



Celebrating  
Eighteen Years of  
Environmental  
Victories

Fall 2005

# Green Fire Report

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

## Victory in Mesquite

by Roderick Ventura, Staff Attorney

For more than ten years, the Helena Chemical Corporation operated a chemical fertilizer facility in Mesquite (near Las Cruces) without the proper air quality permit. Thus, there were no parameters or limits in regards to air pollution for the company's facility within the community. Fugitive dust from fertilizer chemicals affected families whose homes lay right outside the Helena boundaries. Children would come to school with stinging eyes and throats due to clouds of anhydrous ammonia coming down around them.

For years, the residents of Mesquite complained about the Helena facility. For years nothing was done. Then in November, 2005, the town's voice was heard and brought results in the form of both a strong air quality permit, a side agreement between Mesquite and Helena, and a settlement for violation of the State air quality act.

*"People ask me what we've gotten out of this. The biggest thing--the most important thing--is that they've listened to us. For once, this County and this State have listened to us."* Arturo Uribe, client

Arturo Uribe, one of the leaders of the Mesquite Community Action Committee (MCAC), lives right next to the Helena facility and hired the Law Center to represent MCAC in its struggle for a clean environment.

"We live in a community of people of four different colors who had not been listened to but are now being listened to," Uribe said. "People thought we were crazy, troublemakers. But what our elders have been saying, what my neighbors have been saying has been validated."

Through the efforts of the Law Center and MCAC, a settlement was reached for an air quality permit for the Helena

facility which includes conditions that will directly benefit Mesquite. Furthermore, a permit will require Helena to keep records, provide regular reports to the New Mexico Environment Department, perform periodic monitoring and be subject to unannounced inspections.

*continued, next page*

## Surface Owners' Protection Act

by Douglas Meiklejohn, Executive Director

Much of the attention that has been brought to bear on the environmental damage caused by oil and gas extraction, including coal bed methane development, has been focused on the contamination of ground water caused by oil and gas operations. That attention is appropriate because of the seriousness of that contamination and the importance of ground water to New Mexico, a state in which 9 out of 10 people get their drinking water from ground water. In the 2006 legislative session that begins in January, however, the New Mexico Legislature will take up legislation that addresses another significant problem cause by oil and gas operations, damage to the surface of the ground where oil and gas reserves

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our Biannual Report**

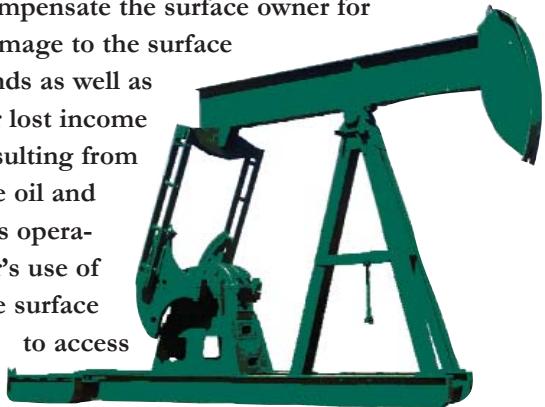


## 2 CASE UPDATES

### SURFACE OWNERS' PROTECTION ACT, CONTINUED

are located. A bill that was sponsored by Representative Andy Nunez in the 2005 legislative session would have provided protection for the owners of lands that include subsurface minerals owned by oil and gas companies. Representative Nunez has first-hand experience with the development of such minerals because his family's lands were seriously damaged by an oil and gas operator who was developing minerals located beneath those lands. Representative Nunez's legislation, which is expected to be introduced again in the 2006 session, would require that an oil and gas operator **provide notice to the owner of the surface lands**, and would mandate that the oil and gas operator **compensate the surface owner for damage to the surface**

lands as well as for lost income resulting from the oil and gas operator's use of the surface to access



**minerals.** These requirements, which are not in current law, would go a long way to protect the rights of surface owners whose lands are impacted by the development of subsurface minerals.

Working with the New Mexico Cattle Growers Association and the Oil and Gas Accountability Project, the New Mexico Environmental Law Center was one of the lead lobbyists for this legislation during the 2005 legislative session, when House Bill 1015 passed the State House of Representatives and ran out of time in the State Senate. We expect to be heavily involved in the effort to enact similar legislation during the 2006 session, and we look forward to working with our rancher and other allies on this important issue.

**WWW.NMENVIROLAW.ORG**

### MESQUITE VICTORY, CONTINUED

In addition, the Law Center helped broker a side agreement between MCAC and Helena which provides for **regular meetings between the community and the industry** to discuss activities at the facility and concerns of the community.

Finally, because the facility acted out of compliance, it was **fined \$202,500** by the New Mexico Environment Department. Through efforts from the Law Center and MCAC, **most of the funds will be distributed directly to the community** to benefit Mesquite.

As some members of Mesquite have noted, these settlements are only the beginning. MCAC is hoping to look into ground water issues related to the Helena facility.

"We're watching now and Helena knows, the State knows," said Uribe. "People ask me what we've gotten out of this. The biggest thing, the most important thing is that they've listened to us. For once this County and this State have listened to us." *See [www.nmenvirolaw.org](http://www.nmenvirolaw.org) for more details about the settlement.*

### PETROGLYPHS SETBACK -- BUT CASE NOT OVER

*by Sarah Piltch, Staff Attorney*

The Law Center filed a lawsuit in February 2005 against the City of Albuquerque to stop the proposed extension of Paseo del Norte through the Las Imagines Archeological District.

This summer, the City of Albuquerque brought a motion for summary judgment, alleging that there were no issues of material fact for the court to determine, and therefore the court should make a decision on the law. Law Center clients argued that there were genuine issues of material fact yet to be determined including whether the City's discussion of alternatives was adequate to support a decision to build the proposed extension--i.e. whether there were prudent and feasible alternatives to the alternative chosen, whether the alternative chosen would fulfill the purpose of the project, whether the City's environmental impact analysis was flawed, whether the City conducted all possible planning to mitigate harm to the district, and whether the city must perform a new environmental analysis.

After hearing oral argument on September 2, Judge Vanzi issued her decision on the city's motion for summary judgment on October 11. **Although the decision did not end the lawsuit, it constituted a major set-back in the case for Law Center clients.**

Judge Vanzi found that the City acted within the scope of its authority and could have reasonably believed that there was no feasible and prudent alternative, and/or that the other alternative road alignments presented unique problems. However, she also ruled that under the regulations, the city must undergo all possible planning to preserve and protect and minimize harm to the site.

Although she decided against the plaintiffs on the question of prudent and feasible alternatives, Judge Vanzi was troubled by the city's behavior towards the pueblos. SAGE Council has advocated for the city to engage in tribal consultation with all affected tribes, particularly before the state Cultural Properties Review Committee.

In her decision, Judge Vanzi noted that “the way in which the record has been presented leads the Court to believe there has been little action on the part of the City to substantively reach out to the Pueblos as sovereign governments, resulting in the appearance of insensitivity to the people who hold the land most sacred.”

*“The way in which the record has been presented leads the Court to believe there has been little action on the part of the City to substantively reach out to the Pueblos as sovereign governments, resulting in the appearance of insensitivity to the people who hold the land most sacred.”*

Judge Linda Vanzi

tively reach out to the Pueblos as sovereign governments, resulting in the appearance of insensitivity to the people who hold the land most sacred.” At this time, our clients are weighing their options as to their next step.

## LAW CENTER APPEALS NRC DECISIONS IN FAVOR OF URANIUM COMPANY

by Eric Jantz, Staff Attorney

The fight against Hydro Resources, Inc. (HRI) and the U.S. Nuclear Regulatory Commission (NRC) to protect the groundwater in Crownpoint and Church Rock from uranium contamination continues. On July 20, the NRC judge presiding over the case, E. Roy Hawkens, rejected all of our client’s arguments regarding HRI’s inability to prevent contamination of the Crownpoint and Church Rock water supplies. Essentially, our technical experts testified that underground stream channels in the aquifer would prevent HRI from containing its uranium-contaminated water within its property boundaries, which would result in toxics spreading into adjacent underground sources of drinking water. Additionally, our experts testified that once the groundwater is contaminated, it cannot be restored to pre-mining conditions.

Judge Hawkens found that HRI’s expert testimony, given by executives and managers in the company, was more credible than the testimony presented by our clients’ expert witnesses. Ironically, shortly before the judge issued his decision, the U.S. Geological Survey published a draft report, commissioned by the NRC, which supports our clients’ position that HRI will be unable to remediate the groundwater after mining.

The Law Center has appealed this decision and a decision regarding cultural properties to the full Commission.

## WELCOME AND FAREWELL

The Law Center is thrilled to welcome **Dr. Diana Bustamante** to our Board of Directors. Diana is the Executive Director of the Colonias Development Council (CDC), based in Las Cruces. The CDC works with residents of colonias to organize and develop plans for community-driven solutions to building infrastructure, defeating discrimination and growing economic development. Diana is a recipient of the prestigious Ford Foundation’s *Leadership for a Changing World* Award. Welcome, Diana!

The Law Center would like to express its heartfelt gratitude to Frank Herdman, who recently left our Board of Directors. Frank provided invaluable leadership for the Development Committee, and inspired us with his passion for our mission. We wish him the best of luck in his future endeavors!

## MISSION

The New Mexico Environmental Law Center is a nonprofit, public interest law firm that provides free and low-cost legal services on environmental matters throughout New Mexico. The mission of the Law Center is to protect New Mexico’s environment and communities. Founded in 1987, the Law Center works with clients -- often individuals, neighborhood associations, environmental organizations, Tribes and Pueblos -- seeking to protect the environment. The work of the Law Center is made possible by tax-deductible contributions from individuals, businesses, foundations and limited earned income.

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## THANK YOU TO OUR SPONSORS, BENEFIT COMMITTEE, VOLUNTEERS AND SUPPORTERS!

*The Law Center would like to thank all those who contributed to our November 20th event.*

*Our special thanks to Mr. Ted Turner and Mr. Wes Studi for their participation in this event.*



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\*As of November 8, 2005



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**Check out the Law Center's Biannual Report inside.**

# LAW CENTER BIANNUAL REPORT, JULY 2003 - JUNE 2005

## NOTE FROM THE PRESIDENT

I joined the Law Center's Board in 1997. That year I wrote in the Law Center's newsletter that 'many Indian tribes...don't feel they can have an effect on environmental issues and they feel they are at the mercy of the federal laws and Congress and the administration and the courts because they don't understand the process. This is where the Law Center-people who are dedicated and who know the process, who are experts and know the language-are so important to Indian tribes and other communities....The Law Center enhances the ability of the tribes to set up internal mechanisms to develop and use laws for our own protection, to protect our sacred areas, our water, our land and anything else of value to the tribe.'

Those words are as true today as the day I wrote them.

But Native American communities are not the only ones that benefit from the work of the Law Center, and the organization's impact is not localized to the communities in which the Law Center specifically works. I know that without the Law Center, our water would be more contaminated, our air would be dirtier, our state's residents would be sicker, and our ancient cultures would be more damaged. All of us who live in this beautiful, but often shabbily-treated state, benefit from the Law Center's ability to protect the world we share.

If you already support the Law Center's work, I thank you for helping this extraordinary group of people continue their work on behalf of New Mexico's communities and environment; the Law Center cannot operate without you. If you are new to the Law Center, I urge you to become a long-time supporter; I am proud to be a part of one of the oldest and most respected independent environmental organizations in New Mexico, and hope that you will be as well.



Richard Deertrack  
President of the Board of Directors  
New Mexico Environmental Law Center

## INSTITUTIONAL FUNDERS

The Law Center thanks the foundations that supported our work during our 2004 and 2005 fiscal years.

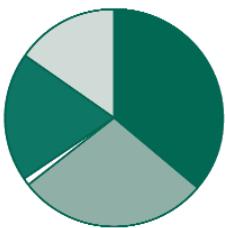
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## FINANCIALS, JULY 1, 2003 - JUNE 30, 2005

FY04 - JULY 1, 2003 - JUNE 30, 2004

### Income - \$659,507

Foundations - 75.7%  
Major Donors - 11.5%  
Membership - 5.4%  
Fees & Cost Reimbursement - 5.8%  
Special Events - 1%  
Other - .6%



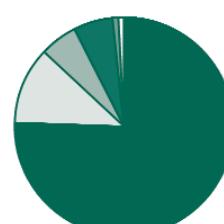
### Expenses - \$533,985

General Community Representation - 36.2%  
Native American Comm. Rep. - 28.3%  
Growth & Sprawl program - 1.2%  
Development - 19.1%  
Administration - 15.2%

FY05 - JULY 1, 2004 - JUNE 30, 2005

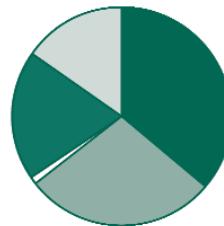
### Income - \$422,931

Foundations - 73%  
Major Donors - 10.7%  
Membership - 7.7%  
Fees & Cost Reimbursement - 3.3%  
Special Events - 3.7%  
Other - 1.5%



### Expenses - \$544,055

General Community Representation - 39.2%  
Native American Comm. Rep. - 31.5%  
Growth & Sprawl program - .7%  
Development - 13.8%  
Administration - 14.8%



Due to GAPP-accepted accounting practices, multi-year grants are recorded in the year when the Law Center is notified of the grant. For example, in fy04, the Law Center received notification of \$170,000 in grants that were recorded as income, although the actual funds were not received and expended until fy2005.

# LAW CENTER DOCKET OF MAJOR CASES, JULY 2003 - JUNE 2005

## AIR QUALITY CASE

### Appeal of two open burning/open detonation permits issued to Los Alamos National Laboratory (LANL)

**Clients:** Concerned Citizens for Nuclear Safety, Embudo Valley Environmental Monitoring Group, TEWA Women United

**Objective:** To prevent air pollution in communities surrounding LANL.

**Update:** NMED has scheduled a hearing for Spring 2006; we are currently in negotiations with NMED and LANL.

### Helena Chemical Plant air pollution\*

**Client:** Mesquite Community Action Committee

**Objective:** Mitigate unregulated air pollution in colonia of Mesquite

**Outcome:** Negotiations resulted in a fine for Helena Chemical, a stringent air quality permit, and quarterly meetings between neighbors and the company.

## HARD ROCK MINING CASES

### Molycorp molybdenum mine, Questa

**Client:** Amigos Bravos

**Objective:** To protect human health and groundwater/surface water quality from mine pollution, and to restore contaminated minelands.

**Update:** The Law Center will represent Amigos Bravos at a hearing on Molycorp's closeout plan for the subsidence area at the mine.

### Phelps Dodge Tyrone and Chino Copper Mines, Grant County\*

**Client:** Gila Resources Information Project

**Objective:** To protect human health and groundwater/surface water quality from mine pollution and to restore contaminated minelands at the nation's 4th and 5th largest open pit mines.

**Tyrone Update:** Succeeded in obtaining nearly every provision sought by our clients in the Tyrone permit.

**Chino Update:** The Law Center won a unanimous decision before the NM Court of Appeals to reopen our appeal of the Chino closure/closeout plan.

## NATIVE AMERICAN COMMUNITY CASES

### Church Rock & Crownpoint proposed uranium mines

**Clients:** Eastern Navajo Diné Against Uranium Mining (ENDAUM) and the Southwest Research and Information Center (SRIC)

**Objective:** to stop proposed *in situ* leach uranium mining in the Navajo communities of the Crownpoint-Church Rock region. This mining would likely contaminate the sole source of drinking water for 15,000 residents in the region.

**Update:** The Law Center is appealing several issues to the full Commission of the Nuclear Regulatory Commission.

### Diné Natural Resources Protection Act (DNRPA), Navajo Nation\*

**Client:** ENDAUM and SRIC

**Objective:** implementation of a law that would ban uranium mining on Navajo lands.

**Outcome:** The Navajo Nation passed the DNRPA in the spring of 2005. The law bans underground/open pit uranium mining, and places a 50 year moratorium on *in situ* leach uranium mining in Navajo Indian Country - the first law of its kind in the U.S. We anticipate that the uranium industry will appeal this law.

### New Mexico uranium groundwater standards\*

**Client:** ENDAUM

**Objective:** to lower New Mexico's uranium groundwater standard from 5,000 micrograms/liter of groundwater to 30 micrograms/liter.

**Update:** The State adopted the new health-based standard in 2004; the oil and gas industry and mining industry are appealing the decision.

### Oil and gas leasing, Counselor Chapter, Navajo Nation\*

**Client:** Counselor Chapter

**Objective:** To prevent the leasing of lands historically, culturally, religiously and environmentally important to the Navajo People for oil and gas development. The Bureau of Land Management (BLM) prepared to lease these lands without tribal consultation.

**Outcome of Counselor Chapter case:** Through the efforts of our client and the Law Center, the BLM was forced to withdraw the parcels from consideration.

### Paseo del Norte expansion, west side of Albuquerque

**Clients:** SAGE Council and several other organizations and individuals

**Objective:** To prevent the expansion of a sprawl-inducing road through a culturally-sensitive site important for its ancient petroglyphs.

**Update:** The Law Center lost the major issues of its 2005 lawsuit; its clients are determining a future course of action.

### Taos Airport expansion, Taos

**Client:** Taos Pueblo

**Objective:** to prevent the expansion of the Taos Municipal Airport

**Update:** The Pueblo is working with a technical expert to analyze the Federal Aviation Administration's draft environmental impact statement for the expansion.

### U.S. Hill mica mine, Picuris Pueblo\*

**Client:** Picuris Pueblo

**Objective:** to stop the expansion of a mica mine on Picuris aboriginal lands

**Outcome:** Through a negotiated settlement, Picuris Pueblo regained the minelands, and is currently remediating those lands in order to restore its ancient pottery tradition, which relies upon clay gathered at the site.

**Update:** The Pueblo's aboriginal title claim against the previous owner continues.

## SOLID WASTE CASES

### Southwest Landfill proposed expansion, South Valley, Albuquerque\*

**Clients:** South Valley Coalition of Neighborhood Associations (SVCNA), the SouthWest Organizing Project (SWOP)

**Objective:** Stop the expansion of the Southwest Landfill in a neighborhood already burdened with environmentally-degrading industries.

**Update:** In December 2004, the Law Center was handed a victory by the New Mexico District Court when the judge overturned the landfill's permit to expand. The company has appealed.

### Rhino Environmental Services proposed landfill, Chaparral\*

**Client:** SVCNA

**Outcome:** filed a friend of the court brief in support of a case brought by the Colonias Development Council and argued before the NM Supreme Court that community testimony and impacts on the community should be considered when the NM Environment Department makes permitting decisions about solid waste facilities. The Court ruled in our favor, and the hearing in the Chaparral case will be reopened.

### New Mexico Amendment of Solid Waste Management Regulations

**Clients:** SWOP and South Valley Coalition of Neighborhood Associations

**Objective:** To obtain environmental justice provisions in the NM Solid Waste Regulations, specifically to prevent the over-concentration of solid waste facilities in communities, and to avoid disparate impacts on low-income communities and communities of color.

**Update:** The New Mexico Environmental Improvement Board has scheduled a hearing for January 2006.

## WATER CASES

### Top of the World water rights transfer

**Clients:** Two acequia associations and individuals

**Objective:** to prevent an illegal water rights transfer to Santa Fe County from Top of the World Farms near the Colorado border.

**Update:** this case is on hold pending progress being made in the federal Aamodt water rights case.

### Groundwater Discharge Permit/LANL Radioactive Liquid Waste Facility

**Client:** Amigos Bravos

**Objective:** To prevent groundwater contamination by this facility.

**Status:** The Law Center commented on the draft permit issued by NMED; we are awaiting a decision.

\*Denotes victory in case.