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NMELC Legislative Priorities for the 2023 Session

1 message

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New Mexico Environmental Law Center™

NMELC staff recently gathered in our Albuquerque office for an Operations Planning session facilitated by Everette Hill. We ate lunch, exchanged holiday gifts then dove into planning for 2023.

Photos by Susan Schuurman

In This Week's Eblast

• Welcome New NMELC Staffer Kourtney Andar, Director of Operations!

• NMELC's Legislative Priorities for 2023

• NMELC Supports YUCCA Panel and Die-In

• Green Fire Times features NMELC's Top 10 EJ Issues for 2023 & OpEd by NMELC IPS Intern Ennedith Lopez about Cumulative Impacts Regulation

• NMELC & Clients In the News

• Job Opening at NMELC: Environmental Justice Staff Attorney

• Staff/Intern Publications: "New Mexico at a Crossroads: False Solutions or a Just Transition?" a report published by Institute for Policy Studies and written by Ennedith Lopez, Basav Sen, Emily Li, Taneya Garcia & Alyssa Garza

• NMELC Board Elects New Officers

Welcome to Kourtney Andar, NMELC's New Operations Director!

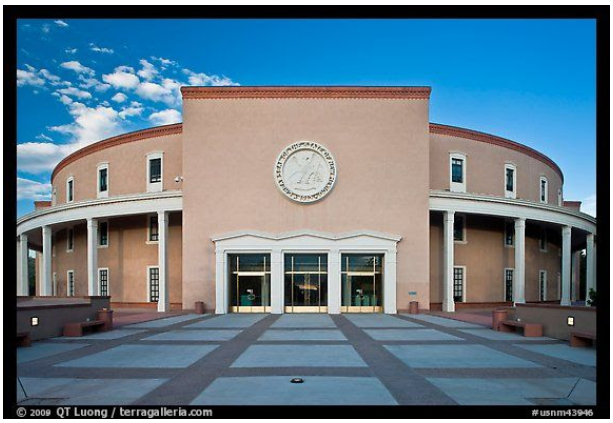
We are excited to announce that Kourtney Andar has joined the NMELC team as our new Operations Director!

Kourtney has a strong background in social justice organizing and nonprofit operations. He will be serving in a key role in support of our entire organization. Learn more about Kourtney below. Welcome on board, Kourtney!

Kourtney Andar
Director of Operations

Kourtney Andar is a writer, activist, and social justice educator. He has trained hundreds of people on violence prevention, pro-feminism, environmental justice, and transformational leadership. He is a co-facilitator for Prospera Partners in Santa Fe, and is a former board member of Veterans For Peace, where he led membership recruitment efforts, served on the executive committee, and led convention workshops. At the University of Missouri-Columbia, Kourtney co-advised a male ally program and sexual violence prevention student organization and assisted with implementing a comprehensive bystander intervention program. He was a featured speaker at the 2014 Earth At Risk: The Justice & Sustainability Conference in San Francisco. Kourtney is a published author, and his articles are available on several activist websites. He grew up in Illinois, served five years in the Army National Guard, and moved to Santa Fe with his wife in July 2016.

NMELC's Legislative Priorities for 2023



As many of you are well aware, the 2023 Legislative Session is already underway. During this 60-day session we are focusing our efforts on three bills that we have supported in previous years: A "**Bad Actor**" bill that would enable state regulators to deny or suspend a permit for environmental violations; **Private Right of Action** that would allow for citizen suits for environmental violations; and the **Green Amendment** (GA), a proposed Constitutional Amendment which would allow the right to a clean and healthy environment to be put to New Mexico voters. The GA is Senate Joint Resolution SJR 6 and HJR 4 in the House. More details on these three important bills are below.

The three bills, if passed, would serve as important tools to strengthen our ability to protect our air, water and land as well as community health.

(1) "Bad Actor" (sponsored by Rep. Christine Chandler and Rep. Andrea Romero)
This bill would **amend** the **Oil and Gas Act** to grant the Oil Conservation Division the authority **to deny, suspend, or revoke a permit** of any entity
-who has a **record of violation of state or federal environmental laws**;
-who **fails to prove fiscal solvency**;
-who **fails to provide proof of third-party environmental insurance**.

(2) "Private Right of Action" (sponsored by Rep. Matt McQueen)
This bill would **amend** the **Oil and Gas Act, Air Quality Control Act, Water Quality Act, Solid Waste Act, and Hazardous Waste Ac**t to
-allow for any person who is injured or imminently threatened with injury ("economically or otherwise") to bring civil action against anyone for alleged past or present violations of relevant environmental statute(s); it is intended to complement, not to replace or challenge, agencies' enforcement obligations.

(3) Green Amendment (sponsored by Sen. Antoinette Sedillo Lopez, Rep. Patricia Roybal Caballero, and Rep. Joanne Ferrary)

- The Green Amendment proposes to amend the state's Constitution by providing the people of the state with environmental rights, including **the right to a clean and healthy environment and the right to protection of the environment.**
- The Green Amendment would amend the New Mexico constitution to elevate environmental rights to the same level as other civil rights we're all familiar with, such as freedom of speech, due process, and freedom of religion
- A New Mexico Green Amendment would constitutionally mandate that state government officials protect the environmental rights of all residents equitably, including future generations. The self-executing amendment will allow legal redress when these rights are violated by government action;
- The Green Amendment must go through both the Senate and the House before it can go to the people of New Mexico for a vote.

Private Right of Action and **Bad Actor** are being led by Earthworks, and other groups involved in developing the bills including the Western Environmental Law Center and the Coalition for Clean and Affordable Energy. Community advocacy and frontline organizations that support these bills to date include Citizens Caring for the Future (CCFF) and Interfaith Power and Light. NMELC is lending support to these two bills because we believe that they will help our clients and other communities resist industry's continued polluting of New Mexico's air, land, and water.

The **Bad Actor** bill will give State agencies the courage and legal authority to say "NO!" to repeat offenders in the oil and gas industry and to those who, because of financial instability or lack of insurance, will predictably bail on their obligations to run clean operations or to repair environmental damage, leaving New Mexico communities stuck with the bill. It's important to note that, while the Oil and Gas Act does not currently contain a "bad actor" provision, several other State laws do have such provisions, including the Air Quality Control Act, the Water Quality Act, the Hazardous Waste Act, and the Solid Waste Act. We believe that it's inexcusable that the Oil and Gas Act currently has no similar provisions.

In addition, the **Private Right of Action** bill will allow communities who have been harmed—or will imminently be harmed—to bring lawsuits against polluters when State agencies are not adequately addressing environmental violations. This type of law is common among federal environmental laws as well as in the New Mexico Mining Act.

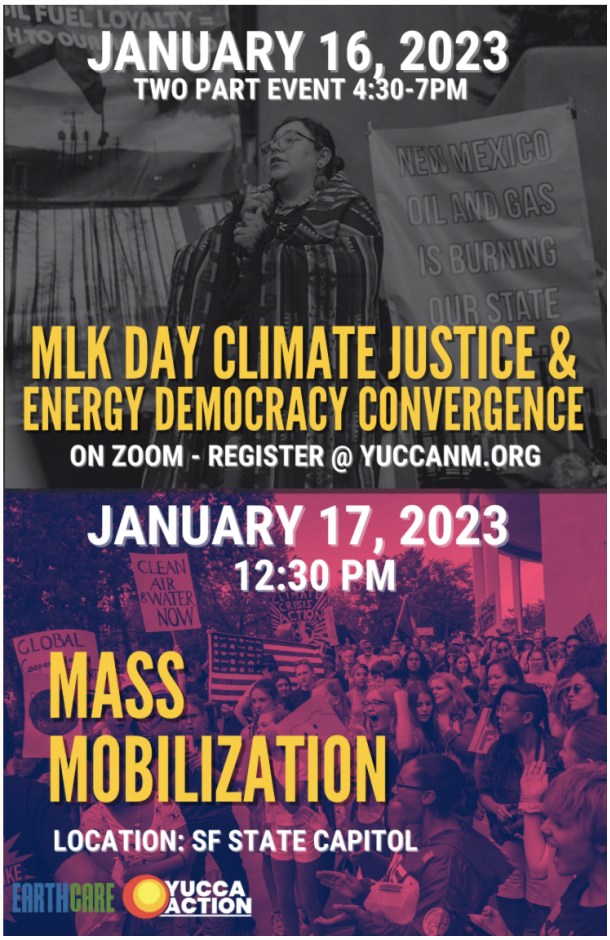
We hope that state agencies support the Private Right of Action bill as currently written (it has not been filed yet); it is important that agencies not give deference to oil and gas industry lobbyists when finalizing the bill language.

We invite our supporters to please consider contacting the sponsor of the Private Right of Action bill, Rep. Matthew McQueen, to thank him for sponsoring the bill and emphasize why it's important to frontline impacted community members to move it forward as currently written. You may email Rep. McQueen at matthew.mcqueen@nmlegis.gov or phone him at (505) 986-4423.

We are currently in ongoing internal discussions and taking a hard look at our process for determining our legislative priorities and policy work. We welcome your input about our legislative priorities as we strive to find the right balance between capacity and goals while keeping in mind our ongoing case work.

NMELC Participates in Youth United for Climate Crisis Action (YUCCA) Panel & Action

YUCCA invited NMELC Executive Director Dr. Virginia Necochea to speak on a panel held on MLK Day that was part of the Climate Justice & Energy Democracy Convergence.



YUCCA held their 2nd annual Climate Justice & Energy Democracy Convergence on Monday, January 16. Local and national leaders from the environmental and climate justice movement discussed policies and strategies to advance a just energy transition, with discussion of specific policy proposals for the 2023 Legislative Session and the Energy Justice Scorecard. A second panel discussion focused on the larger climate movement strategy to build power and win the changes we need.

Dr. Necochea said, "When I think about a just transition, we're really talking about, if we name it, those who have power, those who hold power, and those who don't. We have to keep at the forefront we're talking about unjust, inequitable racist systems, oppressive systems in place, that continue to harm our community, our people, our environment and have created so many of these climate injustices."

The next day, Tuesday, January 17, three NMELC staffers were privileged to join in the direct action led by YUCCA in the Roundhouse rotunda. YUCCA Action led a "Die-In" as a mass mobilization to put pressure on lawmakers to take action now on the climate crisis.

Participants laid down for 7 minutes, one minute for each of the 7 years scientists have predicted remaining to avert the most catastrophic impacts from global warming. We laid mock paper tombstones on our bodies, with messages that said what aspect of climate change caused death, whether widfires, drought, flooding, and heat exposure.

Here is a statement from YUCCA's report back:

"The Die-In highlighted the devastating losses New Mexicans and communities across the world have already suffered at the hands of climate disruption caused by fossil fuel pollution. After the worst wildfires the state has ever seen YUCCA is demanding lawmakers take immediate action this session to address climate change and protect their future. Youth leaders are demanding an end to the state's practice of chasing short-term profits at the expense of long-term climate stability, economic sustainability, public health & environmental justice."

You can read YUCCA's full report back from the Die-In and check out their Legislative Priorities as well at this link.

Click here to watch the video of the MLK Climate Justice & Energy Democracy Convergence.

You can read media coverage of the Die-In in *Source NM*.

YUCCA organized a "die-in" for Climate Justice at the Roundhouse on Tuesday, January 17, 2023. Photo by Austin Fisher, Source NM.

Green Fire Times Features NMELC's Annual Top 10 EJ Issues for 2023

Plus NMELC Intern Ennedith Lopez' OpEd Uplifts Mountain View Coalition's Health, Environment & Equity Impacts Regulation

For several years Green Fire Times has invited NMELC to submit our Top 10 Environmental Justice Issues for the coming year for their January/February issue, which is guest edited by YUCCA and Earth Care.

You can pick up a hard copy issue or access the article online. Our article is on pages 5-8.

Earth Care also invited NMELC Intern/Institute for Policy Studies Fellow Ennedith Lopez to write an OpEd about the Mountain View Coalition's Health, Environment & Equity Impacts proposed regulation. Her OpEd is on pages 24-25.

TOP-10 ENVIRONMENTAL JUSTICE ISSUES FOR 2023

BY NEW MEXICO ENVIRONMENTAL LAW CENTER STAFF

For several years, the staff at the New Mexico Environmental Law Center (NMELC) has weighed in on what we see as the most pressing environmental justice issues for the coming year. This year we reflect on how now, more than ever, we must stop doing business as usual and address profound environmental justice challenges in a way that centers community health and wellbeing rather than financial profits. Because of the profound responsibility we have to our current and future generations, we must do everything in our power to make the right decisions that will safeguard Mother Earth, uphold environmental justice, and ensure our children and their grandchildren have a liveable future.

1. THE CLIMATE CRISIS REMAINS OUR NUMBER ONE PRIORITY

We are at a tipping point when it comes to averting the most catastrophic climate change impacts, which are already evident in drought, wildfires, famine, flooding from sea-level rise and extreme weather events. We hear a lot of lip service around the need to prioritize reducing greenhouse gas emissions but do not see enough tangible action taken by decision makers. As a state, we bear a sobering responsibility for emissions due to the massive extraction of oil and gas in the Permian Basin.

YUCCA blocked the entrance to the NM Oil & Gas Association meeting in Santa Fe, 2022

As we face the daunting challenge to drastically reduce greenhouse gas emissions, we must take our lead from and organizers of color in New Mexico who have been demanding concrete action at the frontlines for years. The days of marginalizing or tokenizing their voices must end now. We urge legislators to heed their demands during the 2023 session, especially given the billions of dollars of surplus money in state coffers and a once-in-a-generation opportunity to be bold. For example, Youth United for Climate Crisis Action (YUCCA), Pueblo Action Alliance and other frontline youth organizations are pushing for critically important amendments to the timeline and net zero language in the proposed Climate Bill that would mandate emissions reductions throughout the state [1] [2], are calling for a just transition fund; a Sun Juan Generating Station clean-up bill that would require a comprehensive independent study of coal ash contamination and other toxins at the site; Local Choice Energy, which would enable local communities to buy or generate more renewable energy and speed up the transition to renewable energy sources; and mandatory setbacks to the Oil and Gas Act.

We must think of a clean and healthy environment as a fundamental civil and human right.

We must reject false solutions to the climate crisis [like fossil fuel-produced hydrogen, carbon sequestration and carbon offsets) and create policy that is fundamentally based on a just transition from reliance on fossil fuels. ([3])

2. WILDFIRES

The year 2022 was a devastating year for New Mexicans when it comes to wildfires. A prescribed burn conducted by the U.S. Forest Service resulted in the Calf Canyon/Hermit's Peak Fire: the largest and most destructive fire in the history of the state. It burned over

Governments must heed recommendations by the water stewards and place the highest priority on traditional knowledge.

340,000 acres and destroyed more than 900 buildings, devastating rural communities and traditional water users across the northeast part of the state, threatening the domestic water supply of residents in and near Las Vegas, N.M. The fires raged for five months, and after they were extinguished, impacts continued to pile on as monsoon rains fell onto the burn scar, with the resulting flooding moving toxic ash into rivers and streams.

Federal aid has been allocated for people impacted by these mammoth fires, but bureaucratic processes have delayed communities' ability to access much of this funding. Importantly, community concerns were ignored before the burn was conducted. This disaster could have been avoided if federal agencies had listened to local voices. At the recent Congreso de las Acequias, *mayordomos* (acequia stewards) reported that 48 acequias were damaged by the Calf Canyon-Hermit's Peak fire. The Black Fire, the state's second largest, located in the Gila National Forest, damaged more than 20 acequias, and the Cerro Pelado Fire near Cochiti Pueblo burned 30,000 acres. Because of the impacts of these massive fires, they are asking for twice as much federal funding as has been allocated.

Moving forward, the process of designing and approving prescribed burns must be fully overhauled to prevent such a devastating disaster from ever happening again. The Congreso issued a declaration that includes: "The trees'[4] , plants, roots, soils and cloud patterns that were our source of water and our source of life will never be the same again. …Acequias, once flowing with clean, crystalline snowmelt from our beloved mountains, are clogged with ash and soils that eroded from burned hillslopes." As *Source NM* reported, "The declaration spells out steps the acequia leaders say are required to ensure centuries-old waterways recover, including mobilizing communities, investing in thinning and erosion control to protect unharmed watersheds, establishing emergency seed banks and dedicating more resources toward developing drought-resistant crops and livestock." Governments at every level must heed the recommendations by these water stewards and place the highest priority on traditional knowledge[5] .

3. A CLEAN & HEALTHY ENVIRONMENT IS A FUNDAMENTAL RIGHT

When we think about our fundamental civil rights, we often think of the right to freedom of speech, freedom of assembly, freedom of religion and freedom from undue search and seizure, to name a few. Considering the state of our planet, shrinking habitats, damaged ecosystems and the threat of another mass extinction of species from climate change, we must think of a clean and healthy environment as a fundamental civil and human right as well. Our survival depends on it.

The Río Grande near Taos, New Mexico © Seth Roffman

One way to elevate a healthy environment to the same importance as other rights in the courts is for New Mexico to adopt a Green Amendment. The New Mexico Green Amendment would amend Article 2 of the state Constitution by adding a new section to read that "The people[6] of the state shall be entitled to clean and healthy air, water, soil and environments; a stable climate; and self-sustaining ecosystems, for the benefit of public health, safety and general welfare. The state shall protect these rights equitably for all people regardless of race, ethnicity, tribal membership status, gender, socioeconomics, or geography." The state would be required to "conserve, protect and maintain these resources for the benefit of all the people, including present and future generations."

If the NM Green Amendment passes in the upcoming legislative session, the measure would then be put to the voters of the state, as it would amend the state Constitution. Elevating a clean and healthy environment to be a fundamental right would strengthen the ability of residents to obtain adequate cleanup of contamination and pollution as well as prevent it in the first place[7] .

4. CUMULATIVE IMPACTS

Regulators have long looked at air pollution permits as if they exist in a silo. They evaluate predicted emissions without considering other pre-existing sources of pollution and social determinants of health in the neighborhood where the polluting industry wants to set up shop and make a profit while harming the health of nearby residents. Cumulative Impacts regulations and laws around the country have long been considered the holy grail of environmental justice[8] . These regulations require agencies to take into consideration the disproportionate impacts that low-income communities of color have to bear from toxic and polluting industries.

The Mountain View Coalition and NMELC recently submitted a historic draft Health, Environment and Equity Impacts Regulation to the Albuquerque-Bernalillo County Air Quality Control Board. The regulation would enable the Albuquerque Environmental Health Department to deny an air pollution permit

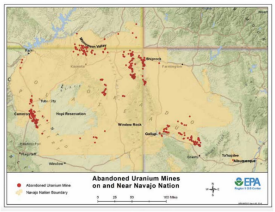
Land use must be tied to sustainable water availability.

if it will be located in an overburdened community and negatively impact the health of residents in that community. If the facility is proposed to be located in an overburdened community, the applicant must perform a Disparate Impact Screening and evaluate nine identified Health Indicators. The permit application will be denied if any one of nine health indicators in the area already exceeds the county average for those indicators.

We expect the Air Quality Control Board to schedule a public hearing on the proposed impacts regulation in the next several months. We will be pressing upon community members and ally organizations to support the Mountain View Coalition's regulation by writing letters of support and speaking up at the hearing. We also urge legislators to adopt a similar cumulative impacts regulation at the state[9] level[10].

5. URANIUM IMPACTS AND INTERNATIONAL HUMAN RIGHTS

Uranium mining and milling activities have left a legacy of disease, mortality and contaminated lands, water and air, especially in tribal communities across the state. The EPA has counted 523 abandoned uranium mines [see map] and allotted funds to assess and clean up 230 of the mines, fewer than half. In spite of that legacy of harm, the Nuclear Regulatory Commission (NRC) licensed additional uranium mining and milling activities in Church Rock and Crownpoint in 1998; the company has changed hands in the decades that have followed, from HRI to Laramide, but the license remains viable. Grassroots community



Los Jardines Institute press conference for Mountain View Coalition filing of health, environment and equity impacts regulation, Nov. 2022 Photo by Asmi Hanna

members united to fight back and formed Eastern Navajo Diné Against Uranium Mining (ENDAUM), and filed a petition with the Inter-American Commission on Human Rights in 2011. In 2021 the IACHR ruled ENDAUM's petition, filed by the NMELC, as admissible, only the second time for an environmental justice case against the United States. As we wait for a decision on the merits, ENDAUM and NMELC have requested that the decision be expedited, and that a thematic hearing

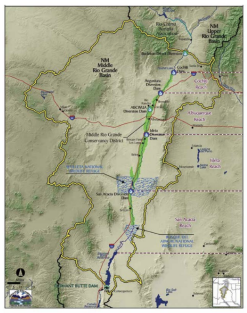
The military industrial and nuclear complex has left a legacy of contamination and disease on traditional Indigenous territories and communities.

on uranium impacts to tribal communities be held at the next IACHR session, which will be held in early March in Los Angeles.

The threat of renewed uranium mining has not been higher in decades; Russia's war on Ukraine has indirectly led to subsidies by the Biden administration for domestic uranium mining exploration. Right now, activity at the proposed mine near Church Rock has the local community alarmed, asking questions and mobilizing to assess their options. The Red Water Pond Road Community Association was recently pleased to see the NRC put a halt to their plan to move mine waste only half a mile down the road, after three NRC commissioners came to Church Rock in April 2022. But we have now learned that the NRC has lifted the pause and intends to move forward with the flawed plan that doesn't adequately protect the Diné community whose land and health the mine waste threatens[11]

6. FREE, PRIOR AND INFORMED CONSENT (FPIC)

In 2007, the United Nations General Assembly adopted the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). At first, the United States voted against the declaration, but then reversed its position. UNDRIP specifies that free, prior and informed consent be a prerequisite for any activity that affects ancestral lands, territories and natural resources of Indigenous peoples. In the New Mexico context,



New Mexico's Middle Rio Grande Basin

FPIC must apply to the extraction and cleanup of lands impacted by uranium mining and milling and storage of radioactive waste. Federal and state government agencies need to do more than just send letters to tribal governments and check off the consultation box, something we see the NRC, for example, do when an Environmental Impact Statement (EIS) is prepared.

We are seeing Environmental Justice principles being prioritized in the Biden administration across many departments and agencies, but those discussions, Powerpoint presentations and memos are not filtering down to concrete policy changes enough. The military industrial and nuclear complex has left a legacy of contamination and disease on traditional Indigenous territories and communities, and government agencies must do a better job incorporating FPIC into their decision-making processes, whether that is concerning clean up or when considering new extraction projects[12] .

7. WATER AVAILABILITY, DROUGHT & EQUITY

Water is life. Without water, we cannot survive. We seem to recognize these truths, yet this knowledge and wisdom is not reflected in our policies. In Bernalillo County, for example, land-use decisions and water availability are no longer tied together. Development projects are approved by planners and the Bernalillo County Commission with little regard to whether there is actual "wet" water available to meet the needs of a new project. Land use must be tied to sustainable water availability. If there is no water available, the proposed development project must be denied. Period.

The western region of the United States is experiencing a historic megadrought, the worst in 1,200 years, according to researchers. The years 2000-2021 were the driest 22 years since the year 800 CE. According to evidence shared by the New Mexico Water and Natural Resources Committee, this ongoing drought is characterized and exacerbated by less snowpack, diminished stream flow and increased variability of precipitation. The Middle Rio Grande Water Advocates are attempting to wake up water policy decision-makers to the hydrologic reality we are currently in. Twentieth-century water management rules won't work in the 21st century as the Southwest becomes more arid.

New Mexico has unmet obligations under the Rio Grande Compact; the accrued debt to Texas was more than 127,000 acre feet of water as of calendar year 2022. Our reservoir levels are at historic lows. Water use must decrease, water infrastructure must be upgraded, and resources must be allocated to bolster convenings to discuss the hard but necessary decisions that must be made. The current system to allocate water is inequitable. One of the key commitments made by the Middle Rio Grande Water Advocates is to be in compliance with the State-Tribal Collaboration Act so that "state cabinet agencies diligently seek collaboration with tribal governments and give full consideration to their water management strategies, policies, and concerns." As tough decisions about water allocation are contemplated in the years ahead, the water rights of traditional communities, irrigators and acequia users who have sustainably managed water in this arid region for centuries must be protected[13] .

Too often we see elected officials supporting business interests and large campaign donors at the expense of community well-being and environmental health.

8. AIR QUALITY

New Mexico's clear blue skies can be very deceiving. Air quality issues in our state are often invisible to the naked eye. Significant health impacts are experienced by residents, especially in low-income communities of color where the most toxic and hazardous polluting industries are located. Two such communities are Santa Fe's Southside and Albuquerque's Mountain View neighborhoods. Asphalt plants emit tons of dangerous chemicals and fine particulate matter. Both the New Mexico Environment Department (NMED) and the City of Albuquerque's Environmental Health Department (EHD) have a long history of rubber-stamping air pollution permits for facilities located in vulnerable, already overburdened communities.

Urban sprawl exemplified by the Santolina development project is simply not needed and not sustainable.

Community members speak out about expansion of an asphalt plant on Santa Fe's southside. Photo courtesy Earth Care

NMED approved Associated Asphalt & Materials' (AAM) application to consolidate two plants in Santa Fe's Southside despite the community's opposition and that the plant will spew harmful emissions 24 hours a day, seven days a week during certain parts of the year. This neighborhood is primarily made up of lower-income, young, Spanish-speaking families. Earth Care NM has been organizing with these families to fight back against this egregious environmental injustice, with the assistance of NMELC's attorneys. A Hearing Officer determined that the AAM facility would cause or contribute to violations of the National Ambient Air Quality Standards and negatively impact the health and quality of life of the surrounding community, but the Environmental Improvement Board subsequently voted to set the recommendation aside, ignoring significant health and environmental impacts.

In the Mountain View community, EHD similarly issued an air pollution permit for a company called New Mexico Terminal Services. Concerned residents formed the Mountain View Coalition, and utilizing legal services provided by NMELC, appealed the permit to the Air Quality Control Board. The permit was recently remanded to EHD by the Air Board because EHD failed to consider whether the NMTS facility could be built in a reasonable period of time, and two years have passed since the permit's issuance. Meanwhile, residents were pleased when another asphalt company, Star Paving, applied for a permit but was denied by EHD. The asphalt assault on overburdened communities must stop. We are hopeful that if cumulative impacts regulations are adopted across the state, the environmental injustice present in air quality decision-making will finally be addressed[14] and disrupted.

9. URBAN SPRAWL DEVELOPMENT PROJECTS

Urban sprawl is defined as uncontrolled expansion of urban areas. In the case of the greater Albuquerque area, the biggest threat lies on the West Side. Sandia and Isleta Pueblo as well as Kirtland Air Force Base prevent expansion to the north and south, and the Sandia Mountains to the east.

For nearly a decade a small but mighty group of dedicated community members and grassroots organizations—the Contra Santolina Working Group—has fought against a massive housing development project called Santolina. The developer, Western Albuquerque Land Holdings, acquired the former Artesco Land Grant when London-based Barclays Bank bought it. WALH asked the Bernalillo County Commission to let it build 37,000 homes for 95,000 people, and the county approved the Level A Development Agreement in 2015 despite overwhelming public opposition. The developers have never secured water for that many residents.

While the agreement is still on the books, the Santolina housing development has never been built, thanks to steadfast organizing by the community in partnership with skilled and tenacious legal representation by NMELC attorneys. By the end of 2022, developers had obtained approval from the Bernalillo County Commission to build out industrial uses for a small part of the acreage that could possibly include solar, battery storage, a tire dump or a landfill. It remains unclear. Meanwhile, NMELC, on behalf of our clients, has filed a suit to challenge the BCC's approval of this proposal in order to safeguard the due-process rights of the community. We have seen a long pattern of the county not following its own procedures. The big picture concerns corporate profits over community concerns, and the failure to connect land-use decisions to water availability. We also must recognize that projected population growth has failed to meet predictions. The urban sprawl exemplified by the failed Santolina development project is simply not needed and not sustainable. We need smart, community-driven planning, not piecemeal, developer-driven sprawl[15] .

10. GOVERNMENT ACCOUNTABILITY

A common thread running across all of our environmental justice issues is government accountability. At NMELC, we, our clients and allies consistently find ourselves having to remind government agencies at the local, state and federal levels what their job is and why they were ostensibly created. So often these agencies act beholden to corporations and polluting industries instead of the people. We also too often see elected officials, who were elected to represent their constituents, supporting legislation that serves business interests and large campaign donors at the expense of community well being and environmental health. This dynamic is on display when appointments are made to fill legislative seats between elections.

The influence of big money from the oil and gas industry is evident across New Mexico politics. This pattern was recently covered in a report by New Mexico Ethics Watch. We must address this inequitable process by no longer considering campaign contributions as free speech or corporations as people. The voices of the people and especially those most harmed by environmental, climate, health and social injustices, must be at the forefront and prioritized in all legislation, policies and by governmental agencies. ■

The New Mexico Environmental Law Center has been defending environmental justice since 1987. It is our mission to work with New Mexico's communities to protect their air, land and water in the fight for environmental justice. For more information about the New Mexico Environmental Law Center, go to WWW.NMELC.ORG.

New Mexico Environmental Law Center

OP-ED: ENNEDITH LOPEZ

HISTORIC MOUNTAIN VIEW FILING

Cumulative Impact Regulation Will Help Ensure Youth of Color Have a Future

Fighting to Live by David Pecas Valencia. The 20-year-old artist said, "It's about a young Chicano boy fighting to live in a world full of violence, poverty and pollution."

The urgency of the climate crisis calls for an evaluation of our society, its daily functions and systemic changes needed to ensure a viable future. In New Mexico, due to racist policies, polluting industries have disproportionately impacted overburdened communities. Community-led initiatives are critical, today more than ever, to address intersecting concerns such as community health, preservation of the environment and climate crisis impacts.

Mountain View, located north of Isleta Pueblo, has traditionally been treated as a sacrifice zone. This neighborhood, where residents are mainly working class and people of color, has faced the brunt of decades-long toxic and hazardous pollution from industries in the area. According to Lauro Silva, Mountain View Neighborhood Association board member, the fight for environmental justice has been going on for more than 30 years. The Mountain View Coalition, developed over the past two years, includes the neighborhood association, along with Mountain View Community Action and Friends of the Valle de Oro National Wildlife Refuge.

Industry wants to carry on with business as usual by continuing to pollute communities for generations to come.

Life expectancy in Mountain View is 10 to 24 years less than more affluent White

Mountain View, located north of Isleta Pueblo, has traditionally been treated as a sacrifice zone.

neighborhoods in the Albuquerque metropolitan area. Younger residents of color and other historically overburdened community members are particularly at risk. In addition, children and elders have a higher incidence of respiratory and cardiovascular diseases and cancer. Silva stresses the importance of recognizing the impacts pollution potentially carries for younger residents, as it poses a risk of altering their genetic make-up, making future generations more vulnerable to illnesses.

On November 21, 2022, the Mountain View Coalition and New Mexico Environmental Law Center (NMELC) filed a Health, Environment and Equity Impacts Regulation with the Albuquerque-Bernalillo County Air Quality Control Board, in an attempt to address these health disparities in Bernalillo County. The proposed regulation raises serious concerns. It would require the Albuquerque Environmental Health Department (EHD) and the Air Quality Control Board to evaluate the health, environmental and equity impacts of air emissions prior to issuing a permit to a new industry or business. If an emitting industry is to be located in an overburdened community, and potentially negatively impact the health of the residents, the application would be denied.

Maslyn Locke, staff attorney at NMELC, said that the regulation will require EHD to "meaningly consider the impacts of air pollution on low-income communities and communities of color." The regulation would, in effect, make possible opportunities for a healthy environment with clean air, water and soil.

Top: Las Jardines Institute members
Bottom: Lauro Silva, Mountain View Neighborhood Association

On Dec. 14, 2022, the Air Quality Control Board voted unanimously in favor of holding a hearing on the regulation. Not surprisingly, there was great opposition from industry representatives. One of their primary issues was the impact the regulation might have on economic development in New Mexico. Industry wants to carry on with business as usual by continuing to pollute communities for generations to come. However, based on our experience, in the Albuquerque area there has not been much social or economic prosperity as a result of the industries' economic development.

Mountain View Coalition members with NMELC attorneys and community members at a press conference.

Those advocating for increasing industrial sites in the area also do not consider how their industry or business is directly harming younger New Mexicans' futures by failing to acknowledge their industries' contribution to the climate crisis. From the early 1970s until 2011, the U.S. Environmental Protection Agency (EPA) reports a 90-percent increase of global carbon emissions from fossil fuels and industrial processes. This has also contributed to an approximately 78 percent increase of total global greenhouse gas emissions. New Mexico does need economic mobility, but it is the responsibility of industry to institute clean, renewable practices.

The proposed regulation holds industries accountable and sets preventative measures to stop the contamination. Eric Jantz, senior staff attorney at the NMELC, said, "Externalizing pollution costs is facilitated by structural racism, since politically and economically marginalized communities are much easier to exploit than more advantaged communities." The regulation reflects a community initiative that is people-centered and environmentally conscious.

During the Air Quality Control Board meeting, Silva said, "This permit regulation is to account for the cumulative impacts, not just of one company, but the entire amount of pollution that is taking place. We are not against business. We are for a clean industry."

The regulation will positively impact all overburdened communities in Bernalillo County and become a preventative measure to the disproportionate spread of pollution. Overburdened communities like Mountain View deserve the opportunity for a clean and healthy environment and environmental justice. ■

Enneditth López, a Xicana born and raised in the International District of Albuquerque, has centered her studies and work to support BIPOC, low-income and marginalized communities in New Mexico. She is interning at the NMELC through an Institute for Policy Studies New Mexico Fellowship.

NMELC & Clients in the News

NMELC Staff Attorney **Mara Yarbrough** and Senior Staff Attorney **Eric Jantz** were both quoted in an article in *Capital & Main* about three legislative bills that would reform the Oil & Gas Act.

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THE SLICK

Changing the Playing Field

Proposed legislation would dramatically change New Mexico's principal oil and gas law.

Published on January 18, 2023
By Jerry Redfern

Oil drill near Bloomfield, New Mexico. Photo: Amy Dala/Getty Images

Three bills proposed for the New Mexico legislative session would shift the state's focus on the oil and gas industry by emphasizing public safety and environmental protections, denying permits and increasing penalties for companies in violation of the law, and making it

Here are some excerpts:

"**Three bills proposed for the New Mexico legislative session** would shift the state's focus on the oil and gas industry by emphasizing public safety and environmental protections, denying permits and increasing penalties for companies in violation of the law, and making it easier for citizen groups to sue scofflaw operators. ... Lawyers from the Western Environmental Law Center (WELC), Earthworks, the New Mexico Environmental Law Center (NMELC) and the Coalition for Clean, Affordable Energy are still finalizing drafts of the three bills — the Oil and Gas Justice and Reform Act, a citizens' suit bill and a bad actor bill (the last two are not yet named). ...

"The Oil and Gas Act, as it stands now, doesn't prioritize public health and communities," says Mara Yarbrough, staff attorney at NMELC. "Rather, it prioritizes protecting the oil and gas industry and protecting the resource from being wasted." ...

"If oil and gas operators are following the law, they have nothing to worry about," says Eric Jantz, the senior staff attorney at NMELC, and another author on the bills. "There will be no flood of lawsuits. There will be no frivolous lawsuits … The argument to the contrary that there's going to be this flood of lawsuits is, essentially, the industry conceding that they aren't following the law right now. And that's problematic."

Read the entire article here.

During our holiday break, *The Paper.* covered the **Air Quality Control Board decision to hold a public hearing** on the Mountain View Coalition's Health, Environment & Equity Impacts proposed regulation.

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NEWS

Community Convinces Air Quality Board to Hold Public Hearing

Health, Environment and Equity Impacts Regulation Could Shift Environmental Racism in South Valley

Credit: Courtesy New Mexico Environmental Law Center

Mountain View Community Center President Nora Garcia, Mountain View Community Action President Marla Painter and NMELC Senior Staff Attorney Eric Jantz were quoted among others in the article in support of the hearing.

Here are some excerpts:

"The South Valley is a clear example of environmental racism and they are fed up with being the dumping ground for decades of a dirty industry that no one else wants. The strength of community organizing paid off for residents there when, spearheaded by the Mountain View Coalition and New Mexico Environmental Law Center (NMELC), they were able to convince the ABQ-BernCo Air Quality Control Board (AQCB) to vote unanimously (5-0) to hold a public hearing on their proposed Health, Environment and Equity Impacts Regulation.

“Most of the burdens and few of the benefits of economic development are experienced by residents in these overburdened communities,” **Eric Jantz,** NMELC Senior Staff Attorney told the AQCB.

Historically a rural Latino center of Albuquerque, the South Valley contains some of the most polluted areas of the state. “We hope that the draft impacts regulation will become a new beginning toward a healthier environment and improved quality of life,” President of the Mountain View Neighborhood Association **Nora Garcia** said. ...

“This is the furthest we have ever gotten on having the Air Board or the City address our concerns and demands for a healthier environment in Bernalillo County, particularly in vulnerable neighborhoods,” said **Marla Painter** of Mountain View Community Action. ...

To read the entire article, click here.

Job Opening at NMELC: Environmental Justice Staff Attorney

Environmental Justice Staff Attorney

PRIORITY HIRE

We would greatly appreciate our community's help in sharing this job post widely!

The New Mexico Environmental Law Center (NMELC) is seeking applications for a Staff Attorney dedicated to NMELC's mission of working with communities to advance environmental justice and human rights.

New Mexico Environmental Law Center

Job Opportunities

Environmental Justice Staff Attorney

The New Mexico Environmental Law Center works in partnership with community organizations, coalitions and other stakeholders to build multi-strategy campaigns that address the systemic polluting of low-income communities of color and advance community health and sustainability. Black, Indigenous, People of Color (BIPOC), women and LGBTQ+ candidates are highly encouraged to apply.
JOB TITLE: Staff Attorney

SALARY: 62K to 75K

START DATE: ASAP

REPORTS TO: Executive Director & Senior Staff Attorney

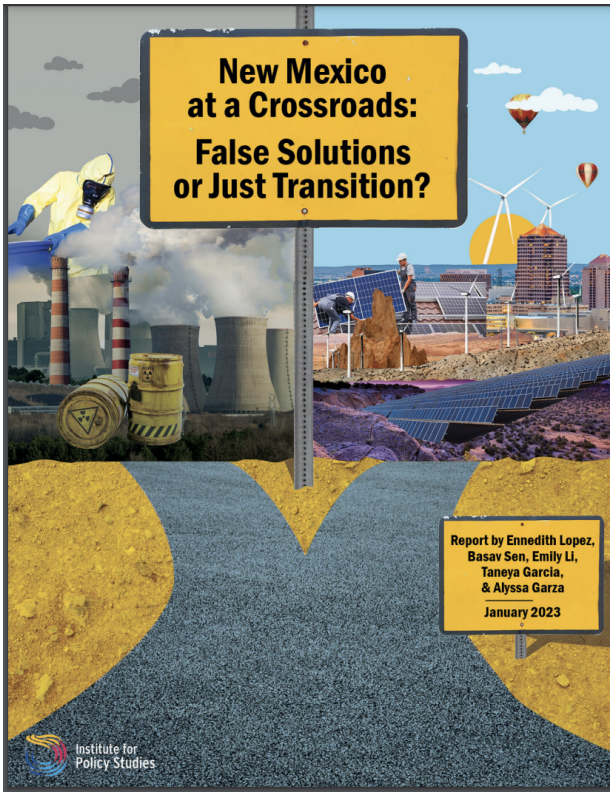
JOB SUMMARY:
As a Staff Attorney, you will engage in legal, policy, and administrative advocacy, as well as coalition-building, fundraising, and media work. You will work closely with client communities to achieve client-directed priorities. You will also be responsible, in collaboration with the Executive Director and staff, for identifying, managing and advancing new campaign and litigation opportunities. Staff Attorneys are involved in policy development, advocacy, and larger development/fundraising initiatives that help to support and expand NMELC's legal services and work. …

Click here to read full job description.

Staff/Intern Publications

Institute for Policy Studies Issues New Report "New Mexico at a Crossroads: False Solutions or a Just Transition?" by Ennedith Lopez, Basav Sen, Emily Li, Taneya Garcia & Alyssa Garza

Ennedith Lopez, NMELC's intern through her fellowship with the Institute for Policy Studies, co-authored a new report called **New Mexico at a Crossroads: False Solutions or Just Transition.**



The authors conducted interviews with the following community organizers and researchers: Julia Bernal, Director of the Pueblo Action Alliance; Alejandria Lyons, former Environmental Justice Organizer for the Southwest Organizing Project (SWOP); Josue de Luna Navarro, Climate Policy Innovator with The Semilla Project and a former New Mexico Fellow at the Institute for Policy Studies; and Bob Alvarez and Miriam Pemberton, Associate Fellows at the Institute for Policy Studies.

Here's information from the introduction:

As the fight to transition off fossil fuels and into clean, renewable energy gains momentum, communities and their advocates face several challenges.

These include a fossil fuel industry still lobbying to hold back renewables, promote dirty energy, or else peddling false, “greenwashed” solutions that allow it to continue profiting from pollution. They include the challenge of cleaning up the harmful health and environmental legacy of fossil fuels, as well as the need to ensure that renewable energy sources are owned by, and affordable for, the communities who rely on them.

The state of New Mexico encapsulates all these trends and more. As a poor, climate-vulnerable state as well as a leading fossil fuel producer, New Mexico has made important strides toward an energy transition in recent years. Indigenous and frontline communities in New Mexico have articulated a clear vision of a just transition away from a polluting, extractive economy, and are working to implement their vision. But enormous challenges remain.

This report focuses on the future of renewable energy in New Mexico and how the state could lead on a just transition — and even offer a blueprint for other parts of the country. It also highlights the cost of the use of fossil fuels for New Mexican communities, particularly low-wealth and Indigenous communities.

This report draws upon publicly available information as well as interviews with community organizers and researchers in New Mexico and elsewhere to make the case for centering community-led solutions to the climate and energy crisis. ...

Access the full report here.

NMELC Board of Directors Update

We are excited to share that NMELC's Board of Directors recently elected a new slate of officers listed below:

Chair: Ramón Padilla
Vice Chair: Johana Bencomo
Treasurer: Carla Nieto
Secretary: Kristine Suozzi

Congratulations to NMELC's new officers! We also want to thank all board members for their service and commitment and a special thanks to all of our 2022 officers: Donna House (former Chair), Ramon Padilla (former Vice Chair), Johana Bencomo (former Secretary), and Harry Brown (former Treasurer) for having fulfilled their respective duties.

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