

Green Fire Report

New Mexico Environmental Law Center | FALL 2018



“I’M JUST A RESIDENT, BUT...”

Residents protesting against Santolina mega-development at a Bernalillo County Commission hearing.

The Critical Importance of Public Participation

Someone stands up and moves toward the microphone. It is the start of a brief public comment period on the first day of a permit hearing. The lawyers have made their opening statements, and the first of several technical experts for the facility owner making the permit request has started walking through his long, detailed explanation of why nothing bad is going to happen when the facility is allowed to operate. He has a long way to go before he is finished and a staff attorney from the New Mexico Environmental Law Center can cross-examine him.

And then it is time for a break and some public comment. Names on the sign-up list are called. The first person comes to the microphone and starts: “I’m just a resident and there are all these experts here, but I wanted to let you know that I’m worried about this facility and my children and grandchildren.”

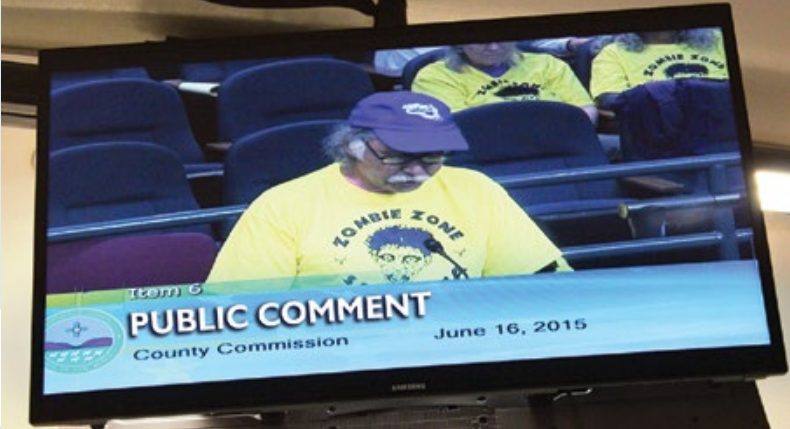
These are people that the Law Center represents: people living near proposed mines, dairies, hazardous waste dumps, bulk fuel facilities, massive planned sprawl developments, or large groundwater withdrawal sites. People who will be impacted by changes to water quality standards, by air quality permits that do not acknowledge the cumulative impact from prior permits, by changes to the rules that will make their participation in decision-making even harder – or impossible. The Law Center helps community members voice their concerns.

There is something very positive and inspiring in people speaking up at a hearing, expressing their concerns to public servants representing regulatory agencies and the government in general. This is the ideal picture of our democracy in action. But the reality is not so simple.

Not every hearing is held near the site of the facility (or the proposed facility), so people might have driven several hours from a far corner of New Mexico, leaving before daybreak to get to the hearing in time to sign up to speak at some unspecified time. Even when the hearing is closer, some people cannot get transportation to the meeting or cannot take the time off from their work to show up. Many times, the community is divided between those who believe there will be jobs for their poor community and those who believe the contamination of the water or the air is not worth it. Speaking up in public can be difficult when it pits neighbors against each other.

Then there are those experts and dozens of technical documents supporting and opposing the permit. There can be hundreds of documents and many motions for a major rule change like the Dairy Rule or Copper Rule. Not everyone has easy access to all those files, let alone the time to read them and the training to understand them.

Just getting a hearing and a response from a regulatory agency can be difficult.



South Valley Acequia leader, Santiago Maestas, speaks at Commission hearing.

issues with data or analysis is “substantial”; and private meetings between NMED and stakeholders who have raised specific issues are not a replacement for a public hearing. Public hearings are critical, the Court made clear, because they produce a record necessary to file an appeal of a faulty permit approval.

In 2005, residents of Chaves County filed a civil rights complaint with the Environmental Protection Agency (EPA) charging NMED with discriminatory practices in approving a permit for the Triassic Park hazardous waste site near Roswell. [The Law Center is not involved in this case.] In 2017, the EPA reached an agreement with NMED in which NMED agreed to develop new public participation and limited English proficiency policies. However, the new policies, released in early 2018, have significant flaws, in part the result of NMED refusing to allow public participation in developing the new public participation policies despite repeated requests to participate from members of the public, including residents of Chaves County.

Triassic Park was also one of five consolidated cases nation-wide charging EPA under Title VI of the Civil Rights Act with a pattern of discriminatory practice in allowing civil rights cases (based on “undue burden” of pollution in affected communities) to drag on for many years. On April 2, 2018, a California federal court judge ruled that the EPA must investigate and provide a preliminary response to civil rights complaints within 180 days of accepting them, which is what EPA’s own rules state.

However, the EPA is choosing to interpret the Court’s ruling to mean that it must close all Title VI cases within 180 days, even when the two sides have begun negotiations to try to resolve the issues. This decision by EPA affects one of the Law Center’s cases dealing with the cumulative impact of air quality permits issued in the largely Hispanic and low-income South Valley of Albuquerque. EPA has given a deadline for closing the case, even though our client, SouthWest Organizing Project, and the City of Albuquerque have recently said that they will try to negotiate a solution and the EPA should, therefore, stop the clock.

The Law Center is representing Amigos Bravos and the Gila Resources Information Project in another effort to protect public participation. We are appealing a change to the Water Quality Act regulations governing discharges to groundwater. The change, which was proposed by the NMED and approved by the WQCC, alters the duration of variances, which allow facilities to avoid compliance with regulations. The new regulation allows a variance to be granted for “the life of a facility,” instead of being limited to five years, thereby eliminating public notice and an opportunity for a hearing every five years. However, we and our clients were able to persuade NMED not to proceed with another proposed change. It would have allowed permittees to use “amendments” for “minor changes” in permits for facilities without any public notice or opportunity for a hearing.

The regulated industry always gets a seat at the table and always has its voice heard. Our job at the Law Center is to make sure community voices are also heard. Thanks to the dedication of our clients and to your support, we are able to stay committed to cases that can drag on for years.

Significant Milestones in the Fight for Public Participation

1990-Solid Waste Act 1991 and 2005-Solid Waste Management Regulations

NMELC helped to enact the NM Solid Waste Act, which provides for extensive public notice and public participation when a company applies for a permit for a solid waste facility. NMELC was also heavily involved in the enactment of the regulations that implement the Act, which prohibit the siting of incinerators in communities, and the amendments to those regulations that prohibit the siting of solid waste facilities in vulnerable communities already overburdened with polluting facilities.

1993 - Mining Act

NMELC helped develop and win the New Mexico Mining Act – one of the strongest mining laws in the nation. Under the Act, mining companies must clean up mines and post realistic financial bonds to the government for cleanup if the company can’t (or won’t) complete reclamation. If the agency fails to enforce, residents can sue. In addition, the Act provides substantial opportunities for the public to participate when companies seek permits to operate mines.

2005 - Rhino Decision

NMELC helped win the significant “Rhino” decision from the NM Supreme Court. The ruling requires regulators to take public input into account (not just record input) when making decisions about solid waste facilities.



Protest march before a Santolina development hearing.



NMELC Executive Director Doug Meiklejohn speaks with residents opposing the Augustin Plains Ranch water grab.

“THIS IS OUR HOME...”

An interview with Esther and Steven Abeyta

Esther Abeyta was born and raised in the San Jose neighborhood in Albuquerque’s South Valley. Although she left for nine years to live in Colorado, she and her husband Steven returned home in 1999.

Her grandmother’s house, where they were going to live, needed a lot of work. Esther called her brother and asked if he could fix up the back room for her daughter, so she would have a nice room, and Esther and Steven would get to the rest of the house as they could. When they arrived, they found a completely remodeled house.

“When people heard I was coming back, friends I’d grown up with, neighbors, they remodeled this whole house, the whole house was gutted and redone. People helped however they could. These are people I hadn’t seen for years.”

Steven and Esther gradually became immersed in the environmental issues of their community, through the neighborhood association and eventually with individual campaigns – they began fighting against a waste transfer station, the Honstein bulk fuel facility, and the Sunport Boulevard Extension, which includes a second component that would continue the extension from Broadway down Woodward Road to 2nd Street. The New Mexico Environmental Law Center represents the Abeytas for both the Honstein air quality permit and the Sunport Extension project.

Discussion about the Sunport Extension began in 2010, but it was a proposed “recycling” facility in 2011 that first got their full attention. They thought a “recycling” facility would be a good environmentally friendly business. When Esther started looking into it, she discovered a request for proposals that the city put out to run a waste transfer station that would collect the trash from all over the City, sort out the recyclable materials, and then ship the rest to the City’s waste dump.

One company hired a former County Commissioner to represent it to the community. “He was Hispanic, so they thought we would trust him,” laughed Esther. The company promised lots of jobs.

“But when I looked at the documents they had to file to get their bid approved,” continued Esther, “I saw that the management was going to be paid a lot of money, but the people who did the sorting – and I read that it is one of the worst jobs because you can get sick from it – they were going to be paid really low wages and no benefits.”

The eye-opener for the Abeytas came in 2012 when Bernalillo County Place Matters, working with the Joint Center for Political and Economic Studies, engaged the community to produce a comprehensive analysis of the social, economic, and environmental conditions in Bernalillo County and their relationship to the health status of the county’s residents. [At the time, Place Matters was directed by Kitty Richards, a Law Center Board member since 2012.]

“One of the requirements of the Health Impact Assessment was that we had to read it when it was done,” explained Steven. “We read it and said, ‘Oh no!’”

“We’d always known people got sick – ‘they got cancer’, ‘she got cancer’, ‘my uncle got cancer,’ everybody got cancer. So we went outside and drove around the neighborhood and, wow, everything in the Health Impact Assessment was true. All these industries, refineries, the shredding, all over this location.”

“I think back now,” added Esther, “to when I was growing up and I had friends of mine, their mothers died of cancer, my friend’s sister died of cancer, and I never made the connection until I got involved with the environmental issues in San Jose.”

The Sunport case is critically important for the Abeytas. One access into their neighborhood is off of Woodward Road close to the entrance to a recent rail transloading facility and the intersection with 2nd Street. Up the street, closer to Broadway, is the entrance to the former General Electric plant (and before that, an Air Force manufacturing facility) along with several other former industries that have contaminated the groundwater in the area.

“All these places ... polluted the groundwater. They closed the acequias here because they were connected to the aquifer. They closed people’s wells; they had to hook up to the City. I remember growing up [in the 80s], the Air Force would spray this water to keep the dust down – it was all dirt roads around here – and we would run behind the trucks. And they would spray up into the trees. They said they were spraying to kill the cicadas. My mother wouldn’t let us outside when they were spraying.”

In a 2010 transit analysis, the conclusion was that if Sunport Boulevard were extended beyond the I-25 freeway, then it should only run down to Broadway. There was no justification for going farther across Broadway down Woodward to 2nd Street. There were concerns about running the route through the South Valley Superfund site just west of the freeway. And, despite the County being designated the lead on the Sunport project, much of the land for that project and all the land for the Woodward addition is within the City.

Despite these issues, the County has resolutely pursued the Sunport project, hiring contractors to produce three Environmental Assessments (EAs). The first did not include the Woodward section, so a second one was done. That version treated the two plans as separate projects and was rejected by the Federal Highway Administration, which prohibits “segmenting” projects because it does not allow for assessing the impact of the whole project. The third EA is being finalized now.

There are also Environmental Justice (EJ) issues. “We’re already overburdened with oil refineries and asphalt batching, the crusher companies, the auto junkyards,” said Steven.

“There was a recycling convention we were invited to,” continued Steven (“No, we heard about it, so we went,” Esther jumped in – they often do that when you talk with them: complete the others’ sentences, add details or make corrections). “So we signed up,” Steven continued, “and we took some of the courses and we talked to some of the people there and they told us: ‘If Sunport goes in, we’re going to locate there.’ We’re talking about auto dismantlers, shredders ... Who’s going to want to locate next to an oil refinery or an asphalt batching plant?”

Steven explained how the system works in their neighborhood.

“An industry comes in, applies for a permit, the industry gets the permit. Another industry comes in, applies for a permit, they get approved. It’s always the same thing. The community always opposes. We do our best, but with limited resources, we’re unable to win the big battles.”

Esther told the story of how the Law Center first began to represent them. They had called the Law Center back in 2011 about the recycling facility. Director Doug Meiklejohn met with them in Albuquerque, but explained that none of the staff attorneys had the time to take on the work. He did give them advice on how to address the issues with the facility. “And it really helped,” said Esther, “because they ended up not building in San Jose.”

Then the Sunport project began gathering steam and the first of the three EAs came out, saying the project wouldn’t cause any significant problems in the neighborhood. Esther continued the story.

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Esther and Steven with NMELC staff attorney Eric Jantz at an Albuquerque/Bernalillo County Air Quality Board meeting.

“I told the County I was going to stop this project. I’m going to stop this project! I didn’t know how I was going to do this. I was excited, I was afraid, right here I thought, God how am I going to do this? And then all of a sudden I got this email, from [Law Center staff attorney] Jon Block, and he was trying to find out what ever happened with the advice that Doug gave us. So I told him what happened with that [and about Sunport]. So he says, ‘well send me the information, and I’ll look at it’ and then I guess he looked at the document and he says ‘well, you know we’re going to help you’. So I guess that’s why I say Jon is my angel. Honestly, Jon’s my angel.”

Both Steven and Esther say that people ask them all the time why they keep fighting. Why don’t they leave. “But the whole thing is, that kind of discouragement and despair, even though it’s felt in the community, we’ve been able to exert some fortitude to continue on with this particular fight.” Steven laid out the options as he sees them.

“You can flee your community, but you’ll abandon your neighbors and sell your home to somebody else, but what if their child gets sick? That’s on you. Or you can live in bliss, deny anything is going on, but the problem persists. Or you can make the ultimate choice. You’re going to fight, fight, fight. You’re going to have to keep fighting even though you’re losing. Because we can’t run and we can’t hide.”

Esther took a deep breath, hesitated a moment, then continued the thought.

“I agree with what Steven said, but for me it’s a little different. This is my home. My grandmother lived here, my mother lives up the street. I went to school here, I went to church here, I have memories here.”

In 2017, the New Mexico Environmental Law Center awarded Esther and Steven Abeyta the Jeanne Gauna Award for community environmental activism.

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DONOR SPOTLIGHT - Mark & Marla

Marla Painter and Mark Rudd have long been a dynamic duo in the fight for environmental justice, but they worked on many similar issues in Albuquerque for years before they actually met.

Marla was doing community organizing across the West, working on military and Department of Energy issues such as land appropriation for bases and military exercises and the Yucca Mountain nuclear waste repository. She looked for “unlikely allies”, bringing together ranchers, miners, environmentalists, peace activists, and Native Americans. Having been to Albuquerque for meetings and hearings, she stayed on in 1997. Mark had started doing student organizing against the Vietnam War and for free speech in the 1960s before coming to Albuquerque in 1982.



Marla had heard of Mark, but they had never met until a mutual friend introduced them. Marla “thought he was going to be a sexist, misogynist revolutionary,” she admits, but found instead that “he’s a rather evolved guy.”

They both acknowledge the position they are in, living and trying to organize in Albuquerque’s South Valley. “It’s weird,” Marla says, “being a person of privilege living with people who often feel powerless.” Mark added that it was eye-opening, coming from places that are wealthy and at least outwardly well-regulated to one of the most polluted areas in New Mexico, with no sign of regulation and with industrial facilities backed up directly against family residences.

The first issue they worked on together was the Vulcan aggregate rock crushing facility, about the year 2000, but there have been many other neighborhood and environmental justice issues since then. Many of those issues have brought them into partnership with the New Mexico Environmental Law Center. “The Law Center came to our rescue because community members in the South Valley don’t always have the wherewithal to fight environmental injustice. The Law Center was the only source of help and hope.”

Mark added that the most valuable thing about the Law Center is that it is very clear about its role. “Legal expertise is only one aspect of seeking environmental justice,” he said. “There are political and advocacy aspects as well. The Law Center understands this and integrates its legal work as an equal partner with the community and doesn’t get in the way of the other activities.”

“We can’t express adequately our appreciation for what the Law Center does,” Marla added. “As donors, we understand that giving to lawyers isn’t sexy or exciting to people. It’s always the hardest money to raise. We strongly encourage people to realize this and contribute.” **Thank you, Marla and Mark!**

Winter is Coming...

And that means so is our annual end-of-year **Member Appreciation Party!** This year the event will take place on Sunday, December 2nd. Once again we’ll be at Sweetwater Harvest Kitchen in Santa Fe. Come for the camaraderie, food and drink and stay for the Toxic Turkey reveal. Awards for good work will also be celebrated. Stay tuned for details!

Also in December, our friends at Sweetwater will **donate 2% of all cash proceeds** throughout the entire month! The community-minded restaurant benefits a different local nonprofit each month, and we’re grateful to be in their line-up. Bring your cash and come eat, drink and be merry while supporting the Law Center’s work.

Meiklejohn Legacy Circle

On behalf of future generations of New Mexicans, we'd like to thank you for protecting their air, land and water. Your support for the Law Center's work makes a difference today and tomorrow. **Your ultimate gift through your will or estate plan can have a profound effect on the Law Center's work, and on New Mexico's future.**

If you would like further information about how to create a lasting legacy to support the Law Center's work, please contact Elizabeth Lee at elee@nmelc.org or (505) 989-9022. Thank you!



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

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