



GreenFire report

New Mexico Environmental Law Center



A monthly snapshot of how your support makes a difference for New Mexico.

January 2019



Thank You for All Your Support in 2018!

Thanks to all of you for helping protect New Mexico's communities and our precious air, land, and water.

2018 held both disappointment and real success and hope.

Copper Rule - Early in the year, the NM Supreme Court decided in favor of the Copper Rule, allowing the creation of groundwater "sacrifice zones" beneath all new copper mines in the state in violation of the state Water Quality Act. However, we now have a new Governor and are hopeful that her administration and the Legislature will address this critical problem. The first copper mine permit under the Copper Rule is the proposed Copper Flat mine. The mine's permit application is in limbo now (see more below in Case Updates) but would set a precedent for future copper mining permits.



Chino Copper Mine

San Agustin Basin - In August, the State Engineer denied an application to mine 17 billion gallons of groundwater annually from the San Agustin Basin. The applicant has appealed that decision to the 7th Judicial District Court and we will continue to support our clients in resisting this monumental water grab.

Mt. Taylor Mine - The NM Mining Commission voted narrowly to support the Mining and Minerals Division (MMD) Director's approval of a "return to active" permit for the Mt. Taylor uranium mine, even though the mine will not produce any marketable uranium during the term of the permit, in violation of the the NM Mining Act's purpose. Without the active status permit, the mine would complete the maximum allowed 20 years in standby status at the end of 2019 and would have to close and begin cleanup. Returning to active status allows the mine to evade cleanup. We are supporting our clients' appeal of the permit approval.



Mt. Taylor

Kirtland Air Force Base Toxic Plume - We have been working with our clients to determine the best path forward to force faster and more effective cleanup of the jet fuel leak and toxic plume caused by Kirtland Air Force Base (KAFB). The Albuquerque Bernalillo County Water Utility Authority (ABCWUA) publicly refuted both the KAFB status report on the cleanup and NMED's support of that report. We are thankful for their efforts to get effective and rapid cleanup of the plume, which threatens the Utility's best-producing well field.

Los Alamos National Laboratory - A lot happened with Los Alamos National Laboratory in 2018. In July, a US District Court judge allowed our client's lawsuit challenging the Lab's failure to implement the 2005 Consent Order on cleanup to move forward. Our clients' 2017 success challenging NMED's failure to allow a public hearing on the groundwater discharge permit (DP-1793) for the chromium plume monitoring program led to a hearing in 2018; a decision is pending. Our clients also had a hearing on the groundwater discharge permit (DP-1132) for the Radioactive Liquid Waste Treatment Facility (RLWTF). There will not be an actual discharge to the groundwater from the facility. Documents show that the Lab and NMED were pursuing a groundwater discharge permit in order to avoid having to meet the more stringent requirements under a Hazardous Waste permit. Our clients have petitioned the Water Quality Control Commission (which will have new members under the new administration) to review the permit.



Communities for Clean Water Representatives

Santolina - The proposed 90,000 resident Santolina development now has multiple cases in the 2nd Judicial District Court and the NM Court of Appeals involving the Level A Zone Map Amendment, the Level A Master Plan and Level A Development Agreement, and the Level B.1 Master Plan and Level B.1 Development Agreement. Reports emerged that it could cost as much as \$600 million for the water and wastewater facilities needed for Santolina, which are supposed to be developed at “no net cost” to ABCWUA customers. There was also a welcome acknowledgment by ABCWUA Chief Operating Officer John Stomp that Santolina’s development would significantly change the character of the South Valley – a claim our clients have been making for several years.

South Valley - Albuquerque’s South Valley was another intense area of activity in 2018. After a federal court ordered the Environmental Protection Agency (EPA) to finally address several outstanding Title VI complaints (civil rights cases that are essentially environmental justice claims of disproportionate exposure to toxic pollution), the EPA interpreted this as allowing it to close the cases. This included a case in the South Valley in which our client was entering negotiations with the City and EPA should have allowed them to continue. Other cases include a new air quality permit application for an asphalt batching facility, our long-running case against the air quality permit application for the Honstein Oil Storage Facility, and the long fight against the Sunport Extension / Woodward Road Improvements project being pushed by Bernalillo County. Mayor Keller sent a letter to the Federal Highway Administration saying the City was withdrawing support for the project, most of which would be within the City limits, but the County is still insisting on building the project, which would increase traffic in the area and bring even more heavy industry and manufacturing into the neighborhood.



South Valley Oil Facility

Groundwater Discharge Variance Rule - Finally, there is an extremely important case involving amendment of the Variance Rule for groundwater discharges, proposed by the NM Environment Department and approved by the Water Quality Control Commission. The new regulation allows a variance, which allows facilities to avoid compliance with regulations, to be granted for “the life of the facility”, rather than being limited to five years. This change eliminates public notice and an opportunity for a public hearing every five years.

These and other cases our staff attorneys worked on in 2018 are complex and time-consuming. Our clients depend on the Law Center being there with them for the long haul, year after year. On their behalf, all of us at the Law Center thank you for being there for us year after year.

New Administration - New Opportunities

There were high expectations for who Governor Michelle Lujan Grisham would appoint to key Cabinet positions overseeing the environment. Early in her transition process, she announced that she was appointing Sarah Cottrell Propst as Secretary of Energy minerals and Natural Resources. EMNRD is a very diverse department, encompassing mining, oil and gas, state parks, and state forests. Propst served as Governor Bill Richardson’s energy and environment advisor and then as deputy secretary of the New Mexico Environment Department (NMED). More recently, she worked as executive director of the Interwest Energy Alliance, a nonprofit trade association of western states renewable energy companies. In an [interview with the New Mexico Political Report](#) Propst said that the Governor will be focused on how to promote clean energy growth in New Mexico (see the [article on this in NM in Depth](#)). Propst said that her Department will work with NMED, the State Land Office, and other stakeholders to craft a methane emissions reduction plan. Propst also stressed the need to make sure that the Oil Conservation Division (winner of the Law Center’s Toxic Turkey Award in 2018) can deal with the boom in oil and gas operations in the state. That means having staff and resources to correctly process drilling permit applications, while also ensuring compliance with state laws. One early sign: on January 8, the newly-staffed Oil Conservation Commission (joint winner of the 2018 Toxic Turkey Award) suspended the Martinez administration approval of a request by Hilcorp to double the well density on its oil and gas holdings in northwest New Mexico and set a new hearing for May in order to allow for more public participation and to ensure protection of the environment and public health.



Sarah Cottrell Propst, Secretary, Energy Minerals and Natural Resources

The Governor's appointment as Environment Department Secretary is James Kenney, who has worked for around 20 years with EPA, especially on energy-environment nexus issues under the Obama administration, eventually coming to New Mexico as oil and gas advisor and continuing under the Trump administration. Kenney was also **interviewed by the NMPR**. Kenney stressed that he wanted to base the Department's actions on "four tenets": to use science as the basis for decisions, to see environmental protection as an opportunity to innovate, to work collaboratively, and to ensure that decisions are enforceable. He said that based on conversations with the Governor, he believes that NMED will "go big on environmental issues." Echoing Propst, Kenney mentioned the need to deal with climate change, including the methane hotspot in the Four Corners area in New Mexico. He said that the administration should revisit the Richardson administration's climate change initiatives and determine what is still applicable, what new technology can do, and what other states are doing now.

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Case Updates

Copper Flat Mine – The mine needs a mining permit from the Mining and Minerals Division of the Energy Minerals and Natural Resources Department (EMNRD) and a groundwater discharge permit (DP-1840) from the New Mexico Environment Department (NMED). The Bureau of Land Management (BLM) also needs to review the financial assurance submittal from NM Copper Corporation. In December, NMED issued the groundwater discharge permit. Since then, the mine permit has stalled. On Dec. 22, the federal government shut down, including BLM, so its review is delayed. NMED has not issued its environmental compliance determination, which typically would follow the groundwater discharge permit. With new Cabinet secretaries and other staff at both

EMNRD and NMED, it is unknown what will happen with the mine's permits. *Staff attorney: Charles de Saillan.*

Los Alamos National Laboratory Chromium Monitoring Permit – We filed our closing arguments and Findings of Fact and Conclusions of Law on NMED's groundwater discharge permit DP-1793 on January 11. This permit allows Los Alamos National Laboratory to land apply treated groundwater produced as part of the Lab's monitoring and remediation of toxic chemicals, including a chromium plume, in the drinking water aquifer under the Lab. *Staff attorney: Charles de Saillan.*

Santolina – We just filed in the 2nd Judicial District Court our reply to Bernalillo County and Western Albuquerque Land Holding's (WALH's) responses to our Level B.1 Statement of Appellate Reasons. We also filed our Notice of Appeal/Alternative Petition for Writ of Certiorari of the Board of County Commissioner's approval of the Level B.1 Development Agreement, also in the 2nd Judicial District Court. In December, we represented our clients at the Albuquerque Bernalillo County Water Utility Authority (ABCWUA) Board's meeting and presentation on the ABCWUA's "Serviceability Letter", which is the ABCWUA's proposal for how water and sewer infrastructure requirements for Santolina can be met. *Staff attorney: Jaimie Park.*



Thank you!





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