

GreenFireReport

Fall 2011

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

Another Supreme Court win for the environment *Setting precedent that will protect New Mexicans for generations to come*

In July, the Law Center and its members scored their third victory of the year at the state Supreme Court. In a unanimous decision, the justices ruled that parties which participate in rulemakings can, by right, participate in appeals. © photo courtesy of Shelbie Knox



TOP: Attorney Bruce Frederick talks with Amigos Bravos' attorneys during a break; NMELC Attorneys Bruce Frederick (left) and Jon Block (center) with Erik Schlenker-Goodrich of the Western Environmental Law Center wait for the decisions.

The case sprang from an appeal filed by PNM and our state's other major carbon polluters to get "Rule 100" overturned. Rule 100 is the carbon cap that we and our client, New Energy Economy, won in 2010, after two years of work.

The Supreme Court's decision overturned a May ruling by the Court of Appeals to keep New Energy Economy and several other public interest groups out of PNM's appeal. We are now parties in that case.

"This is an important victory," said attorney Bruce Frederick. "If the Court of Appeals's opinion were allowed to stand, public-interest groups would be barred from defending or appealing the same regulations that they drafted and persuaded an agency to adopt. Then there would be little point in advocating for good regulations in the first place."

Ruling A Double-Edged Sword

While the ruling is a victory for New Energy Economy and others, it also can be a

double edged sword for community groups.

Our client, the Mesquite Community Action Committee, commented last year in an administrative proceeding about the negative impacts that the Helena Chemical

Company has on their neighborhoods. Earlier this year, Helena appealed its air quality permit to appellate court; we attempted to intervene, but were denied. Because the group was not an official party to the proceeding, the Supreme Court did not require the appellate court to grant us party status.

"This could be a difficult ruling for communities," says Law Center attorney Jon Block. "Concerned residents will have to

get involved in an official capacity at the beginning of a proceeding, or they may lose their rights to participate later. It's a tough thing to ask of New Mexicans who don't have expertise in how the system works and lack the funds for the lawyers and experts needed to challenge agency permitting decisions."

For more information on our greenhouse gas case, see page 2. Also see nmelc.org for updates and background information.

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Tackling the Martinez Administration...again

Commission illegally dumps Energy Conservation Code

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© photo courtesy of John DeBord

\$25,000 Challenge Grant for the Law Center

But we need to raise \$25,000 by December 31 to get it! Will you help?

– Story on page 6



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

– Aldo Leopold
A Sand County Almanac

Tackling the Martinez Administration...again

Commission illegally dumps Energy Conservation Code

In June, the New Mexico Construction Industries Commission ignored required rulemaking procedures, and summarily repealed three building codes and amended another. The codes that were repealed and amended, which included the Energy Conservation Code adopted in 2010, would have required new construction to be 20% more energy efficient than was required previously. Those codes were developed through a collaborative process that included the construction industry, public-interest groups, and regulators. In terms of conserving energy, these four codes were the best standards of their kind in the United States.

The Law Center jumped into the fray soon after the repeal. "It is not clear whether the Commissioners who voted for the changes (one Commissioner voted against the changes) and the Construction Industries Division (which proposed the changes) were not aware of the procedural requirements or simply chose to disregard them," says Douglas Meiklejohn, lead attorney on the case. He explains that the Commission did not explain its decision for the repeal; did not base its decision on technical testimony showing why the Code should be repealed; and did not offer adequate opportunities for public comment and cross-examination. The Commission also refused initially to submit to the Court as part of the record the draft minutes of the meeting at which it repealed the Code, but the Court granted our motion that the draft minutes should be included.

The Law Center filed an appeal in the State Court of Appeals on July 11, and is awaiting word how the Court will handle the case. Our clients in the case include the Southwest Energy Efficiency Project, Sundancer Creations Custom Builders, Environment New Mexico, the Sierra Club, e-Solved, Inc., and several individuals, including Sundancer owner Faren Dancer.



In late 2010, the Environmental Improvement Board (EIB) adopted regulations limiting carbon emissions by our state's largest greenhouse gas polluters. After Governor Susana Martinez came to office, she dismissed the 2010 EIB members, and installed seven new members.

This summer, PNM and other groups petitioned the new EIB to repeal the regulations. On October 2, as a result of a motion made by the Law Center, EIB members James Casciano and Gregory Fulfer recused themselves from the proceedings to consider repeal. Both men testified against the proposed regulations in 2010. (They remain on the EIB.)

Who Recused...and Who Didn't

Chairwoman Deborah Peacock—*patent attorney & former mining engineer*—negotiated in private with PNM and other opponents of the carbon regulations to temporarily shut down their court appeal of the regulations. The EIB and our opponents entered into a settlement that led directly to the industry groups petitioning the EIB to repeal the carbon regulations.

Member Jeffrey Bryce—*mechanical engineer with 10 years of experience in the oil & gas industry*—listed as his personal reference the attorney for the Independent Petroleum Association of New Mexico; that attorney is representing the Association in the hearings to repeal the carbon regulations.

Member John Volkerding—General Manager for a company that disposes of oil and gas drilling wastes.

Member James Casciano—*manager of Intel's Environmental Health and Safety program*—testified against the carbon reduction regulations in 2010. RECUSED

Member Gregory Fulfer—*rancher, realtor and Lea County Commissioner*—testified against the carbon reduction regulations and voted against it as a Lea County Commissioner in 2010. RECUSED

Law Center asks judge to stop illegal tactics by State

Surrendered documents show NMED manager catered to mining company

A new lawsuit aims to stop the New Mexico Environment Department (NMED) and Hydro Resources, Inc. from illegally expediting uranium mining in the Navajo community of Church Rock.

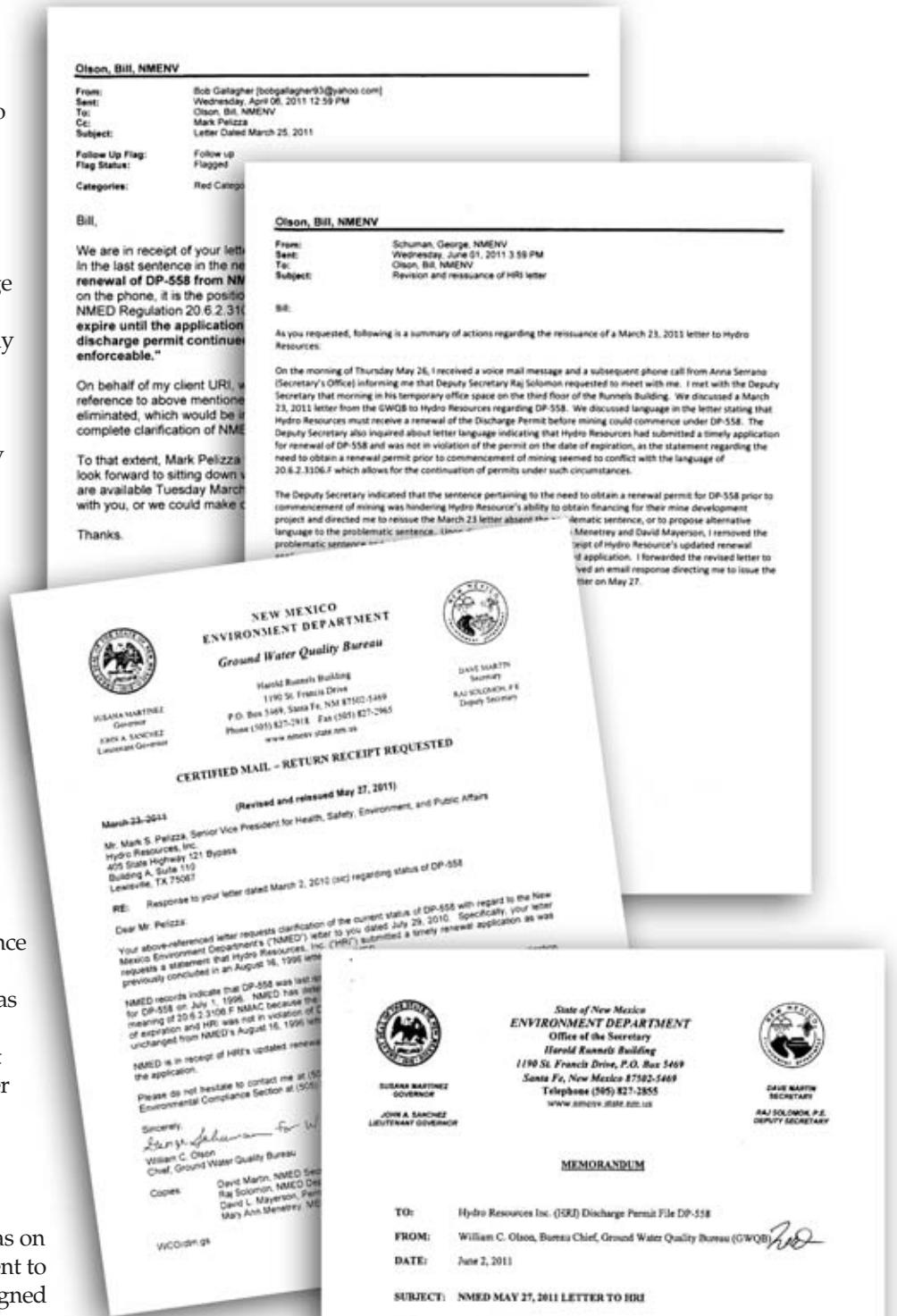
The lawsuit asks a District Court judge to determine that the agency has no authority to consider the company's groundwater discharge permit as valid. The permit, which was issued in 1996, expired in 2003; we assert the company needs to undertake a new permitting process.

The suit also asks the judge to rule that NMED cannot allow Hydro Resources to discharge into ground-water unless the agency issues a new, valid permit. Disturbing aspects of this case became apparent this spring, after lead counsel Eric Jantz filed an Inspection of Public Records Act request.

The Smoking Emails, From the Top

- Email from Hydro Resources' lobbyist complaining about a letter sent March 23 by Groundwater Chief Bill Olsen to Hydro Resources. The letter mandated that, "Hydro Resources must receive a [renewal of its discharge permit] before mining can commence."
- An email from NMED regulator George Schuman documenting that, "Deputy Secretary [Solomon] indicated that the sentence pertaining to the need to obtain a renewal permit prior to commencement of mining was hindering Hydro Resource's ability to obtain financing for their mine development project and directed me to reissue the March 23 letter absent the problematic sentence..."
- The revised letter, issued without the "problematic sentence."
- Memo from Chief Olsen stating, "While I was on vacation, a revised and reissued letter was sent to Hydro Resources under my signature and signed on my behalf without my knowledge, review or approval."

[Ed. Note: Deputy Secretary Raj Solomon was fired from NMED in July for undisclosed reasons.]



Mount Taylor: sacred mountain under siege

Uranium companies versus native peoples in fight for holy place

by Elizabeth Cook-Romero

© photo courtesy of Juana Colón



Mount Taylor / Kaweshtima / Tsibina / Dewankwin Kyaba:chu Yalanne/Tsoodzil / Tsiiipyia

On published atlases of New Mexico, the stratovolcano that forms the highest peak of the San Mateo range is called Mt. Taylor. But, the mountain has other, more ancient names. The people of Acoma and some members of the Laguna Pueblo call it Kaweshtima. Other Laguna people call it Tsibina. In the Zuni Pueblo it is Dewankwin Kyaba:chu Yalanne. The Navajo know it as Tsoodzil. Among the Hopi, it is Tsiiipyia.

Each of these tribes has a unique creation narratives, and Mt. Taylor figures prominently in all. For the region's tribes, the mountain is a breathing entity, embodying a spiritual essence. It is home to immortal beings and a place of pilgrimage and prayer. Its springs and seeps are sacred.

The Players

In October of 2009, Roca Honda Resources, LLC applied for a permit to open a uranium mine on the Mt. Taylor District of the Cibola National Forest. Roca Honda is owned by Strathmore Minerals of Canada, and Sumitomo Corporation of Japan.

The Multicultural Alliance for a Safe Environment [MASE], represented by the Law Center, is fighting to stop

desecration of the sacred mountain and to establish a process that will protect the environment and the health of future generations. The Coalition brings together citizens of Acoma Pueblo, Laguna Pueblos and the Navajo Nation, as well as Anglo groups of former uranium miners and local residents who have been impacted by Cold War-era uranium contamination.

MASE and the Law Center are currently awaiting the issuance of a Draft Environmental Impact Statement by the U.S. Forest Service, which manages a portion of land where the mine is proposed. The next step will entail proceedings for state-level permits. Because this is the first mining permit application for uranium since the passage of the New Mexico Mining Act in 1993, it will set the standards for all future conventional uranium mining permits.

"For whatever reason, the mining company and the regulators are going through the process too quickly," said Nadine Padilla, MASE's Coordinator. "It's not a well defined process. They're just making it up as they go. I think it needs to be slowed down so the public is offered more opportunities to be heard."

Throwing Away Water

The mining permit, if approved, would allow the company to remove up to 11.5 million gallons of water a day from the mountain's aquifer. "Dewatering" would continue for 16 years, or longer, and could discharge more than 60 billion gallons of water into San Mateo Creek.

Even if the mine treats the water to a high standard through decades of dewatering, radioactive and non-radioactive pollutants left in the creek by previous uranium mines will likely become waterborne. The effluent could also impact the Homestake Tailings Superfund site, just 12 miles downstream, and already a major source of water contamination in the region.

According to Eric Jantz, lead counsel on this case, the mine application fails to analyze how the removal of billion gallons of water from the aquifer will affect sacred springs and seeps. It ignores the cumulative effects of 60 years of uranium mining in the region. It doesn't consider how moving billions of gallons of water through a polluted landscape will affect residents of the Grants Mineral Belt or future generations of Native Americans who will depend on local ground water.

"I think it's time we start looking at other forms of economic development in the Grants Mineral Belt," Padilla said. "What we'll gain from this mine doesn't outweigh the cultural loss to our people."

See nmclc.org/gfr for an extended version of this piece that includes the controversial story of Mount Taylor's Traditional Cultural Properties designation under Governor Richardson – and the revocation of that designation by a Lea County judge during Governor Martinez's first months in office.

Digital Journey Brings Impacts into Focus

Film to feature impacts that Law Center and its supporters have had across state

© photo courtesy of Juana Colón

Filmmaker Debra Anderson films wind turbines in southern New Mexico.



Bruce Frederick speaks at the Pie Town Community Center to residents fighting the San Augustin water grab.

In late July, Sebia Hawkins (Law Center Development Director) and I traveled with Emmy-winning filmmakers Debra Anderson (*Split Estate*) and Doug Crawford. For six days, we visited clients, asking them to talk about their experiences with the New Mexico Environmental Law Center. This film will share their stories, and share the impact that the Law Center and its members have had on communities throughout the state.

First Stop, Church Rock

In Church Rock, we met with Larry J. King. He lives on his family's ranch.



Client Larry J. King points to a proposed uranium mine outside his home in Church Rock.

surrounded by red rock cliffs and rolling grass hills. A former uranium miner, he is now on the board of Eastern Navajo Diné Against Uranium Mining (ENDAUM),

working to prevent new uranium mining in his community.

As Debra filmed him, he pointed to one proposed minesite, a stone's throw from his front door.

I asked Larry to tell us how the Law Center has helped their 17-year long fight. He said that if it wasn't for the Law Center, he was sure there would have been uranium mining happening across the road from his home years ago.

Next Stop, Crownpoint

We met with Christine Smith, who is also a member of ENDAUM and lives in Crownpoint. There, she raised her family; sings in her church next door and can look out the back window of her home to see a proposed uranium mill site.

She talked about learning the risks of uranium mining and gaining confidence so that she could educate her community. And she said without the help of the Law Center, she has no doubt the uranium would've been in her backyard a long time ago.

Onward to Pie Town

We left Navajo Country and drove south on N.M. 602 through lush green valleys towards Pie Town, where we met clients who are challenging a 17 billion gallon-



The Pio-O-Neer restaurant in Pie Town is a great place to hold meetings.

per-year water grab (with a quick break for pie, of course!)

Our clients, mostly ranchers and farmers, expressed their gratitude at having a lawyer to confer with. San Augustin Coalition Treasurer Eileen Dodds said the Law Center's assistance was essential in helping the community join together in unified opposition to an attempt by an Italian billionaire to take the region's water.

Reflections at Home

What struck me during these interviews was how the Law Center amplified the strength of our clients. They spoke of the fear, anger and frustration that occurred when they first heard of the threat coming to their home. Then they spoke of how the Law Center provided them with tools to face the threat – when no one else would. See a preview of the film at nmelc.org/christine.

© photo courtesy of Debra Anderson/Red Rock Pictures

© photos courtesy of Debra Anderson/Red Rock Pictures



NMLEC Director Doug Meiklejohn accepts Piñon Award alongside NMLEC Board Member David Henderson and Board President Stuart Bluestone

Law Center Wins “Unsung Hero” Prize

We were thrilled to be named the winner of the first **Quiet Inspiration Award**. The Award, presented by the Santa Fe Community Foundation on October 4, is given to an “Un-sung Hero” organization whose hallmark is to work quietly and respectfully among a wide range of people in the community.

“The Center’s nomination struck the Awards Committee as the epitome of behind-the-scenes dedication,” says Brian Byrnes, the Foundation’s President and CEO. Coincidentally, twenty-one years ago, the Law Center was the recipient of the Foundation’s first Jack Kenney Award for Outstanding Community Service in the Environment.

Our hearty thanks to the Foundation, to our member-volunteer Joan West for nominating the Law Center, and to all of our members who make our work possible!

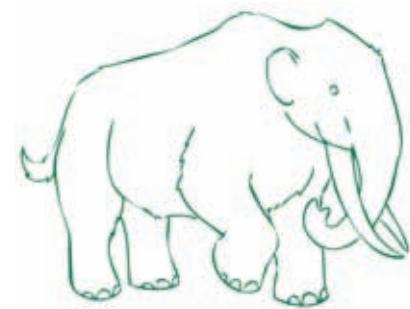
Your gift is **ALWAYS** important to the Law Center, but between now and December 31, it's **doubly** important!

The EMA Foundation will match, dollar-for-dollar, gifts made to the Law Center between now and the end of the year – **up to \$25,000!**

Thank you for your support!

One easy way to give: use our automatic monthly giving option, and your entire 12 month pledge will be counted towards the match!

Just click the “Donate” button at www.nmelm.org



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*Perspectives on Natural Sciences
and the Environment of
New Mexico and the West.*

Dec. 5 – The Pleistocene Extinction of Megafauna / *Dr. Todd Surovell*

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Dr. Ian Miller

We hope we'll see you there!

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6pm | \$12 at the door

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every kilowatt produced

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powered by the sun

Murray Brott, managing owner of A-1 Self Storage and Law Center *GREEN BUSINESS PARTNER*, announced that in August of 2011, the business converted its 16 facilities to solar power. The Law Center congratulates A-1 on its commitment to protect our climate by converting to renewable energy – and hopes it can lead other businesses in the same direction. The conversion was designed to power the electronic gates, lights, apartments and offices, and was designed by Daybreak Solar, headed by Michael Stewart.

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