

GreenFireReport

Summer 2009

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

Major Hurdle Cleared in New Mexico Climate Change Case

"The threat to public health from mercury, sulfur dioxide, and nitrogen oxides is serious enough to warrant immediate action. Yet this threat pales in comparison to the financial and health costs from unchecked global warming. With American coal plants alone adding over two billion tons of carbon dioxide to the atmosphere each year, we must ask ourselves: what are the costs of not quickly enacting climate change legislation and investing in a new energy economy?"

Dr. John Fogarty, Director of New Energy Economy (NEE), wrote these words in an editorial to the New Mexico *Independent* in December 2008. His article ran after we petitioned the State on behalf of NEE to adopt the country's most significant limits on carbon emissions.

In April, we and the NM Environment Department (NMED) both argued – and won – an important decision from the New Mexico Environmental Improvement Board that the Board can regulate greenhouse gases as air pollutants. We were opposed by many of New Mexico's biggest corporations and trade groups, including PNM, the NM Oil and Gas Association, and the Dairy Producers of New Mexico; their experts testified that greenhouse gases fall outside of the Board's jurisdiction.

As a result of this decision, the Board will hold a public hearing in late 2009 or 2010 to determine whether to impose a cap on greenhouse gas emissions, and if so, what that cap should be. At that hearing, we will



Coal Power Plant Chimney – Black and White
© Danicek | Dreamstime.com

argue that New Mexico must take the route dictated by nearly all of the world's climate scientists: we must reduce our greenhouse gas emissions by at least 25% below 1990 levels by 2020 or face catastrophic impacts. NMED will likely argue that the State should adopt the carbon caps recommended by the Western Climate Initiative, which would lower our state's emissions by 15% below 2005 levels by 2020.

"We've reached a point where we can no longer take half-measures," says Bruce Frederick, counsel on the case. "Our job at the hearing will be to advocate that New Mexico must adopt the carbon caps championed by 1,200 of the world's leading scientists; if we don't, we face catastrophic problems such as prolonged drought, new diseases and massive wildfires, to name a few. Granted, New Mexico is a small fish in a global pond of carbon emitters, but if New Mexico can do what is scientifically necessary, other states can do it as well. Our leadership on this issue will help our country become part of the climate solution, instead of a big part of the climate problem."



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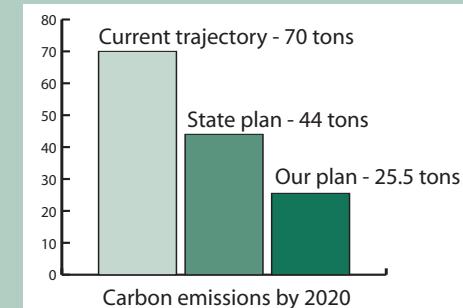
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"So if you can shape your renewables, you don't need fossil fuel or nuclear plants to run all the time. And, in fact, most plants running all the time in your system are an impediment because they're very inflexible. You can't ramp up and ramp down a nuclear plant. And if you have instead the ability to ramp up and ramp down loads in ways that can shape the entire system, then the old concept of [coal and nuclear power] becomes an anachronism."

– Jon Wellinghoff, Chair of the Federal Energy Regulation Commission, to the U.S. Energy Association, April 21, 2009.



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

– Aldo Leopold
A Sand County Almanac

Nuclear Revitalization Commission?



PHOTO: Oil Well Site Work
© Neonriver | Dreamstime.com

After the Nuclear Regulatory Commission (NRC) licensed uranium mines in the drinking water aquifer underlying the Crownpoint-Church Rock region, we thought perhaps the agency should be renamed the Nuclear Revitalization Commission. After reading the NRC's final draft of the Generic Environmental Impact Statement (GEIS) for *in situ leach* (ISL) uranium mining, we are pretty sure that the name change is in order.

The Final GEIS, released on June 5th, addresses common environmental issues associated with the construction, operation, and decommissioning of ISL facilities, as well as groundwater restoration at such

facilities in Nebraska, New Mexico, South Dakota and Wyoming. The NRC explains on its website that it developed the GEIS in order to facilitate its review of a large number of anticipated ISL uranium mining license applications. As of May 2009, the agency is expecting 17 such applications before the end of 2010.

The Law Center submitted technical comments in November 2008, most of which seem to have been ignored by the NRC. The agency did bend on one significant point, however. Instead of requiring Environmental Assessments at new proposed mines, the agency will require the completion

of Supplemental Environmental Impact Statements before it makes licensing decisions. Environmental Impact Statements involve more thorough site-specific reviews than Assessments, and have provisions for public comment.

"The decision to do 'full' environmental reviews is positive," says Law Center Staff Attorney Jonathan Block. "But one has to take a wait-and-see attitude because you're dealing with an agency that has a very bad history in terms of handling these kinds of matters."

We are working with our clients to develop our next steps in this case.

On another front, the uranium industry is pushing the NRC to allow it to build infrastructure at proposed in ISL mines before those mines are licensed. Industry representatives met with NRC staff in November 2008 to outline their pre-licensing construction plan.

To date, we have agreed with the NRC's interpretation of the rule, which does not allow companies to build first and get licensed later.

"This is just a terrible idea," says Block, who submitted comments to the NRC on this matter in May. "If regulators let corporations sink millions of dollars into infrastructure, then they have less ability to turn the projects down, which is exactly what these companies are gambling on."

Big Copper Goes to Court

In January 2009, we had a major victory when the NM Water Quality Control Commission ruled that Freeport McMoRan (formerly Phelps Dodge) is responsible for cleaning up the acidic, metals-laden groundwater beneath its 12,000 acre Tyrone mine complex.

Two months later, the company appealed to the state appellate court to overturn the Commission's ruling. Law Center Staff Attorney Bruce Frederick represents the Gila Resources Information Project (GRIP), a Silver City-based non-profit group, in this litigation. "Contrary to the arguments put forth by Freeport McMoRan, contaminated groundwater doesn't just stop at the company's fenceline," says Frederick. "We will argue to the Court of Appeals that the Commission made the right decision for Tyrone, and the right decision for New Mexico."

The outcome of this case will impact the ability of the Commission to mandate groundwater cleanup at large industrial sites throughout the State.



Hydro Resources Dealt Major Setbacks



Is Hydro Resources looking at Easy Street...or an Avenue of broken dreams?

Uranium company Hydro Resources, Inc. (HRI) is having a tough year so far. In March, its biggest investor, Itochu Corp. of Japan, dissolved its partnership with the beleaguered uranium mining company. Less than a month later, HRI lost a critical decision in the U.S. 10th Circuit Court of Appeals.

In a lawsuit against the federal government, HRI contended that its Church Rock Section 8 property in the “Checkerboard” region bordering the Navajo Nation is like any other private land in New Mexico, and subject to State jurisdiction. However, after examining evidence that 97% of the community surrounding the Section 8 minesite is Navajo, two of the three judges hearing the case disagreed with the company, and ruled that the proposed minesite falls under tribal and federal jurisdiction. (While the Law Center was key to the administrative proceedings pertaining to this ruling, we did not participate in the federal lawsuit.)

The ruling could affect HRI in two ways. First, if the company has no other setbacks, it would be required to apply for and receive an “underground injection control permit” from the U.S. Environmental

Protection Agency before it could begin mining. Second, and more important, the ruling could signal that HRI’s proposed mining would be prohibited under the Navajo Nation’s ban on uranium mining and milling.

“The ruling rejects the position of HRI, which contended that its small island of [private] land was, in essence, excluded from the community,” Navajo Nation Resources Committee Chairman George Arthur told the *Gallup Independent*. Arthur, who sponsored the mining ban, continued, “That position would allow the fabric of Navajo communities to be destroyed from within anytime there is a small tract of non-Indian land within the community boundaries.”

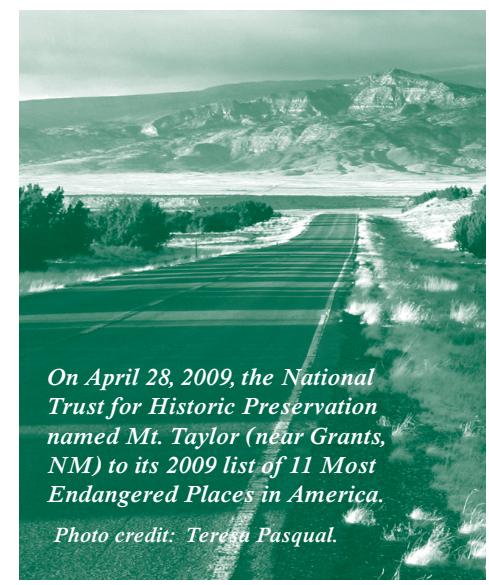
This is a significant ruling, and if it stands, will be very useful to our clients in their effort to defeat HRI’s ill-conceived scheme to mine uranium in the drinking water aquifer for these communities. Hopefully, HRI has not yet seen the last of the bad news this year. We are still awaiting a ruling from the 10th Circuit Court on our lawsuit against the Nuclear Regulatory Commission to overturn the mining license it granted to HRI in 1996.

Neutron Energy gets Green Light

For more than a year, Law Center attorney Eric Jantz worked with the Haaku Water Office of Acoma Pueblo to prevent the issuance of the state’s first non-minimal impact exploration permit for uranium. In the end, however, the Mining and Minerals Division granted the permit for Neutron Energy’s Marquez Canyon site. Neutron Energy will drill on the flank of Mt. Taylor (*Kaweshtima*, in the Keres language), a site that is culturally important to as many as 30 Native American tribes.

“This is the first time that the State has issued this type of permit for uranium,” says Jantz. “Because of the element’s toxic and radiological characteristics, as well as its readiness to mobilize into groundwater when exposed to oxygen, uranium mining requires a higher level of regulation than other hardrock mining.”

When asked about the decision, Jantz reflected, “Unfortunately, in our legal system, cultural destruction is not enough to prevent mining. The only silver lining is that we did set some good environment precedent with this permit, which should translate to future uranium permits in New Mexico.”



On April 28, 2009, the National Trust for Historic Preservation named Mt. Taylor (near Grants, NM) to its 2009 list of 11 Most Endangered Places in America.

Photo credit: Teresa Pasqual.

PR Powerhouse Helps Law Center



At the age of 13, Jennifer Marshall would get up at 4:30 a.m. on Fridays to picket in front of the Knolls Atomic Power Laboratory near Troy, NY. "I am very anti-nuke," Marshall says with a smile, "and when I moved to New Mexico in 2000, I knew

The Law Center sincerely thanks Jennifer Marshall for lending us her great talent, passion and commitment.

I had to get involved with the Law Center because of your work on fighting against uranium mining in New Mexico. I'm especially passionate about the HRI case. It's unfathomable that the NRC would allow a company to mine uranium in a community's municipal drinking water."

She launched the Marshall Plan, a leading marketing and communications firm in 2007 after a decade of working on marketing and public relations campaigns in Santa Fe. She now donates her time and expertise to the

Law Center working on strategic, long-range marketing and public relations plans. "I work directly with the legal and development staff keeping a steady flow of information to the media. I absolutely love it."

Thinking about the many important cases the Law Center has taken on in the past 21 years, Marshall comments, "These cases are so huge and I can't believe that they are being handled by this tiny nonprofit! Whenever I can jump in and help; it is an honor and a privilege."

"The Law Center fights the good fight for many people, in some cases for more than a decade," says Marshall. "You guys stand up for all New Mexicans, and aren't doing the work to be popular with politicians and industry leaders. You do the work for the citizens of New Mexico."



New Staff Attorney Seeks to Pun-ish Polluters

We would like to congratulate Staff Attorney Jonathan Block, who was admitted to the New Mexico State Bar on April 20. Jon, who joined our staff in June 2008, has nearly two decades of experience as an attorney under his belt, primarily in private practice. Except the fact that he doesn't own a dog, Jon fits right in at the Law Center. He is a crusader who has spent much of his legal career fighting the Nuclear Regulatory Commission on behalf of citizens' groups; in his case, he worked to improve the environmental and safety track records of nuclear power plants in New England. When not saving this corner of the world, Jon is an accomplished jazz pianist and infamous groan-inspiring punster.

IN MEMORIAM



The Law Center family mourns the passing of **Richard Deertrack**, client, ally, leader, teacher and friend. We met Richard in 1994 when he requested our assistance on behalf of Taos Pueblo to prevent or limit the proposed expansion of the Taos Airport. Soon, he joined our Board of Directors, and ably led our organization as our Vice-President (2000-2002) and President (2002-2007). We have lost a good friend. We will miss his gentle encouragement, his deep wisdom, and most of all his tireless pursuit for justice for all peoples and Mother Earth.



We also are deeply saddened to report the death of **Luke Cole**. Luke was a founder and the Director of the Center on Race, Poverty, and the Environment in San Francisco, as well as one of the leading environmental justice attorneys in the country, even though he was only 46. He represented communities suffering environmental injustice throughout the nation, and he was a leading spokesperson for environmental justice on the national level as well. He served as a very effective witness for the Law Center in the 2005 proceeding to include environmental justice provisions in the State Solid Waste Management Regulations, and he was always an ally in our work to protect communities. He will be truly missed.

A Sweet Partnership



Katie Zemlick, 3rd from left, with her candy-making colleagues

We thought that we were lucky to work with Señor Murphy General Manager Katie Zemlick because of her efficient and knowledgeable assistance with Justice Bars. But our luck doubled when Katie, who is interested in a legal career, volunteered as an intern with the Law Center. In addition to cataloguing twenty years of our community requests for assistance, Katie developed a business plan for Justice Bars.

Thank you, Katie!

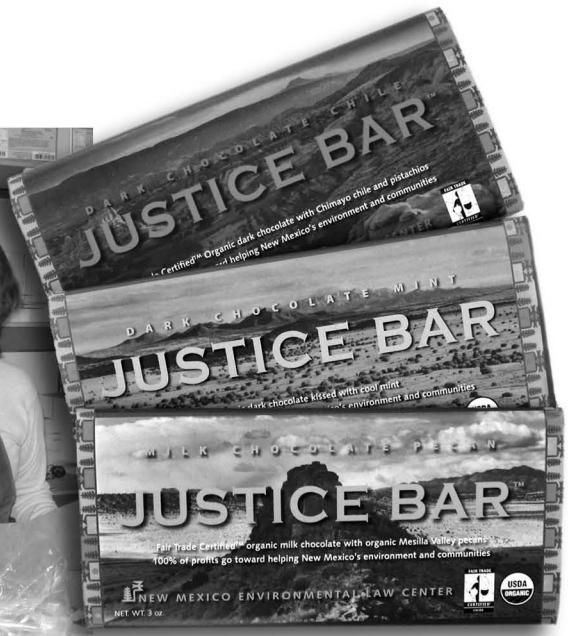


A Bar by any other name?

Law Center Executive Director Douglas Meiklejohn has received many awards over the years, but nearly all of them have come from groups or programs that work to

promote environmental and social justice. He was pleasantly surprised when he received a call from the *New Mexico Business Weekly* informing him that he was one of the newspaper's inaugural "Best of the Bar" award recipients. Doug was one of 25 attorneys from across the state who were recognized as "tops in their areas of expertise," and one of three lawyers to be honored in the field of Energy and Natural Resources law. The Business Weekly solicited nominations from the public, and winners were chosen by an anonymous panel that included a retired District Court judge and a former state Attorney General.

Congratulations, Doug!



"Justice Bars exemplify the Law Center's commitment to environmental, ethical, and social justice issues," Katie says. "They are a tangible reflection of the organization's unwavering support of local businesses and sustainable products."

Justice Bars are made from organic ingredients, and flavored with New Mexico's finest nuts and spices. Now available in Chimayo Chile—Pistachio in dark chocolate; Monticello Mint in dark chocolate; and Mesilla Pecans in milk chocolate.

See our website for retail and ordering information:



nmenvirolaw.org/justicebars

From the Executive Director

Dear Friends,

How does the Law Center become an even better, more effective organization? It's a good question, and we're hip-deep in a strategic planning process to find the answers. For the past year, our staff, board and volunteers have spoken with dozens of clients, colleagues, regulators, funders, and even an opponent or two in order to better gauge the needs of New Mexicans and get an idea about the public perception of our organization. We've analyzed trends, examined threats, identified opportunities, and brainstormed until our heads ached. Our goal is to distill all of this into a three-year Strategic Plan that will be done this year.

As a result of the process, we pledge to be even bigger and more bold, creative and staunchly committed to the health of communities and the environment across New Mexico. We are aiming for an audacious outcome because the needs of our state's communities are great. If nothing else, we know we have to do more and better for ourselves, be more effective and proactive than before, and make

government and regulatory officials adopt the policy initiatives we want to see in New Mexico and throughout our region.

Please stay tuned for more news about the Law Center's future plans and thank you for your steady, stalwart and ongoing support for New Mexico's communities and environment. We can't do our work without you.

All the best,



Douglas Meiklejohn



P.S. – We would like to extend special thanks to the French American Charitable Trust, our wonderful facilitator Elsa Rios, our outstanding volunteer Grace Perez, and our interviewees for making this process possible!

After you care for your loved ones, will you care for New Mexico?

Your charitable bequest will help the Law Center to protect the air, water, land and communities of New Mexico for years to come.

For more information, see nmenvirolaw.org/giving
or call Shelbie at 505.989.9022.

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