

GreenFire Report

SUMMER 2013

A publication of the New Mexico Environmental Law Center, a non-profit, public interest law firm dedicated to protecting New Mexico's environment and communities.

nmelc.org

THANK YOU FOR BIG WIN!

Members make Mount Taylor victory possible

Law Center members ensured that community groups were able to challenge the Martinez Administration over a critical test of public participation. On July 22, the Multicultural Alliance for a Safe Environment (MASE) and Amigos Bravos took the Mining and Minerals Division (MMD) and the Mining Commission to district court over the agencies' failures to provide opportunities for meaningful public participation in mine permitting proceedings. Our clients walked away from the courthouse with a stunning victory—one that sends the message to the Governor (once again) that her Administration is not above the law. After the hearing we were able to sit down with Law Center Staff Attorney Eric Jantz for a quick catch-up on the case.

Can you provide a little background on the Mount Taylor Mine case?

Eric: The Mt. Taylor uranium mine operated intermittently in the 1970s and 1980s. In 1992, it stopped production because the uranium market tanked. After the New Mexico Mining Act passed in 1993, the Mt. Taylor Mine obtained a mining permit, which it



Enjoying our Mt. Taylor uranium mine victory at the Steve Herrera Judicial Complex (from left): Douglas Meiklejohn (NMLEC); Nadine Padilla (MASE); Laura Watchempino (Laguna-Acoma Citizens for a Safe Environment/MASE); Eric Jantz (NMLEC Lead Counsel); Candace Head-Dylla (Bluewater Valley Downstream Alliance/MASE); Lisa Franceware (NMLEC legal intern); and Petuuche Gilbert (Laguna-Acoma Citizens for a Safe Environment/MASE)

almost immediately revised to allow it to go on "standby status". In 2010, Rio Grande Resources applied for the mine's fourth standby permit. Under the Martinez Administration, MMD and the Commission took every opportunity to cut our clients out of the process. MASE and Amigos Bravos were not allowed to introduce important ecological testimony at a public hearing, and were told that it was outside the scope of the permit. They were barred from questioning the company's reclamation bond—in fact, MMD decided to review the company's bond *after* it renewed the permit, and has yet to receive public input. Finally, our clients were not able to review an economic viability analysis that is supposed to provide evidence that

the uranium market would be robust enough for the mine to reopen in 2014. After the agencies renewed the standby permit, we took them to court.

What was the ruling?

Eric: Judge Raymond Ortiz of Santa Fe District Court ruled that the agencies failed to provide opportunities for effective public participation in the Mt. Taylor proceeding. Because of this ruling, MMD will have to hold new

hearings on environmental safeguards, financial assurance, and economic viability for the Mt. Taylor Mine. It is an important ruling for the people in our state.

The ruling affects a permit for a mine near Grants. Why is the decision important for all New Mexicans?

Eric: Basically, the judge ruled that the provisions of the New Mexico Mining

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[Mount Taylor Ruling, continued from page 1]

Act that provide for transparency, accountability, and public participation are meaningful. It is unacceptable for the agencies to interpret those provisions so narrowly as to render them meaningless.

Thus the agency – and indeed, the Administration – is on notice that it cannot treat the public as a nuisance to be tolerated. Under the Mining Act, it must take into account our questions, concerns and grievances. I imagine that this ruling will impress upon other agencies like the New Mexico Environment Department that they should not try to dodge requirements for public participation.

What's next?

Eric: Rio Grande Resources filed an application earlier this year to take the mine to "active" rather than "standby" status. We have requested a hearing on that permit application, and anticipate that will happen this fall. With Judge Ortiz's ruling, we know that our clients will be afforded much better opportunities to participate in that process.

Anything else to add?

Eric: We are up against some major players in this case. Not only are we opposed by the New Mexico Mining Commission and MMD, but the Mt. Taylor Mine is operated by Rio Grande Resources, which is a wholly-owned subsidiary of General Atomics (a global defense contractor).

I would like to thank our supporters for making sure that the Law Center was there when communities near Mt. Taylor needed legal representation. In a perfect world, we could trust our government and corporations to do the right thing. In the real world, we rely on your help to make sure that decision-makers are held accountable for their actions. Thank you again, and we will keep you apprised of what happens in this case and in others that affect Mt. Taylor.

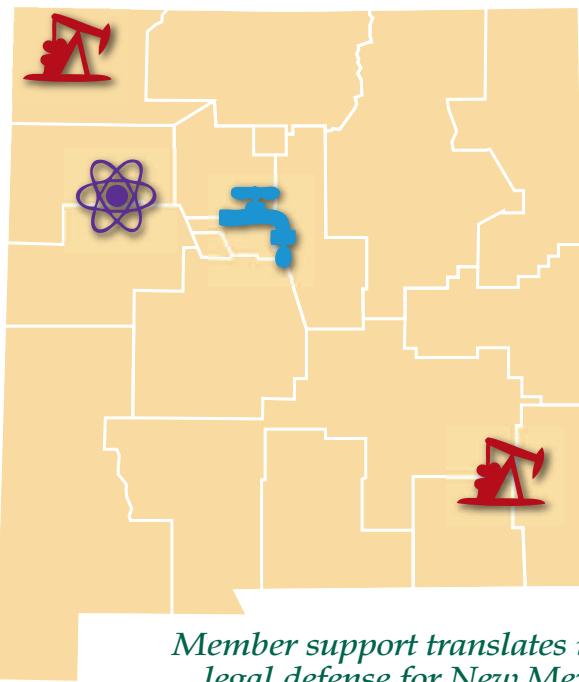
Water protection instead of water pollution

Law Center supporters are leading the charge against State policies and regulations that promote the contamination of our precious water resources. Today, that work is more important than ever: in the summer of 2013 Elephant Butte Reservoir, New Mexico's largest reservoir, dwindled to its lowest level in forty years, about 3 percent of the reservoir's capacity.

Left: NASA photo taken June 2, 1994

Right: NASA photo taken July 8, 2013

Your investment in the Law Center



Member support translates into legal defense for New Mexico communities in more than 40 cases right now.

Some issues our members are supporting this summer:

Water Grabs: Stopping Italian billionaire Bruno Modena, who seeks to grab 54,000 acre-feet of water near Datil – enough to supply a city of 500,000 annually.

Uranium: Winning protections for residents who live near the Homestake uranium millsite. They face a cancer risk 18 times higher than that considered acceptable by EPA.

Oil & Gas: The State just weakened the Pit Rule – including a new provision that allows for multi-acre "frack lakes". The Law Center appealed in early August.

More information on these cases can be found at nmelc.org, or please call us at (505) 989-9022.



is a long-term investment in New Mexico.

Find out more at nmelc.org.



Aquifer Science Water Appropriation

In this major water case, Aquifer Science, LLC seeks a 700 acre-foot appropriation near Sandia Park. Although the State Engineer has stated that the basin has been over appropriated since the 1980s, it now appears to be endorsing the company's application. In June we finished a weeks-long trial before the State Engineer, and anticipate a decision on the company's application this fall.



Oil & Gas Pit Rule:

In June, the Martinez Administration gutted the "Pit Rule," which governs the storage and disposal of toxic oil and gas drilling wastes. The Oil Conservation Commission removed nearly all of its stringent provisions, including setbacks to homes and wells and requirements for closed-loop systems where pits are near water resources. It also added a provision that allows for "frack lakes"—multi-well, multi-acre pits that hold toxic drilling wastes. Member support ensured that Attorney Eric Jantz could build a strong case for appeal during the rulemaking, and that he could file that appeal in district court in August 2013.



© All photos by Juana Colón



Homestake Uranium Mill:

Attorney Jon Block represents members of the Bluewater Valley Downstream Alliance, most of whom live in the shadow of the Homestake uranium mill Superfund site. A recent draft report by the Environmental Protection Agency shows that residents near the mill face a cancer risk 18 times higher than that considered acceptable by the EPA. Jon and his clients continue to advocate to EPA Region 6 that the site be cleaned up.



Thank you for helping us win the first Energy Conservation Codes case!

"Once again a court had to explain to the Administration that the law applies to everyone."

After nearly two years, the New Mexico Court of Appeals handed down a victory in our case against the Administration's illegal repeal of energy conservation codes. The Court ruled on only one of our issues: that the Commissioners could not repeal the codes without giving reasons for their action. (The repealed Codes sought to reduce energy usage by new construction by 20%) The victory was short-lived: the Commission has held a new vote and issued a Statement of Reasons for adopting weaker regulations. We filed a new appeal shortly after the Commission held its new vote.

But it was another message to the Martinez Administration that it cannot circumvent the law.

"It is well established that agencies must provide the reasoning for their decisions, but the Commission's only effort to do so came after we filed our appeal," says Doug Meiklejohn, Law Center Executive Director and lead counsel on this case. "Once again a court has had to explain to the Administration that the law applies to everyone."

Doug represents Southwest Energy Efficiency Project (SWEEP), Sundancer Creations, eSolved, Inc., Environment New Mexico, and several individuals.



How you're standing up to one of the worst proposed regulations (ever)

NMED inexplicably fights on behalf of Big Copper for right to pollute public water

As an agency tasked with protecting water quality in our state, you would hope that the New Mexico Environment Department would, well, work to protect water quality. Here's just one example of how it's not: it is pushing for a "Copper Rule" that would circumvent our state's key water quality law and allow massive contamination of groundwater.

Fortunately, as a Law Center member, you're standing up to this travesty. You're supporting an epic legal battle in what is one of the most significant water cases in New Mexico history.

Here are some of the provisions sought by NMED and copper giant Freeport McMoRan:

- Exempt every New Mexico copper mine (now and in the future) from the NM Water Quality Act.
- Remove common sense pollution prevention measures, such as liners beneath acid-producing waste rock piles. (Liners help to intercept toxins before they can reach groundwater.)
- Eliminate comprehensive monitoring and reporting requirements, so as to hobble the ability of regulators and citizens to know where (and how much) pollution is occurring, and where it's heading. Going up against a state agency and the largest publicly-traded copper company in the world, Law Center members ensured that our public water had strong representation during the month-long hearing. We await a decision on the Rule by the Water Quality Control Commission.

Staff Attorney Bruce Frederick worked with co-counsel Tracy Hughes (High Desert Energy + Environment Law Partners) to represent Amigos Bravos and the Gila Resources Information Project – two of our state's most experienced advocates when it comes to protecting water near hardrock mines. You can find out more about the seamy underbelly of this case in Laura Paskus' "The Canary in the Copper Mine (is Dead): How New Mexico's Copper Industry Wrote its own Rules," an exposé in the Santa Fe Reporter dated May 14, 2013.



NMELC to represent Mora County in any upcoming fight over fracking

In a situation that has the potential to set national precedent, the New Mexico Environmental Law Center has signed on to help Mora County uphold its ban on oil and gas drilling in the event it is challenged in court.

"This really is the most unadulterated form of democracy that there is," Eric Jantz said of the county's ordinance. "This is communities taking control and making decisions about their future."

Eric is working with the Community Environmental Legal Defense Fund in this case.

"I don't think that I could possibly overstate the negative impacts these rules could have on the communities near where I live.

...I think these rules might allow the same kind of pollution at new mines in different communities that they have – that these existing mines have already created, and that seems to me to be a shame because we should learn from our past mistakes.

Also, I think they set a very dangerous precedent for other industries, as [former NM Groundwater Bureau Chief Bill] Olson has been very clear about. I think of water as a lifeblood of our state. I think it's precious. I think we should protect it. I think the integrity of this Water Quality Commission and the Environment Department are at stake if you actually approve these regulations as written. I truly believe that."

– Sally Smith, Grant County resident, Gila Resources Information Project Board Member, and long-time Law Center client. From her testimony on the Copper Rule.



We are pleased to announce that Sandy Buffett joined our Board of Directors this summer.

Sandy served as Executive Director of Conservation Voters New Mexico from 2005 to 2013. She has been a Law Center member for more than 20 years, and a staunch defender of our state's environment.

Welcome, Sandy!

Gene Simon's support lives on in bequest

Mr. Gene Simon, a longtime newspaperman and later a rancher in Faywood, NM, began his support of the Law Center when we were still a one-attorney shop, back in 1990. It was always a pleasure to get his notes of

encouragement, which were promptly thumb-tacked to our bulletin board.

Gene passed away in 2012, at the age of 96, and left the Law Center a bequest in his will. His final gift will enable us to provide hundreds of hours of pro bono legal assistance on dozens of cases across the state, and to continue our work to hold our elected officials accountable for their actions. We are very grateful to him for including us in his legacy.

Bequests and other planned gifts play a critical role in ensuring that the New Mexico Environmental Law Center can continue fighting on your behalf for cleaner water, safer air, and protected lands for years to come. Every gift makes a difference, no matter how big or small. For information on ways to include the Law Center in your estate plans, please contact Elizabeth Lee at (505) 989-9022, ext 18, or elee@nmelc.org. Thank you.

Thank You Green Business Partners!

For more information, please contact Elizabeth Lee at elee@nmelc.org.



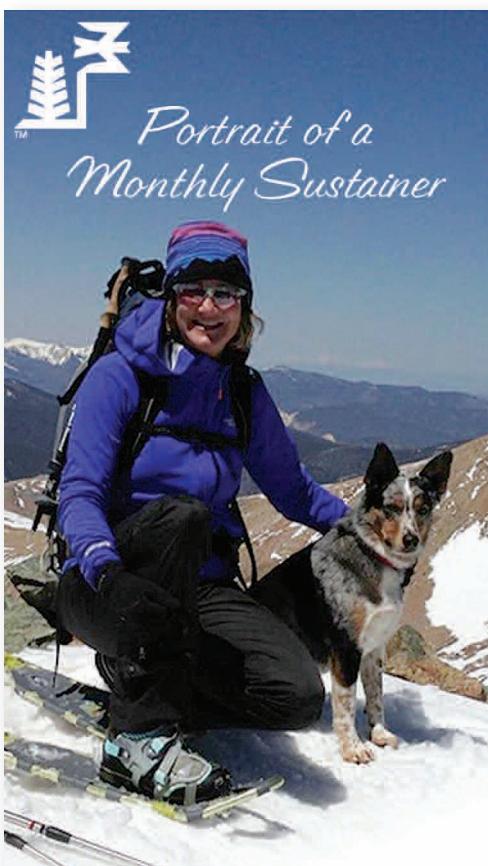
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— Kelly

valued member since 2006
(with Lucy atop Wheeler Peak)

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Thank You!

The New Mexico Environmental and donors. The following

Because of your generosity, we obtained a \$50,000 challenge grant offered by the Lannan Foundation. Members' gifts made between February and July have been matched dollar for dollar by the foundation!

Southwest Seminars presents *Mother Earth, Father Sky: Perspectives on New Mexico and the American West*

A lecture series held annually to honor and acknowledge the important work of the New Mexico Environmental Law Center.

Admission by subscription or \$12 at the door.
No reservations necessary. Refreshments are served.

Monday nights at 6pm at Hotel Santa Fe, a Picuris Pueblo Enterprise. For more information see www.southwestseminars.org, or call (505) 466-2775.

Schedule subject to change:

October 21 Dr. Eske Willerslev, Genetic Scientist and Professor, National History Museum and Biological Institute, University of Copenhagen, Denmark and Visiting Professor, Oxford University. *American Indian Continental Migrations: Journey of the Human Genome*

October 28 Leigh J. Kuwanwisiwma (Hopi), Director Hopi Office of Cultural Affairs. *Hopi and their Homeland*

November 4 Wayne Ranney, Geology Educator, Grand Canyon Field Institute and Author, Carving the Grand Canyon. *How Old is the Grand Canyon Really?: New Thoughts, Old Ideas*

November 11 Dr. Henry Wright, Professor of Anthropology University of Michigan and Board member, Santa Fe Institute. *Mesopotamia and Madagascar: What Can We Learn From Old World Civilizations?*

November 18 Dr. Richard I. Ford, Professor Emeritus of Anthropology and Ethnobotanist, University of Michigan and Dr. Glenna Dean, Former State Archaeologist of New Mexico. *Aboriginal Cotton Production in Northern New Mexico: Perspectives From Archaeology and Ethnology*

November 25 Dr. Paul Zolbrod, Professor of Literature, Diné College, Crownpoint and Author, Diné Behane: Navajo Creation Story. *A Navajo Myth for Hunting and The Natural World of Animals*

December 2 (tentative) Dr. Dean Falk, Senior Scholar School for Advanced Research and Evolutionary Anthropologist. *My Recent Research in Evolutionary Anthropology and the Human Story*

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Law Center can fight for community justice and environmental protection because of the generosity of our members
contributions were made between January 1–July 31, 2013. If you have any questions about your listing, please contact Shelbie Knox
at shelbie@nmelc.org, or call (505) 989-9022 ext. 19.

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GreenFireReport summer 2013 issue



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Come back to Sweetwater in September!

Through the month of September, Sweetwater Harvest Kitchen will again donate 2% of all their CASH proceeds to the Law Center.

Thank you Sweetwater!

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Green Business Partner

Welcome back to **Positive Energy Solar**, which has just rejoined the Green Business Partner program. Positive Energy Solar, one of the premier solar panel installers in New Mexico with offices in Albuquerque, Santa Fe, Taos & Las Cruces, will donate \$500 to your nonprofit of choice when you contract to install a solar system at YOUR home or business.

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See page 5 for our complete roster.

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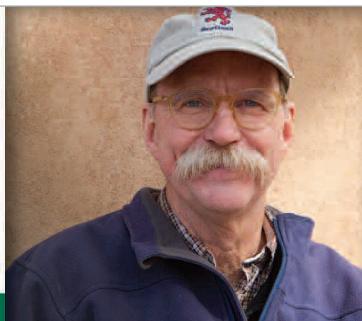
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“We reached the old wolf in time to watch a fierce green fire dying in her eyes.”

– Aldo Leopold
A Sand County Almanac



The New Mexico Environmental Law Center
will present the first

David Henderson Award to Eleanor Wootten

Thursday, October 17th, 5:30 – 7:30 pm
in Silver City, NM (venue TBD)

Co-hosted by our friends at the Gila Resources Information Project (GRIP) **Hope to see you there!**

SAVE THE DATE