

GREEN FIRE REPORT

Q1 2022 Newsletter



A MESSAGE FROM THE EXECUTIVE DIRECTOR

VIRGINIA NECOCHEA, PHD

Dear Supporters,

It is with much pride that we share with you our Quarter 1 2022 Green Fire Report! The Green Fire Report is our premiere publication that highlights our current casework at NMELC and provides important legal updates to our supporters. Over the years this publication has been instrumental in keeping the public informed of the vital work carried out at NMELC, much of which is being supported thanks to your generosity.

In this issue we are pleased to share updates on some of our most active cases spanning our three major focus areas: air, land, and water.

I especially want to take a moment to recognize that although the environmental legal work at NMELC is long, arduous, and often filled with disappointments, **sometimes we win as in a major victory we witnessed due to a vote favoring our clients that took place at a recent Bernalillo County Planning Commission hearing** involving our years-long Santolina case or, as we shared in our last report, the **unprecedented decision of the Inter-American Commission on Human Rights (IACHR)** deeming our client's petition on uranium contamination admissible after a long ten-year wait. You can only imagine what these victories mean to our organization and dedicated attorneys, but most importantly to our clients who are on the frontlines every day of their lives fighting for environmental justice not solely for themselves but for their families, communities, and our beautiful state.

As NMELC carries forward its vital legal and policy work, we will continue to take lead from our clients—individuals, families, organizations, coalitions, neighborhood associations, among others—who are the experts in teaching us about the importance of centering justice and equity and especially what solidarity and resilience look like.

NMELC is firmly committed to working alongside individuals and communities who remain most impacted by environmental pollution, degradation, climate change, and harm—low-income, rural, urban, Black, Indigenous, People of Color, immigrant, and other historically marginalized communities.

We stand proudly with our clients as we rise to demand every New Mexican's fundamental human right to clean air, land, and water.

In solidarity,

A handwritten signature in black ink, appearing to read 'Virginia Necochea'.

A LOOK AT THIS ISSUE:

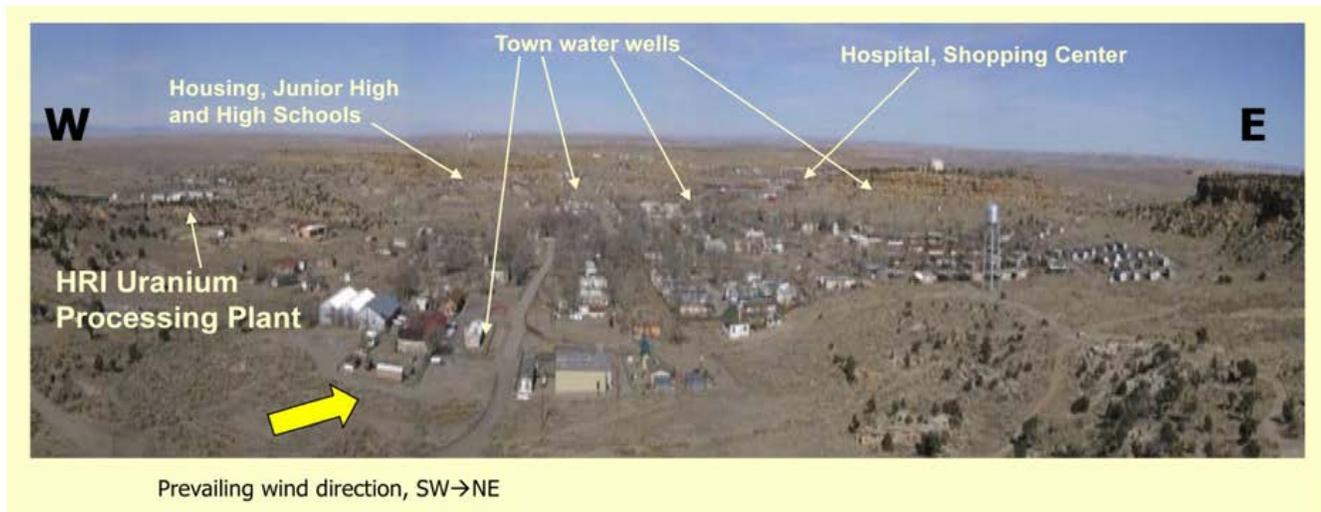
- >>> FROM THE EXECUTIVE DIRECTOR
- >>> CASE UPDATES
- >>> NMELC STAFF AWARDS
- >>> CLIENT & COMMUNITY HIGHLIGHTS

ENDAUM IACHR Petition

ERIC JANTZ, SENIOR STAFF ATTORNEY

For only the second time the Inter-American Commission on Human Rights (IACHR) has determined as admissible an environmental justice case, *ENDAUM v. United States*. In 2011, the Law Center and its clients, Eastern Navajo Dine Against Uranium Mining (ENDAUM) filed a first ever human rights petition with the IACHR, alleging the United States government violated their human rights by approving an in-situ leach (ISL) uranium mining project that the U.S. knows will contaminate local drinking water aquifers. Finally, after 10 years, the Commission determined the petition is admissible, and we filed additional observations in October 2021. The U.S. has until May 2022 to file its additional observations on the merits. We will ask for a hearing on ENDAUM's petition for the Commission's fall session. In the meantime, ENDAUM will also ask for a thematic hearing on the human rights violations caused by uranium development nationwide. The Commission holds thematic hearings to evaluate allegations of human rights on a large scale. ENDAUM's request for a thematic hearing will ask the Commission to evaluate the U.S. government's discriminatory treatment of Indigenous communities throughout the U.S. in the context of of uranium mining and cleanup. We are hoping this thematic hearing takes place during the Commission's summer session in mid-June.

NMELC is proud to represent ENDAUM in this unprecedented reckoning for the U.S. government and the Nuclear Regulatory Commission (NRC) for past and future uranium mining and milling activities on Indigenous lands.



Aerial photo of Crownpoint showing proximity of proposed uranium plant to schools, wells and hospital.

Homestake Barrick Gold Uranium Mill Superfund Site

ERIC JANTZ, SENIOR STAFF ATTORNEY & MIA MONTOYA HAMMERSLEY, STAFF ATTORNEY

The Homestake uranium mill, a designated Superfund site, is a relic of cold war uranium production that has continued to affect groundwater quality and community health for over 30 years since it stopped production. Despite Homestake's groundwater remediation efforts—supervised by the U.S. Environmental Protection Agency (EPA) and Nuclear Regulatory Commission (NRC)—the groundwater contamination from the mill has actually worsened. Now, Homestake is signaling that it will apply to the EPA and NRC to walk away from the site without further groundwater restoration efforts. NMELC and our clients intend to hold Homestake and regulatory agencies accountable to ensure that groundwater is returned to pre-mining quality.



Santolina Master Plan - Major Victory at CPC

MASLYN LOCKE & MIA MONTOYA HAMMERSLEY, STAFF ATTORNEYS

On August 25, 2021, the Bernalillo County Board of County Commissioners (Board) held a re-hearing on our clients' appeal of a zone map amendment originally approved by the Board in 2015. The Board's decision to approve the zone map amendment in 2015 had been appealed on behalf of individuals and community groups made up of traditional farmers and water users in Albuquerque's South Valley who would be impacted by the proposed development's use of water. The amendment would change the zoning of the land where the proposed Santolina development would be built from rural agricultural to planned community, a requirement if the Santolina development is to move forward. In 2021 the New Mexico Court of Appeals remanded the Board's original approval back to the Board for reconsideration with instructions to current Commissioners to assure that they were free of conflicts of interest and able to hear the case without partiality and prejudgment of the matter. At the August 25th hearing, the Board again approved the zone map amendment, refusing to hear new evidence offered by NMELC relating to water scarcity and low population growth. NMELC has again appealed this decision because, **in voting to approve the zone map amendment, two Commissioners based their votes on evidence not included as part of the hearing record, violating NMELC clients' due process rights because they were denied impartial decision makers at this hearing.**

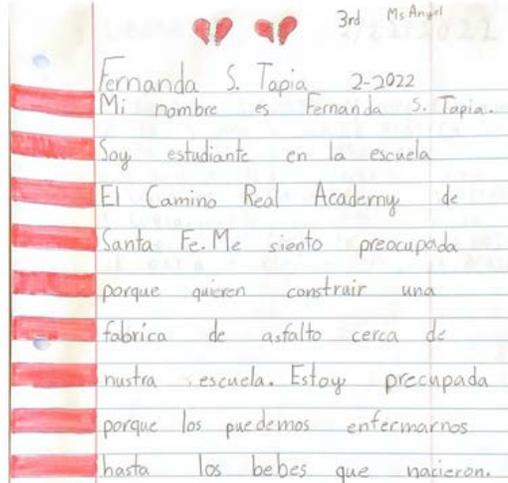
On October 12, 2021, the Board also heard an appeal brought by Western Albuquerque Land Holdings (WALH), challenging the Bernalillo County Board of Adjustment's determination to uphold the Zoning Administrator's definition of the term "interim use." The Zoning Administrator's interpretation of the term limited "interim" land uses, as found in the Santolina Level A Master Plan, to those uses lasting 36 months or less. The Santolina developers had been seeking to develop uses on the Santolina project land—specifically a landfill—as an interim use, which would have allowed WALH to circumvent the master planning process. **The decision to limit interim uses in this way has required the developers to instead go back and attempt to amend the Level A Master Plan in order to allow for the development of a landfill or other uses that were not contemplated by the 2015 Level A Master Plan.**

Because of the "interim use" decision, on March 2, 2022, the Bernalillo County Planning Commission (CPC) held a public hearing on the developers' request to amend the Level A Master Plan, originally approved in 2015, and the proposed Level B.II Master Plan, seeking to develop a small portion of the overall Santolina project land with uses that would not require water or infrastructure development, specifically a landfill or a solar farm. NMELC, on behalf of a coalition of community organizations and individuals, submitted written comments to the CPC opposing both the amended Level A Plan and the B.II Plan, arguing that the developer's proposal to utilize on-site utilities disregarded the fact that water and wastewater services have not yet been secured and that this approach would lead to piecemeal development. Staff Attorney Mia Montoya Hammersley provided oral comment at the March 2nd hearing, arguing that, particularly in light of the projected water scarcity in the Middle Rio Grande, hauling water to the site does not negate the overall water use footprint of the development. **In a surprising victory, the CPC voted against the County Staff recommendations and the developer in favor of community interests for the first time in the 8-year history of the Santolina matter, denying the Level A Amendments and the Level B.II Plan.** The CPC's recommendation will be considered by the Bernalillo County Board of Commissioners at an upcoming meeting. We will continue to keep the public informed of upcoming hearings.

Mountain View/New Mexico Terminal Services

ERIC JANTZ, SENIOR STAFF ATTORNEY

The Mountain View Coalition continues to challenge the air pollution permit for the New Mexico Terminal Services hot mix asphalt plant proposed for their community. Albuquerque's Environmental Health Department (EHD) rubber-stamped the permit despite the fact that the asphalt plant will contribute to ozone levels above the legal limits. As of April 2021, dispositive motions are on hold pending determination of any alleged biases of the Albuquerque-Bernalillo County Air Quality Control Board. In summer 2021, EHD withdrew bias motions, but filed numerous other motions that have further delayed a decision on the dispositive motions. Currently, the motion that is slowing down the process is EHD's motion to stay the proceedings and seek zoning information from the applicant. The Hearing Officer held a hearing on EHD's motion on February 28 and issued an order allowing any party to submit evidence regarding NMTS' zoning status by April 7.



Photos by Earth Care

Associated Asphalt & Materials

MASLYN LOCKE, STAFF ATTORNEY

In July 2021, the New Mexico Environment Department (NMED) issued an air pollution permit to Associated Asphalt and Materials, LLC, for the consolidation of multiple hot mix asphalt batch plants on Santa Fe's Southside. The permit allows the plant to operate up to 24 hours a day, 7 days a week during certain parts of the year. The plant is located near multiple neighborhoods, primarily made up of lower-income, young, Spanish-speaking families. Our clients, Earth Care New Mexico and Linda Marianiello, appealed NMED's decision to issue the permit to the Environmental Improvement Board and had a three-day hearing February 23-25th. On behalf of clients, we challenged the issuance of the permit, alleging that NMED's Air Quality Bureau violated the Clean Air Act, the New Mexico Air Quality Control Act, EPA guidance and NMED's Air Dispersion Modeling Guidelines in issuing the permit to AAM because the operation would likely violate the National Ambient Air Quality Standards. A decision is expected to be issued by the Environmental Improvement Board in July of 2022.

Title VI Complaint

MASLYN LOCKE, STAFF ATTORNEY

On September 15th, 2021, NMELC clients filed a civil rights complaint against the New Mexico Environment Department, alleging that NMED discriminated against Spanish-speaking residents of Santa Fe's Southside during the March 2021 Associated Asphalt and Materials air pollution permit hearing. Under Title VI of the 1964 Civil Rights Act, NMED, as a recipient of federal funds, cannot discriminate against anyone on the basis of national origin, which includes limited English proficiency. NMED, at the March hearing, failed to provide adequate interpretation services for Spanish-speaking members of the community. This complaint was filed with EPA's External Civil Rights Compliance Office and was accepted for investigation on November 2, 2021. NMED has agreed to participate in an informal resolution process, and conversations are ongoing.

Strickling Ranch

MASLYN LOCKE, STAFF ATTORNEY

NMELC represents five acequias near Pecos and Anton Chico in northern New Mexico in their challenge to a decision by the State Engineer to approve a water transfer to Strickling Ranch Partners, LP, a Texas-based ranching company. In October 2020, the State Engineer issued a report and recommendation that would have required Strickling Ranch to participate in a water sharing agreement with the Anton Chico area acequias when the water level on the Pecos River near Anton Chico reached a certain level. In November 2020, however, the State Engineer inexplicably re-issued his decision, changing this shortage sharing requirement in such a way that would be detrimental to our clients. This decision was appealed to the Fourth Judicial District Court, challenging the State Engineer's authority to revise and re-issue a decision on his own. The parties held a settlement conference on January 28, 2022 and are continuing to attempt to reach an agreement resolving this case.



Copper Flat Mine

CHARLES DE SAILLAN, STAFF ATTORNEY

The Copper Flat Mine is a proposed open-pit copper mine near Hillsboro in Sierra County, which would be operated by N.M. Copper Corporation. Mining operations could contaminate groundwater and surface water and severely deplete groundwater in the Lower Rio Grande Basin. The proposed mine poses significant threats to precious water resources and fragile ecosystems. The mine will also leave behind a large pit lake that will exceed water quality standards. Working with our clients—including ranches, local watershed associations, and environmental groups—the Law Center is opposing mine permits and seeking to mitigate the adverse effects of the mine on several fronts.

First, we have opposed the groundwater discharge permit for the mine, which the Environment Department issued in December 2017. In March, we presented oral argument to the N.M. Court of Appeals asserting that issuance of the discharge permit was arbitrary and capricious and contrary to the N.M. Water Quality Act.

Second, in two separate proceedings before the N.M. Office of the State Engineer, our clients have protested the transfer of water rights to the mine. In one proceeding, Frost and Gray, the Court of Appeals has agreed with our argument that the bulk of the water rights have been abandoned and are no longer valid. In the other proceeding, Tulla Resources Group, which is still in the early stages, we are arguing that mining operations would impair local water rights, impede the conservation of water, and harm the public welfare.

Third, we are opposing issuance of a mining permit under the N.M. Mining Act. In 2020, responding to our arguments, the Mining and Minerals Division of the Energy, Minerals & Natural Resources Department suspended consideration of the permit application until the company can show that it has sufficient water rights to operate and reclaim the proposed mine.

Waters of the United States

CHARLES DE SAILLAN, STAFF ATTORNEY

The term “Waters of the United States” defines the scope of federal Clean Water Act jurisdiction and protection. The federal law is particularly important in New Mexico because the state does not have a program for regulating discharges of pollutants into surface waters. In December 2021, the Biden Administration issued a proposed regulation defining “waters of the United States.” Although it is a vast improvement over the Trump administration definition (which we challenged in federal court), it should be strengthened in several respects. In February, on behalf of our clients—Amigos Bravos, the N.M. Acequia Association, and the Gila Resources Information Project—we submitted detailed comments on the proposed rule to EPA.

Triennial Review

CHARLES DE SAILLAN, STAFF ATTORNEY

Under the federal Clean Water Act, each state is required to set surface water standards for all surface waters within its borders. These standards must be reviewed every three years, a process known as triennial review. In the summer of 2021, representing Communities for Clean Water and the Gila Resources Information Project, we participated in the triennial review hearing before the N.M. Water Quality Control Commission. In cooperation with Amigos Bravos, we advocated for stronger standards, supported many of the revisions proposed by the NM Environment Department, and opposed multiple proposals from industry and Los Alamos National Laboratory to weaken the standards. The Commission deliberated in February and issued its decision in March. **We prevailed on most issues.**



Tularosa Basin Downwinders Consortium

MIA MONTOYA HAMMERSLEY, STAFF ATTORNEY

The Tularosa Basin Downwinders Consortium was founded to advocate for and compile data on the cancers and other diseases that plague the communities impacted by the Trinity Nuclear Test of July 16, 1945. NMELC is representing the Consortium in their fight for justice for Downwinder communities. In support of the Consortium’s efforts to pass amendments to extend and expand that Radiation Exposure Compensation Act, the Law Center recently published an Editorial in the Albuquerque Journal, titled "The Best Way to Honor Downwinders? Extend, Expand RECA."

NMELC STAFF AWARDS



Virginia Necochea—Rachel's Network Catalyst Award for Women of Color Environmental Leaders



Eric Jantz—20 Years of Service to NMELC



Maslyn Locke—Outstanding Young Lawyer of the Year from the State Bar of NM



Virginia Necochea—10 years of Distinguished Leadership with CESOSS



Mia Montoya Hammersley—Young, Gifted & Green Award from Black Millenials for Flint

CLIENT & COMMUNITY HIGHLIGHTS

Earth Care Speaks Out Against Asphalt Plant Pollution



"We are concerned there are more polluting industries coming here, increasing the impact on our children's lungs. We are concerned about environmental racism. This is the most densely populated part of Santa Fe, home to the greatest number of youth, low income and immigrant families."

—Domenica Nieto, Earth Care Organizer



Photo by Bella Davis

"Captain G. M. Gilbert, a U.S. Army psychologist assigned to watch the defendants of the Nuremberg Trials from 1945 to 1949, wrote, 'Evil, I think, is the absence of empathy.' By making a decision to expose low-income people of color to serious known health risks, it is my view that this fits Captain Gilbert's definition of evil as a lack of empathy. I cannot imagine that it would be possible to knowingly expose people to harmful pollution while also considering their lives of equal value to my own and that of others who I care about."

—Linda Marianiello, Tierra Contenta Resident

Contra Santolina Working Group Speaks Out Against Sprawl Development

"Eight years ago I testified that the Water Authority did not have enough water rights for Santolina. I believed that they would have to take water from Agriculture, but now with climate change there is no more water in our Acequias for them to take."

—Santiago Maestas, President,
South Valley Association of Regional Acequias



"Our community pulled together beautifully to point out the flaws in the Santolina applications: County staff said not all of their questions and concerns had been answered; there wasn't enough water eight years ago and there is even less now; the Master Plan has devolved into patchwork zoning. We will continue to oppose this sprawl development."

—Marcia Fernandez, South Valley Farmer



Contra Santolina
Working Group



New Mexico Environmental Law Center

1405 Luisa Street, Suite 5, Santa Fe, NM 87505
(505) 989-9022 www.nmelc.org

Non-Profit
Organization
U.S. Postage
PAID
Albuquerque, NM
Permit No. 1439



NMELC staff at the Santa Fe office, March 21, 2022

THANK YOU FOR YOUR ONGOING SUPPORT!

NMELC proudly offers free or low-cost legal services to frontline communities who are defending environmental justice across New Mexico. It is our privilege to represent and work alongside the hundreds of clients and communities we serve.

Your financial support makes it possible for us to continue to provide free legal services to people who otherwise would not have the resources to secure legal representation. Your generosity allows us to hold polluters accountable and to protect environmental health.

We kindly ask you to please consider a one-time donation or a recurring donation. Visit <https://nmelc.org/donations/> to make any-sized donation.

We invite you to become part of the growing movement to protect and defend every New Mexican's fundamental right to clean air, land, and water.

All of us at NMELC sincerely thank you for your ongoing support and for your commitment to environmental justice!