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Ferguson Citizens Seek Bill of Rights for their Home Rule Chapter

by *Ben Price*

Members of Community Rights Activists of Ferguson Township (CRAFT) in Centre County, Pennsylvania, have been circulating petitions to place a question on the ballot for Township residents to vote on a proposed Community Bill of Rights in November. It’s an effort that mirrors the highly successful work of State College Borough residents and members of the group Groundswell, one year ago.

The proposed amendment to the Township’s home rule charter would add the “Ferguson Township Community Bill of Rights” to Article I, “General Powers” of the charter. Specifically, the amendment would establish as legally enforceable certain rights already recognized by the Constitution of Pennsylvania’s Declaration of Rights but frequently unenforced by the State, including a right to pure water and clean air. In addition, the amendment would expand the rights recognized for Ferguson residents to include the right to peaceful enjoyment of home, the rights of natural communities and eco-systems to exist and flourish within the Township, the right of residents to a sustainable energy future, and the right of the people to community local self-government free from subordination to special privileges and immunities granted to corporations. To counter claims that the State has authority to usurp the people’s right to local self-government, the enumeration of rights also recognizes the authority of the people to use their Township government for local law-making.

(Bill of Rights - pg. 2)

Rights of Nature in Italy

by *Mari Margil*

In March, CELDF staff traveled to the Bergamo region in northern Italy. We were invited there for a series of strategy meetings and public events on rights of nature. Italy has had a growing interest in this work since Ecuador recognized nature’s rights in its constitution in 2008.

Through our meetings, a rights of nature organization in Italy was launched called **Diritti della Natura Italia**, which we are now assisting to develop a

(Italy - pg. 4)

Building sustainable communities by assisting people to assert their right to local self-government and the rights of nature.

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(Bill of Rights - from pg. 1)

A section titled “Securing and Protecting Rights” lists certain activities that are prohibited “to further secure and protect the rights enumerated by the Bill of Rights.” Those banned practices include “extraction of natural gas,” and depositing, storing or transporting waste water, brine or “other materials or by-products from unconventional development of natural gas.”

The prohibitions go further, protecting the right to a sustainable energy future by banning “the creation of fossil fuel, nuclear or other non-sustainable energy production and delivery infrastructures, such as pipelines, processing facilities, compressors, or storage and transportation facilities...” In addition, the amendment would make “Corporations and persons using corporations to engage in natural gas extraction in a neighboring municipality, county or state... strictly liable for all harms” against the rights of Ferguson Township residents and natural communities.

CRAFT members have until August 7th to gather approximately 800 signatures for the question to appear on the ballot on November 6th.

This article is the first in a three-part series. We'll take a look at the barriers communities face when confronting a corporate project proposal head-on, and how they overcome them. Each barrier provides an opportunity to expose the system we live under that governs our activism, and in so doing, reveals our opportunity to do something differently.

Overcoming the Obstacles to Community Organizing

By Gail Darrell, New England Community Organizer



Gail Darrell

Regardless of where we live, when we talk to our friends and neighbors about what the obstacles are to getting what we want in our communities, they probably don't differ much. And when we look to the list of remedies offered to us to solve community problems, those limited options can produce frustration and anger. We are conditioned to compromise what we *want* for what we think we might be able to *get*.

There are a number of barriers we run into when we confront a corporate project proposal head-on. Whether it is the structure of law, the culture, the media, our neighbors, the CEOs of the corporation and their financial backers, or our own doubt, each aspect of the opposition to rights-based community organizing presents an opportunity for us to expose the kind of system that governs our activism. The intention of this series is to focus on each aspect of the work and share experiences that we've

had in New England with our readers and organizers in the rest of the country. We begin where the problems manifest - in our communities.

Let's say there is a commercial project coming into a town that the majority of people living there think is a bad idea. Residents may go to their selectmen or board of supervisors for help. The selectmen or board go to their legal advisor, the town solicitor, to find out what authority they have to say "no" to the project. Turns out they have none, so they often come back saying, "We'd really like to help you, but our hands are tied." Sometimes it's an unsympathetic board of selectmen, board of supervisors, or city council that drives residents' frustration as they try to negotiate their way through the channels they think are open to them in local government. Many see their local representatives as the first line of defense for their community. When these elected officials say they are not allowed to say "no" to the commercial project, residents may perceive that their elected officials are on the wrong side. But it's the legal system *itself* that is on the wrong side, designed to protect the permit, rather than allowing local representatives to fulfill on their oath of office to protect the health, safety, and welfare of community members.

So, if it is "illegal" for a municipality to protect itself from harm, and the state supports the permit that allows harm, where do residents turn for self-preservation?

They may turn to their state regulators and legislators to appeal for help, although those folks may seem uninterested in standing up for the people. When residents call the state regulatory agency responsible for issuing the permit for the commercial activity siting in their town, they likely discover that the state department in charge of environmental regulations - the Department of Environmental Services (DES) in New Hampshire - functions to *facilitate* the permitting process, *not* to protect the environment. They'll invite residents to the hearing on the project, but testimony from the community will not affect permitting decisions. In most cases, that decision has already been made. Besides, letting people influence a permit issuance would violate the corporation's property rights; if the application filled out by the project owners is administratively complete, the permit must be issued as a matter of *right*.

Calling their state representative is likely equally disappointing. Over two hundred years ago state legislators carried instructions written by people from their districts to each legislative session. The people actually *prescribed* the agenda for their legislative body. No longer. Today, legislators carry instructions from corporate directors and lobbyists. Corporations prescribe the agenda for our legislative body. So when residents call their state representative, even if they are sympathetic, they likely hear, "but it's the law," in response to community pleas for help.

In article two of the series, we'll talk about the community response to a rights-based ordinance.

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(Italy - from pg. 1)



(Left to right) Francesca Mancini, Amedeo Scandella, Davide Sapienza, Mari Margil, Thomas Linzey, Marco Pezzoli.

plan for public education and outreach, legal research, and initial grassroots organizing efforts.

We spoke at two public events at which we presented on our work in the U.S., Ecuador, and internationally, assisting communities and governments to advance new legal frameworks recognizing nature's rights. We explained how, under current structures of law around the world – including in the U.S. and Italy – nature is treated as property; it's been commodified. Therefore our environmental regulatory laws, such as the Clean Air Act and the Clean Water Act, regulate our use of nature. That is, they regulate how much it can be exploited and by whom.

In the U.S., the result has been that after nearly four decades since the major environmental laws were enacted, the environment is worse off now than forty years ago. The same is true around the world. Despite attempts by corporations and governments to say otherwise, the evidence is plain to see: The world's fisheries are collapsing, the oceans are acidifying, species are going extinct at far above natural rates, and global warming is far more accelerated than previously believed.

The rights of nature work moves nature from being treated as property, to being recognized as having legally enforceable rights to exist and flourish. CELDF has assisted three dozen U.S. communities to recognize nature's rights through local ordinances and Home Rule charter amendments. These laws prohibit activities that would interfere with nature's rights, and empower the people of those communities to defend those rights.

As our work expands internationally, in Italy and elsewhere, we are finding that an increasing number of people, organizations, and governments have come to similar conclusions – that something needs to fundamentally change in humankind's relationship with nature. They've given up hope that existing environmental laws and international treaties will protect them, so long as they continue to treat nature as a resource or an asset with which we can expand our economies. Rather, they are concluding that until we recognize that nature is essential to life – and not only promise change, but mandate it in our laws – nothing will slow the rate of ecosystem and species destruction.

This is the work that is now beginning in Italy, and we are proud to be partnering with Dirriti della Natura Italia to move it forward.

Nepal's Constitution: Working to Include Rights of Nature

by Mari Margil

Since 2009, CELDF has been in discussion with the **Center for Economic and Social Development (CESOD)** in Nepal, a civil society organization whose work has increasingly focused on environmental issues. CESOD contacted us about the rights of nature and how to include it in the country's new constitution.

The constitutional drafting process in Nepal has taken place over the past several years, as political parties seek to build a collaborative government after years of civil unrest.

CESOD invited CELDF to Kathmandu this spring to meet with members of the Constitutional Assembly, the body responsible for drafting the new constitution. We traveled there in April and held a series of meetings with key members of the Assembly, including Nepal's former prime minister, Madhav K. Nepal; the chairman of the Constitutional Assembly Nilambar Acharya; and Amrita Thapa Magar, chairwoman of the Environmental Thematic Committee. The constitutional drafting committee focused on environmental issues.



Shrawan Sharma of CESOD, Executive Director

At the meetings with the Constitutional Assembly members, we presented on the rights of nature – its basis and how it’s become law in the U.S. and Ecuador. We focused on our work with the Ecuadorian Constitutional Assembly, assisting the

assembly to draft constitutional provisions, and how Ecuador’s constitution is now being used to defend ecosystem rights.

In these meetings, we described our work with organizations and governments in different parts of the world, including how increasingly the rights of nature legal framework is addressing global warming. This is a critical issue for Nepal as the Himalayan glaciers melt.

Nepal’s Supreme Court established a final deadline of May 27, 2012, for completion of the new constitution. That deadline was not met and the Constitutional Assembly was dissolved. As of this writing, elections for new Constitutional Assembly members have been called for the fall. We are continuing to work with CESOD to build support for the rights of nature in Nepal’s constitution.

The **Global Alliance for the Rights of Nature**, of which CELDF is a founding member, provided financial support for the trip to Nepal.

Mansfield, Ohio First Community in State to Submit Community Bill of Rights to Voters

by Eric Belcastro

Faced with the permitting of two 5,000 foot deep injection wells in Mansfield by the Ohio Department

of Natural Resources (ODNR) and a wall of preemptive state law offering no remedy, Cindy Soliday, working with Frack Free Ohio and Occupy Mansfield, reached out to CELDF to learn about a rights-based approach. After an initial conference call and follow-up conversations with community members, Council, and the Law Director’s office, John Spon, the Law Director, proposed a charter amendment. The amendment would drive a community Bill of Rights into Mansfield’s charter and then prohibit the injection of fracking wastewater on grounds that such prohibition is necessary to secure and protect those community rights. The amendment also recognizes corporate “rights” as subordinate to the rights of the people of Mansfield, as well as recognizing the rights of residents, natural communities, and ecosystems to clean air and water.

Since the Bill of Rights amendment has been placed on the ballot, the corporation proposing the two injection wells in the city seems to have abandoned its plans. In a press release, Mayor Tim Theaker and Law Director John Spon stated, “While this appears to be the withdrawal of a company that sought to inject toxic poison into our soil, the city must remain vigilant against other companies, and the citizens of Mansfield must be ever aware of the importance of passing and adopting a Bill of Rights for the city.”

The amendment has the support of the City Council and the Law Director: With 177 injection wells in Ohio and the recent associated earthquakes in Youngstown, injection wells are an issue of serious concern. The amendment will be on the ballot November 6, 2012. The Law Director has already received calls from officials across Ohio about the amendment, which serves as a base that may be elaborated on with further ordinances to clarify and strengthen its intent. If adopted in November, the people of Mansfield will become the first electorate in Ohio to frontally challenge the authority of gas corporations and the state within their community.

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Celebrating the Pennsylvania Commonwealth Court's Decision? Hold Your Applause

by *Emelyn Lybarger*

As the shale gas drilling and fracking industry extends its reach across the country, one of the states hit hardest is Pennsylvania. With about 5,000 new wells, it is the epicenter of the fracking boom. Parallel to the rapid increase in the number of wells is the growing concern by residents and local municipal government officials wanting to protect their health, safety, and welfare as concerns with air quality and contamination of water sources mount.

In the face of efforts by local municipal officials to use zoning in insufficient attempts to regulate fracking, Governor Tom Corbett and the Pennsylvania General Assembly passed Act 13 in February of this year. While Pennsylvania municipalities have long been stripped of true governing authority, Act 13 prohibits municipalities – among many other things – from even trying to zone to protect their communities.

In a split decision July 26th, the Commonwealth Court overturned the zoning portion of Act 13 (leaving intact the ability of the Public Utilities Commission to overturn local laws pertaining to fracking, the impact fees, eminent domain powers, and more). While their decision to allow municipalities to retain their zoning powers appears to be a “win,” the reality is that zoning merely allows municipal officials to zone *surface* use, e.g. where the drill pads will be sited. With horizontal drilling, regardless of the drill pad location, the gas corporations can extend up to two miles in any direction underneath the community.

Worse, rather than the Commonwealth Court overturning the zoning portion of the law based on communities' rights to local self-governance and to protect the health, safety, and welfare of community members – including rights protected in the Pennsylvania Constitution to clean air and water – the Commonwealth Court ruled based on *property* rights.

The continued entronement of property rights over community rights and rights of nature leaves communities subservient to property. Already Governor Corbett has announced the state's appeal to the Pennsylvania Supreme Court – and his argument rests, as well, on property rights. The question before the court, ultimately, is whether industry's property rights or a homeowner's property rights will prevail. What about the community's rights? What about rights of nature?

Equally vexing in the decision is the Commonwealth Court's refusal to apply Article I Section 27 of the Pennsylvania Constitution, which holds that people have the right to clean air and pure water. Instead, the Court declared that

the interpretation of that clause was at the state's discretion, and refused to recognize the right of communities to enforce it.

There are 140 communities in eight states that have declared community rights and rights of nature as inviolable, establishing these rights over the rights of property to cause harm. These communities are not waiting for a Supreme Court to let them know what rights they have. They are declaring and exercising the rights they already know they have. Want to learn more? We'd love to hear from you. Contact us: info@celdf.org or 717-498-0054.

What Can You Do To Ban Fracking In Your Community?

Join Us on October 6, 2012
from 10 a.m. to 4 p.m. to find out.

The Location is the Greensburg Garden
and Civic Center in Greensburg, PA

Registration is required and lunch will be provided.

To RSVP & for more information,
email info@celdf.org or call 717-498-0054.

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