

OP-ED: Douglas Meiklejohn / The New Mexico Environmental Law Center's Top Ten Environmental Issues to Watch in 2017

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Trump and Martínez: A Double Whammy for New Mexico's Environment and Communities

Environmentally hostile administrations will be making decisions about New Mexico's communities and resources this year. Coming to the White House is a president who likely will set back federal environmental protections by years, if not decades. In New Mexico, a fading gubernatorial administration is taking its last shots at remaining state-level environmental protections. Yet these problems will likely mobilize even more New Mexicans to protect the air, water and lands that are so important to us. Together with the state's advocacy organizations and public-interest attorneys, we can defend the state we love. But we'll need to work together to make it happen.

Here are 10 issues that the attorneys at the nonprofit New Mexico Environmental Law Center will have their eyes on as 2017 begins.

1 The Trump Administration

Trump need look no further than New Mexico to find a blueprint for how to dismantle environmental protections and decimate the agencies tasked with protecting the environment. It took Gov. Susana Martínez less than a year to undermine much of the New Mexico Environment Department's (NMED's) effectiveness: She appointed leaders intent on reversing the mission of the agency; shuffled managers out of their fields of expertise, and created a climate of fear and recrimination—all of which led to an exodus of many experienced regulators. As early as her first day in office, Martínez installed ideologues as decision-makers and began attacking environmental regulations and policies. Through tough response from public interest groups, her success has been spotty; however, we anticipate no change in her administration's anti-environment trajectory in 2017.

President-elect Trump already is following this scheme. His list of nominees is a who's-who of climate-change deniers and drill-baby-drillers. Once they are installed, we anticipate that Trump will target Obama executive orders and regulations such as the Waters of the U.S. Rule. Then he will work with Congress to circumvent landmark environmental laws like the Clean Water Act and Clean Air Act by financially starving the agencies tasked with enforcing those laws. Next up will be a U.S. Supreme Court appointment who will keep the court majority firmly in far-right ideological territory. We expect the country's highest court to hand down decisions that will damage our environment—and the ability of activists and attorneys to undertake fights for the public interest—for years to come.

2 Climate Change

We live in a state where the impacts of climate change become more apparent every year: less snow. More heat. Record-setting wildfires. Bark beetles. And that's just the start.

In addition to pushing a fossil-fuel agenda, Trump likely will be successful in overturning many of the regulatory strides made by the Obama administration toward addressing climate change, including the Clean Power Plan and the Methane Rule. Those which he cannot overturn, he may seek to defund, such as provisions mandated by the United States' participation in the 2015 Paris climate change agreement (which requires a four-year withdrawal process). While efforts in states like California will ensure that some progress is made in our country toward addressing this global crisis, New Mexico will remain part of the problem, instead of part of the solution, in the short-term.

3 “Energy Independence”

Will the Trump administration lead to a return of drilling in our state in 2017? Perhaps. Given campaign promises and Trump's environmental nominees, we anticipate a wholesale rollback of regulations. Oil and gas drilling is an inherently dirty business. The EPA recently confirmed longstanding public fears that fracking contaminates groundwater. Drilling and pipelines also pollute air, contaminate soil, leak greenhouse gases into the atmosphere, threaten sacred places (like the lands surrounding Chaco Canyon) and poison wildlife and livestock. Public lands, state lands and private lands with split estate (mineral rights belonging to someone other than the surface owner) could all be affected by a Trump-inspired drilling boom. But will a potential boom last? Trump may be used to getting his way, but he may soon discover that he cannot will global markets into defying market forces for long.

We expect that if there is an expansion of coal mining in New Mexico, it will be short-lived. While it is still a significant energy source in the state, progress made toward retiring coal-burning plants, the economy of natural gas, and a move by global financiers away from coal-related infrastructure makes it unlikely that the coal industry will rebound significantly.

Finally, Trump is signaling that he is looking to prop up America's aging nuclear power infrastructure. Whether or not this has any impact on New Mexico's uranium industry remains to be seen; however, it is unlikely that, without massive investment in new nuclear plants, the near-term global market will recover enough to resuscitate the mining industry.

4 Public Lands Designations

Increased drilling and mining are not the only threats to our public lands under Trump. Our public lands allies are gearing up for a fight to preserve Río Grande del Norte and Organ Mountains-Desert Peaks National Monuments, federal sites that have become significant economic engines in their respective regions. They will have a tough fight on their hands not only to preserve these special places, but to preserve the very idea of permanent national monuments in the future. With the nomination of Ryan Zinke as secretary of the Interior Department, New Mexico Land Commissioner Aubrey Dunn may be foiled in his bid to grab lands from the federal government, but Trump's unpredictability means that our allies will be constantly on their guard.

Federal Facilities

Outside of hundreds of unreclaimed uranium mines, some of the most toxic and radioactive waste in New Mexico has been leaked into our soil and water by federal facilities, including Los Alamos National Laboratory (LANL) and Kirtland Air Force Base—sites of tremendously toxic and/or radioactive contamination. Other federal facilities with ongoing cleanups in our state include Sandia National Laboratory and the Waste Isolation Pilot Project (WIPP), which is seeking to store high-level radioactive waste on its surface. New Mexico also has 20 contaminated sites on the Superfund list, including several large abandoned uranium mines and mills in northwestern New Mexico. At all these sites, cleanup has been slow and funding has been low.

The president-elect's picks to head the agencies that are involved with cleanup do not inspire confidence that Trump's government will do what is necessary to protect New Mexicans and our resources from its messes.

- Rick Perry, former Texas governor, has been tapped to head up the Department of Energy; if he is confirmed, he will soon be in charge of LANL and WIPP. The Texas Tribune stated in 2011, "Perry has been particularly hostile to environmental concerns—that is when he's showing any interest at all." At LANL, a toxic plume of chromium is migrating towards the Río Grande and the drinking water infiltration wells for the City of Santa Fe.
- The Justice Department, which is currently negotiating with NMELC and its clients over the cleanup of the massive Kirtland jet fuel spill, could soon be headed by Jeff Sessions, who made pro-environment votes just 7 percent of the time in his career as a U.S. senator. Kirtland leaked an estimated 24 million gallons of jet fuel into Albuquerque's drinking water aquifer; a plume of carcinogenic ethyl dibromide is moving toward wells that deliver 20 percent of the city's drinking water.
- New Mexicans living near Superfund sites reside near major contamination that affects their health, air quality, water quality and quality of life. They will not have an ally in Scott Pruitt, who has been nominated to lead the EPA, and who has made his reputation trying to cripple the very agency he may lead.

6 Surface Water Quality

In 2017, we will closely be monitoring what happens to surface waters in New Mexico. Our rivers, streams and lakes are regulated by the EPA. With more lax oversight, fewer regulators and probably more private contractors, it is possible that we will see more Gold King mine-type disasters in our future. More likely, however, is that our surface waters will experience a more insidious, widespread degradation of quality. So if you fish, watch waterfowl, rely upon an acequia, or just appreciate rivers, prepare for your surface water to be a little—or a lot—worse next year.

7 Groundwater Quality

More than 80 percent of New Mexicans get their water from underground aquifers, which are regulated by the state. 2017 will see a major state Supreme Court ruling on the "Copper Rule," a Martínez regulation that allows the copper industry to pollute groundwater and could allow other industries to follow suit if it is upheld. Martínez-administration agencies also continue to work to gut existing regulations as well. A case in point: born from a "hit list" developed by NMED staffers are proposed amendments to the state's groundwater and surface water quality regulations. The amendments would include several illegal provisions that would eliminate public participation and notice in permitting proceedings. The hearing on these amendments will be held in spring 2017, and it will be a chance for

New Mexicans who depend on groundwater to voice our displeasure at the Martínez administration's efforts to curtail water protections.

8 Water Grabs

Throughout the U.S., private companies are acquiring water rights and water systems in the realization that clean water is one investment that will pay off. Thus far, New Mexico has escaped many of these problems due to public-focused water laws. But even these laws may be in jeopardy under the Martínez administration. In west-central New Mexico, an Italian billionaire who owns Augustín Plains Ranch, LLC is attempting to privatize more than 17 billion gallons of water a year— more than half the annual consumption of Albuquerque in 2014. Although the ranch's scheme was defeated in 2012, it has been reopened by current State Engineer Tom Blaine, who is likely to grant the ranch a new hearing on the illegal proposal.

Will 2017 deliver a windfall for the ranch? While water rights fall within state jurisdiction, will the ranch benefit from Trump's plan for massive public-private partnerships? Will its owners reap massive profits while sucking Datil dry and dumping major infrastructure costs on New Mexico taxpayers? (If you think this is unlikely, take a look at Santolina, a new 90,000-resident city proposed for western Albuquerque. Santolina just persuaded Bernalillo County commissioners to approve \$1 billion in taxpayer subsidies for this Phoenix-like development.)

9 Environmental Justice

The formal concept of “environmental justice” (EJ)—that every person has a right to healthy, sustainable environments in which to live, work, and play—was born in part in New Mexico when groups (including NMELC client/ally, the SouthWest Organizing Project, or SWOP) penned a letter to national environmental organizations in 1990, calling out racism on the part of national environmental groups. Twenty-six years later, the grassroots EJ movement is strong, but community advocates remain marginalized by decision-makers at the local, state and federal levels. While the Obama administration addressed EJ on paper, it did little in the way of making concrete strides toward mitigating environmental harm in communities of color. And while the EPA opened an investigation into a civil rights complaint filed by SWOP and NMELC over discriminatory air quality permitting by Albuquerque and Bernalillo County, it has done little else in the way of policing state and local jurisdictions that failed to address inequities. But it's about to get worse.

Given racist rhetoric from the campaign trail and Trump's nomination of an attorney general who once was denied a federal judgeship because of racism, we can only anticipate that even the lackluster federal EJ enforcement will melt away entirely for the next four years, as it has at the local and state level under the administrations of Gov. Martínez and Albuquerque Mayor Richard Berry. That makes these fights even more critical at the local level, where vigorous community advocacy can still sway outcomes.

10 The nearly-last hurrah at the Roundhouse

2017 will include Gov. Martínez's last 60-day legislative session (2018 will have a 30-day session that is limited to fiscal matters and bills she endorses). We anticipate that the upcoming session could be larded with last-ditch efforts by industry lobbyists to check off client wish lists: Bills prohibiting local jurisdictions from regulating oil and gas are

perennial favorites that may arise again this year. Or perhaps not: Progressive Democrats at the helm of both houses of the state Legislature may dampen industry efforts in New Mexico in 2017. No matter what happens, your voice is important—calls to legislators do make a difference.

What can you do to take a stand for New Mexico's environment?

Be loud. Urge elected officials at all levels to do what is right by our state's communities and environment. Find personalized contact information (using your zip code) using this handy tool hosted by the League of Women Voters: <http://hq-salsa.wiredforchange.com/o/5950/getLocal.jsp>

Be present. Decisions that affect us all are made in administrative proceedings and legislative committee hearings. Your participation and/or thoughtful comments are important to the process. Check with your favorite environmental organizations to be notified about proceedings that will impact places and issues that you care about.

Support local enviro groups. Speaking of advocacy organizations, New Mexico's homegrown environmental groups and local chapters of national groups are doing the work that protects our local resources and communities. They can do a lot with your support.

Keep informed. New Mexico has some great investigative reporters and citizen reporters covering environmental and political beats. Keep reading the *Green Fire Times* and support these outlets financially so they can keep doing their work.

Write. Decision-makers read letters to the editor and op-eds. If you are passionate about an issue, write to your local paper(s), and get your friends to write as well. If you're new to this, here's a great guide by the Union of Concerned Scientists: <http://www.ucsusa.org/action/writing-an-lte.html#.WFL8yrlrKJA>

You can find out more about the Law Center at its website, www.nmelc.org.

Douglas Meiklejohn is founder and executive director of the New Mexico Environmental Law Center. He has spent more than 40 years as an attorney working for the public interest, with a focus on representing New Mexicans whose communities are impacted by environmental injustice.

Newsbite

The New Mexico Environmental Law Center

In 2017, the Law Center celebrates 30 years of fighting for the well-being of New Mexico communities and environment. The Law Center is a nonprofit law firm that provides free and low-cost legal representation to New Mexicans throughout the state; its clients advocate for environmental protection, public health, and community quality-of-life. The Law Center does not accept government funding and is supported through donations from individuals, local companies and foundations. Major cases on the Law Center's docket include:

- Working with Diné (Navajo), Pueblo and Anglo communities to prevent new uranium mining that would have adverse health and environmental impacts and advocating for the cleanup of Cold War-era mining contamination.
- Advocating for the cleanup of the Kirtland jet fuel spill, estimated to be twice the size of the Exxon Valdez oil spill. The plume is moving towards Albuquerque's most productive drinking water wells.
- Opposing efforts to approve the 90,000-resident Santolina development near western Albuquerque.
- Fighting the Augustín Plains Ranch water grab, which if approved, could lead to wide-scale privatization of water in New Mexico.
- Advocating for meaningful cleanup at Los Alamos National Laboratory. NMELC and its clients are advocating for the cleanup of Cold War-era contamination, including a plume of carcinogenic chromium that is moving toward the Río Grande and drinking water supplies (including Santa Fe's).
- Working at the Roundhouse to advocate for adoption of environmentally sound legislation and to prevent the adoption of laws that would be harmful to New Mexico's communities or its natural resources.