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Saying No to Fracking, Yes to Local Self-Governance

by *Emelyn Lybarger*

How do we say “No more!” ask community members and local officials facing the daunting spread of natural gas drilling. “How do we assert our rights to local self-governance?” As the number of gas wells in Pennsylvania grows each week, concern is mounting and citizens want to know how to stop the drilling and protect their community. On Saturday, June 11th, 2011, CELDF and the City of Pittsburgh co-sponsored a conference for local officials and community members across the state: Stopping Marcellus Shale Gas Drilling at the Municipal Level.

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Wagon Mound Self-Government Movement Falter

by *Daniel E. Brannen Jr.*

Citizens of Wagon Mound, New Mexico, failed to persuade their village council to enact an ordinance to elevate the village’s right of local self-governance over the constitutional and property rights of corporate natural gas developers. A clear majority of resident speakers at the December 2010 council meeting supported the ordinance. Alarmist opposition from the village solicitor seemed to drive the council’s 2–1 vote to defeat the ordinance.

Threats to human and environmental health from the natural gas extraction process called hydraulic fracturing led residents to urge the ordinance on the council. Hydraulic fracturing is a process for releasing natural gas from subsurface rock formations at economic rates of recovery. Natural gas corporations drill cased wells into the rock, then blast a fluid through the well to open rock fractures capable of delivering natural gas to the surface.

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

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More than fifty people attended the event, which featured Doug Shields, Pittsburgh City Council, Ben Price, Project Director of CELDF, Jules Lobel, University of Pittsburgh law professor, and Vice President of the Center for Constitutional Rights, and others.



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In November 2010, the Pittsburgh City Council unanimously passed the Pittsburgh's Community Protection from Natural Gas Drilling Ordinance, introduced by Councilmember Doug Shields. The historic action drew international attention and other communities are asking, "How can we do that?" They attended the conference to find out how.

"We need to educate the community, we need to educate elected officials," asserted Councilman Shields. "You can't give more power to corporations than you can to individual citizens."

A concern that surfaced for many attendees focused on the possible overturning of the ordinances through lawsuits.

Dr. Jules Lobel, professor of law at University of Pittsburgh, made a compelling argument that the possible—even likely—overturning of the ordinance would reveal the contradiction we live under. "The Pennsylvania Constitution says 'The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment.' Yet we are told we have no right to stop the poisoning of our communities. The abolitionists led a human rights movement in part by bringing case after case before the courts, undeterred by continual losses, to reveal the contradiction between the language that all men are created equal, and the reality of the legality of slavery. So too is this the start of a movement. The communities in Pennsylvania are revealing the contradiction between the language that we have an inherent right to clean air and pure water, the story that we are a self-governing people, and the reality of corporate rights trumping human rights."

What happens now? Said Councilman Shields, “There is no democracy in this process [of how drilling decisions are made]. So what do you do? You act.” As the pressure to drill increases, so do the people’s recognition that it is time to say “No more!” and to assert their right to decide what happens, where they live.

CELDF and the Lehigh Valley Community Rights Network are co-sponsoring the next conference to be held September 17th in Williamsport, PA. For more information, contact Stacey Schmader at info@celdf.org or at 717-498-0054.

(Movement Falters - from pg. 1)

The fluid used for hydraulic fracturing is a major source of concern to opponents of the process. The fluid is a mixture of water, sand, and chemicals, many of the latter believed to include heavy metals, toxins, and carcinogens. Opponents say this fluid can pollute ground and surface water, causing human health dangers. They also say federal and most state laws do not require corporate disclosure of the contents of the fluids, which companies consider to be proprietary information. The natural gas industry says hydraulic fracturing is safe, and that it reveals fluid contents in Material Safety Data Sheets required for worker safety under the federal Occupational Safety and Health Act.

Conventional environmental law would implement a regulatory process for issuing permits to allow hydraulic fracturing by the natural gas industry. The U.S. Environmental Protection Agency is studying hydraulic fracturing to decide whether to regulate it in this manner, and some states have begun to implement their own regulatory schemes. Industry says regulation is unnecessary. Many opponents of hydraulic fracturing believe that a regulatory process cannot prevent water pollution and the consequent harm to human and environmental health.

Residents of Wagon Mound decided that the issue is not whether hydraulic fracturing can be regulated adequately,



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but whether local communities have political authority to ban corporate activity harmful to people and natural environments. As drafted, the “Wagon Mound Community Water Rights and Local Self-Government Ordinance” asserted that people have an inherent and inalienable right to govern in the communities where they reside. And natural ecosystems have a fundamental and inalienable right to exist, flourish, and evolve naturally. Both rights—of people and of nature—are superior to the rights that corporations have under federal and state law, said the ordinance. It would have banned hydraulic fracturing by corporations, and prevented them from asserting any rights to defeat Wagon Mound’s assertion of the superior civil rights of people and natural rights of nature.

Wagon Mound’s December 13 village council meeting was passionate. Thomas Linzey and Ben Price of the Community Environmental Legal Defense Fund, who helped draft the ordinance, explained the civil rights foundation of the ordinance. Representing the Wagon Mound Development Association, this author spoke on the sources of law upon which the ordinance was based, including not only the inherent right of local self-government, but also New Mexico statutory law. Numbers of residents urged the council to protect local water by voting yes on the ordinance. One expressed dismay that two of the village council’s five members were absent for the meeting. One of the council members who attended, Nick Pino, a lifelong resident of Wagon Mound, unsuccessfully urged adoption of the law.

The most vocal opponent of the law was the village solicitor, Danelle J. Smith. Ms. Smith said the ordinance was illegal under the federal constitution and under New Mexico law on the power of municipal governments. She did not explain how federal and state law can defeat a

right of local self-government that is “inherent and inalienable.” Ms. Smith warned that enacting the ordinance could subject the village to expensive lawsuits, despite that CELDF offered to defend the ordinance in court on a pro bono basis. Finally, Ms. Smith raised the specter of secession, pointing to section 6.1 of the ordinance, which would have required Wagon Mound to explore options for separating from federal or state governments if they used the supposed superiority of their laws to defeat the Wagon Mound ordinance. Many residents, who faced three-minute limits on their public comments, were frustrated that Ms. Smith was allowed to speak without a time limit. One resident spoke in opposition to the ordinance, asking why things could not just remain as they are in Wagon Mound.

In the wake of defeat, some residents of Wagon Mound are turning their attention to Mora County. A county council member has expressed interest in an ordinance to protect the whole county from hydraulic fracturing.

In Pittsburgh, Pennsylvania, Will the People Decide?

by Shireen Parsons

“Should the Pittsburgh Home Rule Charter be amended to add Section 104 ‘The City of Pittsburgh Bill of Rights,’ which enumerates the right to water, the rights of natural communities, the right to a sustainable energy future and the right to self-government, and which secures those rights by banning corporate gas extraction within the City and subordinating corporate rights to the rights of Pittsburgh residents?”

On the 1st of August, the Pittsburgh City Council, in a 6-3 vote, placed that question on



the November ballot as a referendum, affirming the inalienable right of Pittsburgh residents to make the decisions affecting the health, safety and well-being of their community and their environment.

This step follows the City Council's unanimous November 2010 decision to adopt Pittsburgh's "Community Protection from Natural Gas Extraction Ordinance," becoming the first municipality in the Marcellus Shale region to say an emphatic "NO" to the natural-gas extraction method known as *fracking* and its attendant catastrophic risks to communities and the environment.

Asked why he thought it wise to bring the matter to the voters, Councilman Douglas Shields replied, "On matters of such importance how can we not go to the people for their advice and consent? When corporate special interests outweigh people's rights, well, then, where do we go from there? Throughout history, democracy has served us well. I hope we continue to embrace that concept and let the people govern themselves."

Unfortunately, on August 8th, Pittsburgh Mayor Luke Ravenstahl slammed the door on that fresh breath of Democracy when, trampling the will of the council majority, he refused to sign the measure.

In a letter issued to the council that night, the mayor proudly stated that his refusal to sign "effectively eliminated" the possibility that the city charter referendum will appear on the November ballot.

However, a group of council members is considering sending the county elections division a letter urging elections officials to proceed with the referendum, and promising to override a presumed veto when they return from recess in late August.

The question is: *Is democracy alive and well in Pittsburgh, or will one man trample the majority decision of the Pittsburgh City Council, denying the citizens of the Steel City their inherent right to make the governing decisions in their community?*

Stay tuned.

Wilkesburg Borough Council Adopts Community Rights Ordinance That Bans Gas Drilling

On July 20, 2011, the Borough Council of Wilkesburg, Pennsylvania, by a unanimous vote, became the 4th community in Pennsylvania to adopt an ordinance that prohibits natural gas extraction.

The bill, drafted in consultation with the Legal Defense Fund, is titled "Wilkesburg Borough's Community Protection from Natural Gas Extraction Ordinance." It establishes specific rights of Borough residents, including the Right to Water, the Rights of Natural Communities, the Right to a Sustainable Energy Future, and the Right to Community Self-Government.

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The key prohibition enacted to protect the rights enumerated states: *“It shall be unlawful for any corporation to engage in the extraction of natural gas within Wilkinsburg Borough, with the exception of gas wells installed and operating at the time of enactment of this Ordinance.”*

The ordinance goes on to assert: *“Corporations in violation of the prohibition against natural gas extraction, or seeking to engage in natural gas extraction shall not have the rights of “persons” afforded by the United States and Pennsylvania Constitutions, nor shall those corporations be afforded rights under the 1st or 5th amendments to the United States Constitution or corresponding sections of the Pennsylvania Constitution, nor shall those corporations be afforded the protections of the commerce or contracts clauses within the United States Constitution or corresponding sections of the Pennsylvania Constitution.”*

The bill also recognizes the right of the people to a form of government where they live *“which recognizes that all power is inherent in the people, that all free governments are founded on the people’s authority and consent, and that neither individuals nor corporate entities and their directors and managers shall enjoy special privileges or powers under the color of state law which purports to make community majorities subordinate to them.”*

The bill was modeled after the Ordinance drafted by the Legal Defense Fund and adopted on November 16th of last year by the City of Pittsburgh, Pennsylvania. West Homestead Borough adopted a similar Ordinance on May 10th, followed by Baldwin Borough on June 21st. Both municipalities are in Allegheny County, Pennsylvania. Mountain Lake Park, Maryland adopted the Community Rights gas drilling ban on March 6th of this year, and Wales, New York did so on June 14th, 2011.

Welcome Eric!

Eric Belcastro moved to Hickory, Pennsylvania just as the first two horizontal gas wells were being drilled into the Marcellus Shale a few minutes from his home. He witnessed firsthand the rapid industrialization of the countryside and with it the loss of “clean air, pure water, and the presentation of the natural, scenic, historic and esthetic values of the environment” guaranteed as rights in the Pennsylvania Constitution. After attending countless scientific symposiums, conferences, township hearings, industry presentations, and discussion panels, and not see-

ing any decline in the damage being done around him, he began to speak out and advocate on this issue.

Eventually he became involved with Marcellus Shale Protest, a group that organized to rally support for the passing of a rights-based ordinance drafted by CELDF in Pittsburgh. He worked with an active group of organizers to form an outreach committee dedicated to expanding the work in southwestern Pennsylvania that had begun in Pittsburgh. Among many others, he was first awakened to CELDF's work by Ben Price. Under his guidance, he has dedicated himself to organizing within a rights framework in hopes that communities will preserve things of true worth for the survival and enjoyment of themselves and future generations.



Eric Belcastro

Eric also studies physics and biophysics at the University of Pittsburgh, and writes and performs music in his free time. Welcome, Eric, as an addition to our Community Organizer staff!

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Spokane Bill of Rights on November Ballot

On August 1st, the Spokane City Council voted to place a Community Bill of Rights on the November ballot. Our local partner group – Envision Spokane – successfully qualified the citizens’ initiative to the ballot, collecting over 4,500 signatures of voters. The ballot measure would amend the city’s Home Rule Charter.

The Spokane Bill of Rights establishes the right of neighborhoods within the city to make decisions about major development projects; establishes rights of the Spokane River and Aquifer to exist and flourish, rights that can be enforced and defended by people and the city itself; secures constitutional rights of workers in the workplace and secures collective bargaining rights for workers in unionized workplaces; and eliminates the authority of corporations to wield their corporate constitutional “rights” to undermine any of the rights in the Bill of Rights. For more information, log on to envisionspokane.org/communitybillofrights.html.



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