

**Statement of County Commissioner John Olivas,  
Chairman, Mora County, New Mexico Board of Commissioners**  
*Defending Our Community Bill of Rights Ordinance  
Which Bans Corporate Oil and Gas Drilling in Mora  
March, 2014*

*“A Constitutional ‘Right’ to Frack?”*

This past spring, the people of our county – Mora County, New Mexico – became the first in the U.S., at the county level, to ban all corporate oil and gas drilling as a violation of the people’s civil and environmental rights.

During the past six months, several corporations have sued Mora County in federal court, seeking to overturn our law, known as the Mora County *Community Bill of Rights*.

The corporations are claiming the following:

- That our ban on corporate oil and gas drilling violates the corporations’ constitutional rights to drill;
- That our protection of the fundamental rights of the people and the natural environment of Mora violates the corporations’ federal constitutional rights as “persons”; and
- That Mora County can’t pass such a law because communities can’t ban what the state already regulates, and that New Mexico state legislators – not the people of Mora County or other communities – have exclusive authority to decide whether Mora County is drilled.

Simply put, the corporations suing Mora County are claiming that they have a *constitutional right to frack*, and that the people of Mora lack a constitutional right to protect their own health, safety, and well-being.

**How Law Protects Corporate Interests over Community Interests**

In seeking to adopt a local law to protect our community from harm, the people of Mora County have learned that over the past century, our lawmaking authority as “we the people” has been largely eliminated. In its place, decision making has been increasingly centralized at the state and federal level. Along with this, and as an integral part of it, private corporations have been granted increasing power to dictate the future of our communities.

Indeed, since the early 1800s, corporations have, mostly through the courts, successfully manufactured a legal system that promotes and protects their private interests over our public interests. This legal system includes an ever-expanding set of rules that bestow constitutional “rights” onto corporations. For well over a century now, corporations have used those “rights” to stop efforts, like ours, which seek to use local lawmaking to protect our communities from harmful corporate activities.

What’s worse is that most lawyers and judges regard this legal system as untouchable. By treating it as untouchable, they validate a system in which corporations prevail before they even set foot in a courthouse.

Put simply, that system says that our communities have no rights, but corporations do. And further, that when people within a community attempt to assert their rights collectively, that not only do they have no rights to assert, but their actions automatically violate the “rights” of corporations.

Not surprisingly, those corporate “rights” include the authority to wield our own state legislatures against us to preempt our local lawmaking. Unfortunately, this legal system is not unique to Mora County or New Mexico, but is alarmingly American.

Recently, the Oregon Legislature, at the behest of the agribusiness industry, passed a law prohibiting communities from interfering with the use of genetically modified seeds. Oregon now joins over twenty other states that have eliminated community decision making over GM seeds. Several years ago, the Pennsylvania legislature passed a law authorizing the Attorney General to sue communities that had adopted local laws protecting them from corporate farming and the dumping of sewage sludge. Other state legislatures – always at the behest of this country’s largest corporations – have prohibited communities from adopting local laws dealing with everything from water withdrawals to mining, and from logging to land development.

While corporations prefer to use our state legislatures to preempt local authority outright – it’s more efficient than going community by community – they don’t hesitate to use their court-guaranteed “rights” when they need to get results in the courts instead.

As in the case against Mora County, around the country corporations have filed lawsuits claiming that their “rights” have been violated by communities (and even states) that have passed laws to protect the public health and well-being. They include challenges to laws related to the siting of cell phone towers and the labeling of dairy products, as well as to bans on longwall coal mining and restrictions on out-of-state waste.

Unfortunately, the complex way in which our system operates means that very few people fully understand how corporations succeed at what they are doing.

### **Drafting the Mora County Community Bill of Rights**

In drafting our ordinance, the people of Mora County asked ourselves what the purpose of law and government is. We agreed that first and foremost, law must serve to protect our people and our community. We then asked ourselves whether we can do so under the existing system of law, which recognizes corporate powers, but not community rights. The clear answer to that was “no.”

With that in mind, we decided not only to recognize that Mora residents possess certain civil and environmental rights – to local self-government where they live, to a sustainable energy future, to clean air and water, and to water for agriculture - but that those rights cannot be overridden by corporate “rights” or nullified by state legislatures. Just as state constitutional provisions may recognize greater constitutional rights than those recognized by the federal bill of rights, our local bill of rights recognizes greater rights for the people and environment of Mora than they possess under either the state or federal constitution. The prohibitions in the ordinance, including the ban on corporate oil and gas drilling, become necessary because many activities – if undertaken - would automatically violate the rights secured by the ordinance.

The people of Mora County haven’t set ourselves adrift from the state and federal system of law. Instead, our ordinance envisions a transformed system – one in which rights expansion at the municipal level is immune from the corporate privatization of the courts and state

legislatures. Ours is now a system that doesn't recognize corporations as capable of possessing constitutional rights (because they are property), while preventing the authority of state and federal governments from being wielded to prohibit communities from using law to protect their own health, safety, and welfare.

*In short, the Mora Bill of Rights finally asserts – in law – the democracy that many of us thought we already had.*

Throughout our process of drafting and adopting this ordinance, many people of Mora County – myself included - have discovered that we hold certain core beliefs:

- We believe that it is time to end energy extraction and use that endangers our water, overheats our atmosphere, and compromises our ability to build economically and environmentally sound economies;
- We believe that under the current system of law, corporations – and the relatively small number of people who run the largest corporations – have greater rights and powers than the people who live in the communities where those corporations operate;
- We believe that as a result of those rights and powers, our communities cannot make crucial decisions about energy, agriculture, and development, and thus, that movement towards sustainability is impossible;
- We believe that as a result, we don't live in a democracy;
- We believe that communities and groups currently work on a wide range of issues, such as oil and gas extraction, but that very few are working to devolve power away from corporations and federal and state governments down to those communities directly harmed and affected by those issues;
- We believe that until communities seize local lawmaking authority – to ban fracking and other harmful activities – economic and environmental sustainability will continue to be illegal under this system of law;
- We believe that a statewide, and eventually national, movement must arise that establishes a right to local self-government that cannot be preempted by other governments, or nullified by corporations, when communities work to protect their own health, safety, welfare, and quality of life;
- We believe that this country's current institutions of government and power are incapable of building or respecting those movements; and
- We believe that this change may not come from the courts, but must come from changes to state constitutions, and to the national constitution, by a new movement of people who understand that environmental and economic sustainability is impossible if corporations and federal and state governments – whose interests are not aligned or compatible with those of local communities – hold more decision making authority than our own counties, towns, cities, and villages.

On November 26<sup>th</sup>, 2013, the Mora County Commissioners voted unanimously as a Board to defend the Mora County *Community Bill of Rights* against the first lawsuit filed in federal district court against Mora County. On February 14<sup>th</sup>, 2014, the Mora County Commissioners voted unanimously as a Board to defend the Mora County *Community Bill of Rights* against a second lawsuit filed in federal district court by a subsidiary of the Shell Corporation. That Corporation holds leases on New Mexico State Trust land in eastern Mora

County. This area is also known as *White Peak*, and the Corporation has **leased these state trust lands (*White Peak*) in 2010 for \$.25 / acre or \$160/section of land.**

Rather than the end of the fight, however, we see these lawsuits as merely a beginning – of a waking up that must occur across our communities and the country to understand that we are caught within a system that virtually guarantees our destruction.

Across the U.S., over 150 communities – including the City of Pittsburgh - have now begun to walk the path that the people of Mora are now walking. Along the way, we must not only call out corporate decision makers for what they do – but begin to dismantle what they’ve spent so many years building.

We call on you to join the people of Mora in our resistance to a system of law and governance that bears almost no resemblance to “we the people” and “consent of the governed.” Only then will we begin to build the world and communities that we so desperately need.

**Commissioner John Olivas is the Chairman of the Mora County Board of Commissioners. This statement was issued by Commissioner Olivas, and is not a statement issued by the Mora County Board of Commissioners.**