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# New Mexico Governor Martinez Accused of "Wholesale Disregard of the Law"

Tuesday, 06 May 2014 09:15

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Susana Martinez, Governor of New Mexico, giving a speech on August 29, 2012 at the Republican National Convention. (Photo: **PBS NewsHour**)

Tracy Hughes was a career employee in the New Mexico Environment Department who was just three months away from being eligible for retirement when she was fired by an appointee of New Mexico Governor Susana Martinez.

"It was clear from the campaign [of right-wing Tea Party Gov. Martinez] I was going to be gone," Hughes told Truthout. "The environment agency was clearly going to be targeted to clear out employees and prepare a new agenda for the Martinez administration."

The Martinez administration calls itself "business friendly," but Hughes, along with environmental lawyers, activists, authors, renewable energy advocates, and current and former state employees told Truthout that Gov. Martinez is little more than a lobbyist for big oil and gas, the copper and dairy industries, and other

of difference



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environmentally destructive industries that decide to set up shop in New Mexico.

"The Martinez administration will make sure that environmental protection does not get in the way of industry being able to do business in New Mexico," Hughes, who now works for an **energy and environmental law firm**, added. As an example, she pointed to the "copper rule," legislation the Martinez administration passed that **allows copper mines to pollute the groundwater on their property**. "I worked on [opposing] the copper rule, and what I saw happen on the copper rule was that it was wholesale disregard of the law by the Martinez administration," Hughes said.

These strong words from a long-term former state employee might sound alarmist, yet they are but the tip of a giant iceberg of discontent towards a radically industry-friendly state governor with **national political ambitions** who has a reputation for slander, hypocrisy and trying to rewrite laws in her favor.

Despite that reputation, however, Martinez is being groomed as a possible Republican presidential candidate. Later this month a **lavish fundraiser** is being held for her re-election campaign in New Mexico, the likes of House Speaker John Boehner, House Majority Leader Eric Cantor, Senate Minority Leader Mitch McConnell, and John McCain attending.

Martinez, according to the sources Truthout has interviewed, actively promulgates rules, issues permits and makes decisions that allow the mining, oil and gas, and dairy industries to destroy the environment with their myriad forms of pollution.

## "An Environmental Demon"

**"Martinez is an environmental demon with this huge industrial**

**"There is nowhere else like this where industry just writes the rules," Patrick Davis, the Executive Director of ProgressNow, a nonprofit progressive**

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agenda."

advocacy group that works to hold elected officials and corporations accountable in New Mexico, told Truthout of Martinez, who took office in January 2011. "What the Martinez administration is doing is so far out there that many people in the state just can't believe it. They don't see that Martinez is an environmental demon with this huge industrial agenda."

William Olson is a hydrologist and geologist who worked for 25 years for the state of New Mexico, including as the Environment Department's chief of the Ground Water Quality Bureau as well as with the Water Quality Control Commission for 13 years.

"The Martinez administration has overturned the application of groundwater-quality laws from how they'd always been," Olson, who retired just after Martinez took power but continues to work as a contractor, told Truthout. "They allowed industry to pollute their property, as long as it doesn't leave their property, and this sets the precedent for all other industry in the state to do the same thing."

New Mexico, one of the poorest and most drought-stricken states in the US, is already being dramatically impacted by climate change. Author and northern New Mexico resident William deBuys, who has written about the Southwest's environment for more than 30 years, is deeply troubled by Martinez's actions.

"The Martinez administration behaves like a corporation focused on quarterly numbers," deBuys, author of seven books, including [A Great Aridness: Climate Change and the Future of the American Southwest](#), told Truthout. "Given the state's long-term prospects under the warming and drying influence of climate change, New Mexico should be placing high priority on building its water resilience, including protection of its groundwater. Unfortunately, the Martinez gang doesn't understand

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this, or doesn't care. Susanna's national aspirations and the hunger of her cronies for immediate profits trump everything."

The group **Conservation Voters of New Mexico** (CVNM) keeps a nonpartisan environmental scorecard about the conservation voting records of the **governor** and **legislature** of the state.

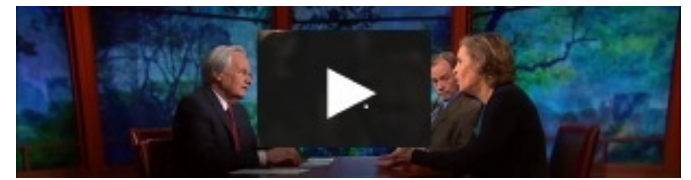
"The 2013 session was yet another mile marker in the Martinez administration's ongoing assault on the laws that preserve the air, land, and water on which all New Mexicans depend," the group's **website states**. "Despite another year of severe drought and catastrophic wildfires, these issues didn't warrant a single mention in the Governor's State of the State Address on the opening day of the session. Instead, her attention was focused on tax breaks for corporations - big incentives for some of the very companies whose pollution comes at a distressing cost to New Mexican families."

The Martinez administration has an abysmal record when it comes to protecting the environment, and has not supported one measure to protect clean air and water. According to CVNM:

Members of her administration routinely - and quite aggressively - opposed measures designed to protect our water supply. One example is **Rep. Emily Kane's HB 259**, which would have ensured that New Mexico could recover damages from polluters who contaminate the state's groundwater.

Another example is **HB 429**, sponsored by **Rep. Georgene Louis**, which would have helped individuals being harmed by unlawful pollution, such as hazardous

**Members of her administration routinely - and quite aggressively - opposed measures designed to protect our water supply.**



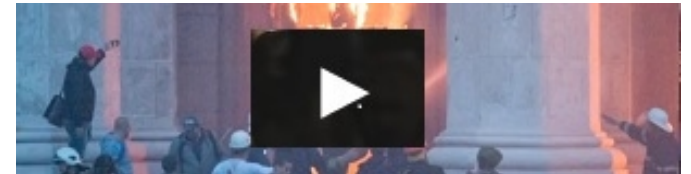
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waste threatening the water supply of their domestic wells. Yet another was **Rep. Gail Chasey's HB 286**, which would have toughened the penalties for oil and gas companies who pollute our water - increasing fines from the current levels, which were set way back in 1935. None of these bills passed the House of Representatives. Had Gov. Martinez decided to make clean water a priority, there is little doubt that any of these bills could have passed with her support. Instead, she chose to oppose them all - denying New Mexicans crucial water protections in a time of crisis.

It was clear from the beginning that when Martinez took the reins of governorship, her assault on the environment was a priority.

Mariel Nanasi, the Executive Director of the **New Energy Economy** (NEE), in December 2010 succeeded in convincing the state of New Mexico Environmental Improvement Board to adopt NEE's rules to reduce greenhouse gas emissions by three percent per year from 2010 levels, with a goal to reduce emissions 25 percent below 1990 levels by 2020. This was known as the Carbon Rule.

However, one of Martinez' campaign promises was to overturn the Carbon Rule, and one of the first things she did upon taking office was to attempt to subvert her own state laws in order to stop this plan to begin reducing her state's carbon emissions.

The new environmental regulations delineated by the Carbon Rule were required by law to be published in the New Mexico Register, to alert the state's residents of the new rules. Martinez, however, did not like the rules and ordered that they not be made public.

"She chose to tell a bureaucrat not to do what they were required to do, which was to publish the rules," Nanasi explained. "The administrative function was to simply let people know what the rules are."

In response, NEE filed a lawsuit against the governor's action in the New Mexico Supreme Court in January 2011. The court granted NEE's request for an expedited hearing and ruled that the Martinez administration had deliberately and illegally prevented the lawful publication of final administrative rules as codified in state law.

"We were surprised at how quickly her administration has apparently violated the Constitution in pursuit of an ideological agenda," Nanasi **told Truthout** at that time.

Martinez has continued her anti-environment campaign since then.

**"Governor Martinez has vetoed any and everything that has to do with solar power."**

"Governor Martinez has vetoed any and everything that has to do with solar power," Nanasi, whose group is working to bring more solar power to New Mexicans, said. She believes Martinez has undermined the Air Control Act, in addition to inserting pro-oil and gas advocates on the New

Mexico Environment Improvement Board, and calls Martinez' record with environmental regulations "disdainful."

It is important to note that the kinds of pollution the Martinez's administration is promulgating, such as groundwater contamination and pollution that results from giving active coal plants a pass to pollute the air, among others, are all major public health issues.

## **Headhunting**

Another of Martinez's early actions was to fire the entire New Mexico Water Quality Control Commission (WQCC) and install a group of industry subordinates, who proceeded to eliminate the existing program and adopt a new program that was literally drafted by the mining industry. Martinez's systematic removal of regulators



and staff with expertise and commitment to environmental protection is well known in New Mexico.

A current state employee with intimate knowledge of the Martinez administration's strategy of pushing through the Copper Rule, as well as the inner workings of the Environment Department, spoke with Truthout on condition of anonymity because of fear of retribution from the administration.

The source said the Martinez administration replaced the entire Water Quality Control Commission (WQCC) when it took power, because "the mining companies perceived the folks she let go as being friendly to the environmental organizations that were part of the hearing process. Her intent was to replace them and bring in industry-friendly members on the commission to vote in favor of her agenda items, like the copper rule."

According to this source, the Martinez administration is "very friendly to the copper, dairy, and oil and gas industries," and said that as state workers working to safeguard groundwater quality were pushed out, "the industry basically stepped in and could do anything they wanted, and basically wrote the rules for themselves," and that this is "still going on today."

The source told of the exodus of people who were working to protect New Mexico's environment, once Martinez was in power. "We saw some of our best environmental lawyers quitting, one after another," the source said. "They quit because of the people they were working under. We could see a great unhappiness spreading rapidly. Some quit immediately; others quit due to pressure applied to them over time, which included false accusations of them doing things they hadn't done. That was the first set of people leaving, then it spread downwards. I had staff leaving because they couldn't stand the working environment anymore, because they felt they couldn't protect the environment, which was their job, without suffering direct



reprisals. I started losing staff, and then they came after me, so I personally experienced it. I would occasionally question policies, and would be reprimanded for this. I was moved to another program to basically get me out of the way."

Olson spoke of this type of control as well. Being a long-term state employee in the Environment Department as well as a water-quality expert, hydrologist and geologist, he worked with the state to try to find a middle-ground approach that would work for everyone on the Copper Rule.

"But after nine months of this work, right at the end, the department made a political move and adopted the Copper Industry's rules en masse," Olson told Truthout. "The rules weren't changed for 36 years, but then they were in order to allow the Copper Industry to pollute, and it went against all the work I'd done for the state. I was working for the New Mexico Environment Department at this point, but then I terminated my contract. After watching what they [the Martinez administration] were doing, they weren't being truthful, so I came back as a private citizen and testified against them."

The anonymous state employee told Truthout this draconian methodology was and continues to be used with other industries that back Martinez.

"Martinez brought in **Ryan Flynn** to become the cabinet secretary of the Environment Department, which regulates the dairy and mining industries, and we saw [an] immediate change towards the agencies that were doing the regulating of the dairy and mining," the source said.

"Because of Flynn, all of industry basically stepped in and could do anything they wanted, and basically wrote the rules for

**"All of industry basically stepped in and could do anything they wanted, and basically wrote the rules for themselves."**

themselves."

This is exactly what Olson has witnessed. "Martinez has done the same with the oil and gas pit rules, and I was involved in the rule-making that developed the rules as they stood until her administration came in," he said. "Then industry came back with her administration, proposing their own rules, gutting portions of the rule, and it's happening with oil and gas, and dairy, and they come in and present these changes and the department doesn't present any witnesses of their own during the hearings. This is unheard of."

### **Flynn vs. Environmental Lawyers**

This February, Flynn **told** the state's Senate Rules Committee that he needed to "make it possible for industry to operate" in New Mexico.

But a statement like that coming from a cabinet secretary of a state environmental department shouldn't come as a surprise, given that prior to this nomination, Flynn worked at the **Modrall Sperling** law firm, which represents several of New Mexico's biggest polluting corporations, including **Freeport-McMoRan**, one of the largest international mining companies in the world.

Douglas Meiklejohn, executive director of the nonprofit New Mexico Environmental Law Center, joined other conservation groups in publicly opposing Flynn's confirmation before the Senate Rules Committee.

**"I've never seen an administration as determinedly anti-environment as this**

**"I started the New Mexico Environmental Law Center in 1987, and I've never seen an administration as determinedly anti-environment as this administration," Meiklejohn told Truthout.**

**administration."**

In fact, the deregulation of protections against groundwater contamination by the dairy industry will mean that where there are large concentrations of dairy cows in small spaces, there will be large amounts of animal waste that concentrate in on-site lagoons that often leak and contaminate groundwater.

Meiklejohn is also intimately familiar with Flynn's machinations. During Flynn's confirmation hearings, when he was accused of letting copper companies "rewrite the [Copper Rule] regulations," Flynn responded, "I disagree with that suggestion."

However, Meiklejohn pointed out that documents show that the attorneys who represent Freeport McMoRan wrote the bulk of the "Statement of Reasons" adopted by the Water Quality Control Commission, which relied on it to justify passage when it adopted the Copper Rule. New Mexico's Environment Department (NMED) submitted the statement as its own, until Meiklejohn's Environmental Law Center provided the proof that it was actually written by Freeport's lawyers.

Flynn was also challenged with allegations that he sought to intimidate William Olson in order to prevent him from testifying against the Copper Rule at the public hearing. Flynn responded, "No threats were made. No intimidation occurred.... [T]he Environment Department did not seek to strike Mr. Olson's testimony or in any way prevent him from participating in the proceeding."

Contradicting Flynn's comments, the fact is that Olson, who was head of the department's Groundwater Bureau from 2004-2010, was tapped by the agency after his retirement to lead the Copper Rule development process. According to a NMELC statement:

After a year at its helm, he [Ryan Flynn] wrangled a compromise draft Rule out of regulators, public interest groups, and the mining industry. He ended his contract after NMED's upper management added Freeport McMoRan's pollution

clauses to the draft Rule; he then announced that he would oppose the adoption of the Rule. Olson asserts that Flynn threatened him with legal action to keep him from testifying. When Olson didn't back down, NMED attorneys filed a motion intended to discredit Olson. The Hearing Officer not only denied the motion, but struck it from the record.

As a result of this, NMELC staff attorney Bruce Frederick told Truthout, "New Mexico is a predictor of what would happen if you have a Tea Party governor in charge. Flynn is a good example. He was a tax attorney with no environmental experience, and now he's head of an agency that is in charge of environmental policy. So you have people in charge of an agency who have no competence or interest in the agency's mission. Martinez appoints these people to assure that industry has its way."

The Martinez administration violated the "separation of powers" doctrine of the New Mexico Constitution by illegally preventing the greenhouse gas regulations and several other environmental regulations from being published after the regulations were officially adopted. "Law, whether a statute or a regulation, only becomes enforceable 'law' after notice is published," Frederick told Truthout. "Publication of a duly adopted law is supposed to be what lawyers call a 'non-discretionary ministerial act.' The Executive has no power to interfere with the publication of law. This sounds esoteric and nerdy, but it's actually a very underhanded and insidious attack on democracy."

Flynn, when asked if he is proud of the Copper Rule, responded, "Absolutely. I believe this rule is the most protective rule for copper mining in the country. And we've compared this rule against all the other jurisdictions where copper mining occurs."

His statement contradicts the fact that the ruling was perceived as so destructive to



New Mexico's environment, and thus so indefensible, that not one NMED technical staff member testified in favor of the Copper Rule during the proceeding. In addition, a senior staff member of the Ground Water Quality Bureau repeated several times in an internal email obtained by the NMELC that the proposed rule had even violated the Water Quality Act.

All of this is bad news for New Mexico's environment, and Frederick got to the heart of the matter when Truthout asked him for a summary of the situation.

"Now Freeport [mining corporation] has unprecedented influence over the Environment Department," he explained. "Now many people now call the Environment Department the "Freeport department" because of that heavy influence."

Thus, industry has literally written the laws it must follow, which are then "enforced" by the state.

"The point of all this was that this was a kangaroo court in which Freeport controlled and dominated the process, as

they had the most to gain from this," Frederick said. "Freeport determined what the rule would be, and what the justification for that rule would be, and it did that by acting through the Environment Department."

While it is the state's Environment Department that enforces the regulations, it is the WQCC that actually adopts the regulations. That commission, according to Frederick, "is composed of 14 people who are in agencies Martinez has control over in cabinet posts, and she appoints four of them directly. She has influence over the entire commission. What happens is industry is now able to write its own ticket."

**Industry has literally written the laws it must follow, which are then "enforced" by the state.**

Truthout contacted Jim Winchester, the public information officer for the state's Environmental Department, requesting interviews with both him and Flynn, but he failed to respond to repeated requests.

## **Slander, Lying and the Ongoing Assault on the Environment**

Recently exposed explosive audio tapes of Gov. Martinez and her staff crafting a plan to hide their position on teacher pay made big news.

In public, Martinez has portrayed herself as a friend of teachers. However, she **told campaign staffers** she would hide her opinions on teachers during the campaign, because she didn't like teachers who "already don't work," referring to summer breaks. She then **laughed** with her chief campaign strategist, Jay McCleskey, about ways to avoid accusations that she hid her true anti-teacher feelings during the campaign.

Another tape **exposed** her laughing and playing along as an aide called Ben Lujan (former Speaker of the House and father of NM Congressman Ben Ray Lujan) a "little retard," and later she slammed a former Democratic opponent, Diane Denish, **calling her** "that little bitch."

Martinez, who is the first Latina governor in both New Mexico and the United States, was also exposed belittling a Latino business group as well as a women's jobs program. She **dismissed** the role of the "Hispano Chamber of Culture, or I don't know what the hell it was," (Hispano Chamber of Commerce) as well as summarily dismissing the Commission on the Status of Women, a group that helps women learn job skills and advocates for policies that promote equality for women in the workplace. She **laughed** and agreed when her campaign manager, Jay McCleskey, made a sexist comment suggesting one of their male campaign staffers wanted to run that commission to "study more women."

But these were far from the first time that internal conversations have given the public a look inside Martinez's inner circle.

## Public records requests uncovered administration emails showing the new administration letting industry lobbyists write an executive order limiting regulation of the industry.

- **January 2011:** Public records requests **uncovered** administration emails showing the new administration letting industry lobbyists write an executive order limiting regulation of the industry.
- **August 2012:** Martinez's campaign lawyer and inner circle advisor Pat Rogers was forced to resign his high-paying attorney/lobbyist job after he **sent a racist email** containing a rant against the state's Native American community and suggesting that meeting with Native people was disrespectful to the memory of noted "Indian-killer" Col. George Armstrong Custer.
- **Throughout 2012:** Various batches of emails between administration staffers **surfaced**, showing a deliberate attempt to create a network of secret "non-public" emails where state business was conducted out of the public eye. Various email accounts, including many set up under the domain of the governor's SuperPAC, SusanaPAC, showed the governor's personal staff directing cabinet officials to take official actions.
- **September 2012:** Keith Gardner, Martinez's chief-of-staff, came under fire

after a secret recording of a conversation with a Roswell man was **released**. Gardner, a Roswell native, blasted his community, saying leaving was the best decision he ever made and calling the former Democratic Senate president pro tem "a cock-sucking son of a bitch."

- **October 2012:** Campaign emails between staff were **leaked** by a former campaign staffer. They included lobbyists and donors asking for special access to the administration for their special interests, and chronicled administration staffers quarterbacking the awarding of a business contract to campaign donors.
- **May 2013:** Former Martinez appointee Rick May **went public** with documents outlining the administration's plan to limit one of the state's largest public investment agencies in a way that favored private banks and investors. "Don't listen to what they say. Watch what they do," May told the *Santa Fe Reporter*.
- **April 2, 2014:** A **leaked administration email** showed the administration directing public records staff to stonewall requests for information from elected legislators and their staff, instead sending those requests through back channels to the governor's chief of staff for review.

Despite a promise to be one of the most transparent administrations in New Mexico state history, the Martinez administration has been anything but. The administration has repeatedly rewritten and reinterpreted the rules on public records and transparency to give itself greater control, leading to lawsuits and tens of thousands of New Mexican taxpayer dollars spent to oppose transparency.

**The administration has repeatedly rewritten and reinterpreted the rules on public records and transparency to give itself greater control.**



In September 2013, the *Santa Fe Reporter* **sued** Gov. Martinez for Public Records Act violations after the administration refused to respond to the newspaper's requests for information. The following month, the Martinez administration's former New Mexico Finance Authority director **filed suit** against the administration for failing to release public records he'd requested the previous April. Two months later, in December 2013, the Associated Press **sued** Gov. Martinez for her refusal to release her public travel records.

Yet, given the crisis spawned from the perfect storm of poverty and growing impacts of anthropogenic climate disruption in New Mexico, the catastrophic impacts Susana Martinez and her administration are having far outweigh the Machiavellian nature of her political methods.

Olson, who continues working to do what he can to try to effect some kind of positive change in the realm of New Mexico's myriad environmental problems, remains angered by the administration's actions.

"It's unconscionable," he said. "It's the loss of resources. I was a Bureau Chief, and we regulated the mines and worked deals to recognize the economics with the mines, but it was always understood they would always have to clean up any messes they made. But now all that is thrown by the wayside: they can pollute and they'll never have to clean it up and you're looking at a total loss of resources."

To Olson, the future looks bleak as long as Martinez and her appointees remain in charge.

**"They aren't even trying to protect our resources."**

"They aren't even trying to protect our resources," he said. "Industry is given a blank check now. Her administration does not encourage any kind of responsible ways

to protect our resources. Instead they are blanket polluting them."

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## DAHR JAMAIL

Dahr Jamail, a Truthout staff reporter, is the author of *The Will to Resist: Soldiers Who Refuse to Fight in Iraq and Afghanistan*, (Haymarket Books, 2009), and *Beyond the Green Zone: Dispatches From an Unembedded Journalist in Occupied Iraq*, (Haymarket Books, 2007). Jamail reported from Iraq for more than a year, as well as from Lebanon, Syria, Jordan and Turkey over the last ten years, and has won the Martha Gellhorn Award for Investigative Journalism, among other awards.

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