

GREEN FIRE REPORT



NEW MEXICO ENVIRONMENTAL LAW CENTER WELCOMES NEW EXECUTIVE DIRECTOR AND A NEW ERA IN ENVIRONMENTAL JUSTICE

essential process necessary to becoming a more equitable and inclusive organization. We are having conversations internally and with community partners, identifying the ways in which we have perpetuated oppressive structures, and are finding ways to address our shortcomings in order to better serve New Mexico.

The Law Center is taking strategic steps, not only to continue to serve communities in New Mexico, but to ensure that staff and leadership reflect the community we serve.

Therefore, the Law Center is proud to announce and welcome Dr. Virginia Necochea as the organization's new Executive Director. Dr. Virginia Necochea is a long-time educator, researcher, and community advocate. Much of her work focuses on how structural racism impacts our society and lives, especially within systems and institutions. She is a former UNM faculty member and the former executive director of the Center for Social Sustainable Systems (CESOSS), a community-led nonprofit focused on protecting and preserving land and water resources in the South Valley and larger Middle Rio Grande region. Dr. Necochea looks forward to continuing to advocate for equity, environmental justice, and frontline communities in her new role with the Law Center.

While the nation's environmental laws are held up as a bastion of progressivism, they do not serve everyone equitably. The environmental movement is rooted in the privilege of affluence and whiteness, and has historically excluded communities of color. The New Mexico Environmental Law Center is committed to dismantling the racist structures that are at the heart of environmental injustice and all disparate treatment of communities of color.

We in the environmental movement are often the beneficiaries of privilege that oppresses our neighbors and allies. It would be easy for the Law Center to retweet a statement from a frontline organization or post something on our website expressing outrage at the latest incidents of state violence and then go about our lives. It's much more difficult and important to engage in meaningful and thoughtful evaluation of our place in the framework that perpetuates violence and oppression.

We know that, before we can understand and resist the racist structures that dictate who in New Mexico has clean water, air and land, we must take a hard look at ourselves. We acknowledge that we have benefitted from the status quo and, as such, have begun the difficult but

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The paper used for this newsletter is recycled

DEAR NMELC MEMBERS AND SUPPORTERS

This year has brought with it many changes and challenges stemming from the pandemic and continued struggles demanding equity and justice for BIPOC (Black, Indigenous, People of Color) communities who continue to endure oppressive systems.

As many of you know, there have also been changes at the Law Center – some more challenging than others. We believe it is vital that we meet every challenge as an opportunity for continued learning and for growth.

The entire staff at the Law Center wants to reassure our members and supporters that, amidst the shifts and challenges, our good work continues and we remain firmly committed to working alongside New Mexico's communities to protect their air, land and water in the fight for environmental justice.

Although our mission remains unchanged, we realize that we must dive deep into understanding and truly integrating diversity, equity, and inclusion (DEI) across every aspect of our organization. We understand that, by doing so, we will strengthen our work with clients and communities, especially those who are from frontline communities who continue to be disproportionately impacted by environmental injustices. Current times demand justice in all its forms for communities across the nation, and we are rising to the call.

WHAT DOES THIS MEAN FOR THE LAW CENTER?

It means that we will continue to create changes internally that uphold and expand our mission. It means placing the voices of frontline and BIPOC communities at the center of our work. It means continuing to work alongside clients and communities to demand environmental justice and hold polluters accountable. It means naming and centering environmental racism in environmental justice work.

But most importantly, it means a new journey for the Law Center—one that celebrates over 30 years of history and welcomes a path of needed self-reflection that demands greater accountability to the clients and communities we are privileged to serve.

All of us at the Law Center sincerely thank you for your continued support.

In solidarity,

NMELC Staff

Dr. Virginia Necochea, *Executive Director*

Doug Meiklejohn, *Founder/Staff Attorney*

Eric Jantz, *Staff Attorney*

Charlie de Saillan, *Staff Attorney*

Gail Evans, *Staff Attorney*

Maslyn Locke, *Staff Attorney*

Kendra Palmer, *Paralegal*

Janiece Jonsin, *Office Manager*



LOS ALAMOS NATIONAL LABORATORY PLANNED VENTING OF TRITIUM GAS

Charlie De Saillan, Staff Attorney

On August 28, 2020, the Law Center's Executive Director, Dr. Virginia Necochea, and Jay Coghlan, Executive Director of Nuclear Watch New Mexico, signed a joint letter to the U.S. Environmental Protection Agency strongly objecting to its approval of a planned release of radioactive tritium gas into the ambient air. The letter requested that EPA reconsider its approval.

Tritium is a radioactive isotope of hydrogen used to boost the nuclear detonation of plutonium "pit" bomb cores. Tritium behaves much like hydrogen; it easily bonds with oxygen to form radioactive (or "tritiated") water that living organisms can absorb. It can be a dangerous radiation hazard when inhaled as gaseous tritium, ingested in food or water, or absorbed through the skin as tritiated water.

On May 17, 2019, the U.S. Department of Energy and its Laboratory contractor, Triad National Security, LLC, submitted to EPA an application to vent into the atmosphere waste tritium from four specialized containers. The venting would be conducted in a building at Technical Area 54 (TA-54). Three business days later, EPA approved the application. DOE and Triad amended the application on March 5, 2020, to allow the venting to be conducted at multiple locations. DOE and Triad asserted – incorrectly we believe – that EPA did not need to approve the amendment.

The venting was originally scheduled to take place in May 2020, but it was postponed.

DOE documents suggest that Triad planned to conduct the venting in September.

The application that DOE and Triad submitted is flawed in several respects. Most importantly, the application does not demonstrate that the venting will meet the EPA standard for air emissions of radioactive material. Such emissions may not result in a radiation dose to any individual of more than 10 millirem per year. The application, to the contrary, suggests that the standard will be exceeded. Additionally, the application proposes to use a control technology that might not be effective and that EPA has not approved.

Our concerns are heightened by the risk the venting would pose to nearby Pueblo and Hispanic communities, which often bear the brunt of the Laboratory's polluting activities.

Dr. Necochea and Mr. Coghlan conclude the letter with the following recommendations:

"We believe that EPA and DOE, as federal agencies mandated to serve and protect the public, need to entirely reconsider their decision to allow this tritium venting project to move forward. The venting project has been poorly thought out; it would put an inestimable number of individuals needlessly at risk; it would disproportionately affect communities of color; it would exacerbate the distrust that many people in the surrounding communities have for the Laboratory; and it would most likely violate the law. The agencies need to compel Triad to develop an alternative means to dispose of the radioactive tritium without expelling it into the ambient air."

MT. TAYLOR MINE

Eric Jantz, Staff Attorney

When it was announced that the Mt. Taylor Mine was closing last December, we and our community partners, the Multicultural Alliance for a Safe Environment (MASE), and Amigos Bravos knew our work wasn't done. Although the global pandemic has slowed the process down, the New Mexico Mining and Minerals Division and New Mexico Environment Department continue to evaluate the Mine's reclamation and groundwater remediation plans. Along with MASE and Amigos Bravos, we will ensure that reclamation is done right. Already, we and our clients have identified numerous shortcomings with the Mine's proposed plan and are pressing the state regulatory agencies to require changes to the proposed plan.

COPPER FLAT MINE

Charlie De Saillan, Staff Attorney

On August 24, 2020, the Law Center filed its opening brief in the N.M. Court of Appeals challenging the groundwater discharge permit for the Copper Flat Mine. New Mexico Copper Corp. obtained the permit as part of its plan to re-open the Copper Flat Mine, an open pit copper mine near the town of Hillsboro, in Sierra County, New Mexico. The Copper Flat Mine operated for three months in 1980.

The N.M. Environment Department had issued the discharge permit for the Copper Flat Mine, under the N.M. Water Quality Act, to New Mexico Copper Corp. in late December 2018.

The discharge permit authorizes New Mexico Copper Corp. to discharge up to 25,264,000 gallons
cont'd >>

per day of tailings slurry to a lined tailing impoundment, and an indeterminate volume of discharges from other mine facilities including waste rock stockpiles, ore stockpiles, a mill, process water impoundments, and the open pit. The N.M. Water Quality Control Commission sustained the permit, deliberating in closed session, last year.

The Law Center, on behalf of our clients, appealed the Commission's decision to the Court of Appeals. We assert that the Commission failed to adequately explain why it found that the mine will not pose an undue risk to the nearby properties. We also assert that the permit is unlawful because it will allow surface water quality standards to be violated in the lake that will form in the open pit after mining operations cease. In addition, the Commission did not adequately explain its conclusion that the future pit lake is not subject to these standards. We are asking the court to send the matter back to the Commission for further consideration.

The Commission, the Environment Department, and New Mexico Copper Corp. will have the opportunity to file one or more response briefs, and the Law Center will then file one or more reply briefs. After briefing is complete, and possibly after the court hears oral argument, the court will issue a written opinion.

New Mexico Copper Corp. is also seeking an operating permit under the N.M. Mining Act, but a permit has not yet been issued. Mining operations cannot begin until the permit is issued.

OIL AND GAS WASTE WATER

Douglas Meiklejohn, Staff Attorney

The New Mexico Environmental Law Center and a private attorney represented the Rio Grande Chapter of the Sierra Club in an administrative proceeding conducted by the New Mexico Oil Conservation Commission. The point of the proceeding was to consider the adoption of regulations proposed by the State Oil Conservation Division to implement (within the oil and gas industry) the Produced Water Act that was enacted by the State Legislature during the 2019 legislative session.

The Sierra Club's two witnesses presented a forceful case for substantive regulations governing the use of produced water, which is the fluid that comes out of the ground with oil during oil and gas extraction operations. They also presented compelling testimony about the need for data concerning the amount of produced water that is recycled by the oil and gas industry and the amount of water other than produced water that is used in the industry.

First, Camilla Feibelman, who is the Director of the Rio Grande Chapter of the Sierra Club, testified that the Rio Grande Chapter of the Club is concerned about the regulation of produced water because of its potential impact on fresh water resources. She pointed out that if produced water comes into contact with fresh water resources, the produced water will contaminate those fresh water resources. She also explained that the oil and gas industry should be encouraged to use produced water in the industry's operations whenever possible so that fresh water resources do not have to be used in those operations. Second, Norman Gaume, who is a retired licensed professional water engineer with 37 years of experience on water issues in New

Mexico, also testified for the Sierra Club. He noted that the Produced Water Act calls for the regulation of produced water "in a manner that protects public health, the environment and fresh water resources." He then explained that the status quo with respect to produced water is unacceptable because of the large number of leaks and spills of produced water, and he urged that more stringent regulations be enacted to prevent those spills and leaks.

A second point made by the Sierra Club witnesses was the need for more data concerning the use of produced water and fresh water resources by the oil and gas industry. Both Ms. Feibelman and Mr. Gaume noted that large amounts of fluid are used in oil and gas extraction operations (particularly in hydraulic fracturing or "fracking"), and that the use of large amounts of fresh water in those operations has the potential to deplete New Mexico's limited fresh water resources. They therefore urged that the Oil Conservation Commission adopt regulations that require the collection of data showing how much produced water and how much water with various levels of total dissolved solids the oil and gas industry is using.

In a Commission meeting on September 3rd, the Commissioners did adopt the language proposed by the Sierra Club which requires that the oil and gas industry collect data showing how much produced water and how much water with various levels of total dissolved solids is used in the industry. This will provide a basis for more substantive regulations concerning the use of produced water and fresh water by the oil and gas industry in the future.

The Sierra Club was represented by Cara Lynch of the Baake Law Firm and Douglas Meiklejohn of the Law Center.



PAST & UPCOMING EVENTS

>> ONLINE MEET AND GREETINGS WITH DR. VIRGINIA NECOCHEA

The Law Center hosted two virtual Meet and Greet in September, giving community members an opportunity to meet Dr. Necochea and all NMELC staff!

These were the first-ever virtual events hosted by the Law Center. They were well attended – thank you all — and many who attended asked excellent questions. We felt the overwhelming support for the future of the Law Center. We can't wait to meet everyone in person one day!

If you weren't able to attend, keep an eye out for other virtual events, including our upcoming Environmental Justice Series, where you will have an opportunity to hear from community members and NMELC staff regarding important environmental justice issues and the work the Law Center is doing.

>> INTRODUCING OUR ENVIRONMENTAL JUSTICE SERIES

NMELC is proud to announce the launch of our Environmental Justice Series. The Series will focus on important environmental justice issues impacting communities across New Mexico. Each event will include updates on cases the Law Center is working on and, most importantly, will focus on the clients and communities impacted.

OCT 22

Topic: Environmental Racism
5:30 - 6:45 PM
 Zoom link at nmelc.org

Topic: Uranium
5:30 - 6:45 PM
 Zoom link at nmelc.org

NOV 19

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GREEN BUSINESS PARTNER HIGHLIGHT

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>> BE A GREEN BUSINESS PARTNER!

Show your support for the Law Center's environmental and racial justice work, and be an advocate for healthy communities throughout New Mexico!

Visit nmelc.org for more information.

VOTE NM



NOW, MORE THAN EVER, YOUR VOTE MATTERS.

Early voting is happening now and ends on **October 31st**. If you are planning to vote by mail or need to request an absentee ballot, you must apply for an absentee ballot no later than **October 20th**. Mail-in ballots must be received by 7pm on Election Day.

Learn more by heading to:

sos.state.nm.us/voting-andelections/voter-information-portal



RED WATER POND ROAD COMMUNITY UPDATE



Eric Jantz, Staff Attorney and Maslyn Locke, Staff Attorney

Since 2014, NMELC has been working with the Red Water Pond Road Community to address the impacts of decades of uranium mining and milling that took place, representing community members in negotiations with EPA to relocate families to a safe and culturally appropriate location and ensure justice in the remediation of radioactive and toxic waste from the Church Rock Tailings spill.

On September 19th, staff attorneys Eric Jantz and Maslyn Locke traveled to Gallup to meet with the Red Water Pond Road Community. Neither a stubborn EPA, nor a global pandemic, has lessened community interest in moving forward with plans to relocate to a safe and culturally appropriate location, and the Law Center is excited to continue working to support the community to achieve this goal.

Red Water Pond Road Community, the UNM School of Architecture Indigenous Design and Planning Institute, and the Law Center will be moving forward with plans to obtain sustainable, safe, and culturally appropriate housing. Stay tuned for more updates in the coming weeks!

WHY WE SUPPORT THE CLIMATE EQUITY ACT

Since 1987, the New Mexico Environmental Law Center has worked alongside communities in our state in the name of environmental justice. Our staff and attorneys pursue legislation and court battles on behalf of clients, working on cases that often take years of court filings and appeals to wind their way through the legal system. At every step of the way, we are confronted with opposition from industries backed by enormous wealth and supported by the anti-environment, racist agenda of the federal government.

This is why the Law Center fully supports the Climate Equity Act introduced on August 6, 2020 by Senator Kamala Harris and

Representative Alexandria Ocasio-Cortez.

The Act ensures that the federal government focuses on the needs of communities who are most affected by climate change, placing frontline communities front and center when deciding on policy related to climate and the environment. This legislation, if passed, would address the systemic racial, health, economic and environmental injustices that have persisted in our country from its inception and makes it clear that there is no climate justice without racial justice.

If the Climate Equity Act becomes law, it will be a giant step forward towards environmental justice and equity in the United States. The Act will give teeth to the movement for racial equity and help to address systemic racism perpetuated by our federal

policies. For far too long, frontline communities have suffered disproportionately from higher than average levels of exposure to various toxic pollutants, often resulting in serious health issues and higher death rates. This law would protect frontline communities from environmentally harmful projects—no longer would power plants, incinerators, factories, mines, or other polluting industries be able to poison communities with impunity.

The Climate Equity Act is a law with a purpose directly aligned with the Law Center's mission and could be a game changer when it comes to supporting healthy environments, racial justice, and climate equity.

Read the Act in its entirety here: [nmelc.org](https://www.nmelc.org)



WELCOME NEW STAFF ATTORNEY, GAIL EVANS

Throughout her career, Gail has been devoted to fighting for the rights of low income individuals and families through impact litigation, lobbying and policy work as well as defending clients facing the death penalty.

She served as the New Mexico Center on Law and Poverty's Legal Director where she led successful campaigns and lawsuits to improve the administration of New Mexico's benefits programs—especially for immigrant families; increase access to healthcare for low-income New Mexicans; improve language access services in the state's largest hospitals and state agencies; create a loan-repayment assistance program for public interest attorneys; win a constitutional lawsuit ordering that agricultural laborers are entitled to workers' compensation; and win a landmark education lawsuit, *Yazzie v. State of New Mexico*, in which the court ruled that the State of New Mexico is violating the constitutional rights of students to a sufficient education.

She earned a B.A. from Johns Hopkins University; J.D. from the University of New Mexico School of Law; and L.L.M. from Georgetown University Law School. We are very honored to have Gail join our team at NMELC.

DEAR NMELC COMMUNITY

We would like to send our sincerest thanks to all of the individuals who responded to our last appeal letter and sent in donations! These are challenging times for all of us, and your donations are hugely appreciated.

Your financial support makes it possible for us to hold state and federal governments accountable to protect our natural resources and public health.

Please consider a one time donation or a recurring donation of \$10 or more.

Use the enclosed self-addressed remittance envelope to mail in your check or credit card information, or donate online at: nmelc.org/donations.

All of us at the Law Center wish you and your loved ones continued well-being!

NMELC Staff



WELCOME NEW STAFF ATTORNEY, MASLYN LOCKE

Maslyn grew up in Los Alamos, New Mexico and, after spending the better part of the last decade studying and organizing in Lawrence, Kansas, she returned to New Mexico to work as an environmental and economic justice advocate in her home state. She joins the Law Center after working as a community organizer with Greenpeace, a policy advocate with the Appleseed Network, and, most recently as a staff attorney with New Mexico Legal Aid, providing free civil legal services to low-income communities. She has organized successful issue campaigns at a national level, worked with the Natural Resources Defense Council in Washington, D.C., to protect endangered species and advocate for clean air and water in low-income communities, and assisted with the defense of activists and organizations with the Civil Liberties Defense Center in Eugene, Oregon.

Maslyn earned a B.A. in Psychology and Global and International Studies, a Master's degree in Social Work Policy Practice and a J.D. from the University of Kansas.