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GreenFireReport

SUMMER 2015

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

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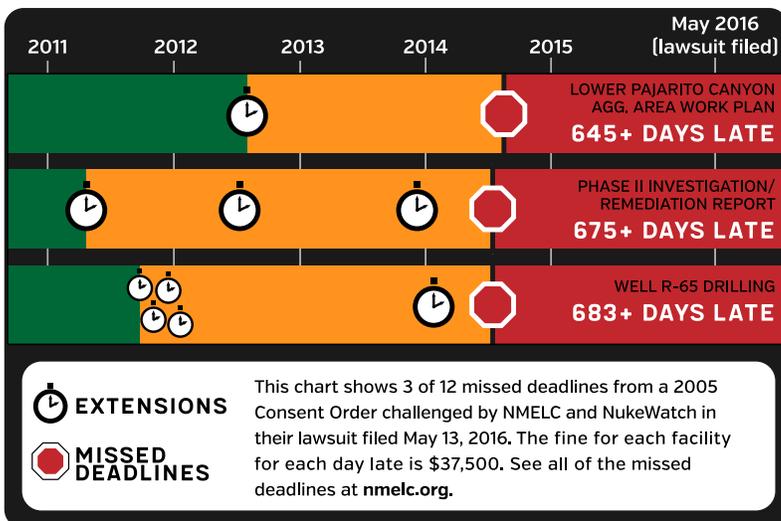


2 New Campaigns for Better Cleanup at LANL

"LANL has been hiding behind the wastewater treatment unit exemption for nearly six years," explains Joni Arends of CCNS. "In order to protect our health and environment and to provide transparency in its regulatory efforts, it is time for EPA to terminate Outfall 051 from the LANL discharge permit." – Joni Arends, CCNS executive director

With the help of its members, the Law Center continues to help local groups mount legal fights for meaningful cleanup at Los Alamos National Laboratory (LANL).

CLEANUP DEADLINES MISSED By Los Alamos National Lab



© Illustration by Shelby Knox

Hazardous low-level and transuranic waste remains at sites around the sprawling campus of Los Alamos National Laboratory (LANL), impacting water and air quality. Staff Attorney Jon Block continues to work closely with advocates to pursue legal solutions to improving cleanup and to ensure that members of local communities have a meaningful role in decision-making. So far this year, his work has involved two major cases. *Support from Law Center members makes it possible for us to take on important cases like these.*

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Case Updates

(continued from page 1)

Holding the Lab Accountable for Failure to Clean Up Over the Past Decade

Client: Nuclear Watch New Mexico (NukeWatch)

Co-Counsel: Lindsay Lovejoy and John Stroud

Process: *Petition to the U.S. District Court for the District of New Mexico*

\$300 million and climbing. That is the estimated amount of fines that should have been levied against LANL for blowing past mandatory cleanup and reporting deadlines outlined in a 2005 “Consent Order”, even after dozens of those deadlines were repeatedly extended by the Martinez Administration.

After LANL missed a final deadline in 2015, NMELC and NukeWatch filed a complaint in federal district on May 13, 2016. The complaint concerns 12 failures by the Lab to comply with the 2005 Consent Order. The lawsuit, filed in May against the Department of Energy and operators of the Lab, asks the Judge to require LANL to comply with the 2005 deadlines on a “reasonable but aggressive schedule,” and to impose a civil penalty not to exceed \$37,500 per day for each violation.

See nmelc.org for the NukeWatch's amended complaint, which addresses LANL's 2016 Consent Order.

Closing the Discharge Loophole

Client: Concerned Citizens for Nuclear Safety

Co-Counsel: Lindsay Lovejoy

Process: *Petition to the U.S. Environmental Protection Agency (EPA)*

Although it has a discharge permit, no waste has come through the “Outfall 051” at the Radioactive Liquid Waste Treatment Facility (RLWTF) since 2010. Yet the Lab is adamant about keeping a discharge permit for a nonexistent discharge. Why?

The current discharge permit exempts the Lab from state and federal hazardous waste laws that have stringent provisions to guarantee public hearings and access to documents.

Under the current scheme, the New Mexico Environment Department (NMED) Secretary can deny public hearings for major changes, and the public cannot access documents until after permits are considered.

In June, we petitioned the Environmental Protection Agency (EPA) to rescind the Outfall 051 discharge permit; a decision by the EPA Administrator is subject to an internal appeal by whichever party does not prevail. The law is clear: the EPA cannot regulate a nonexistent discharge. If we win, the Lab will have to obtain a hazardous waste permit for both the old and new RLWTFs. Our client and its members hope that this will finally give residents of affected communities the right to be heard on major changes at the RLWTF.



2016 Consent Order:

If You Aren't Winning, Change the Rules

The U.S. Department of Energy, New Mexico Environment Department (NMED), University of California (LANL operator in 2005) and the state Attorney General signed the original “Compliance Order on Consent” (Consent Order) in 2005. It lists specific milestones and deadlines for cleanup of legacy waste and reporting at the Lab, and required a final report on cleanup on December 6, 2015.

The Lab was privatized in 2006; Governor Martinez was inaugurated in 2011. Deadlines from the 2005 Consent Order loomed, were extended, extended again, and finally ignored.

Rather than hold the Lab accountable for these failures, NMED wrote a new draft Consent Order, unveiled in 2016. The new Consent Order, signed in July, abolishes hard deadlines, replacing them with targets that would be negotiated each year through a closed process between NMED, the Department of Energy and the Lab operator. The new Order also gives the Department of Energy and LANL significant room to assert that “any particular ‘cleanup objective is impracticable.’”

NMED did not hold public hearings on the 2016 Consent Order, or confer with public-interest groups that have been heavily invested for decades in obtaining more effective cleanup at the Lab.

Uranium Resources Sells Out

With help from Law Center supporters, NMELC and ENDAUM press advantage to stop the Crownpoint Uranium Project for good.

30 years after first proposing the Crownpoint Uranium Project, Uranium Resources, Inc. (URI) has walked away from its plans mine uranium in the Diné (Navajo) towns of Crownpoint and Church Rock. NMELC has represented the Eastern Navajo Diné Against Uranium Mining (ENDAUM) in this case for nearly 20 years.

In April 2016, URI sold out to Laramide Resources, an undercapitalized “junior” company that has never produced uranium. Eric Jantz, lead NMELC attorney on the case, quickly wrote to the Environmental Protection Agency to request that the agency rescind a groundwater pollution permit granted to URI’s subsidiary in 1989.

This letter follows on a December victory for NMELC and ENDAUM, when NMED Secretary Ryan Flynn was forced to terminate a critical state-level groundwater pollution permit for the site.

“There has been more than two decades of unrelenting opposition from ENDAUM, whose members are residents of these communities,” says Jantz. “Their opposition, combined with our legal challenges, is protecting the air, water and lands from companies like URI and Laramide. These companies are looking to profit at the expense of those who live there, and who already deal with contamination left from the Cold War mining era. A huge thank you to our members for helping us stay in this fight until the end!”

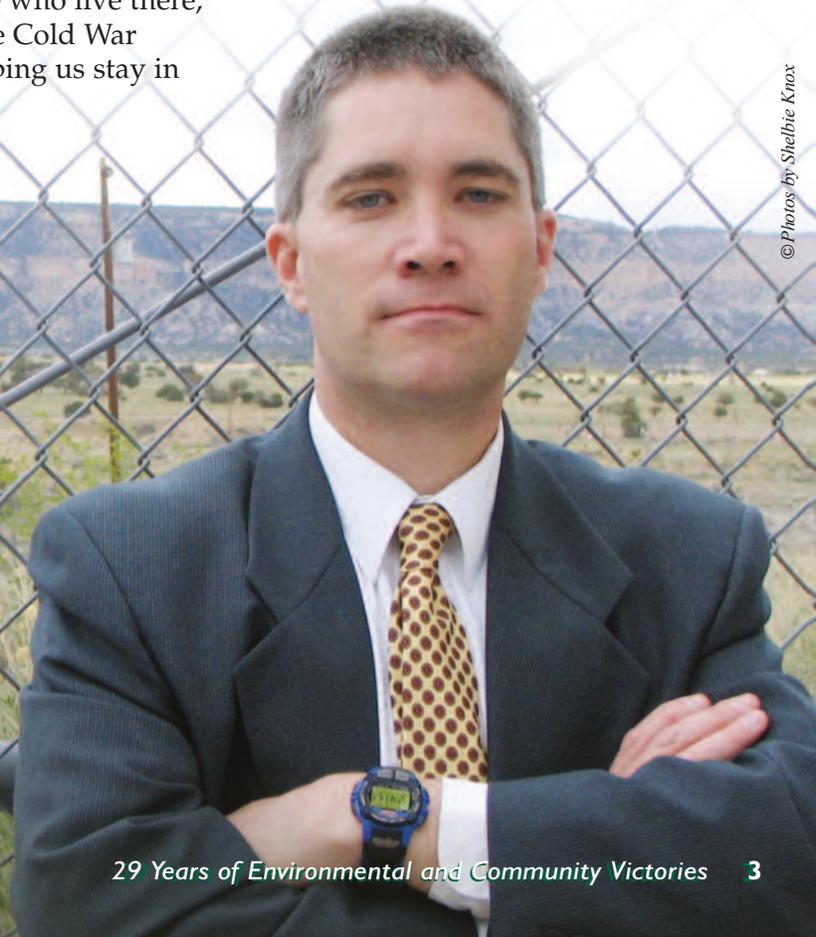
NMELC Staff Attorney Eric Jantz has worked with ENDAUM to fight proposed uranium mining in Diné communities since 2001.



An old United Nuclear building sits on the site of a proposed uranium mine near Church Rock.

Laramide does not appear to have the financial resources necessary to conduct adequate or even cursory groundwater restoration should it begin mining [in Church Rock]. According to Laramide’s last available financial statement (4th quarter, 2015) Laramide had working capital of only \$103,891 and accumulated losses of over \$90 million.

– Letter to EPA Regional Administrator Ron Curry, dated May 4, 2016



© Photos by Stelthie Knox

Santolina Developer loses bid to kick out NMELC clients

Santolina developers failed in their first gambits to dismiss our appeals of “Level A Approvals” and a zoning change for the massive proposed development. These appeals are in response to the Bernalillo County Commission’s first round of approvals for the development in June, 2015.

At a hearing in April, Developer, Western Albuquerque Land Holdings (WALH) advocated to state District Court Judge Nancy Franchini that our clients lacked standing and that the case was not yet ripe for hearing. They even included a lengthy explanation

(backed up by a technical report and maps) about how our clients’ lives will not be impacted by Santolina because they would not be able to “see the rooftops” of homes built at the development.

Fortunately, Judge Franchini did not accept most of WALH’s arguments, and ruled that five of our six clients have standing and that four of our five claims are ripe and will be considered. SouthWest Organizing Project (SWOP), Pajarito Village Association and three individuals will continue the case; our client NM Health Equity Working Group was dismissed as an appellant.

In June, WALH launched another assault against our appeal. (WALH also challenged an appeal by other Albuquerque residents who are represented by a private attorney; the developer was successful in knocking down portions of their appeal, but not all of it.) We look forward to moving past its latest motion, so that the Judge can consider our arguments that Santolina has not demonstrated:

- where it will obtain its “wet” water;
- that it can be built at no net expense to taxpayers;
- that it can attract the 100,000 jobs that it promises; and
- that enthusiastic support from Bernalillo County Commissioner Art De La Cruz (stretching back to before the public hearing) did not deprive our clients of a fair hearing.

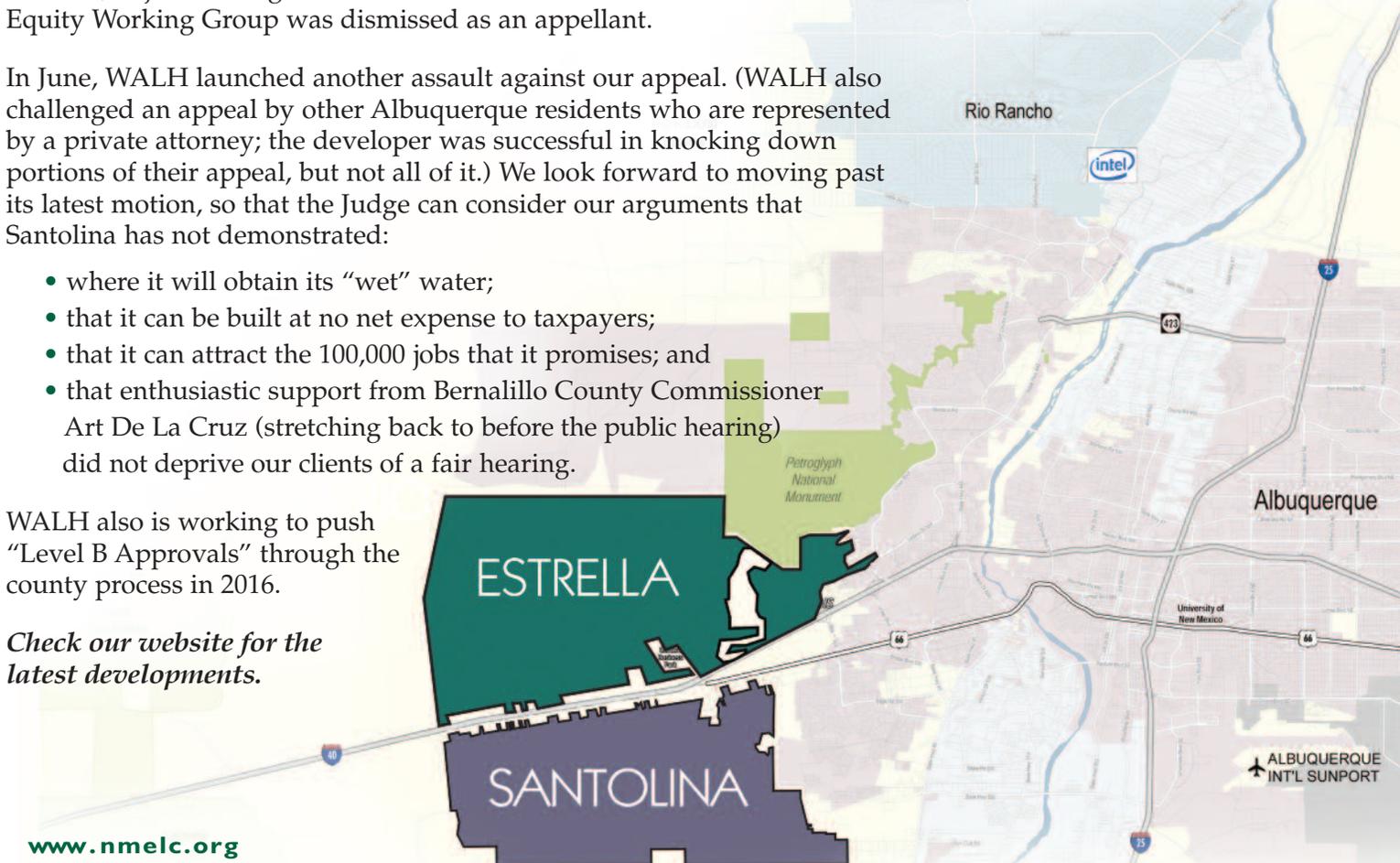
WALH also is working to push “Level B Approvals” through the county process in 2016.

Check our website for the latest developments.

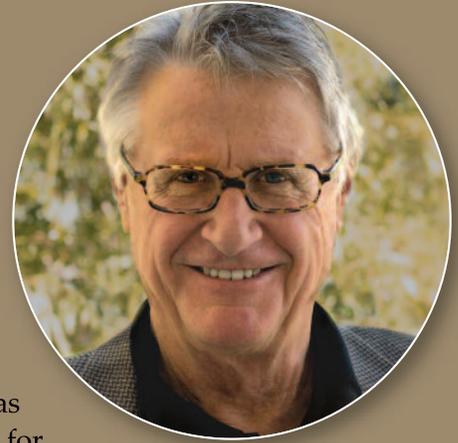


Douglas Meiklejohn and client Santiago James Maestas, president of the South Valley Regional Association of Acequias, share a moment following an April hearing in the Santolina sprawl case.

© Photo by Shelby Knox



Paul Hultin



"I'm honored to work with the Law Center," says Paul, "and to support all of the very important work that you do to protect the water and environment here in New Mexico."

The Law Center is very fortunate to count Paul Hultin as not only a donor but a key volunteer.

Paul has had an illustrious career as an attorney, having practiced now for more than 40 years as a civil trial lawyer in a broad range of complex commercial litigation.

He practiced most of his career in Colorado and was a founding partner of Denver-based Wheeler Trigg O'Donnell, the largest civil trial and appellate firm in the Mountain West. For the past 25 years, however, Paul says he did more work outside Colorado than in, trying cases in 13 different states and appearing as counsel of record in 35 states.

Paul had always loved Santa Fe, and had purchased property here for a future move. Then, through a mutual friend, he met the Santa Fe artist who would become his wife, Vicki Laszlo. That sped up the process a bit, and Paul moved to Santa Fe full-time in 2012.

In the meantime, through another set-up, he was introduced to the Law Center, and another kind of partnership began. One of his oldest friends in Colorado introduced Paul to Dale Pontius, a former Law Center Board member. When Dale mentioned the Law Center, Paul's interest was piqued. He had always done *pro bono* work, and wanted to get involved in such work in New Mexico. He had already taken and passed the New Mexico bar. So Dale introduced Paul to Doug Meiklejohn.

The first case that came up was *Aquifer Science v. Verhines*, a case involving an attempted groundwater appropriation by a California-based water speculator that was being handled by former Law Center attorney Bruce Frederick. Paul had an interest in water law because it's such an important issue in the West. Right before the hearing started, Bruce and Doug asked Paul if he wanted to assist. He did, and is still lending his experience and expertise to the case. After we won the issue before the State Engineer, the company appealed the decision to District Court in Bernalillo County, with an August 2017 trial date now set.

As icing on the cake, Paul and Vicki helped fund the matching gift amount for the Law Center's recent Match Madness campaign.



Michelle Mosser

Michelle is a big picture thinker. Working with clients who sometimes get stuck in the weeds of running socially-conscious businesses and non-profits, she has a knack for helping people see the big picture through her Santa Fe-based marketing and design firm, BrandNature.

“I think people come to activism because of personal experience. Something in their world has awakened them.”

Her awakening came in south Florida in the late 1980s. She was a partner in a successful advertising agency, and an avid lover of the outdoors. But her career and her love of nature grew discordant as she attended rallies to protect the Everglades on personal time, then worked for real estate developer clients on the job. With the death of her mother, she began to question our country’s food systems, changes in agriculture and land use, and their affects on our health and ecosystems. Something had to give, and in 1998, Michelle sought out a new place and a new way to do business... to the benefit of New Mexico.

“I became aware of a movement where entrepreneurs were growing their enterprises as agents for doing good in the world, for being profitable while innovating solutions to social and environmental problems. ‘Triple Bottom Line’ has become the business term for strategies designed to benefit people and the planet, while delivering sustainable profits. It’s an approach that values the people associated with an organization, inside and out, as much as the product itself.”

Seeing this emerging business sector, Michelle was inspired to transform her brand strategy and design experience to serve cause-based organizations and businesses. She founded Grace Communications [the predecessor to BrandNature] with this mission in mind.

“I came to realize for triple bottom line models to succeed, leaders needed to think, plan and communicate like an ecosystem. We help organizations value — and grow the wisdom in their own systems. Waste less. Connect more dots. Think of their team, suppliers and customers as a community — and how one aspect supports the next.”

The Law Center was fortunate to meet Michelle in 2008, introduced by Sebia Hawkens. While we are thrilled that BrandNature designs our Green Fire Reports, we’re even more grateful for the hundreds of hours Michelle and her colleagues have donated to us to connect more dots and value our wisdom, with the goal of improving how we communicate our work in the world.

Thank you, Michelle!

“I’ve worked with many non-profits over the last 29 years – but none as selfless, efficient or more committed than the Law Center. That you are so effective with the amount of resources you have is humbling. The mostly gratis legal representation you provide communities is critically important for people who otherwise wouldn’t have a voice in our state.”

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

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The Law Center is thrilled to announce that two passionate advocates for social and environmental justice joined our Board of Directors this summer.

Ramón Padilla, Jr. is an Educator at Alma d'Arte Charter School in Las Cruces and teaches at New Mexico State University; previously he worked as a Youth/Community Organizer with the Doña Ana County Colonias Development Council (a Law Center client). Juan Reynosa is a Field Organizer at the SouthWest Organizing Project (SWOP), where his job includes working with the Law Center on our Bernalillo County air quality cases, the Kirtland Air Force Base jet fuel spill, and the Santolina sprawl case.

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1405 Luisa Street, Suite #5 | Santa Fe, NM 87505
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Our 30th Anniversary is next year!

We're looking for great volunteers to help with house parties, our inaugural parade float, and getting the word out about the Law Center!

If you're interested, please contact Elizabeth Lee at 505.989.9022 or elee@nmelc.org.

Did you know you can make a gift to the Law Center in your will?

It's a simple yet powerful way to help protect New Mexico's clear skies, clean water, significant landscapes and local communities for future generations to come.

For more information, please contact Elizabeth Lee at **505.989.9022** or elee@nmelc.org.