

GREEN FIRE REPORT

Fall 2022 Newsletter



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A MESSAGE FROM THE EXECUTIVE DIRECTOR

BY: VIRGINIA NECOCEA, PHD

Dear Community,

This year officially marks the **New Mexico Environmental Law Center's 35th Year Anniversary!**

Since NMELC first opened its doors in 1987, thanks to your ongoing support, we have continued to work **in partnership with clients and communities on some of the most significant environmental cases** protecting air, water and land across New Mexico, including state-level greenhouse gas emission limits, radioactive air and water pollution from uranium mines/mills, sprawl development, asphalt plant emissions, and advocacy for air quality rules at the state and local levels that protect *all* New Mexican communities.

As we continue our journey, NMELC reaffirms its deep commitment to authentically integrating equity across our entire organization, from our board governance to our programs and legal services. During our strategic planning session held this past summer, NMELC formalized the integration of **movement lawyering** as a guiding framework for our organization.

"Movement lawyering means taking direction from directly impacted communities and from organizers, as opposed to imposing our leadership or expertise as legal advocates. It means building the power of the people, not the power of the law" (American Bar Association, 2021). We are proud to share that NMELC will be the **only** environmental justice focused nonprofit law center in the state to integrate movement lawyering across its entire organization.

With our 35 years of service in mind, it is with much pride we present our latest Green Fire Report that includes updates on some of our most active cases: the continued battle against the Santolina Master Plan; the unprecedented decision of the Inter-American Commission on Human Rights declaring ENDAUM's petition admissible; highlighting the vital work of one of our newest clients—Tularosa Basin Downwinders Consortium; among other updates provided by our dedicated legal team.

We take a moment to recognize that **our work would not be possible without the support of long-term and new donors** whose financial contributions help our organization take on these challenging and precedent-setting environmental justice cases that often take several years if not decades to complete.

All of us at NMELC thank you for believing in the importance of our work and for helping to uphold environmental justice across our state! I hope you enjoy reading our Green Fire Report and here's to the next 35 years of history making at NMELC!

In solidarity,

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

CASE UPDATES

Santolina

BY MASLYN LOCKE & MIA MONTOYA HAMMERSLEY, STAFF ATTORNEYS

Since 2015, NMELC has partnered with clients and communities in a battle to protect the limited water resources of the Middle Rio Grande region. The original Santolina development plan called for 37,000 homes for approximately 95,000 people that would use more than 3.8 billion gallons of water per year. However, the developers have never been able to obtain the required water availability agreement from the Albuquerque-Bernalillo County Water Utility Authority. On August 25, 2021, the Bernalillo County Board of County Commissioners (BCC or Board) voted to approve the Santolina developer's requested Zone Map Amendment, which the developers (Western Albuquerque Land Holdings, LLC and Consensus Planning, Inc.) must have in place in order to build anything on the Santolina property, a massive housing development proposed on Albuquerque's West Mesa.

This was the Board's second time hearing arguments related to the Zone Map Amendment – the BCC first approved the Amendment in 2015, but that decision was reversed by the Court because it violated the due process rights of the community. NMELC, on behalf of the **SouthWest Organizing Project**, the **Pajarito Village Association**, and a few individuals, appealed the BCC's 2021 decision to the Second Judicial District Court on September 24, 2021, again asking the Court to review whether, in voting to approve the Zone Map Amendment, the BCC once again violated the due process rights of the community. The District Court ultimately upheld the BCC's approval of the Zone Map Amendment on July 29, 2022. Unfortunately, with the Zone Map Amendment in place, the developers are one step closer to building a sprawl development at the expense of Bernalillo County residents' quality of life.

NMELC has filed suit to challenge the BCC's decision in order to safeguard the due process rights of the community



In addition, the BCC recently considered the Bernalillo County Planning Commission's (CPC) recommendation to deny the Amended Level A and Level B.II Master Plans on August 16, 2022. This hearing presented many procedural issues for the community, including dysfunctional sign-up procedures and hybrid meeting format plus uncertainty around the rules the BCC was following throughout the hearing. Most importantly, the hearing should never have taken place because no party officially appealed the CPC recommendation. Despite these issues and the fact that the plans enable the developer to move forward with the project without securing a water service provider in a time of increasing water scarcity, the BCC voted to approve both plans.

On behalf of our clients, NMELC has filed suit to challenge the BCC's decision in order to safeguard the due process rights of the community and ensure that the County provides the public with a just and equitable process. Working together with community members, we have successfully delayed this unneeded and unwanted development project for more than 9 years. We will continue to protect the precious water resources of the Middle Rio Grande and the South Valley's agricultural traditions from being exploited by developers' greed.

Red Water Pond Road Community Association

BY ERIC JANTZ, SENIOR STAFF ATTORNEY

The Red Water Pond Road Community Association continues to struggle against federal regulatory agencies that want to keep radioactive and toxic waste produced by two historic uranium mines and one uranium mill in this small Diné community, rather than move it out of Navajo Indian Country. The U.S. EPA and NRC plan to bury waste from one of the mine sites on top of waste from the mill less than a mile from peoples' homes. **On Earth Day this year, the Red Water Pond Road Community hosted the three sitting NRC commissioners to personally demand that the NRC reconsider its ill-advised plan. Gale-force winds whipped radioactive dust through the gathering, emphasizing the dangers the community faces on a regular basis.** Soon after the Commissioners' visit, the NRC announced it was putting its permitting process on hold to re-evaluate the situation. This unprecedented step would not have been possible without community engagement and support of allies like the NMELC.



Eastern Navajo Diné Against Uranium Mining

BY ERIC JANTZ, SENIOR STAFF ATTORNEY

Since 1994, members of the Diné communities of Crownpoint and Churchrock have been resisting planned uranium mining that would destroy valuable drinking water sources where they live. The mining company, Laramide Resources, has secured all its necessary federal permits, and appeals filed by Eastern Navajo Diné Against Uranium Mining (ENDAUM) in federal courts have been fruitless. In 2011, ENDAUM filed the first ever petition alleging human rights violations against the U.S. Nuclear Regulatory Commission for its uranium development policies and practices, which continue to disproportionately impact communities of color, especially Indigenous communities. The petition was accepted in 2021, and since then ENDAUM and NMELC have been filing additional evidence supporting their human rights abuse allegations. **Because of its historic disdain for international human rights law, the U.S. government refused to submit its own evidence on the merits.** Most recently, ENDAUM and NMELC asked the Commission to make an expedited decision on their Petition merits because the recently enacted Inflation Reduction Act has numerous provisions that will incentivize domestic uranium production, putting their communities in imminent danger. Once the aquifer—their principal source of drinking water—is contaminated by uranium mining, it can never be remediated.

Homestake Barrick Gold Superfund Site

BY 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 and the Nuclear Regulatory Commission—the groundwater contamination from the mill has actually gotten worse. **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. This case has recently received a higher profile thanks to in-depth coverage in national media. NMELC continues to support our clients in meeting with regulating agencies and monitoring Homestake's activities.

Mountain View Coalition/NMTS

BY ERIC JANTZ, SENIOR STAFF ATTORNEY & MASLYN LOCKE, STAFF ATTORNEY

After years of fighting a proposed asphalt batch plant proposed for their community, the Mountain View Coalition (Mountain View Neighborhood Association, Mountain View Community Action, and Friends of Valle de Oro National Wildlife Refuge) may be near the end of its struggle. For decades, the Mountain View neighborhood in Albuquerque's South Valley has been the location where Albuquerque and Bernalillo County have steered industries that emit air pollution. As a result, Mountain View and adjacent communities have become overburdened by polluting industries, which have had a significant impact on community members' health. In fact, the life expectancy in Mountain View is significantly lower than in other Albuquerque neighborhoods due to pollution.

The proposed New Mexico Terminal Services asphalt plant would emit tons of dangerous chemicals and fine particulate matter, but the City of Albuquerque Environmental Health Department granted the plant's permit application anyway. The Mountain View Coalition appealed the Department's decision to the Albuquerque/Bernalillo County Air Quality Control Board, and **in early September, the Hearing Officer on the case recommended the Air Board send the permit back to the Department for reconsideration.** The Board will vote on the Hearing Officer's recommendation in October just after this goes to print. The Mountain View Coalition will continue to pressure the Department to reverse its earlier decision and take an important step in decreasing Mountain View's pollution burden.



The Cumulative Air Impact Regulation will be a significant step in protecting the health of already overburdened communities.

Cumulative Air Impact Regulation

BY ERIC JANTZ, SENIOR STAFF ATTORNEY; MASLYN LOCKE, STAFF ATTORNEY & MIA MONTOYA HAMMERSLEY, STAFF ATTORNEY

Cumulative impacts—that is, the consideration of environmental and social impacts on a community holistically—have been called the Holy Grail of environmental justice. **Low-income communities and communities of color have traditionally been the dumping grounds for society's polluting industries.** Albuquerque is no different, with industries that generate air pollution, such as asphalt plants, concrete plants, and hydrocarbon storage facilities, proliferating in a few working class, BIPOC communities. A coalition of groups from disproportionately impacted communities has begun, with NMELC assistance, to draft a regulation that would force industry and regulatory agencies to take into account the health and environmental impacts of air pollution from existing and anticipated facilities when evaluating new air pollution permit applications. The regulation will be a significant step in protecting the health of already overburdened communities.

**¡NO QUEREMOS LA
CONTAMINACIÓN DEL
AIRE EN NUESTROS
BARRIOS!**



FIRMA NUESTRA PETICIÓN

**Southside residents appeal
environment department approval of
asphalt company's plan to consolidate
operations**

Earth Care/Associated Asphalt & Materials

BY MASLYN LOCKE, STAFF ATTORNEY & ERIC JANTZ, SENIOR STAFF ATTORNEY

In July 2021, the New Mexico Environment Department (NMED) issued an air pollution permit to Associated Asphalt and Materials, LLC (AAM) for the consolidation of two hot mix asphalt batch plant facilities 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 and does not protect the health of the public with any certainty. The plant is near multiple neighborhoods where most industrial facilities in Santa Fe are located, 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 last February. On May 27, 2022 the Hearing Officer issued his report and recommendation, agreeing with the community and recommending that the Environmental Improvement Board reverse NMED's decision to issue an air pollution permit to AAM. The Hearing Officer determined that the community met its burden of proof and demonstrated that, as permitted, the AAM facility would cause or contribute to violations of the National Ambient Air Quality Standards, which would negatively impact the health and quality of life of the surrounding community.

On June 24, 2022, the Environmental Improvement Board sided with NMED and the status quo, at the cost of the community.

Despite the Hearing Officer's recommendation, which validated community concerns, on June 24, 2022, the Environmental Improvement Board voted to set it aside, siding with NMED and the status quo, at the cost of the community. Our clients have decided not to appeal this decision to the New Mexico Court of Appeals, and are instead developing a robust environmental justice campaign to best serve Santa Fe's Southside residents and challenge the broader systemic issues that contribute to the environmental racism in Santa Fe. NMELC will continue to work alongside the community in their fight however we are needed, providing legal assistance and advocacy while the community leads the way.

Copper Flat Mine

BY MIA MONTOYA HAMMERSLEY, STAFF ATTORNEY

The Copper Flat Mine is a proposed open-pit copper mine near Hillsboro in Sierra County, which would be operated by New Mexico Copper Corporation. **Mining operations could contaminate groundwater and surface water and severely deplete groundwater in the Lower Rio Grande Basin in a time of increasing water scarcity due to climate change.** The mine will also leave behind a large pit lake that will exceed water quality standards. NMELC is representing a coalition of ranches, local watershed associations, and environmental groups in a proceeding before the New Mexico Office of the State Engineer, where our clients have protested the transfer of water rights to the mine that would harm our water resources and enable polluting mining operations to move forward.

Upper Pecos Watershed Assn./Tererro Mine

BY MASLYN LOCKE, STAFF ATTORNEY

NMELC represents the Upper Pecos Watershed Association, which works in coalition with several other groups including the New Mexico Acequia Association, the New Mexico Acequia Commission, the New Mexico Wilderness Alliance and many individuals, in the fight against the exploration and proposed mining operation near Tererro, New Mexico, in the Upper Pecos watershed. Both the exploration and mining would impact traditional farmers in the Pecos who depend on the river to feed their families and community. A Colorado subsidiary of an Australian mining company, Co-Mexico, LLC, is seeking to drill 30 exploratory holes in and around the Pecos Watershed, risking contamination of the river and degradation of the surrounding area, in search of gold, copper and zinc.

On July 12, 2022, the Water Quality Control Commission ruled that the northern part of the Pecos River, along with over 125 miles of rivers in Northern New Mexico, were designated as Outstanding National Resource Waters, adding an important layer of protection to the river. We are also currently waiting for the US Forest Service to issue an Environmental Assessment related to the proposed drilling, a process that has been delayed by the effects of the **Hermit's Peak and Calf Canyon fires that burned over 341,000 acres in the area and has impacted many community members**. Given the already existing impacts of the old Tererro mine and the largest wildfire in New Mexico history, plus impacts from any proposed mining in the area, the community is united in its opposition to the Tererro mine, and NMELC will continue working with clients and community in their fight.

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Augustin Plains Ranch Groundwater Transfer

BY MASLYN LOCKE, STAFF ATTORNEY

Since 2007, the Law Center has represented community members and groups near Datil, New Mexico, in their protest against the transfer of 54,000 acre feet/year of groundwater by Augustin Plains Ranch. Datil is halfway between Pie Town and the Very Large Array. The Ranch proposes to transport the groundwater out of Catron County to various counties across New Mexico via a 140-mile pipeline for use by unidentified municipal or commercial users, impacting rural water users and exposing communities to potential water mining that could change the future of water management in New Mexico. The State Engineer has denied the Ranch's application twice since 2007 because the Ranch has been unable to identify any clearly beneficial use for the water, relying entirely on hypothetical future uses that are detrimental to the community currently relying on the water. In 2019, the District Court upheld the decision of the State Engineer to deny the Ranch's application because the Ranch was attempting, for the second time, to appropriate groundwater for unspecified purposes to the detriment of current water users. **On August 11, 2022, the New Mexico Court of Appeals reversed the decision of the District Court, holding that the District Court's decision to dismiss the Ranch's case was unfair to the Ranch and an abuse of the Court's discretion.** A small group of protestants, along with Catron County, have appealed the decision to the New Mexico Supreme Court, asking the Court to reverse the Court of Appeals decision and address the Court's failure to address whether the State Engineer's decision to deny the Ranch's application due to its speculative nature was appropriate. The Ranch has also appealed the decision to the Supreme Court, requesting the Court order the State Engineer to allow them an additional hearing on the application.

Tularosa Basin Downwinders Consortium

BY MIA MONTOYA HAMMERSLEY, STAFF ATTORNEY

NMELC is representing the Tularosa Basin Downwinders Consortium (TBDC), which 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. The Downwinders successfully advocated for legislation extending the Radiation Exposure Compensation Act (RECA) for two years, which provides an opportunity to expand eligibility for compensation under RECA to downwinder communities in the Tularosa Basin. NMELC is currently assisting TBDC with gathering additional information about the Trinity Nuclear Test through Freedom of Information Requests.

CLIENT HIGHLIGHT

Tularosa Basin Downwinders Consortium

TBDC is doing a deep dive into uncovering exactly what happened with the infant mortality after the Trinity test. Kathleen M. Tucker and Robert Alvarez published a paper on this entitled "Trinity: The Most Significant Hazard of the Entire Manhattan Project" on July 15, 2019 in the *Bulletin of the Atomic Scientists*. Steering Committee member Bernice Gutierrez has done most of the research. She was born in Carrizozo 8 days before the bomb was detonated and is one of the children who survived. More than 40 members of her family either got cancer or survived radiation exposure illnesses. She is trying to access death records from the State Archives but it has not been easy to obtain them; TBDC is now enlisting the help of some of our State Legislators to do so.



"We had casualties from Trinity and they were our babies. Babies died and the Federal Government looked the other way. They had an opportunity to intervene when contacted by a health care worker who asked for assistance as an unusually high number of babies were dying. For me this is the most egregious part of the Trinity history. It is unconscionable that our own government let our babies die and that people, families suffered through the loss."

—Tina Cordova, Co-founder/Director
Tularosa Basin Downwinders Consortium



Seeking justice for the unknowing, unwilling, and uncompensated, innocent victims of the July 16, 1945, Trinity Test in South Central New Mexico

<https://www.trinitydownwinders.com/>



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NMLEC staff at the strategic planning meeting in July 2022. L to R: Sara Beltrán, Maslyn Locke, Kendra Palmer, Sue Schuurman, Eric Jantz, Virginia Necochea, Mia Montoya Hammersley.

WE ARE IMMENSELY GRATEFUL FOR YOUR ONGOING SUPPORT



NMLEC 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 support allows us to build our capacity and leverage our legal representation and advocacy in the fight for environmental justice across the state. Your generosity allows us to hold polluters accountable and to protect environmental health. You are part of the movement to protect and defend every New Mexican's fundamental right to clean air, land, and water. All of us at NMLEC sincerely thank you for your ongoing support and for your commitment to environmental justice!

Visit nмелc.org/donations to make any-sized donation