortiz Mountains Educational Preserve in 2003. The Preserve is a result of a settlement between Friends of Santa Fe County (represented by the Law Center) and LAC Minerals.

In Memoriam

The Law Center lost a true friend with the passing of Edith Pierpont in December. Edie sat on our Board of Directors during the 1990s, including a term as President. She worked tirelessly to protect New Mexico's water resources, and was a formidable defender of the environment in many arenas, including the State Legislature. We will miss her.



Partners in Justice: *Doug and Harriet Meiklejohn*

© 2008 Alain McLaughlin

Imagine an ambitious, talented lawyer with no corporate or wealthy clients, whose legal aspirations do not include remunerative civil suits or elective office; an attorney guided by family tradition and a personal recognition that our legal system should do more to represent the least powerful among us. And imagine a wife who shares those values and goals, who for over 40 years has supplied the moral and financial support needed to make reality out of good intentions. This is not imagination: it is Doug and Harriet Meiklejohn.

In 1977 Doug came to New Mexico to work in the Attorney General's office, working first in consumer protection efforts and last on environmental cases, a sensitivity that his parents had instilled in him. In 1987 however, Garrey Carruthers became Governor and Hal Stratton the Attorney General. Doug painfully realized that their priorities did not include his central concerns, and that he could no longer address those concerns working for the state.

The 80s were a period of increased social and environmental activism, with people around the U.S. experimenting with new, non-governmental ways of making change. In that heady time of making things better in spite of government, the Sierra Club Legal Defense Fund, the Environmental Defense Fund, and the Southern Environmental Law Center, among others, were beginning to make laws and the legal system work for – not against – the environment.

Moved by these non-governmental efforts to improve the environment, Doug left state government and regular paychecks in 1987 and founded the Law Center. With three young children, to call this a gamble is an understatement! But from the start, the Law Center had an angel keeping the Meiklejohn family afloat: her name is Harriet. She was then – as now – a librarian. It would take a long time for Doug to be earning “lawyer’s wages;” he’s still waiting. He and Harriet live in the same small house they lived in then.

Reflecting Doug’s values, the Law Center “represents the least powerful among us,” usually Indian tribes and poor Hispanic

communities that can’t afford legal counsel, but who live under threats to their health or environment. Frequently, all costs of carrying a case to conclusion are borne by grants and private donations, not the client. Unfortunately, with its small staff and limited resources, the Law Center has to turn away approximately 80% of the cases that come to it.

By Don Goldman

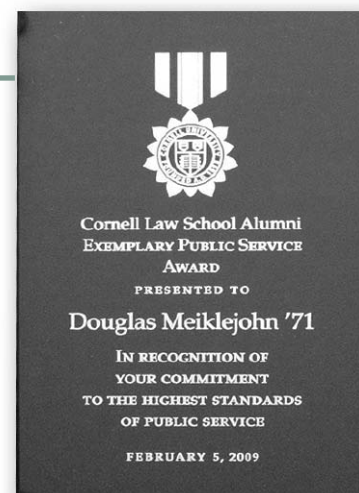
Law Center member since 1988.

Ed. note: *In 2008, we launched '20 Stories for 20 Years' in honor of the Law Center's twentieth anniversary. We're a little late, but are happy to present the final five stories in that series. Please see our new website for the remaining four stories.*

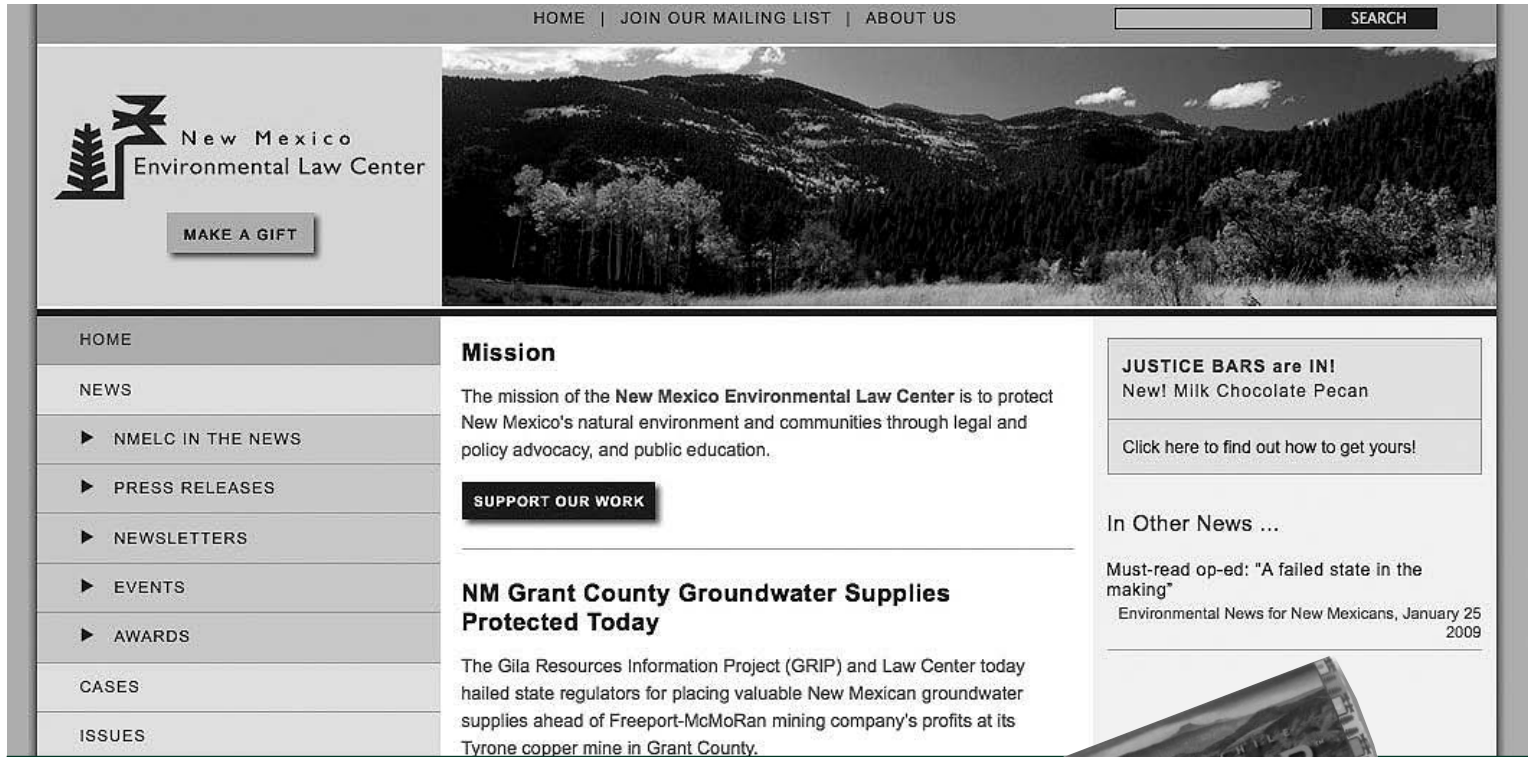
A distinguishing Law Center characteristic is that it responds to requests from communities. It doesn’t tell them what they need; the community determines its needs and the Center helps it achieve them. The community members stay actively involved in the case; it’s their case, not the Center’s. It’s been a long haul since Doug was a full-time volunteer founder-attorney. Today the Law Center and its staff of eight (including four attorneys) is recognized and honored for its work on behalf of New Mexico’s environment and communities. Thank you, Doug and Harriet!

Of Note

On February 5, Cornell Law School recognized Doug Meiklejohn ('71) for his lifetime of service as a public interest attorney. Doug was accompanied to the ceremony in New York City by attorney and Law Center Board member Pablo Padilla, Jr., who nominated Doug for the award. Doug was also nominated by a classmate of his at Cornell. Congratulations, Doug!



Law Center Joins 21st Century



*Check out our website –
nmelc.org – with a new address
and a new look!*

Our static site has been retired, and our new site is up and running. Try our new Search Box, check out daily news stories, and sign up for our RSS subscription. Thanks to the folks at Array Design of Santa Fe (www.arrayweb.com) for their great work!

Remember to mention our name!

Mention the Law Center, and GreenMoney Journal will donate \$25.00 to the Law Center when you subscribe. Or mention us during your first visit to Lakind Dental Group, so that 50% of the cost of your new patient visit will be donated to us!

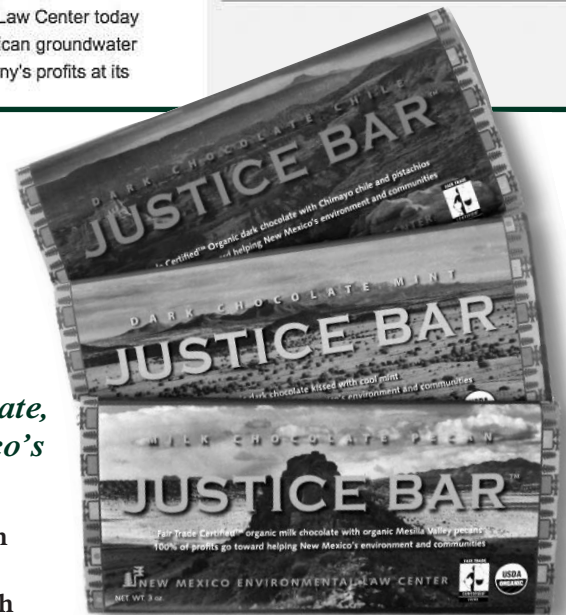
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- Dark chocolate kissed with cool organic mint from Old Monticello Organic Farms near Truth or Consequences.
- Milk chocolate studded with organic pecans from Del Valle Farms in the Mesilla Valley.

In Santa Fe, you can pick up Justice Bars at Señor Murphy's retail stores at the La Fonda Hotel or Santa Fe Place, Señor Murphy's factory, or at the Mission Café and Sweet Shop. For ordering information, to find out more about our partners and our increasing number of retail outlets, or to see the beautiful wrapper photographs donated to us by John Vavruska, see nmelc.org.





New Mexico
Environmental Law Center

1405 Luisa Street, Suite #5 / Santa Fe, NM 87505
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