



Celebrating
Seventeen years of
Environmental
Victories

Summer 2004

Green Fire Alert

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

Law Center Recognized for Work by American Bar Association

In August, the Law Center was honored by the American Bar Association (ABA) with an award that recognizes individuals, organizations, or programs that have distinguished themselves in environmental law and policy, contributing significant leadership in improving the substance, process or understanding of environmental protection and sustainable development. The award was established by the ABA's Standing Committee on Environmental Law and was co-sponsored this year by the ABA Section of Environment, Energy and Natural Resources.

As the first public-interest law firm bestowed with this accolade, the Law Center was selected for its efforts to promote environmental justice in specific communities as well as its work to foster it

"Environmental Justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies."

--U.S. Environmental Protection Agency

within state policies, laws and regulations.

"We're thrilled to be recognized as a national leader in promoting environmental justice," states Douglas Meiklejohn,

Director of the Law Center. "Few people want a landfill or a uranium mine next to their home; unfortunately, it is often communities with few financial resources and little political clout that end up with a disproportionate number of these facilities. The Law Center strives to help level the playing field for these communities, so that residents have a voice in the legal proceedings that affect them."

We have worked closely with Ms. Gauna on statewide environmental justice issues, and we are grateful for and flattered by her nomination.

Register and vote! Tuesday, November 2 is election day!

IN A NUTSHELL HERE'S WHAT WE'VE BEEN UP TO THIS YEAR...FILING AN ABORIGINAL LAND CLAIM | ACHIEVING A STATE GROUNDWATER STANDARD OF 30 MICROGRAMS OF URANIUM PER LITER OF WATER | MEETING A \$25,000 MATCH REQUIREMENT FOR A GRANT | RETURNING TO LITIGATION IN THE HRI URANIUM CASE | SETTLING WITH NORTH AMERICA'S LARGEST MEDICAL WASTE DISPOSAL GIANT | SCUTTLING PROPOSED 'ENVIRONMENTAL SACRIFICE ZONES' AT THE 5TH LARGEST OPEN-PIT MINE IN THE U.S. | PREVENTING LEASE SALES OF SACRED NAVAJO LANDS FOR OIL AND GAS DEVELOPMENT | KEEPING THE STATE'S LARGEST ELK HERD SAFE FROM GAS DRILLING SEE CASE UPDATES INSIDE & FIND MORE AT WWW.NMENVIROLAW.ORG.

Inside:

CASE UPDATES --

Picuris Pueblo land claim
Phelps Dodge copper mine closeouts
Counselor Chapter oil & gas drilling
ENDAUM uranium mining case
NM uranium groundwater standards

NEW BOARD MEMBERS --

Max Coll, Susanne Hoffman-Dooley,
Pablo Padilla, Jr., Robby Rodriguez

A BIG THANKS TO OUR MEMBERS AND OUR BUSINESS DONORS

We were able to meet the match requirement needed for a \$25,000 grant from a local foundation. Thanks to everyone who made that possible!

We have too many things going on to fit everything in this newsletter! Please see the expanded version online at

WWW.NMENVIROLAW.ORG



Sunday, October 17th
See the back page for more information!

COUNSELOR CHAPTER OIL + GAS DRILLING

In the fall of 2003, the president of Counselor Chapter learned that the Bureau of Land Management (BLM) was poised to offer up two parcels of land sacred to Navajo residents for oil and gas development. Despite the fact that the parcels are important for religious, cultural, historical and environmental reasons, the BLM did not consult with either Counselor Chapter or the Navajo Nation prior to making its decision to open these sites. To stop the permanent destruction of these lands, Counselor Chapter approached the Law Center to help it develop legal means by which to protect the sites.

In early April, the U.S. Bureau of Land Management backed off its decision to offer the parcels for oil and gas lease sale. Under threat of a formal protest of the lease sale prepared by the Law Center on behalf of Counselor Chapter and because of negotiations by Counselor Chapter, the BLM determined that it would not offer the two parcels of land for lease sale for the foreseeable future.

CROWNPOINT URANIUM PROJECT

Over the past three years, ENDAUM, a grassroots Navajo organization, has been in settlement negotiations with Hydro Resources, Inc. (HRI), the company that proposes to perform in-situ leach uranium mining in the aquifer beneath the Crownpoint-Church Rock region. While HRI has been licensed, it has not been allowed to commence mining.

In February, 2004, the Nuclear Regulatory Commission's Presiding Officer issued a 55-page decision on Section 8, which is the first proposed mining site. Admittedly, it is a mixed decision for our clients. On the positive side, the Presiding Officer ruled that there are deficiencies in the RAP that will have to be cured; unfortunately, HRI will be able to resubmit its RAP for approval. This spring, the Law Center appealed the Presiding Officer's decision to the Nuclear Regulatory Commission, which is comprised of five commissioners who are appointed by the President and confirmed by the Senate. We have just concluded briefing on the appeal and are awaiting a decision, which we believe

will be issued within the next three months.

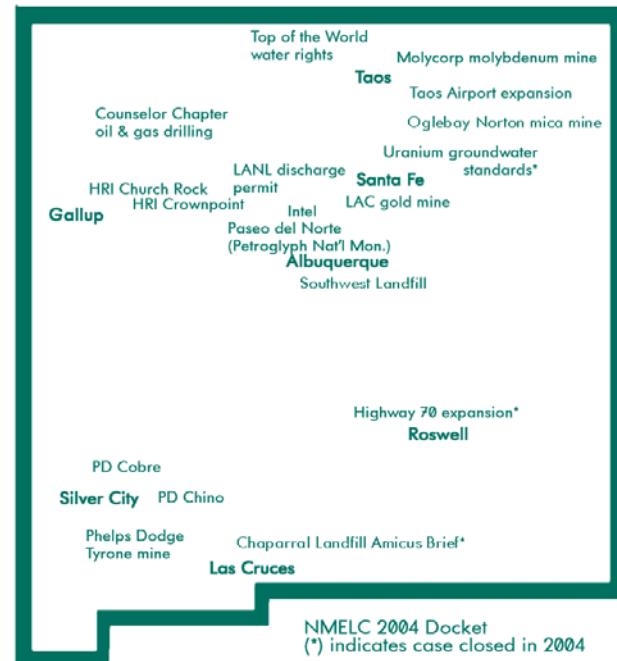
The decision on the appeal will mean two things. First, if the NRC, which has shown a heavy bias in favor of industry in the past, decides in favor of HRI, HRI's license to mine at Section 8 will be valid; however, HRI will still have to obtain an aquifer exemption and underground injection permit before it can drill. Second, we will begin Phase II litigation, in which we argue to prevent mining in the remaining three sites. Central to our arguments will be HRI's inability to protect the drinking water aquifer in which they propose to mine.

NEW MEXICO URANIUM GROUNDWATER STANDARDS

On June 7, the New Mexico Water Quality Control Commission handed the Law Center and the New Mexico Groundwater Bureau a major victory by deciding unanimously to lower New Mexico's groundwater standard for uranium to 30 micrograms per liter of water ($\mu\text{g/L}$), down from the previous 5,000 $\mu\text{g/L}$. The Law Center presented extensive evidence about the adverse health effects of uranium, a toxic heavy metal, when ingested through drinking water. This decision will protect current and future drinking water supplies throughout

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New Mexico. Several Indian tribes, including the Navajo Nation, several New Mexico counties, ranchers and ordinary citizens testified in support of lowering the standard. The New Mexico Mining Association, especially its members that engage in uranium mining,



including HRI, strongly opposed lowering the standard, arguing that it would be too expensive to comply with.

PICURIS PUEBLO MICA MINE CASE

For nearly a decade, Picuris Pueblo has pursued legal, political and public avenues to stop the expansion of, and ultimately shut down, an industrial mica mine located on the Pueblo's aboriginal lands. Especially important to the Pueblo are sacred clay pits that have been systematically obliterated by mining activities over the past ten years.

On February 20, the Pueblo filed an aboriginal title claim for the lands on which the mine is sited. Declaring that the title has never been extinguished, the Pueblo is asking that Oglebay Norton, the current mine operator, be evicted from the land, and that the current and previous operators be required to pay the Pueblo damages.

Oglebay Norton, the current operator, declared Chapter 11 bankruptcy three days after the land claim was filed; proceedings against Oglebay Norton are on hold until further notice. In the meantime, Franklin Minerals, the previous operator of the mine, has removed the case to federal court; we have filed a motion to remand to state court, arguing that the company missed its deadline to request removal. We are currently awaiting a decision on this issue. Franklin has also filed

a motion to dismiss our case, which will be decided once venue is determined. We anticipate that, barring a settlement, there will be a fairly intensive discovery period in the land claim litigation before courtroom proceedings begin.

PHELPS DODGE TYRONE CLOSEOUT CASE

Since 2001, we have represented the Gila Resources Information Project (GRIP) in administrative proceedings to determine what State-mandated closeout plans of the Chino and Tyrone copper mines will look like. GRIP's goal in participating in these proceedings is to ensure that when Phelps Dodge closes these mines, reclamation is done in a way that will protect the scarce groundwater resources upon which local communities may rely.

In April 2003, the New Mexico Environment Department issued a groundwater permit for the Tyrone mine. Phelps Dodge appealed the permit to the Water Quality Control Commission (WQCC), but

"When the results of this hearing are combined with the settlement reached with Phelps Dodge last fall, our client has obtained nearly every groundwater protection provision it had sought in the Tyrone mine closure plan."

was denied on several issues, including the exemption of the Tyrone mine from state water quality laws and the use of an open pit capture zone at the Tyrone mine which would have allowed over 1,100 acres of stockpiles to remain unreclaimed.

In its appeal, Phelps Dodge argued that NMED lacked statutory authority to impose permit conditions in water quality discharge permits. Under Phelps Dodge's theory, NMED can not impose its own conditions in any water discharge permits, and must simply accept or reject any conditions for clean-up suggested by polluters in draft permits submitted to the Department. The Law Center, on behalf of GRIP, successfully argued to the WQCC that this proposal would have led to self-regulation by polluters.

When the results of this hearing are combined with the settlement reached with Phelps Dodge last fall regarding tailing impoundments at the Tyrone mine, our client has obtained nearly every groundwater protection provision it had sought to obtain in the Tyrone closure plan.

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Welcomes & Farewells

We are happy to announce the newest Law Center board members, who bring with them a tremendous diversity of experience and perspectives.

MAX COLL served as an advocate for New Mexico's air, land and water in the New Mexico Legislature for more than thirty years. His record on the environment speaks for itself: as Chair of the House Appropriations Committee, he was instrumental in the passage of several key laws that protect New Mexicans' environment and health, including the Solid Waste Act, the Subdivision Act and the Mining Act. He also helped to pass regulations that allow the State to set emissions standards for incinerators that are more stringent than federal standards.

SUSANNE HOFFMAN-DOOLEY is an attorney who works for the Office of the State Engineer and specializes in water law and water issues. She headed the adjudication of water rights in the Lower Rio Grande basin until recently, when she took over the State Engineer's Active Water Resource Management regulations project which will put in place regulations in a number of stream systems in New Mexico to administer water uses during the drought. Since coming to New Mexico, she has been involved with the Law Center in various ways and has most recently served on the Center's fundraising committee for a number of years.

PABLO PADILLA, JR. attends UNM School of Law and expects to graduate in June 2005. He has extensive experience working on both tribal and environmental issues. Over the past ten years, he has worked in different capacities for the Pueblo of Zuni, and has also performed pro bono consultation to the Walapai Nation, interned for the Environmental Defense Fund and is currently interning with Law and Resource Planning Associates.

ROBBY RODRIGUEZ is Co-Director of SouthWest Organizing Project. He has been employed there since 1997, working to organize New Mexico communities around issues of youth criminalization, environmental, and economic and social justice. He has worked with the Law Center extensively on cases such as the Southwest Landfill expansion and those concerning Intel air quality and water rights.

The Law Center would like to express its heartfelt gratitude to **Linda Siegle** and **Verna Williamson Teller**, who have served on our board of directors for eight and seven years, respectively. We have been guided by their insight, made better through their talents, and inspired by their passion to protect the communities of New Mexico. Thank you, Linda and Verna, and we wish you well in your other endeavors!

The Law Center also sends our best wishes to former Staff Attorney **Heather Anderson** and her husband Arden as they celebrate the birth of their son, Kaleb. Heather was lead counsel on our work with Picuris Pueblo, SAGE Council, the Valley Community Preservation Commission.

Thanks to our Members!



We were able to meet the match requirement to get a \$25,000 grant from a local foundation. Thanks to everyone who made that possible!

and thanks to our Business Donors!

Business support is incredibly important to our ability to provide high-quality, low-cost services to the communities of New Mexico.



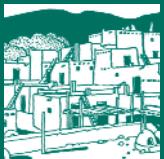
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2004 New Mexico Environmental Awards



Please join the New Mexico Environmental Law Center, host Max Coll, and award winners for the eighth annual NEW MEXICO ENVIRONMENTAL AWARDS.

WHERE: Randall Davey Audubon Center, Santa Fe

WHEN: Sunday, October 17th

TIME: Brunch begins at 11am

TICKETS: \$125 per person | Please RSVP by October 7th.

Sponsorships begin at \$35. Please call 505.989.9022, or see www.nmenvirolaw.org for more information.

Awards Benefit Committee: Catherine Joyce Coll, co-chair | Jill Cooper Udall, co-chair
Frieda and James Arth | Cindy and Alan Austin | Karen and Steve Durkovich | Kristen and Steve Flance
Barbara and Chris Gay | Dana and John Grubasic | Tony Hillerman | Athi-Mara Magadi | Ali McGraw
Stewart Udall | Carol Romero Wirth and Peter Wirth

In 2004, gifts have been made in memory of: Allison Abbot, Philip Adamo, Jr., Joseph J. Dykton, Sr., George Fix, Carl Hertel, Dr. Harry E. Klepinger, Robert Langenkamp, Donald and Betty Meiklejohn, Catherine Spielman, Hazel Strickland, and Steve Wienberger. Gifts have been made in honor of: Max Coll and Douglas Meiklejohn. Thank you to these donors and all of the donors who make our work possible.

 **New Mexico
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6pm, Hotel
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\$10/lecture

For the full schedule, see
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Our series speakers include:

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Author Stanley Crawford
Vulcanologist Kirt Kempter
Endocrinologist Rob Bernstein
Activist Pablo Padilla
Ethnobotanist Jean Brody
Advocate Lynda Taylor
to name a few...