

GREEN FIRE REPORT

Spring 2023 Newsletter

A MESSAGE FROM THE EXECUTIVE DIRECTOR

BY: VIRGINIA NECOCHEA, PHD

Dear Community,

We are excited to present you with the latest issue of our Green Fire Report—NMELC’s long-standing publication that keeps our supporters and community informed on our current casework across the beautiful state of New Mexico. NMELC proudly represents over a hundred clients—both individuals and groups—fighting on issues that span across the protection of clean air, land, and water. Our cases range from groundwater contamination, air pollution, long term uranium contamination, extractive mining, the protection of limited water resources, among others.

In this issue we provide timely updates on two of our most active cases—Eastern Navajo Diné Against Uranium Mining’s (ENDAUM) commitment to securing a thematic hearing in front of the Inter-American Commission on Human Rights focused on the long-standing toxic legacy of uranium mining and its impacts to Indigenous and surrounding communities; and our historic and precedent-setting Health, Environment, and Equity Impacts (HEEI) Regulation that is making its way in front of the Albuquerque-Bernalillo County Air Quality Control Board despite fierce opposition from industries.

These two cases alone—ENDAUM’s Human Rights Case and the HEEI Regulation—are groundbreaking in the precedent they each will set in the environmental justice sector. As we’ve mentioned before, ENDAUM’s petition to the IACHR is only the second environmental justice case against the United States deemed admissible by this international body that will hold the US government to account for violating the human rights of our clients. The HEEI Regulation is part of a growing, national movement that protects the health of frontline communities who continue to bear the brunt of environmental pollution and harm by demanding agencies take into account the cumulative impacts borne from toxic industries. New Jersey and other states have already set the stage for cumulative impacts regulations considered the “holy grail” of environmental justice.

In this issue, our dedicated staff attorneys provide updates on other key casework—from our continued work with the Red Water Pond Road Community Association fighting for their community’s health and wellbeing against uranium contamination to providing an important update on our clients’ battle to protect precious and limited water resources from the looming sprawl development known as the Santolina Master Plan.

As always, it is my honor to lead this powerful organization that is deeply committed to working alongside our clients in demanding environmental justice across various areas—from fighting toxic air pollution, holding governmental agencies accountable for environmental degradation, protecting sacred water, and to ensuring clean up from mine waste.

We hope you enjoy reading our updates! We are grateful for your continued support!

In solidarity,



A LOOK AT THIS ISSUE:

>>> FROM THE EXECUTIVE DIRECTOR

>>> CASE UPDATES

>>> IMPACT REPORT/FINANCIALS



Mountain View Coalition/Cumulative Impacts

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

On November 21, 2022, the Mountain View Coalition, consisting of the Mountain View Neighborhood Association, Mountain View Community Action, and Friends of Valle de Oro, filed a Petition before the Albuquerque-Bernalillo County Air Quality Control Board asking the Air Board to hold a hearing on the Coalition's Health, Environment and Equity Impacts (HEEI) Regulation. The regulation would allow the City of Albuquerque's Environmental Health Department (EHD) and the Air Board to address the disparate impacts of air pollution negatively impacting the health and quality of life of Bernalillo County residents by denying air pollution permits to applicants seeking to locate facilities in communities that already bear the disproportionate burden of air pollution, like Mountain View. The Board has agreed to hold a hearing on the regulation and has appointed a hearing officer, but a hearing date has not yet been set.



Meanwhile industry has come out in full force against the HEEI regulation, filing numerous last minute frivolous motions attempting to disqualify members of the Air Board and more than a dozen businesses, trade associations, and other entities have joined as parties in opposition to the regulation, citing a false narrative that the regulation is set in stone and not subject to negotiation, and that it would shut down all economic activity in the county. **These are misleading myths that distract from the fact that frontline communities have faced devastating health impacts from polluting industry being disproportionately sited in their community.** It's long past time for conscientious businesses to get on board the growing nation-wide movement calling for cumulative impacts regulations as a way to advance environmental justice.

We know that the impacts of air pollution on low-income communities and communities of color in Bernalillo County are significant. The American Lung Association (ALA) recently gave Bernalillo County an "F" for air quality related to ozone and a "D" for fine particulate matter. As demonstrated in this recent [ALA State of the Air report](#), air pollution does not affect everyone in Albuquerque equally; the effects of air polluting industrial permits overwhelmingly impact low-income communities, and communities of color experience the adverse health impacts of air pollution disproportionately. Air pollution is associated with a range of health problems, including cancer, heart disease, and respiratory illnesses, and low income communities and communities of color are particularly vulnerable to adverse health impacts of air pollution because polluting industries are disproportionately located in their communities. In addition to being overburdened by polluting industries, low-income communities and communities of color have less access to health care and nutritious food than more advantaged communities, which amplify the health impacts of concentrated air emissions on overburdened communities. The proposed regulation allows EHD and the Air Board to make decisions that better protect residents' health, which is especially important because low-income communities and communities of color in Bernalillo County have a greater risk of health impacts including lowered life expectancy from pollution than more affluent, non-minority communities. **The Health, Environment & Equity Impacts regulation is a historic, precedent-setting rulemaking effort by the community working in partnership with NMELC and is the result of decades of grassroots organizing by residents who have lived next to polluting industry and whose concerns have been ignored by regulators for years.** Cumulative Impacts regulations are considered the "holy grail" of environmental justice organizing and we are seeing states across the country adopt EJ into their local decision making. Given the City of Albuquerque's recent award recognizing its equity work, it would make most sense for Bernalillo County to support this important regulation that centers equity.

Inter-American Commission on Human Rights

BY ERIC JANTZ, SENIOR STAFF ATTORNEY

Earlier this year, ENDAUM, Red Water Pond Road Community Association (RWPRCA), Buffalo Magpie Organizing and the White Mesa Concerned Community, with assistance from NMELC and the Multicultural Alliance for a Safe Environment, asked the Inter-American Commission on Human Rights to hold a “thematic hearing” on the impacts of the United States’ uranium development policies on Native communities. Unfortunately, the IACHR did not hold a hearing on this important issue, but ENDAUM director Jonathan Perry and RWPRCA member Teracita Keyanna traveled with Senior Staff Attorney Eric Jantz to Los Angeles for the IACHR’s 186th Period of Sessions to personally urge Commissioners to hold a thematic hearing on this important issue in future meetings. During our trip to L.A., we met one on one with Commissioner Roberta Clarke, who committed to a visit to impacted uranium communities in New Mexico this year. The coalition of groups also held a Side Event at the UCLA Law School where Jonathan, Teracita and Tonia Stands (Oglala Lakota) gave presentations about the impact of uranium development in their communities. The Side Event was well attended and feedback was positive. Finally, Jonathan was able to present testimony about uranium impacts in his community to the entire IACHR during its meeting with civil society, and Eric read a statement from White Mesa Concerned Community about the impacts of the White Mesa Uranium mill on their Indigenous lands, air and water. We are hopeful a thematic hearing may take place in the Fall of 2023.



Eastern Navajo Diné Against Uranium Mining

BY ERIC JANTZ, SENIOR STAFF ATTORNEY

The New Year started on a sour note for Larry King, a longtime community leader and member of Eastern Navajo Diné Against Uranium Mining (ENDAUM). Mr. King discovered that Laramide Resources, a Canadian uranium mining company, had set up drill rigs across the two-lane road from his residence. Laramide was conducting “confirmatory” drilling to confirm the size and quality of uranium deposits that run under the land across from and under Mr. King’s residence itself. Laramide, which purchased Hydro Resources, Inc. (HRI), the company that has been threatening to mine uranium in Churchrock and Crownpoint for decades, failed to notify community members of its project. While the “confirmatory” drilling has concluded, ENDAUM is still gravely concerned that project development could begin this year. During the last several years, the United States has created numerous financial incentives for the nuclear industry, which will stimulate the uranium market directly and indirectly. The Inflation Reduction Act (IRA) in particular incentivizes the uranium industry with tax credits to help preserve the existing fleet of nuclear power plants at \$15 per mega-watt hour, new tax credits for nuclear reactors that generate hydrogen, plus \$700 million to support development of a domestic supply of high-assay low-enriched uranium (HALEU) to reduce the U.S.’s current dependence for 20 percent of this type of uranium from Russia. We expect these government subsidies to continue, increasing the risk of active uranium mining in Crownpoint and Churchrock, which would destroy valuable drinking water sources in their communities. NMELC will continue to work with our clients to protect precious drinking water as well as cultural and human rights by asserting these rights at the state, tribal, national and international levels.

Red Water Pond Road Community Association

BY ERIC JANTZ, SENIOR STAFF ATTORNEY

While we were hopeful that the visit by the Nuclear Regulatory Commission (NRC) to the Red Water Pond Road community in April 2022 would have inspired the Commission to listen to community voices about the NRC staff's and U.S. EPA's plan to consolidate waste from the Northeast Churchrock Mine (NECRM) at the United Nuclear Corporation (UNC) uranium mill rather than move that radioactive waste to a safe repository, in January 2023, the Commission decided to go forward with waste consolidation. This plan will move mine waste from the NECRM, which is mere yards away from Red Water Pond Road residences, to the UNC mill, located a half mile from the community. While we are disappointed (although not surprised) by the NRC's decision, we continue to explore options with the RWPRCA for ways to hold the U.S. government accountable and to address community needs. Emerging research over the last 15 years has demonstrated that living within a mile of uranium mine and mill waste greatly increases the risk of diseases such as hypertension, heart disease, autoimmune dysfunction, cancer and premature death. Additionally, the damage caused to land, air and water from uranium development waste is a cultural insult to the Diné that is connected to cultural destruction and loss of identity.



Santolina

BY MASLYN LOCKE & MARA YARBROUGH, STAFF ATTORNEYS

Since 2015, NMELC has partnered with clients and community members in a battle to protect the limited water resources of the Middle Rio Grande region. The proposed Santolina development would use more than 3.8 billion gallons of water per year, but the developers have never been able to obtain the required water availability agreement from the Albuquerque-Bernalillo County Water Utility Authority. The proposed development project has never broken ground, in large part due to delays and opposition from our dedicated and tenacious clients who are part of the Contra Santolina Working Group, in partnership with NMELC attorneys.

On August 16, 2022, the Bernalillo County Board of County Commissioners (BCC) made its most recent decision regarding the proposed Santolina development, despite the developers' continued failure to demonstrate water availability for the development. Prior to the August 16 decision, the County Planning Commission recommended denial of the Developers' proposed amendments to the Santolina Level A Master Plan and the Developers' proposed Level B.II Master Plan due to the fact that the Developers could not explain where the water for the proposed plans would come from. Unfortunately and disappointingly, the BCC held a hearing in violation of their own procedural rules and voted to approve both plans.

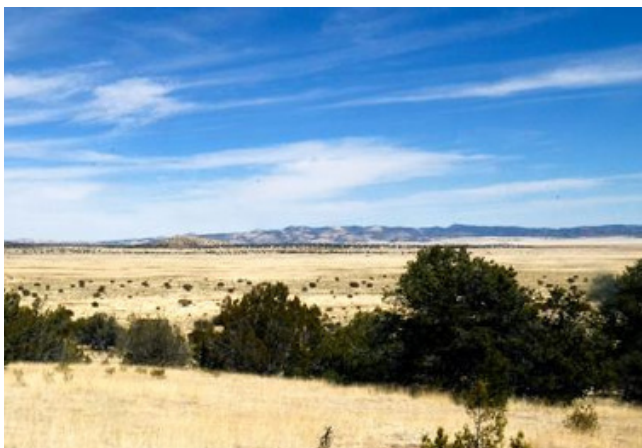
On behalf of our clients, NMELC filed an appeal in the second judicial district court, alleging that Bernalillo County violated our clients' right to due process. Specifically, we've argued that members of the public have a right to rely on the BCC's articulated procedures when the BCC holds a hearing, and the BCC failed to follow its own rules, both in deciding to have a hearing on the plans and throughout the hearing on the plans. The case is pending before Judge Joshua Allison.

Homestake Barrick Gold Superfund Site

BY MARA YARBROUGH, STAFF ATTORNEY

The Homestake uranium milling operation might be long-defunct, but the radioactive waste it left behind still contaminates groundwater in multiple aquifers and poses a massive threat to nearby communities. Even as community members and organizers work to hold Homestake, the EPA, and the Nuclear Regulatory Commission (NRC) accountable for the ongoing cleanup, Homestake has pursued an obstructive strategy. The company requested that the NRC review a request to allow Homestake to meet alternative cleanup standards that differ from federal clean groundwater standards. Simultaneously, the company would like agencies to agree that full remediation of the site is “technically infeasible.” Finally, the company is attempting to buy up nearby property owners’ land in exchange for silence, a move that, if successful, would expand the site’s boundaries and relieve the company of pressure to clean up the site to current required standards. Our clients have asked agencies to consider that contamination may prove to be more widespread than currently believed, with the potential to pollute even more underground water, surface water, and communities. NMELC continues to support our clients in engaging with agencies and keeping an eye on Homestake’s actions—and inaction—on the ground. We are pleased to share that on May 17, 2023 the NRC announced it has declined to accept Homestake’s application for Alternate Concentration Levels (ACLs), which is highly unusual but great news for our clients and the impacted community. We will continue to monitor developments and to keep our supporters informed.

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Augustin Plains Ranch Groundwater Transfer

BY MASLYN LOCKE & MARA YARBROUGH, STAFF ATTORNEYS

NMELC represents community members and groups living near Datil, New Mexico, in their protest against Augustin Plain Ranch’s application for the transfer of 54,000 acre feet/year of groundwater to be used by unidentified municipalities in counties across the state via a yet-to-be-built 40-mile pipeline. The proposed water transfer, if approved, would negatively impact rural water users and alter the course of water management in New Mexico. The case has been ongoing since 2007 and, most recently, on August 11, 2022, the New Mexico Court of Appeals reversed a District Court decision that had been favorable to our clients and impacted water users which denied the Ranch’s application to appropriate groundwater. Now with the reversal, the District Court will again decide whether the Ranch’s application to appropriate groundwater is speculative and contrary to the requirement that all water transfers in New Mexico demonstrate that the use of the water is beneficial. While we do not yet have a new hearing date at the District Court, all dispositive motions, meaning motions that could result in a decision, will be due in June, 2023, with a possible final decision slated for August. Preserving precious and scarce water resources is a critical environmental justice issue, especially in New Mexico which has been experiencing decades of prolonged drought conditions.

Mountain View Coalition/NMTS Asphalt

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

After five years of struggle in this environmental justice battle, the New Mexico Terminal Services (NMTS) case is finally coming to a close. In 2018, the Mountain View Coalition, represented by NMELC, appealed a decision by the Albuquerque Environmental Health Department (EHD) to issue a pollution permit for an asphalt batch plant in the Mountain View neighborhood, even though the land on which the plant would be located was not zoned for heavy industrial use and Mountain View already bears a disproportionate number of polluting industries. **Because of the pressure from the Mountain View Coalition, EHD terminated NMTS's pollution permit earlier this year.** While we celebrate this amazing victory, we remain vigilant for other polluting projects that may target the Mountain View community.

Aquifer Science

BY MASLYN LOCKE, STAFF ATTORNEY

NMELC has worked alongside the Deep Well Protest Group and homeowners in the East Mountains to challenge the Aquifer Science application to drill wells and draw large amounts of water for a “resort lifestyle community” larger than the cities of Socorro or Raton between Santa Fe and Albuquerque. Vidler Water Company, a Nevada based company, sought to appropriate roughly 114 million gallons of water, for use by the proposed Campbell Ranch development, which would negatively impact existing water users in the area. On December 15, 2022, the New Mexico Court of Appeals issued a decision affirming the district court's denial of the application based on the fact that drilling would impair existing water users and would be inconsistent with the need to conserve water in the state. **The New Mexico Supreme Court declined to consider the case, and, with that, the case is officially over.** This decision is especially exciting because, as of 2021, any additional applications for new groundwater appropriation by the developer would be rejected based on the Office of the State Engineer issuance of an order closing the Sandia Groundwater Basin to new appropriation applications, **meaning the communities' 14-year long fight has finally come to an end!**

Cunningham Hill Gold Mine

BY MARA YARBROUGH, STAFF ATTORNEY & ERIC JANTZ, SENIOR STAFF ATTORNEY

In the Ortiz Mountains near Santa Fe sits a large open pit, the remnants of the Cunningham Hill Gold Mine. The pit contains a large pool of water that has been rendered acidic from seepage and runoff off the mine's exposed pit walls; the sulfuric acid poses a potential threat not only to wildlife attracted to the surface water, but also to groundwater and surrounding communities. LAC Minerals Barrick Gold Corporation is responsible for cleaning up and reclaiming the property, and although cleanup efforts to date have fallen short of hopes and expectations, LAC Minerals has asked the New Mexico Mining and Minerals Division (MMD) to excuse it from certain cleanup requirements and to, in effect, allow it to walk away from long-term maintenance and monitoring of the site. The company submitted amendments to its mine closeout plan through MMD; NMELC clients and State agencies have responded to the company's requested amendments; and our clients continue to press for complete cleanup and reclamation, as well as for long-term maintenance and monitoring of the site.

Tulla Resources /Copper Flat Mine

BY MARA YARBROUGH, STAFF ATTORNEY

Mining interests are asking the State Engineer to approve the transfer of water rights for the purpose of supplying water for mining and milling operations at the proposed Copper Flat Mine in southwestern New Mexico. The New Mexico Copper Corporation wants to develop the open-pit Copper Flat copper mine on an existing open-pit mine site near the town of Hillsboro—and it needs water in order to operate. Tulla Resources applied to transfer several hundred acre feet per year of groundwater rights, a transfer that would negatively impact water resources and others' water rights throughout this arid region and would enable the development of a polluting mine that would likely contaminate groundwater. Many people, including NMELC's clients, protested the water rights transfer application, and our clients survived Tulla Resources' attempt to question their right to fight the application and to disqualify them from participating in the proceedings. A hearing before the Office of the State Engineer is scheduled for August, and NMELC continues to work closely with our clients as we prepare for the hearing.

IMPACT REPORT/FINANCIALS

NMELC 2022 UNAUDITED FINANCIAL REPORT

INCOME:

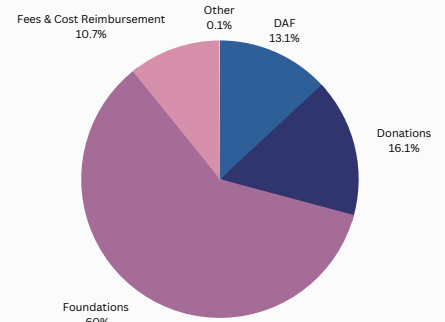
| | | |
|----------------------------------|---------------------|-------|
| • Foundations | \$512,180.94 | 60.0% |
| • Donations..... | \$137,109.64 | 16.1% |
| • DAF..... | \$111,720.89 | 13.1% |
| • Fees & Cost Reimbursement..... | \$91,250.00 | 10.7% |
| • Other..... | \$1,010.66 | 0.1% |
| TOTAL INCOME..... | \$853,272.13 | |

EXPENSES:

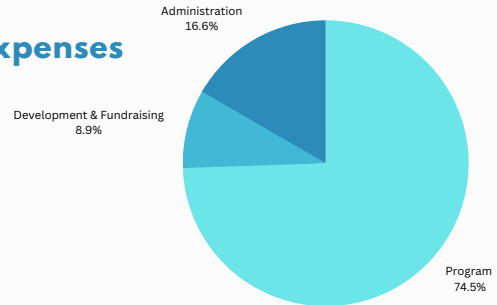
| | | |
|----------------------------------|-----------------------|-------|
| • Program..... | \$771,890.96 | 74.5% |
| • Development & Fundraising..... | \$92,232.38 | 8.9% |
| • Administration..... | \$172,455.92 | 16.6% |
| TOTAL EXPENSES..... | \$1,036,579.26 | |

NET INCOME.....(\$183,307.13)

2022 Income



2022 Expenses



27

OPEN CASES

139

CURRENT CLIENTS

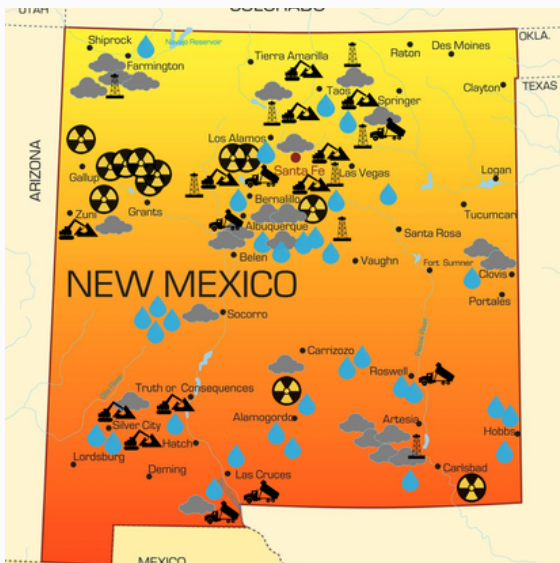
35

YEARS OF CASEWORK
AROUND THE STATE



Thanks to
La Montañita
Food Co-op!

Many thanks to La Montañita Food Co-op for their generous donation of \$7,579.55 from their Round Up For Change program in April in honor of Earth Day! Last year shoppers raised over \$100,000 for New Mexico nonprofits.





New Mexico
Environmental Law Center

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Sue Schuurman, Maslyn Locke, Kendra Palmer, Virginia Necochea, Mara Yarbrough and Eric Jantz.

THANK YOU FOR YOUR GENEROUS SUPPORT



Mountain Being by Dora Chavarría

NMELC is taking on polluting industry and shoddy regulatory enforcement across the state but especially in two key cases that are both historic and precedent-setting: fighting alongside Diné communities against uranium mining on Navajo Nation, and with the Mountain View Coalition on a cumulative impacts regulation in Bernalillo County. With your financial support, we can fight for environmental justice in overburdened communities as well as take on other environmental justice cases across the state. Please consider helping us to expand our ability to fight for every New Mexican's fundamental human right to clean and healthy air, water and land. NMELC is a nonprofit organization that provides free or low-cost legal services to frontline communities who are defending environmental justice across New Mexico.

We greatly appreciate every donation from our community!

Visit <https://nmelc.org/donations/> to donate online.