

AMIGOS BRAVOS



Spring 2009
Bulletin

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The Raffle for the Río is our single largest annual fundraiser.
The success of the Raffle depends on you!
Drawing to be held July 16, 2009

-see raffle coupon on page 4

Victory in Holding Polluters Accountable

On February 25, 2009, Amigos Bravos won a huge victory that paves the way for new federal rules that will require hardrock and phosphate mine operators, metal finishers, wood treatment facilities, and other industries to post bonds covering the cost of potential future cleanups.

Without financial assurance regulations, it has been easy, time after time, for mine operators to walk away from sites contaminated with cyanide, lead, arsenic, mercury, and other toxins. The undisputed evidence before the Court demonstrated that such financial assurance requirements will result in better environmental protection and more thorough and timely cleanups.

U.S. District Judge William Alsup, based in San Francisco, stated, "(b)y not promulgating financial assurance requirements, EPA (Environmental Protection Agency) has allowed companies that otherwise might not have been able to operate and produce hazardous waste to potentially shift hazardous waste to taxpayers."

In November 2007, Amigos Bravos joined with the Idaho Conservation League, the Sierra Club, and Great Basin Mine Watch in taking action to make it harder for mining and other polluting industries to skip out on costly cleanups by declaring bankruptcy. The public interest law firm Earthjustice represented us in this groundbreaking federal lawsuit that will assure that polluters pay for cleanup of hazardous waste sites.

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Mining Commission Rulemaking – One step forward, more needed!

In an effort to further control impacts from mining exploration operations, the Gila Resources Information Project and Amigos Bravos filed a Notice of Intent to provide technical testimony at the February 17, 2009 Mining Commission meeting. We were represented by Eric Jantz of the New Mexico Environmental Law Center. Dr. Richard Abitz, a consultant geologist specializing in the movement of hazardous and radioactive elements, was scheduled to testify on our behalf.

We went into the hearing prepared to present testimony on **five proposed revisions to rules affecting so-called “minimal impact” exploration activities** aimed at protecting groundwater:

1. Require the use of uranium-free bentonite (a form of clay) when plugging abandoned wells. The current practice of using cement for this purpose has been shown to be inadequate. Cement breaks down over time and allows oxygen and water to come into contact with the ore body, which can result in the pollution of groundwater.
2. Mandate that, when an exploratory well comes into contact with an aquifer, the mining operator collect water samples to determine background water quality. Emerging evidence shows that even exploratory wells penetrating groundwater can have detrimental impacts on water quality over time. The rationale for our proposal is that if the State waits to get background water quality data until a new mine is in place, the water in the aquifer will already have been altered.
3. Require that all exploration operations be required to have financial assurance in place to assure cleanup once the exploration has been concluded. Exploration operations often require building roads, drill pads, and waste pits, and result in altering the landscape. Having cleanup money in place prior to beginning exploration assures that the operator can pay for restoration, rather than abandon the site and leave it for the tax-payer to pick up the cleanup costs.
4. Require that all financial assurance estimates be based on the costs of work being done by third party contractors, not the mining company’s estimate.
5. Add a “bad actor” provision to the regulations. This provision would provide the Director of Mining and Minerals Division (MMD) with the essential tool of being able to deny a permit to an operator who is in violation of another permit, or has not met its regulatory obligations in good faith anywhere in the US.

Unfortunately, two of our proposals (#2 & #5) were opposed by MMD, despite the fact that we discussed

them with MMD prior to the hearing and were assured that the agency would not oppose our testimony! MMD was then joined in opposition by industry and the New Mexico Environment Department and the Commission voted to deny a hearing on those two issues.

Our other proposals did not get a hearing due to time constraints, but the hearing was continued on March 25, 2009, and we were able to finally put on our testimony.

Commissioners present were:

- Chairman Jon Goldstein, New Mexico Environment Department
- John Bemis, State Land Office
- Doug Bland, Bureau of Geology
- Andy Core, Office of the State Engineer
- Matthew Wunder, Department of Game and Fish representative
- LeRoy Dugger, Industry representative

Important Commission decisions include:

1. The Commission rejected MMD’s proposal to limit minimal impact operations to no more than 20 holes. However, Bland moved to accept MMD’s proposal to limit minimal impact operations to 1000 cubic yards of excavated material, and that passed unanimously. This will have a positive effect on making sure minimal impact proposals are in fact minimal impact.
2. The Commission rejected MMD’s proposal that a minimal or regular exploration permit application include cultural resources that are eligible for inclusion on the National or State Register of Historic Places. Bland moved to reject this language and Dugger made the second. The motion carried 4-2 (Wunder and Core opposed). The main argument against adopting this language was that nomination of

-continued on page 4

Amigos Bravos 2009 Raffle for the Río

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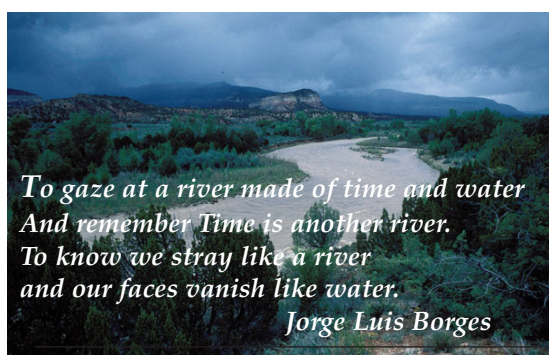
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Amigos Bravos' Capital Reserve Fund is our hedge against hard times, ensuring that Amigos Bravos can survive cash flow shortages in the annual operating budget. It can only be accessed for certain purposes, such as meeting payroll or for emergency capital outlay. Any use of money from the Fund requires approval from the Board of Directors. Thanks to the many generous contributions of our members, the interest-bearing account now has a balance of \$113,880. *Please consider making a contribution to the Capital Reserve Fund.*

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Mining Commission —continued from page 2

properties “eligible” for inclusion on the national or state registers was too “subjective”.

3. The Commission adopted, 4-2 (Dugger and Bemis opposed) MMD’s proposed requirement that minimal impact operations have financial assurances. However, the Commission rejected, on a tie vote (Dugger, Bemis and Core voting against) MMD’s requirement that new minimal impact mining operations of less than 2 acres be required to have a financial assurance.

4. The Commission adopted, 4-2 (Dugger and Bemis opposed) the provision requiring all permit applicants – excluding existing mining operations as defined under the NM Mining Act – without new units to provide financial assurance based on the estimates of 3rd party contractors. Bland made the motion to approve, seconded by Wunder. Since this applies to full-blown mining operations in addition to exploration operations, this has far reaching implications.

5. The Commission adopted, unanimously, MMD’s proposal for plugging and abandonment. The Commission did not vote on our proposal.

In the near future, Amigos Bravos and GRIP will consider strategies to further strengthen the regulations to include a mandate to collect baseline water quality data in all permits and to adopt a “bad actor” provision. Amigos Bravos thanks the New Mexico Environmental Law Center for having provided its services *pro bono*. ❖

LANL Update

There have been two recent developments in Amigos Bravos’ efforts to get Los Alamos National Laboratory (LANL) to deal with its toxic legacy.

In mid-March, Amigos Bravos and its partners filed an appeal of the Environmental Protection Agency’s (EPA) Individual Stormwater Permit (ISP) for LANL. The appeal is with the Environmental Appeals Board of the EPA. Amigos Bravos was joined by Concerned Citizens for Nuclear Safety, Embudo Valley Environmental Monitoring Group, Honor Our Pueblo Existence, J. Gilbert Sanchez, and Tewa Women United. We participated throughout the permit application process, but believe the final ISP fails to meet Clean Water Act (CWA) requirements.

We argue that a compliance schedule is not allowed under the CWA. The compliance schedule – giving LANL up to seven years to meet ISP requirements – is not appropriate because LANL has failed to comply with previous permits for the past 17 years. We also argue that the ISP won’t meet CWA standards because it allows LANL to establish “Site Monitoring Areas” that are too large to monitor effectively, do not include all pollutants, and has inadequate sampling to assess relevant Best Management Practices (BMPs).

On March 30, the Federal District Court held a scheduling hearing on our lawsuit against LANL management, Los Alamos National Security (LANS), and the Department of Energy.

Albuquerque Youth Water Monitoring Project

Amigos Bravos started its Youth Water Monitoring Project this March. The project works primarily with two schools in Albuquerque’s South Valley. The project is funded through the US Fish & Wildlife Service. Bernalillo County Environmental Health also provides some funding and assistance. The School on Wheels, an alternative high school, has about a dozen students participating. Río Grande High School is using the project to help redesign their entire curriculum and had over 200 students at the two sites near the campus.

Students, Amigos Bravos staff, and some South Valley *promotores* (community health workers) are collecting field measurements and water samples that are analyzed for nutrients, dissolved solids, pharmaceuticals, semi-volatile organics, metals, radiologicals, *E. coli*, and petroleum products. The sampling - at eight sites - will occur three times during the diversion season, from March through October. We will report on the early analysis results in our next issue. For questions about the project, contact Lucy Sanchez at lsanchez@amigosbravos.org or (505) 688-5458. ❖



Fernando Ortega - So. Valley Partners, Maceo Martinet - US Fish & Wildlife, Ariel Gonzales - the School on Wheels, student and teacher Bill Gorum - Rio Grande High School

A scheduling hearing is meant to get agreement between the parties and the Court on when different phases of the litigation will occur. The timeline and sequencing of the different phases of the process will run well into 2010, with a non-jury trial set to begin in June.

Our lawyers, the Western Environmental Law Center, had also filed a motion asking the judge to separate (“bifurcate”) “liability” – determining if LANL has been violating the Clean Water Act – from “remedy” – determining what LANL has to do assuming it is found liable. This would help assure that the very complex issues involved in liability would be more clearly addressed. However, lawyers for LANS and the DOE argued that separating the two phases would put a burden on them (LANL has a \$2 billion annual budget) because they would have to bring their experts in twice. The judge decided that LANL shouldn’t be so burdened and said the two issues could be treated together in the litigation, making our lawyers’ work more difficult. ❖

2009 Legislature Report

The 2009 legislative session was marked by another sustained effort to limit the ability of state agencies to perform their public trust responsibilities to regulate. At least seven pieces of legislation (introduced by legislators Ulibarri, Nuñez, MH Garcia, and Berry) would have impacted agencies' ability to function effectively and flexibly by imposing additional reporting requirements, time limits on permit processes, or legislative review of agency decisions. Encouragingly, all died in committee. A number of pieces of legislation targeted issues we have been involved with for many years.

ONRW Process - House Joint Memorial 49 (Rodella, D, Dist 41) requests the Governor to cancel or suspend Outstanding National Resource Water (ONRW) designations. In April 2008, the Governor initiated ONRW designation, which would provide the strongest protection, for surface waters in national forest wilderness and inventoried roadless areas. We know there is concern that ONRW status might impact land grants, acequias, and current activities, but ONRW does not affect property rights nor exclude any current activity and may allow new or expanded activities as long as they don't degrade water quality. The memorial passed the House 53-10 and the Senate 29-8.

WQCC Limits - Senate Bill 206 (Harden, R, Dist 7) limits the rulemaking power of the Water Quality Control Commission by removing the WQCC's ability to deal with "site-specific" permits, permit deficiencies, and other matters. SB206 contradicts the State Court of Appeals, which ruled in 2006 that the WQCC could impose reasonable permit conditions not specifically authorized by the State Water Quality Act. The Energy Minerals & Natural Resources Department concluded that SB206 would "preclude permit conditions other than those relating to monitoring and reporting". The bill passed the Senate 22-19 and the House 56-7. The Governor signed it on April 7th.

Uranium Mining - The Multi-Cultural Alliance for a Safe Environment (Amigos Bravos is an allied organization) began the session expecting the worst regarding uranium bills. Of eight pieces of legislation, MASE came away with \$150,000 for the inventory of abandoned mines (SB224, Lovejoy, D, Dist 22; approved in HB2). Rep. Madalena's (D, Dist 65) uranium legacy cleanup bill, HB749, passed the House 65-0, but died in the Senate. SJM15 (Lovejoy) – urging federal cleanup funds – passed. Rep. Lundstrom's (D, Dist 9) memorial (HJM6) for a uranium mining task force, though problematic, passed the House 31-28; she is currently discussing membership with MASE members.

Agricultural Water Quality - Stuart Ingle (R, Dist 27) introduced SB479, which would transfer authority to issue water-related permits for agriculture from the Environment Department to the Department of Agriculture. It would affect primarily concentrated animal feedlot operations (CAFOs). Permitting fees that currently pay about 20% of the cost of issuing and overseeing permits would be

transferred to the Department of Agriculture. The legislature failed to enact the same thing in 1997, so the NM Environment Department established its own agriculture section with expertise to deal with dairy and livestock issues. The bill died in committee.

Pit Rule - In early 2008, Amigos Bravos helped gain new pit rules for the oil & gas industry under the Oil Conservation Division (OCD). Industry responded by attacking the OCD's ability to effectively regulate. That effort failed, but this year Rep. Heaton (D, Dist 55) introduced HB108, and Sen. Leavell (R, Dist 41) introduced SB17. HB108 would force the OCD to allow oil and gas producers "reasonable degradation" of water quality standards, allow wastes to migrate to even the purest water sources, and prohibit the OCD from requiring protective measures until after pollution had already exceeded water quality standards. SB17 was confusing and unclear, but one interpretation was that it would transfer oil & gas jurisdiction exclusively to the OCD so that counties, municipalities, and other state agencies would not have any authority or input on oil & gas permits, applications, and operations. Combined with HB108, it would leave oil & gas operations with almost no regulation. Both bills died in committee. However, Governor Richardson proposed six changes that would weaken the 2008 pit rules. OCD hearings on those changes started on April 2nd, but have been postponed without explanation.

"Ethics" for Non-Profits - 2009 appeared to be the year the Legislature would finally pass ethics reform. While there was, finally, some limited ethics reform, the debate was overshadowed by House and Senate leadership calls for "ethics reform for non-profits". This was an attempt to harass and impede the ability of the non-profit sector to advocate on important issues and educate the public about voting records and campaign contributions. The Supreme Court has laid out clear guidelines regarding advocacy and education speech by non-profits. Unfortunately, New Mexico's current Campaign Reporting Act is likely unconstitutional because it is too vague. The proposed legislative requirements would have made the situation even worse. No person or group in this country should be required to register and report to government as a condition of speaking out on issues that are important to the public. At the same time that industry groups and their political allies continue to seek ways to limit the ability of agencies to protect the environment and public health, the legislature was seeking to limit the ability of non-profits like Amigos Bravos to speak out freely and advocate for their members and the public. However, non-profit organizations across a broad range of issues and constituencies came together to keep this legislation from passing. Unfortunately, the fight is not over. Some members of the Albuquerque Charter Review Commission recently proposed placing similar restrictions on non-profits in the new city charter. ❖

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2009 Taos River Cleanup - Saturday, June 6

Sponsored by Amigos Bravos, Centinel Bank, and Water Sentinels, volunteers will meet at Centinel Bank Main Parking Lot at 8:00 am to clean up trash on the Rio Fernando and other area rivers. Bring work gloves, hat, long sleeved shirt, long pants, sturdy shoes. At noon, Centinel Bank will host a barbeque for all participants.

1st Red River Restoration Weekend - Fri.–Sun. June 12-14.

Continuing work on a cattle and ATV exclosure to protect the riparian area in the Bitter Creek drainage. Call Rachel Conn for details at 575-758-3874 or email her at rconn@amigosbravos.org.

Victory in Holding Polluters Accountable

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EPA ranks the mining industry as the nation’s top toxic polluter, reporting more toxic releases annually than any other industry. The industry generates more than 2 billion pounds of toxic waste each year, and has polluted more than 40 percent of western watershed headwaters. In 2004, EPA reported that 63 hardrock mining sites were listed as Superfund sites, with an estimated cleanup cost of \$7.8 billion. Of that, \$2.4 billion was expected to come from taxpayers.

“This victory will encourage mine operators to act more responsibly, hopefully preventing future problems in New Mexico,” said Brian Shields, Executive Director of Amigos Bravos, in a press release announcing the court ruling. “Now that companies know that they are responsible for cleaning up after themselves, there’s a strong incentive for them to improve their waste management practices.”

The lawsuit closes a gap between two federal laws governing hazardous waste cleanup: the Superfund law and the Resource Conservation and Recovery Act (RCRA). When the Superfund law was passed in 1980, lawmakers gave EPA five years to put financial assurance regulations in place. More than 23 years later, EPA has done next to nothing. Although many industries that handle hazardous materials are subject to bonding requirements under RCRA, hardrock mining and other polluting industries used to fall through the gap between the two laws. Not any more! ❖