Dear Friends and Supporters,

It is with much excitement that I present you with the latest issue of our Green Fire Report—New Mexico Environmental Law Center’s premiere publication providing our supporters with current updates on our most active cases.

Before sharing a glimpse of what’s inside this issue, I wanted to express my sincerest gratitude to each of you for your continued support of our nonprofit public interest law center! Donors and supporters play a major role in ensuring our legal services representing clients from communities most harmed by environmental degradation, continue strong and uninterrupted.

NMELC currently has 28 open cases across the state that all work toward protecting every New Mexican’s fundamental human right to live in healthy environments with clean air, clean land, and clean water. In this issue you will read updates on our historic uranium hearing in front of the IACHR held in Washington, D.C. earlier this year and important information regarding the Quivira Mine Waste Removal proposal; ongoing legal battles involving our Health, Environment, and Equity Impacts (HEEI) regulation; a major water win involving yet another San Augustin Plains water grab; among other key highlights. We are also excited to share an update on one of our newest cases in Southern New Mexico focused on working with our clients residing in Santa Teresa and Sunland Park in demanding a basic right - their right to clean and safe drinking water.

I am most honored and humbled to share the wonderful news we received back in March - that NMELC was one of ten other New Mexican organizations selected out of over 6600 organizations across the nation, to receive a transformative gift from MacKenzie Scott! This is not the achievement of solely one individual, but a result of the collective work of our entire staff, board, clients, allies, and supporters. We will treat this unrestricted gift with the same regard we give to every donation received - with much respect, good planning, and care that ensures the longevity and health of our organization.

I close this message with excitement for the continued precedent-setting work happening at our small but mighty environmental justice law center, with much gratitude for our clients who guide us with their wisdom and expertise, and with deep appreciation of you.

In solidarity,

Dr. Virginia Necochea
Representatives from the Navajo Nation, Havasupai Tribe, Northern Arapaho Nation, Ute Mountain Ute Tribe and Oglala Lakota Tribe of the Great Sioux Nation gave powerful testimony to the IACHR about how uranium development has devastated their communities and cultures. The representatives from the Navajo Nation testified about how living beside uranium mine waste piles had turned their community from a thriving place where extended families lived together to a place that is all but deserted because of disease and families making the difficult decision to move away to protect their health. The representatives from Ute Mountain Ute Tribe described how living beside the only operational uranium mill in the U.S. has prevented them from expressing their cultural identity because contamination from the mill has befouled their medicinal plants, ceremonial waters and the game they hunted. The representative from the Oglala Lakota Tribe testified how legacy mines and ongoing in situ leach uranium mining has contaminated waters tribal members use for drinking and for ceremonies.

In stark contrast, the delegation from the United States spent the bulk of its time congratulating themselves on how much outreach to tribes has improved and how much money they were planning to spend on tribal programs. Of the agencies represented—the Environmental Protection Agency (EPA), the Nuclear Regulatory Commission and the Department of Interior—only the EPA even hinted that the federal government held any responsibility for pollution from uranium exploitation.

After the hearing concluded, the Indigenous community representatives conducted follow-up visits with the EPA, elected officials and the IACHR’s Special Rapporteur on Indigenous Issues. The thematic hearing has already increased public awareness and has helped open the door to further conversation with federal agencies about mine waste disposal. We anticipate that further engagement with the Inter-American system will provide communities with greater leverage in holding the U.S. government accountable for the longstanding impacts and harm stemming from the toxic legacy of uranium contamination.
This option would remove the mine waste entirely from the Red Water Pond Road and Pipeline Road communities. It would require that the Quivira waste be disposed of in lined, subgradient trenches, equipped with leak detection systems. The disposal facility would be located five miles from any population center. After the trenches are filled, they would be covered with an evapotranspiration cover and monitored in perpetuity. In short, the Red Rock Landfill facility would be a state-of-the-art disposal facility.

For almost two decades, the residents of Red Water Pond Road have been demanding that the EPA remove mine waste from their community and they have finally been heard. Unfortunately, much misinformation has been circulating about the risks associated with transporting the Quivira waste and the safety of the disposal facility. The frontline communities who have been most harmed are undaunted and will continue to advocate for offsite and off-Navajo Nation waste removal.
On December 4, 2023, the Albuquerque-Bernalillo County Air Quality Control Board heard the Mountain View Coalition’s (MVC) petition on the proposed Health, Environment and Equity Impacts (HEEI) regulation that would have required the City of Albuquerque Environmental Health Department (EHD) to address the air pollution burden impacting communities that live with a disproportionate concentration of polluting industries and negative health impacts. The highly-contentious hearing lasted six days, ending on December 11, 2023 at 8pm, with the Board adopting a very limited version of the HEEI rule.

Mountain View Coalition/HEEI Hearing & Its Aftermath

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

On December 4, 2023, the Albuquerque-Bernalillo County Air Quality Control Board heard the Mountain View Coalition’s (MVC) petition on the proposed Health, Environment and Equity Impacts (HEEI) regulation that would have required the City of Albuquerque Environmental Health Department (EHD) to address the air pollution burden impacting communities that live with a disproportionate concentration of polluting industries and negative health impacts. The highly-contentious hearing lasted six days, ending on December 11, 2023 at 8pm, with the Board adopting a very limited version of the HEEI rule.

Industry parties, alongside the EHD and Albuquerque City Council, worked tirelessly to prevent the adoption of the HEEI rule, with City Council going so far as to adopt legislation deeming the rulemaking illegal

During the hearing, the MVC and its allies presented substantial evidence indicating the need for the proposed HEEI rule and demonstrating how the HEEI rule would have addressed the cumulative impacts of air pollution disproportionately impacting Albuquerque’s low-income communities of color and put an end to the EHD’s ongoing discriminatory air permitting practices. Specifically, the HEEI regulation would have prohibited polluting operations from locating 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. At the 11th hour, as a result of major stressors and political pressure placed on the Air Board, the HEEI Rule was finally adopted; however, it merely requires the use of specific pollution control technology by polluting sources located within one mile of an overburdened community.

Industry parties, alongside the EHD and Albuquerque City Council, worked tirelessly to prevent the adoption of the HEEI rule, with the Albuquerque City Council going so far as to adopt legislation deeming the rulemaking illegal on the second day of the hearing.

The City Council’s actions have resulted in three lawsuits pending before three district court judges surrounding the validity and legality of the City Council legislation. On December 5, 2023, the Air Board filed the lawsuit, Albuquerque-Bernalillo County Air Quality Control Board and the Board of County Commissioners of the County of Bernalillo v. City of Albuquerque, New Mexico, challenging the validity of the Council’s Resolution and Ordinance and the City’s illegal interference with the Rulemaking Proceeding. On December 11, 2023, industrial permittees and commercial associations filed the lawsuit, GCC Rio Grande, Inc., et al. v. Albuquerque-Bernalillo County Air Quality Control Board, City of Albuquerque,
challenging the validity of the adopted HEEI Rule and the Air Board’s authority and jurisdiction to adopt the HEEI Rule. On December 11, 2023, Complainants filed their lawsuit, Mountain View Community Action et al. v. City of Albuquerque, also challenging the validity and legality of the Council’s Resolution and Ordinance, as well as the City’s illegal interference with the Rulemaking Proceeding and Complainants’ constitutional right to petition the government. To date, all three lawsuits are ongoing. Most recently, on January 25, 2024, the Air Board received a favorable ruling in their case, with the issuance of a preliminary injunction against the City of Albuquerque, enjoining the City from enforcing the Resolution and Ordinance until the merits of the matter are resolved.

In addition to the lawsuits pending before the district court, three groups, including National Technology and Engineering Solutions of Sandia (NTESS), a subsidiary of Honeywell International and the contractor that operates Sandia National Lab, and the EHD, have filed appeals of the rule adopted by the Air Board to the New Mexico Court of Appeals, asserting, among other things, that the Air Board did not have the authority to adopt such a rule. The Mountain View Coalition has intervened in the Court of Appeals proceedings to defend the rule adopted by the Board and ensure their communities are protected.

Santa Fe Civil Rights Complaint

BY MASLYN LOCKE, SENIOR STAFF ATTORNEY & KACEY HOVDEN, STAFF ATTORNEY

On September 15, 2021, NMELC clients, with the advice of NMELC, filed a civil rights complaint with the United States Environmental Protection Agency’s (EPA) External Civil Rights Compliance Office (ECRCO). Specifically, our client alleged that the New Mexico Environment Department (NMED) discriminated against our client and their primarily Spanish-speaking community on the Southside of Santa Fe by denying our client and others the use of a Spanish-language interpreter during an asphalt plant hearing, in violation of their civil rights. EPA accepted the complaint for investigation and promptly began conversations to resolve the issue with NMED. Since 2021, however, communications with ECRCO have been limited—but NMED’s discrimination against New Mexicans with limited English proficiency has not.

On May 10, 2024, NMELC filed additional evidence of NMED’s intentional discrimination against New Mexicans with limited English proficiency, showing that the hearing officer that denied a primarily-Spanish speaking resident the use of an interpreter and ultimately issued an air pollution permit to an asphalt plant located less than one mile from low-income community members and community members of color on Santa Fe’s Southside later denied a similar air pollution permit application for a facility to be located more than one mile away from a primarily white, English-speaking affluent community in Alto, New Mexico. We are currently awaiting any additional response from ECRCO and NMED.

Santolina Development

BY MASLYN LOCKE, SENIOR STAFF ATTORNEY & KACEY HOVDEN, STAFF ATTORNEY

Since 2015, NMELC has partnered with clients and communities in a battle to protect the limited water resources of the Middle Rio Grande region. The proposed Santolina development on Albuquerque’s West Side 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, in partnership with NMELC attorneys and other community allies.

Despite several rounds of decision-making and approval by the Bernalillo County Board of County Commissioners, the proposed Santolina Development still sits vacant, primarily due to the lack of a need for, and water supply to, the Development. In October 2023, the University of New Mexico’s Bureau of Business and Economic Research (BBER) published its report entitled the “Potential Impacts of Santolina Development,” confirming what clients and the Contra Santolina Working Group have said for over a decade: the Santolina Development will result in a net-cost to the residents of Bernalillo County in violation of the Planned Communities Criteria and the data relied on by the Santolina developers resulted in growth and development targets that were overstated, unreasonable, and overly optimistic. In addition to these flawed and unlikely development goals, water scarcity and drought in New Mexico is only increasing, such that any additional development in Bernalillo County would almost certainly harm and impact current water users in the area.

NMELC is continuing to work alongside the Contra Santolina Working Group to urge the Bernalillo County Commission to review its 2015 approval of the Santolina Development and reconsider whether the Santolina Master Plan is valid, or needed at all, in Bernalillo County.
Augustin Plains Ranch Water Grab

BY ANN MCCARTNEY, STAFF ATTORNEY & MASLYN LOCKE, SENIOR STAFF ATTORNEY

At a momentous hearing on April 5, 2024, more than 100 community members from Catron County crowded the court room and hallways of the Seventh Judicial District court in Reserve, New Mexico to hear oral argument on the Augustin Plains Ranch LLC’s (APR) continuing and relentless requests to mine and hoard 54,000 acre feet of water a year from the arid San Augustin Plains. District Court Judge Roscoe Woods heard arguments from APR and the many allied parties opposing the water transfer including the State Engineer Water Rights Division, the Catron County Board of County Commissioners, the Helen Hand Ranch, and two groups of area residents protesting the transfer including one group represented by NMELC.

Agreeing that APR’s request to transfer this groundwater is pure speculation, meaning that APR had failed to show a genuine need to pump and hoard the groundwater, Judge Woods ruled from the bench and denied the water transfer because it is contrary to New Mexico law. The Judge granted the State Engineer’s Motion for Summary Judgment, ultimately preventing APR from pumping water from 30 proposed wells, which APR hoped to pipe upstate to municipalities north of Socorro such as Los Lunas and Belén. Since 2007, NMELC has fought alongside Catron County residents against APR’s water grab and to protect the water which residents rely on for their homes, gardens and livestock.

This decision marks a major win for water, people and ecosystems. The long course of the APR litigation has included two speculative, nearly identical applications from APR to appropriate groundwater and multiple appeals from the State Engineer’s decisions denying these applications to both the district court and the New Mexico Court of Appeals. This decision, again denying APR’s application, will be precedential for the State Engineer moving forward in determining when applications to transfer water are speculative and the applicants do not show an imperative need for the water they seek. It is our hope that APR will finally take NO! for an answer.

New Case: Sunland Park/Santa Teresa Water Crisis

BY KACEY HOVDEN, STAFF ATTORNEY; MASLYN LOCKE, SENIOR STAFF ATTORNEY; & ANN MCCARTNEY, STAFF ATTORNEY

For years, the Camino Real Regional Utility Authority (CRRUA) has provided Southern New Mexico residents in Sunland Park, Santa Teresa, and surrounding colonias (rural communities within the US-Mexico border region that lack adequate water, sewer, or decent housing due to government neglect) with unsafe drinking water. On multiple occasions over the past several years, arsenic contaminant levels in CRRUA-provided consumer water have remained well above the federal health standards and maximum contaminant levels established by the U.S. Environmental Protection Agency (EPA), in one instance, testing 80 percent above the federal health standards.

This ongoing water quality crisis hit its peak in the late winter of 2023, when residents began reporting, via social media, slimy, discolored, odorous, and foul-tasting water. While CRRUA failed to respond or act for days, a later investigation by the New Mexico Environment Department uncovered arsenic contamination in the CRRUA water supply, and the fact that three CRRUA arsenic treatment plants had been “offline and bypassed” for more than a year.

After receiving a request for assistance from local community members in February 2024, NMELC is now working alongside the community in their efforts to obtain safe and clean drinking water, as well as more transparency and accountability from CRRUA. NMELC continues to support community-led efforts as this ongoing water crisis develops and changes on a nearly daily basis.
Transformative One-Time Gift Humbles & Inspires NMELC to Continue Our Work

As many of you know, we announced on March 21, 2024 that NMELC along with 9 other New Mexico organizations, was selected from over 6,600 applications from across the nation to receive a generous $2 million dollar one-time gift from MacKenzie Scott’s Yield Giving Open Call.

All of us at NMELC are humbled and deeply grateful to receive this major gift! This transformative gift will be utilized to ensure the long-term sustainability and health of our organization so that we may continue our vital mission to work alongside our clients and communities in advancing environmental justice across the state.

This gift couldn’t have arrived at a more timely moment given financial challenges we’ve faced these past couple of years! As a nonprofit, NMELC relies on donations from our supporters and grants from foundations to fund our recurring expenses that ensure our free and low-cost legal services to frontline clients fighting for clean air, water and land continue strong and uninterrupted.

Many thanks to the Yield Giving Open Call for selecting our organization for this gift and to our generous funders, donors, and supporters!

THANK YOU

Mountain Mahogany Community School’s 5th grade class!

5th graders at Mountain Mahogany Community School recently made a donation to NMELC as part of their human rights project on air pollution in Bernalillo County.

Thank you, students, you are the next generation of EJ leaders!
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 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.