Law Center Resuscitates Rulemaking

by Cole Merrick

On June 8, we foiled plans by New Mexico’s biggest industries (PNM, El Paso Electric, the NM Oil and Gas Assoc.) to not only kill our client’s petition to limit greenhouse gas emissions, but to cripple the State of New Mexico’s ability to adopt and amend regulations.

On that day, Staff Attorney Bruce Frederick and Eric Miller of the Attorney General’s Office argued before the five justices of the New Mexico Supreme Court that a Lovington District Court Judge had no jurisdiction to stop an administrative climate change proceeding before the Environmental Improvement Board (EIB). If the Supreme Court did not intercede, they argued, any party could sue at any time to stop any State agency from even considering new regulations.

“We would have – and we would deserve – chaos,” Frederick argued in his rebuttal. “State agency proceedings could easily be shut down by any lawyer who can spot a legal issue, no matter how frivolous, and the district courts would become clogged with random and premature declaratory judgment actions.”

In response, the Supreme Court issued a Writ of Superintending Control, which ordered the district judge to dismiss the case, and allowed the EIB to resume our climate change hearing in August.

Announcing the ruling after only 15 minutes of deliberations, Supreme Court Chief Justice Charles Daniels stated that the case raised serious separation of powers issues and that the district court had mistakenly interfered with an ongoing executive agency proceeding.

The Supreme Court case sprang from a lawsuit filed by four state lawmakers, business/industry groups and our state’s utilities to stop the EIB from considering New Energy Economy’s (our client’s) petition to limit greenhouse gas emissions in the state. In January, they filed their suit in a district court in Lea County – the capital of our state’s oil region.

On a windy April day at the Lovington courthouse, Judge William G.W. Shoobridge, heard arguments in the case; shortly

Story continued on page 2
Federal Judges Rule Against Navajo Communities

by Eric Jantz

On March 8, we received a disappointing decision in our federal appeal of Hydro Resources uranium mining license.

As you may recall, in May 2008, we traveled to Denver with a delegation from the Navajo communities of Church Rock and Crownpoint. There, we made the case to the U.S. 10th Circuit Court of Appeals that the uranium mining license granted to Hydro Resources should be thrown out. At the heart of my legal arguments was the contention that uranium mining in these communities will damage the health of the people who drink the water and breathe the air that these mines will impact.

Unfortunately, two of the three judges on our panel deferred to the Nuclear Regulatory Commission (NRC) – an agency that has historically promoted uranium mining and the nuclear industry. The decision was not unanimous; Judge Carlos Lucero dissented “because the majority’s decision in this case will unnecessarily and unjustifiably compromise the health and safety of the people who currently live within and immediately downwind from [the minesite].” It is one of the strongest dissents that my colleagues and I have ever seen. Despite Judge Lucero’s dissent, however, the Court refused our request for an en banc review, in which all of the active judges on the 10th Circuit bench would have reviewed the decision.

In a separate, but related case, the 10th Circuit overturned its previous ruling on which entity will regulate the groundwater beneath the first proposed minesite. The new ruling states that the proposed Church Rock Section 8 site, despite being in a community that is 97% Navajo, falls under the jurisdiction of the New Mexico Environment Dept. The issue at hand – who governs an Indian community in the Checkerboard region – is legally significant, and it is likely that the Navajo Nation (which was a party to the case, along with the U.S. EPA and Hydro Resources, Inc.) will not be satisfied with the appellate decision. For our clients, this ruling is especially significant because it means that the Navajo Nation’s ban on uranium mining no longer applies to the site.

Despite these rulings, this case is far from over. We are preparing for permitting proceedings before the NM Environment Department later this year. If you are a member of the Law Center, you know that as long as our clients in Crownpoint and Church Rock continue their struggle, we will fight beside them. My colleagues and I will keep you apprised of our efforts.

Thank you for supporting our work.

Supreme Court Story continued from page 1

thereafter, he ruled in favor of the plaintiffs. We had to move quickly to preserve both our climate change hearing, and the sanctity of the public rulemaking process in New Mexico– and so made the rare move of appealing directly to the Supreme Court.

“The Supreme Court does not do something like this unless there are extraordinary circumstances involved,” says Frederick, noting that only five percent of requests for Writs of Superintending Control have been granted during the past eight decades. “The Lovington district court and EIB are two separate branches of government. The court cannot intercede in a state agency appeal– the separation of powers issue made for this extraordinary circumstance.”

“We were confident that the Supreme Court would put us back on track. We can finally move ahead to create clean energy jobs, provide a level playing field for small business and the renewable energy industry, and prove that solving global warming will catalyze job creation,” said John Fogarty, Executive Director of New Energy Economy. Frederick is confident that the EIB hearings will resume and finish by the end of the summer.
New Mexico Mooo-ving Towards Groundwater Protection

With New Mexico being the 7th largest producer of dairy products in the nation, we’re also one of our country’s biggest producers of cow manure. That much manure—approximately 2.2 billion gallons per year—can wreak havoc on aquifers, fouling them with nitrates, phosphorus, ammonia, human pathogens and hormones … not to mention the smell.

The problem dairies pose to water quality is not small. Of the roughly 150 dairies operating in New Mexico, approximately 57% of them have documented groundwater pollution (for those that monitor groundwater quality), and a third are in abatement. Some of this contamination is historic, and new liners for liquid waste lagoons are better than their predecessors at preventing leakage. At the same time, however, no one is sure how well technology can treat this contamination (no dairy has been fully remediated in New Mexico yet), and we know that cleaning up polluted groundwater is never cheap or easy.

To address these problems, and to comply with a legislative mandate, the NM Environment Department has drafted dairy-specific regulations to protect groundwater. But in some situations, the regulations don’t go far enough. So when our state’s water quality watchdogs wanted to plug the holes in the State’s proposal, they turned to the Law Center for help.

Some key provisions for which the Law Center and its clients [Amigos Bravos, Caballo Concerned Citizens Group, Citizens for Dairy Reform, the Rio Grande Chapter of the Sierra Club, and Food and Water Watch] are advocating for:

- A minimum separation of 30’ between the bottom of manure lagoons and groundwater, instead of the 4’ recommended by the State.
- Stricter setback requirements, including a buffer of at least 1 mile between dairies and populations of 10 or more homes or businesses, and keeping untreated waste away from food crops.
- Increased monitoring and reporting.
- A company must state in its permit application how many cows will be housed at the dairy.
- A company must send a map of its proposed location to neighbors as part of the public notification process.
- A company must submit a closure plan with its application, and must provide a reclamation bond that would fund cleanup, in the event that the company cannot clean up the site when it closes.

Staff Attorneys Jon Block and Bruce Frederick represented our clients at a 4-week hearing before the Environmental Improvement Board. We expect a ruling later this year.

**“By planning in advance, we will reduce the costs to these companies, and reduce the amount of contamination.”**

—Brian Shields,
Director of Amigos Bravos, responding to Commissioner Howard Hutchinson’s question about why public interest groups want dairies to have plans in place for closure.

**Where are New Mexico’s dairies?**

- **75% — Eastern**
  [Curry, Roosevelt, Chaves, Eddy + Lea Counties]—approx. 266,000 cows

- **15% — Southern**
  [Doña Ana, Sierra + Luna Counties]
  – approx. 53,000 cows

- **10% — Albuquerque Area**
  [primarily South Valley]
  – approx. 35,500 cows

**2.2 billion gallons of cow manure per year can wreak havoc on aquifers.**
Positive Step in Homestake Case

“Residents have reason to be frustrated with progress to date, and suspicious of promises of remediation timelines.” – NMED Secretary Ron Curry

For decades, residents north of Milan have fought to get the Homestake Mining Company to clean up the water polluted by that company’s uranium mill, which was shuttered in 1990. In March, the NM Environment Department handed them a small but significant victory, included in an order renewing Homestake’s groundwater discharge permit for its collection and evaporation ponds.

The renewal came on the heels of a public hearing, held in Grants in January. At the hearing, Staff Attorney Jon Block represented members of the Bluewater Valley Downstream Alliance (BVDA), a grassroots group comprised of citizens living in the shadow of the mill’s massive tailings piles. In addition to presenting community concerns, the group submitted technical testimony from Paul Robinson, Research Director at the Southwest Research and Information Center (SRIC), assisted by Chris Shuey, MPH, SRIC’s Environmental Health Specialist.

In his order renewing the permit, Secretary of the Environment Department Ron Curry specifically agreed that “residents have reason to be frustrated with progress to date, and suspicious of promises of remediation timelines.” He then stated that a study being conducted by the Army Corps of Engineers (and due to be completed this year) may “prompt modifications to the larger remediation strategy of the Mill Site.”

“This is the first time anyone from the State has acknowledged the issues and frustrations that our clients have expressed,” explains Jon. “It is also the first time that a regulatory agency has provided some hope by indicating a commitment to restore groundwater to usable condition in the foreseeable future – and the first time they have offered the possibility of requiring Homestake to change course if the study shows that the company’s current reclamation efforts are not succeeding. Our hope is that the Environment Dept. has opened the door to working with BVDA and other interested community organizations, to come up with a realistic human time-bounded clean up solution for this Superfund site. The fact that Secretary Curry told us that his Water Quality people will be paying attention to the Army Corp of Engineer’s assessment of the site is something we view as a positive step.”

Contamination from the massive mill complex has plagued residents for more than forty years. Because of unsafe levels of uranium, selenium and nitrates in drinking water wells, the company was required to haul water to families, hook residents up to Milan’s municipal water system, and pay residents’ water bills for a decade. Not satisfied with these stopgap measures, our clients at the BVDA continue to fight for true reclamation of the site and remediation of local groundwater.

Neighborhood Negotiates Better Air

Soon after Staff Attorney Jon Block began working with the Greater Gardner Neighborhood Association in Albuquerque to appeal an air quality permit, he realized it would be an uphill fight. For two years, residents of the neighborhood had fought the operational expansion of the American Cement transfer facility, which often spewed hazardous cement dust into their yards, homes, schools and businesses. Despite vocal opposition and documentation of pollution, the Albuquerque-Bernalillo County Joint Air Quality Division issued a permit to the facility that allowed it to operate 24 hours a day/365 days per year, and allowed it to quadruple its emissions.

“This was yet another example of how the Air Quality Division does not consider public testimony when considering air quality permits,” explained Jon. “So, we decided to get the results we wanted without them.”

Jon helped residents set up settlement negotiations with Grupo Cementos de Chihuahua (GCC), the owner of the facility and one of the larger cement producers in the northern hemisphere. “From my experience with these kinds of matters, I knew that attorneys would likely complicate the proceedings. So I suggested that opposing counsel and I stay out of the room, and let our clients and the company participate in a mediated negotiation – something that had not taken place during the permitting process.”

The result was a win-win for the Greater Gardner Neighborhood Association and the company. Among other outcomes, the company has agreed to install state-of-the-art monitoring equipment at the site, and is working with neighbors to implement a panel comprised of residents and company representatives to address any future concerns.

“We’re very pleased that our clients walked away with what they wanted,” says Jon. “However, both they and I remain frustrated that this fight could have been avoided had the City implemented a stakeholder process early on. Until the Air Division and the Board become more responsive to citizens, I believe we will be working with residents in Albuquerque for a long time to come in their fights against air pollution.”
On July 16, 2009, Navajo citizens and their allies commemorated the 30th anniversary of the United Nuclear tailings spill with a 5 mile walk past the broken earthen dam that released 95 million gallons of radioactive effluent and 1100 tons of radioactive tailings.

Over the past decade, the nuclear industry has spent more than $600 million on lobbying, and $63 million on campaign contributions. So it is no wonder that the nuclear industry is now crowing about its pending revival and lining up for federally-funded subsidies and loan guarantees.

Uranium mining is also benefiting from the buzz. Last year, the Nuclear Regulatory Commission “streamlined” its uranium mine licensing process because of an anticipated surge in license applications. This Spring, FORBES magazine featured a story about uranium mining’s potential for big profits. We’ve known that the threat has been growing – during 2009 our uranium caseload grew from three cases to twelve. In addition to our Crownpoint Uranium Project and Homestake Mill cases, here’s the latest on the mines opposed by our clients:

- **RocaHonda mine, on Mount Taylor:** This is the first time that a uranium company is seeking a full-fledged mining permit in New Mexico (mining permits weren’t required until 1993) This case will determine how the State deals with proposed uranium mines for decades to come.

- **Mount Taylor mine, on Mount Taylor:** Fortunately, the State of Colorado recently passed a law prohibiting General Atomics’ from opening its Cañon City, CO uranium mill until that site is remediated. It is believed that remediation will take 50–100 years. Because General Atomics will be unable to process the ore from the Mount Taylor mine, in June the company backed off of plans to reopen the mine.

- **Nichols Ranch mine/Lost Creek mine/Moore Ranch mine, in Wyoming, and Dewey/Burdock mine in South Dakota:** As one of the few law firms to work on federal uranium mine licensing over the past decade, we didn’t hesitate to help oppose these license applications, despite their distance from New Mexico. These cases will determine the extent to which regulators at the Nuclear Regulatory Commission can utilize its new licensing process that will restrict opportunities for public participation and limit the requirements for site-specific studies at proposed in situ leach uranium mines.

- **Pandora Mine, Moab, UT:** Our most recent uranium case involves a lawsuit against the US Forest Service, which has approved a plan to expand the Pandora Mine on federal land near Moab. This lawsuit will help determine how federal land management agencies permit uranium mines in the future.

For more information on these cases, please see the “Case” pages on our website.
Thank Yous

Thank you, Matthew!

Long-time Law Center supporter, Matthew Baca threw a benefit for the Law Center in January, where he read from his first novel, *The Antiquarian*.

Our sincere thanks to Sallie Bingham, for her generous $10,000 challenge grant – and to all of our supporters who helped us meet her match!

“It strikes me every time I look out my studio window at the arroyo and the hills, the junipers and the piñons of the Santa Fe watershed: how lucky I am to rest my eyes every day on hundreds of acres of open space.

My own private view reminds me of my responsibility to provide this same view to people who can’t afford to buy a piece of land next to the watershed or to the National Forest, who must live with what is being done to the views we all share, whether that be the Galisteo Basin, the desert alongside Chaco Canyon, the threatened communities of Mora and San Miguel Counties, or any strip of open land that can fall prey to oil and gas development. Alone I can’t fight for the sanctity of the views that belong to us all, but through my support of the New Mexico Environmental Law Center, I can feel secure in the certainty that my interest and all our interests are being protected.” — Sallie Bingham

Thank you to the funders, sponsors and contributors who make the work of the Law Center possible.

Contributions made July 1, 2009 - May 15, 2010

Board of Directors
Stuart Bluestone, President, Santa Fe
Frank Sanchez, Vice-President, Roswell
Diana Bustamante, Secretary, La Mesa
Robby Rodriguez, Treasurer, Albuquerque
Myron Armijo, Santa Ana Pueblo
David Henderson, Santa Fe
Susanne Hoffman-Dooley, Santa Fe
Donna House, Alcalde
Renee Ingold, Cerrillos
Pablo Padilla, Jr., Zuni Pueblo
Dale Pontius, Santa Fe
Alice Van Buren, Santa Fe

Staff
Jonathan M. Block, Staff Attorney
Juana Colón, Communications and Public Education Associate
Bruce Frederick, Staff Attorney
Sebia Hawkins, Director of Development
Eric Jantz, Staff Attorney
Shelbie Knox, Development Officer
Douglas Meiklejohn, Executive Director
Yana Merrill, Director of Finance and Administration

Institutional Funders
Anonymous
Anonymous Donor at the Santa Fe Community Foundation
Charlotte L. Kiser Charitable Trust
Educational Foundation of America
Nancy and Thomas Florsheim Family Foundation
Ford Foundation
James M. Ewell Charitable Trust
Harold and Norma Brown Environmental Fund at the Santa Fe Community Foundation
Robert Haspel and Lynda Taylor Fund at the New Mexico Community Foundation
Just Woke Up Fund at the Santa Fe Community Foundation
Lannan Foundation
Levinson Foundation
McCune Charitable Foundation
Mumford Family Foundation
New Cycle Foundation
New-Land Foundation
Oppenheimer Bros. Foundation
Patagonia, Inc.
Richard and Rachel Fund at the New Mexico Community Foundation
Eugene V. and Clare Thaw Charitable Trust
The Sulica Fund
Turner Foundation, Inc.

Green Business Partners
A-I Self Storage
Jim Butler Productions
Grace Communications
Green Money Journal
HurleyMedia
KESHI, The Zuni Connection
Lilley Law Offices
Margo Cutler, LTD., Real Estate
Marshall Plan
Resources for Change
Santa Fe Greenhouses
Sculpture Ranch

Individual Donors
Anonymous
A. Paul Mitchell and Genevieve Chavez
Carol and Thomas Aageson
Dr. Daniel and Cynthia Allan
Ardel and Heather Anderson
Neal Apple and Vicki Allen
Amber Archer
Su Anne Armstrong and Ted Hopkins
Frieda Arth
Matthew and Linda Baca
Phyllis Baca
Jack and Diane Baca Stow
Ken Balizer
Tina Bandick
Janice Bandrochak and J. Cleveland Sharp
Paul Bardacke and Lisa Enfield
Marissa Stone Bardino
M. Max Bartlett
Mike Batte and Wanda Kile

Southwest Seminars
Sutin, Thayer & Browne
Verve Gallery of Photography

> Thank you to the funders, sponsors and contributors who make the work of the Law Center possible.

© Vavruska photo of a Storm clearing over the Ortiz Mountains
Thank you to the funders, sponsors and contributors who make the work of the Law Center possible.

Individual Donors (cont.)

William Baxter
Kevin and Susan Bean
Susan Bell
Reed and Melinda Benson
Jean L. Bergeron
Amy Bertelli
Crawford Best
Donna Bevacqua-Young
Paul and Ellen Biderman
Gus and Helen Bigelow
Garland Bills
Sallie Bingham
Helen and John Binkley
Susan Binneweg & Owen Jones
Fred and Daryl Black
Ross M. Blankinship and
Anne Irete
Thomas Blog
Stuart M. Bluestone, Esq.
Elspeth G. Bobbs
Michele Boccia and
Lewis Sawatzky
Myron and Janice Bond
Karen Bonime and
Richard Weiner
Jean and J. J. Brody
Jan Brooks
Joan Brown, osf
Jovana Brown
Ingrid Bucher
Chris Buethe
Sandy Buffett
David and Hannah Burling
Jerome P. Busmeyer
Diana Bustamante, Ph.D.
Christopher Calvert
Joyce Carden
Lawrence Carreon
Ellen S. Casey
John Catron
Rose Marie Cecchini
Susan Chappell, Esq.
Wendy Chase
Kathleen and Hugh Church
Fritzi Cohen
Karen Cohen, MD, and
Robert Templeton
Peter Cohen
A.T. and Cinda Cole
Kenneth Alan Collins
Carol Condie
Philip and Quarriner Cook
Robert Cooley
Dianne C. Cress and
Jon B. McCorkell
Theo Crevenna
Irwin D. and
Florence Cromwell
Hope Curtis
Nancy Dahl
Diane D’Arrigo
Charles and Helen Davis
Nancy and Joe Day
Glen DeGarmo, M.D.
Elaine Diers
Dr. David Doezema
Phyllis Dollinow
Shannon Donahue
Cornelius Dooley, M.D., and
Susanne Hoffman-Dooley, Esq.
Frank Dottle
Dr. James and Julie Drennan
Mary Dykton
Deanna Einspahr
Jocelyn Elder
E. J. Evangelos
Janice Evans, M.D.
Fairholm Builders, Inc.
James Faris
Maria Fellin
Geoffrey Fettus and
Ryan Alexander
Kristina Fisher
Heidi Fleischmann, M.D. and
James C. Scott
Marilyn Forbes
Richard and Karen Ford
David Fowler & Polly Brown
Alan and Anita Frank
Kathleen Gallagher
Eileen Gauna
Nicholas Gentry
Egle’ Gernanas
Sheila Gershon
Daniel Gibson
Larry Ginsberg
Rose Mountain Retreat Center
Byron Goldstein
Carol Goodman
Steven and Lois Goodman
Eda Gordon
Luann and Joseph Graziosi
Joel and Cherrin Green
Gila Tree Thiners
William and Sharon Gross
Michael Leon Guerrero
J. G. Guffy
Carol A. Haller
William Hanranah
William and Linda Hardy
Wendell and Harriett Harris
Richard and Anna Harrison
Jonathan E. Hartshorne
Don and Cheryl Hastings
Sebia Hawkins & Spin Dunbar
Karen Heldreyng, Ph.D.
David and Juliana Henderson
C. Colcott and Beth Henry
Frank Herdmans & Alice Temple
Ann and Jerry Hicks
Vera Hilsenrath
Sara Hiner
Dave Holland
Todd Hotchkiss & Kathy Araki
Donna House
Ken Hughes & Ellen Kemper
Madeleine Hurd
Jeffrey Huser and
Debra Colonna-Huser
Tova Indrids
Renee Ingold
Frank and Janet Iske
Thomas and Carlyn Jervis
Stephen Jett
James J. Johnston
Doug Jones
Richard and Ella Jones
Robert and Ethlyn Jones
Mark Kalin
Elizabeth Kanes
Heather Karlson
Daisy Kates
Kirt Kempter
David King
Shelby Knox and David Clark
Ruth and Paul Kovnat
Kozon Law Office, PC
Robert and Julie Kresa
Patricia Kuhlhoff
Donald Kurtz and
Elizabeth Gutierrez
Lyle F. and Jaclyn Lane
Michael and Barbara Langner
Susan Larsen, DVM
Suzanne LeBeau
Collin Lee, Jr.
Deirdre Lennon
Jason A. Lillegren
Michael W. and Diane Liley
Larry and Julianne Littlefield
Robert robotfield
John Loges and
Lori Remegio-Loges
Mr. and Mrs. Donald R. Lundgren
Ann Maes
Penny and Mallery
Angelo R. Malta
Eileen Mardel
Gayle and Marilyn Manges
Mario Manzo
Jennifer Marshall
James C. and Sherry Martin
Susan and Richard Martin
Wendell and Harriett Harris
Richard and Anna Harrison
Jonathan E. Hartshorne
Don and Cheryl Hastings
Sebia Hawkins & Spin Dunbar
Karen Heldreyng, Ph.D.
David and Juliana Henderson
C. Colcott and Beth Henry
Frank Herdmans & Alice Temple
Ann and Jerry Hicks
Vera Hilsenrath
Sara Hiner
Dave Holland
Todd Hotchkiss & Kathy Araki
Donna House
Ken Hughes & Ellen Kemper
Madeleine Hurd
Jeffrey Huser and
Become a Green Business Partner

People support businesses that support good causes! Partner benefits include increased visibility for your organization’s logo in this newsletter, in our monthly Enews, in print ads and on our website; tickets to Law Center events; and special mention in our donor recognition lists. Contact Sebia Hawkins at 505.989.9022, ext. 27 to learn more.