

# GREEN FIRE REPORT

Fall 2023 Newsletter



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## A MESSAGE FROM THE EXECUTIVE DIRECTOR

BY VIRGINIA NECOCHEA, PHD

Dear Supporters,

It is always my privilege and honor to present you with the latest issue of our **Green Fire Report**—New Mexico Environmental Law Center's premiere publication providing readers with updates on our most active cases.

NMELC currently has 27 open cases across the state ranging from representing clients fighting the toxic legacy of uranium mining, strengthening air quality regulations in Bernalillo County that protect everyone's public health, stopping water grabs and protecting limited water resources such as in our San Agustin Plains case to continued work on the mega housing development known as the Santolina Master Plan. In this issue you will read timely case updates on half a dozen selected cases that highlight the legal work of our dedicated attorneys and tireless clients.

When this issue reaches you, we will be deep in end-of-year fundraising and it is our hope that you consider donating to our public interest nonprofit law center this year. These past couple of years have been some of the toughest financial years for nonprofits everywhere including ours. Individual giving has been on the decline due to long-lasting impacts stemming from the pandemic and a still fluctuating market. This economic uncertainty and instability have impacted nonprofits and individuals everywhere.

On the bright side, the work at NMELC continues strong! I am excited to share that we added two new staff attorneys to the legal team and are now a full staff of 11 dedicated individuals committed to working alongside our clients and communities in advancing environmental justice.

Our small but mighty team has accomplished so much over the past year from providing high quality legal representation to clients on the frontlines of precedent-setting environmental cases to case victories that helped to protect our water and stop continued air pollution in overburdened communities, to moving many steps forward in helping our clients secure a hearing in front of an international human rights commission.

As 2023 comes to a close, I want to take a moment to express how grateful we are for your continued support and belief in the importance of our work. NMELC remains the only public interest law center focused on environmental justice issues in New Mexico. We are proud to provide free legal representation to clients who need it the most and who are the unsung and often unseen environmental heroes of our state.

Thank you for continuing to walk by our side. Our work is possible because your support makes it possible.

It is with much hope that we look to 2024 as being a year filled with legal victories for our clients, for our Mother Earth, and for our communities!

In solidarity,

## Mountain View Coalition/Cumulative Impacts

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

The Mountain View Coalition (MVC) continues to refine its proposed Health, Environment and Equity Impacts (HEEI) regulation that will require the City of Albuquerque Environmental Health Department to address the air pollution burden impacting communities that live with a disproportionate concentration of polluting industries and negative health impacts. In August, the Albuquerque/Bernalillo County Joint Air Quality Control Board (Air Board) mandated a series of pre-hearing meetings between stakeholders, which have concluded and, while MVC worked in good faith to address Industry concerns with the proposed regulation, the industrial stakeholders, including the University Of New Mexico Board Of Regents, the National Nuclear Security Administration and Kirtland Air Force Base continue to oppose meaningful measures that would protect overburdened communities.



**The HEEI regulation is a historic, precedent-setting regulation that addresses decades of environmental racism in a low-income community of color.**

MVC is preparing to provide the Air Board with evidence supporting the need for increased protection from air pollution in overburdened communities and the HEEI regulation. The Air Board will hold a public hearing on the merits of the proposed regulation from December 4 to December 8 at the Albuquerque Convention Center. **It is critical for community members who care about environmental justice and healthy air quality to speak up during the public comment portions of the hearing.**

The most recent iteration of the HEEI regulation prohibits polluting operations within a mile of any overburdened community when that operation would substantially increase the risk of cancer or respiratory diseases in the overburdened community. If the operation would not substantially increase the risk of cancer or respiratory disease, the operation would still have to implement stringent pollution control technologies, pollution monitoring and reporting measures in order to obtain an air pollution permit.

In addition to the HEEI rulemaking itself, MVC has been hard at work fighting a pair of bills that would delay the HEEI rulemaking, sponsored by City Councilor Dan Lewis. These bills would dissolve the current Air Board, replacing its members with hand-picked Industry representatives. They also contain many other provisions that would limit the ability of Albuquerque residents and community members to petition the Air Board for rule changes and would put the ultimate decisions about air quality in the hands of the City Council rather than the highly qualified members of the Air Board. These bills are nothing more than an illegal power grab. On November 8th, City Council voted 5-4 to approve both bills—as this goes to print we are hoping Mayor Tim Keller vetoes both bills. MVC and NMELC are urging Bernalillo County residents to ask the Mayor to veto both bills and ask their City Councilors to sustain the veto if necessary. The HEEI regulation is a historic, precedent-setting regulation that addresses decades of environmental racism in a low-income community of color. This is an important moment in the history of the struggle for environmental justice in New Mexico.



# IACHR Makes Historic Visit to New Mexico

BY ERIC JANTZ, LEGAL DIRECTOR

On July 26, two members of the Inter-American Commission on Human Rights and their staff came to New Mexico to conduct a promotional visit to uranium impacted communities. Commissioner Roberta Clarke and Commissioner Esmeralda Arosamena de Troitiño made this historic site visit to learn how uranium mining has affected Indigenous communities. The Commissioners first visited the Pueblo of Laguna and met with residents who have lived near the now-closed Jackpile uranium mine. The Jackpile mine operated between 1952 and 1982 and was at one time the largest open-pit uranium mine in the world. After the mine closed, the operator conducted reclamation activities under the supervision of the U.S. Bureau of Indian Affairs and Bureau of Land Management, but as is often the case, those reclamation efforts proved inadequate to protect human health and the environment. The U.S. Environmental Protection Agency designated the Jackpile mine a Superfund site in 2013, and restoration efforts continue today. The Commissioners heard stories of how pollution from the mine has affected Laguna residents' health and cultural practices. The Commissioners also attended the Pueblo's traditional Feast Day.



**The geiger counter readings were above background, in some cases substantially above background, which raised commissioners' concerns about their own personal safety.**

Next, the Commissioners and their staff visited Churchrock and the Red Water Pond Road Community. Historic uranium mining has impacted both Churchrock and Red Water Pond Road. Churchrock is the site of the 1979 United Nuclear Corporation uranium mill tailings dam break that resulted in the largest release of radioactive material in U.S. history. The Commissioners visited old uranium mine sites near peoples' homes and saw firsthand the Geiger counter readings that people in Churchrock and Red Water Pond Road experience daily. The geiger counter readings were above background, in some cases substantially above background, which raised commissioners' concerns about their own personal safety. The Commissioners visited Crownpoint next and saw the site of the proposed Laramide/NuFuels uranium processing plant that would process uranium slurry from proposed mines in Churchrock and Crownpoint. ENDAUM member Christine Smith showed the Commissioners how close the proposed plant is to her home, her church and the local elementary school, a quarter mile away. Christine shared an emotional account of how the processing plant would affect her and her family.

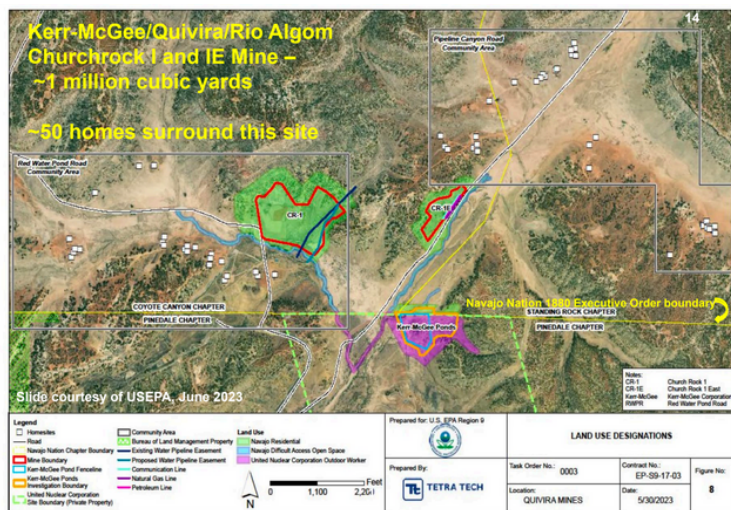
The Commissioners wrapped up their visit with a dinner and a presentation to the community about how they could use the regional human rights system to protect themselves. This was truly a historic visit—the first time any Commissioners from the Inter-American Commission on Human Rights have visited Indigenous communities in North America. It is our hope that our clients will get a hearing in 2024.

# ENDAUM/Laramide Drilling

BY ERIC JANTZ, LEGAL DIRECTOR

Since Larry King, a longtime community leader and member of Eastern Navajo Diné Against Uranium Mining (ENDAUM) discovered that Laramide Resources, a Canadian uranium mining company, had set up drill rigs across the two-lane road from his residence in January, the news about Laramide's proposed uranium mine has grown more ominous. Laramide was conducting "confirmatory" drilling regarding the size and quality of uranium deposits that run under the land across from and underneath Mr. King's residence. Laramide, which purchased Hydro Resources, Inc., 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 drilling has concluded, ENDAUM is still gravely concerned that project development could begin this year. In a recent press release, Laramide announced that it had received a \$1.7 million dollar grant to work with Los Alamos National Lab to demonstrate that it will be able to restore groundwater it will contaminate if it is allowed to begin operations in Churchrock and Crownpoint. No ISL mine has ever restored an aquifer to a state where it can be used for domestic or agricultural purposes. Laramide indicated that it intends to begin mining operations within three years. ENDAUM and the Law Center are committed to pursuing every legal and legislative option to ensure that the community's water, land and air will be protected.

**No ISL mine has ever restored an aquifer to a state where it can be used for domestic or agricultural purposes.**



# Red Water Pond Road Community/Quivira Waste

BY ERIC JANTZ, LEGAL DIRECTOR

For approximately fifteen years, the Red Water Pond Road Community Association has advocated that uranium mine waste from the nearby Northeast Churchrock Mine (NECRM) and Kerr-McGee/Quivira mines be moved away from their community and off Navajo Nation land. Unfortunately, federal agencies ignored their request for waste from the NECRM, choosing instead to consolidate that waste on top of the mill tailings piles at the nearby UNC uranium mill just about half a mile away.

This summer, however, the U.S. EPA finally heard the Community's concerns and proposed to move the Quivira mine waste to a geotechnically appropriate site away from the community and the Navajo Nation. The EPA proposed moving the mine waste to the Red Rock Landfill near Thoreau. This landfill is a below grade facility that is not near populated areas and is far from groundwater. It has a liner and leak detection system. In short, it is a site suitable for mine waste disposal and is significantly safer than covering the waste in place. The Community will continue to work with the U.S. EPA, the NMED and communities along the proposed transportation route to ensure that communities are protected.



# Copper Flat Mine Cases

BY MARA YARBROUGH & ANN MCCARTNEY, STAFF ATTORNEYS

Since 2014, NMELC has partnered with community members in a battle to protect the limited water resources of the Lower Rio Grande Basin. Like vultures circling a carcass, mining interests and water speculators have been drawn to the Copper Flat mine site for decades. Overlooking the mesquite landscape and several vital waterways in the northern reaches of the Chihuahuan Desert ecoregion, the Copper Flat mine site is nestled among the hills just a stone's throw from the town of Hillsboro and from rural residents who stand to be adversely impacted by water rights transfers and mining operations. The site is within the Hillsboro Mining District, which is already pockmarked by dozens of ill-fated mines.

Despite repeated attempts by multiple mining interests, the Copper Flat mine only operated briefly—for about three months—in 1982, before shutting down and leaving behind a legacy of contaminated groundwater and a contaminated pit lake. The mine has not operated since then.

The latest attempt to re-open the mine would require the mining company, New Mexico Copper Corporation, to secure water rights for both the proposed mining operations and reclamation, which will consume a large quantity of water New Mexico does not have to spare. The mining company has applied to the New Mexico Mining and Minerals Division (MMD) of the Energy, Minerals and Natural Resources Department for an operating permit but, in order for the operating permit application to go forward, the mining company must demonstrate that it holds adequate water rights to operate the mine and—more importantly—to reclaim the mine site.



NMELC is currently representing community members in two ongoing water rights cases related to the proposed mining project. One case is a water rights adjudication, involving a determination of water rights water speculators sold to New Mexico Copper Corporation and the other is a water transfer case, where New Mexico Copper Corporation, seeks to transfer existing water rights belonging to Santa Teresa Capital from Doña Ana County to Sierra County for use at Copper Flat mine.

In the water rights adjudication, the Third Judicial District court recently filed its findings of fact and legal conclusions, after the Court of Appeals returned the case to the district court for a further look, confirming a limit on the water rights of New Mexico Copper Corporation to 861 acre feet per year (AFY) from their requested declaration of water rights in an amount of more than 6,000 AFY. Attorneys on the case are finalizing a form of order to submit to the court. NMELC attorneys will continue working with our clients to protect the water rights of the Hillsboro Mutual Domestic Water Consumers Association from this attempt to re-open the Copper Flat Mine.

In the ongoing water transfer case, the mining company is seeking to transfer 2400 acre feet per year of water rights belonging to Santa Teresa Capital to the Copper Flat mine site for mining operations. NMELC represented individual and organizational clients opposing this water rights transfer in a two-week hearing in August before the Office of the State Engineer (OSE). NMELC attorneys are currently writing post-hearing briefs for submission to the Hearing Examiner for decision, arguing that the OSE's approval of the transfer would result in unlawful impairment of existing water rights, is contrary to the conservation of water in New Mexico, and is detrimental to the public welfare. While we remain optimistic about the outcome, a decision may not be rendered for several more months.

# Augustin Plains Ranch Water Grab

BY MASLYN LOCKE, SENIOR STAFF ATTORNEY & MARA YARBROUGH, STAFF ATTORNEY

In the arid San Augustín Plains of central New Mexico, the long battle continues over a private corporation's push for water rights of 54,000 acre feet per year (over 17 billion gallons) of New Mexico's precious groundwater. Augustin Plains Ranch (APR) has been trying to appropriate this groundwater since 2007, through the filing of multiple, nearly identical, speculative applications to the Office of the State Engineer (OSE). Despite its many applications being denied over and over due to the fact that APR cannot demonstrate that it will be able to put the water it seeks to a beneficial use, APR is not showing any signs of accepting "No!" as an answer from the State Engineer, or the New Mexico courts. NMELC represents nearly 20 clients who oppose APR's attempts to procure and hoard this water. This case is one of pure water speculation, and its outcome could profoundly impact water speculation law in New Mexico. Summary Judgment Motions asking the Court to dismiss APR's appeal of the State Engineer's decision denying APR's Application in the case will next be heard by the 7th District Judicial Court in Reserve in January 2024, and NMELC attorneys are hard at work preparing briefs to help inform Judge Roscoe Woods of our clients' position on the issues in the case. There are many parties allied in opposition to APR, including the Catron County Board of County Commissioners, the San Augustín Water Coalition, and the Water Rights Division of the OSE. We are hopeful that January's hearing will result in a favorable outcome for our clients and the broader state of New Mexico, and again result in the denial of APR's water grab.

## CLIENT TESTIMONIALS

### Christine Smith & Jonathan Perry

Members of Eastern Navajo Diné Against Uranium Mining (ENDAUM)

In the face of uranium mining's toxic legacy, community members of Crownpoint and Churchrock united to hold government agencies accountable, forming Eastern Navajo Diné Against Uranium Mining (ENDAUM). Since 1994, they have been resisting an in situ leach (ISL) uranium mine that would permanently contaminate drinking water.

**Christine Smith:** "I have been a resident of Crownpoint, New Mexico, for the last 54 years. Presently I live less than a quarter mile from the Crownpoint Uranium Processing plant. I have been a teacher for over 27 years at Crownpoint Elementary School, which is less than a mile from the processing plant. My siblings, children, and grandchildren also live within the town of Crownpoint. It was important for me and my daughter, Lynnea in 1996/1997 to begin our work with ENDAUM. NMELC has been instrumental in providing legal services, information, and support to ENDAUM in our fight against uranium mining.

NMELC continues today to support our efforts to keep Crownpoint residents free from uranium mining, by providing legal services, information, and support to ENDAUM, as in the passing of the Diné Natural Resources Protection Act of 2005. A coordinated effort between Crownpoint community members and NMELC, we began to provide education on uranium issues to Chapter members, Council delegates, and even the Navajo Nation President.

Today, NMELC continues to journey with us on this never-ending issue of uranium mining as we bring it to a national level, presenting our case before the Inter-American Commission on Human Rights.

"Water is Life" has become our rallying cry, from the time of our ancestors to the future generations of the Navajo people."







**Jonathan Perry:** "While working to protect my community and homelands, NMELC has been a crucial partner in our legal arena. NMELC is an excellent resource for our New Mexico communities as we steer the direction towards a safer, cleaner, sustainable, and just future for ourselves and future generations. As an Indigenous person, I appreciate NMELC for their support and respect.

With the continued work of NMELC, we will see more positive work done."

## **Magdalena Avila & Lauro Silva** Members of Mountain View Coalition

For generations, the Mountain View area of Albuquerque was made up of small farms and orchards. But in the 1970s, the City and developers began changing the zoning of the area from rural, agricultural, to industrial, despite public opposition. Today, over 40% of the land is zoned to allow for manufacturing, leaving residential areas surrounded by junk yards, paint facilities, concrete suppliers, asphalt plants, and fertilizer producers. The Mountain View community has been designated by the EPA as an Economic Justice community because residents are exposed to a higher concentration of industrial pollution compared to more affluent neighborhoods across Albuquerque.

Office Manager, Jene Montano, and Development Associate, Alex Rivas sat with community members Magdalena Avila and Lauro Silva for an eye and heart opening conversation on the Health, Environment and Equity Impacts (HEEI) regulation, environmental justice, and the future of our tierra for the next seven generations.

Lauro explained that the Mountain View community has been working on HEEI for 19 years; the proposed regulation aims to hold polluting industries accountable for the harm they cause and take necessary actions to protect the Earth for seven generations to come. As Lauro stated, **"Environmental justice is about liberation."** **The community invited NMELC to provide technical assistance, and we continue to be guided by those who are most impacted by environmental degradation.**

Magdalena shared that during this time of constant roadblocks and lack of respect for our Mother Earth, she is motivated and reinvigorated by people's love and fight for the land in New Mexico. Magdalena described her connection to our tierra as intrinsically part of her being rather than viewing the environment as a separate entity.





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NMELC is now based in 3 locations - Albuquerque, Santa Fe, and Las Cruces! Pictured from left to right: Kacey Hovden, Staff Attorney in Las Cruces; Kendra Palmer, Paralegal, Maslyn Locke, Senior Staff Attorney, and Mara Yarbrough, Staff Attorney in Santa Fe; Eric Jantz, Legal Director, Sue Schuurman, Communications Manager, Ann McCartney, Staff Attorney, Joelle Chase, Grants Manager, Dr. Virginia Necochea, Executive Director, Jené Montaña, Office Manager, and Alex Rivas, Development Associate in Albuquerque.



"Mystic Mother" by Dora Chavarría

## THANK YOU FOR YOUR GENEROUS SUPPORT

The New Mexico Environmental Law Center relies on donations to continue providing free and low-cost legal services to people fighting for clean air, land, and water across the state. We are the only law center in NM focused on environmental justice. Our client-directed work prioritizes environmental issues that disproportionately impact Indigenous, Black, Latinx, rural, and low-income communities. Together we advocate for equitable and just environmental laws and policies that protect the health and wellbeing of all New Mexicans!

NMELC is proudly a tax-exempt 501(c)(3) nonprofit organization. Email [nmelc@nmelc.org](mailto:nmelc@nmelc.org) to learn about other ways to give such as stock donations and/or bequests.

**We greatly appreciate every donation from our community!**

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