



Mt. Shasta Water Rights:

Who Decides?

Commissioned by
the Mount Shasta Community Rights Project



Prepared in partnership with Global Exchange and the Community Environmental Legal Defense Fund





Contacts and Design Credits

Mount Shasta Community Rights Project – Report Team

Ami Marcus - 530.918.9444, ami@planetvisionproductions.com

Angelina Cook - 530.964.3483, reynasolarqueen@yahoo.com

Molly Brown

Jennifer Mathews

Dr. Rene Henery

Shannon Biggs

Ben Price

Gail Darrell

Thomas Linzey, esq.

www.shastacommons.org (community rights page)

Global Exchange

Shannon Biggs

Director, Community Rights Program

California rights based organizer

Office: 415.575.5540 Email: Shannon@globalexchange.org

2017 Mission Street 2nd Floor, San Francisco, CA 94110

www.globalexchange.org

Community Environmental Legal Defense Fund (CELDF)

Stacey Schmader

Administrative Director and National Democracy School Director

Office: 717.709.0457 Email: info@celdf.org

P.O. Box 2016, Chambersburg, PA 17201

www.celdf.org

Design and Photo Credits:

Report Designer: Kami Griffiths www.ctnbayarea.org

Photo credits: Mark E. Gibson, Paul J. von Hartmann, Kylie Nealis,

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We can disagree on many things as neighbors and residents, but we can ALL come together on one — what happens in Mt. Shasta should be ours alone to decide.

Statement of Intent

We are a diverse community that calls this beautiful place of Mt. Shasta home.

We can disagree on many things as neighbors and residents, but we can ALL come together on one — what happens in Mt. Shasta that affects our health, safety, welfare, quality of life and sustainability of our natural environment should be ours alone to decide.

Water in particular is central to our life here, and our future wellbeing. Whatever our divergent opinions are regarding, for example, water extraction or protecting the environment, as residents living in this fragile ecosystem we have a responsibility to take proactive steps to ensure that we protect this valuable local resource and ensure water management remains in our hands and no one else's.

Unfortunately, there are obstacles to local control of water. According to current law, both corporate ground water extraction and corporate cloud seeding are permitted without monitoring in the State of California. Unless we adopt this ordinance, we are not in control – corporate executives are and will remain so.

The City of Mt. Shasta Community Water Rights and Self-Government Ordinance is about asserting our right as a community to determine how to sustainably manage our natural resources and to ensure that our local livelihoods are protected. It has no partisan agenda because the rights of human beings and nature go beyond political affiliation.

This ordinance empowers us to say “yes” to sustainable water policies and the right of the people to decide how to govern their community on those issues. It allows us to begin asserting this right by saying “no” to water bottling and cloud seeding within city limits.

It is our constitutional right to decide what happens in the place where we live. We the people of Mount Shasta are ready to adopt this ordinance to ensure our right to local self government, and protect our quality of life now and for future generations.



Executive Summary

Mt. Shasta Water Rights: Who Decides?

This report was commissioned by the Mt. Shasta Community Rights Project, a group of citizens who have been working collaboratively to ensure that residents alone can make governing decisions about local water resources.

It offers a detailed account of the **City of Mt. Shasta Community Water Rights and Self-Government Ordinance**, a proposed law to assert our right as a community to determine how to sustainably manage our natural water resources and to ensure that our local quality of life is protected.

Providing a comprehensive look at the ordinance itself and the justification for it, this report includes: what the ordinance does; what it does *not* do; who enacts it into law; and why it focuses on “rights” and specifically the Right of Nature. In addition, concerns and misunderstandings expressed since the petition was certified are clarified and addressed.

Moreover, this report clearly establishes the legitimacy of community local self-government, relying upon US’s Declaration of Independence as well as both Constitutions of the nation and state.

There is a single topic addressed by the City of Mt. Shasta Community Water Rights and Self-Government Ordinance: the protection of the right to “sustainably access, use, consume, and preserve water drawn from natural water cycles.” Based on this right, this ordinance prohibits two specific activities: corporate water extraction for resale and export, and corporate cloud seeding (including chemical trespass of toxins from cloud seeding).

Federal laws and state permits say that corporations do not need community permission to site unwanted or dangerous projects in our community. This ordinance recognizes that “regulatory” laws do not enable communities to say “no” to corporate projects that threaten our quality of life, but merely dictate how much harm communities must accept as a result of those activities. The report explains the need for and the foundation of a “rights-based” approach to uphold community

interests, basic rights, sustainable practices, and community values.

Since initiating the campaign in October 2008 that resulted in this ordinance, community organizers have invited the participation and input of citizens and officials at every stage over the 20-month process. We have partnered with two national organizations, Global Exchange and the Community Environmental Legal Defense Fund, for practical support and legal assistance to properly draft the ordinance as well as research on initiative procedures.

Mt. Shasta will be the first in California to pass an ordinance asserting our rights to local control, but we are not alone. Over 125 communities in other states have passed similar laws, in order to protect their wellbeing from harmful, “legal” activities and illegitimate laws. Other communities in California who are actively pursuing rights-based ordinances, and a bevy of organizations, and citizens interested in rights stand with us.

Rather than leaving decision-making in the hands of large corporations, the Mt. Shasta community has come together across the political spectrum to steward our local resources. As demonstrated in this report, the Mt. Shasta Community Water Rights Ordinance asserts our unalienable right to make decisions on important water rights issues that directly affect we the people and our natural environment in this special place where we live.

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Citizens realized that unless we came together to assert our rights to govern ourselves and our resources in the place that we live, our days would be squandered fighting one corporate assault after the other.

Introduction of the Mt. Shasta Community Rights Project

In October 2008, citizens learned of Pacific Gas & Electric's (PG&E) intent to begin a cloud seeding project in Mount Shasta's southeastern watershed through an announcement in the *Mount Shasta Herald*. When asked about the project, local and county officials knew nothing. Citizens inquiring about the situation learned that officials were unaware of PG&E's plans because the State of California allows private corporations to modify weather using toxic chemicals without regulation, monitoring or permits.

Further investigation revealed that despite the significant risks of crippling snow loads, floods, drought in outlying regions, wildfire, toxic contamination of the environment, road closures, etc., cloud seeding is included as a water management tool in California's State Water Plan. In the most objective review to date, the National Academy of Sciences underscores the lack of evidence confirming the safety and efficacy of cloud seeding and declines to endorse it as a viable tool for water management.

PG&E's announcement came on the heels of the six-year effort to protect Mount Shasta's southern watershed and community from exploitation by Nestle. Many considered this a wakeup call. Citizens realized that unless we came together to assert our rights to govern ourselves and our resources in the place that we live, our days would be squandered fighting one corporate assault after the other. In order to live our lives and contribute to our community in more productive ways, we began seeking systemic solutions for transparent, participatory, accountable natural resource decision-making through cooperative resource management and local self-governance.

Fortunately, we discovered two organizations that specialize in this very solution. Global Exchange (GX) and the Community Environmental Legal Defense Fund (CELDF) have recognized the failures of corporate-controlled government and accepted the urgent task of restoring the integrity of American government by facilitating individuals and communities in asserting their rights to secure healthy

ecosystems. GX and CELDF have guided and continue to support our community in implementing the City of Mt. Shasta Community Water Rights and Self-Government Ordinance (MSWRO, also called the community rights ordinance, or simply, the ordinance).

A. Campaign Process & Timeline

Throughout the process of developing and presenting the City of Mt. Shasta Community Water Rights and Self-Government Ordinance to Mt. Shasta citizens and City Council, organizers worked diligently to invite and incorporate input from officials and the public.

From an organizers' perspective, this campaign has already been successful, as we have worked for more than 20 months in an inclusive and collaborative fashion. Initiating the conversation about self-governing local water resources has been a challenging, enlightening and community-building process in-and-of-itself.

We reached out to local business owners, connected with our local Chamber of Commerce, and attended the countywide water stakeholders meeting to invite and seek opportunities for input and feedback. Over 20 editorial letters about the ordinance appeared in the *Mount Shasta Herald*. Ongoing dialogue was further promoted through radio interviews, articles in local and national newsletters, and numerous public meetings locally and regionally before, during and after the petition process. An open public process to create community discussion and feedback has been a priority from the beginning.

Despite the record-breaking winter conditions during the signature gathering months, organizers were able to secure the signatures of more than 1/3 of Mt. Shasta City's registered voters. To put this into perspective, the last City Councilor to be voted into office secured his seat with only 1/4 of the voting population. The following timeline characterizes Phase 1 of this community water rights initiative:

- **October 2008** - PG&E announced its intent to begin a cloud seeding project on Nov. 1 near Mt. Shasta. Community members informed local officials of the project, protested outside of city hall and requested more information from PG&E.
- **November 2008** – PG&E representatives made a presentation to Siskiyou County Board of Supervisors in Yreka. Many citizens protested the project during public comment.
- **December 2008** – Community organizers investigating the matter confirmed with California Attorney General's Office that cloud seeding by private corporations is unregulated, whereas public corporations (municipalities) who engage in cloud seeding must go through the Environmental Impact Review (EIR) process.
- **December 2008** - Global Exchange learned about the effort in the regional press, contacted local citizens, and offered help.

Despite the record-breaking winter conditions during the signature gathering months, organizers were able to secure the signatures of more than 1/3 of Mt. Shasta City's registered voters.

- **January 2009** – Community organizers facilitated a public meeting at the Flying Lotus with Ben Price of CELDF & Shannon Biggs of Global Exchange to share their framework around local self-government. Over 100 people were in attendance, including Mt. Shasta City Mayor Tim Stearns and Ric Costales, Siskiyou County Natural Resource Specialist.
- **February 2009** – Community organizers held second public meeting to elicit concerns, input and discuss options as a community.
- **February 2009** – PG&E announced their plan to cancel their cloud seeding project for the year and resume plans in fall/winter 2010.
- **March 2009** – Community organizers launched a website called “Climate Council” (www.climatecouncil.us) to serve as information hub for water stewardship initiative.
- **May 2009** – Community organizers hosted “Democracy School” to learn more about rights-based organizing at Mt. Shasta City Park. Facilitated by Global Exchange and Community Environmental Legal Defense Fund, Democracy School was publicized and invited broad community participation. Thirteen locals participated in the three-day workshop.
- **May 2009** – Citizens attending Democracy School unanimously decided to embrace rights-based organizing as our best option for advancing the campaign.
- **June 2009** – A free community forum was held at Stage Door to educate public about rights-based organizing and to elicit feedback.
- **June 2009** – CELDF and Global Exchange provided citizen group with first draft of Community Rights Ordinance.
- **June - July 2009** – Community organizers held two free public forums to introduce the draft Ordinance to the broad community and invite public participation in Ordinance revision. Several changes were made to reflect citizen input.
- **June 2009** – Community organizers met with City Councilors Sandra Spelliscy and Tim Stearns to discuss ordinance and get feedback. The group requested specific, detailed suggestions that could be incorporated into the Ordinance.
- **July 2009** – Mt. Shasta 4th of July festivities booth for public education around the ordinance reached hundreds.
- **July 2009** – After receiving no response from either Councilor for several weeks, community organizers met again with Mayor Tim Stearns at Lily’s. Tim made suggestions to make the language friendlier; he also suggested a preamble and some “whereas” statements to set the context. The organizers created a preamble and emailed it to Tim for feedback.
- **July 2009** – A second meeting was held with Mayor Stearns to discuss the preamble and other concerns at Seven Suns. Tim read some of the ordinance during the meeting, and promised he would finish reading it over the weekend and respond with feedback. Although organizers repeatedly attempted to contact Tim by phone and email, he did not provide any further feedback.

- **August 2009** – Three months after soliciting input from City Council, organizers had received very little feedback. The decision was made to initiate the petition process with the Ordinance as revised through the open public process.
- **August 25, 2009** - Proponents submitted the ballot title & summary along with the Ordinance and published a notice of intent for circulation.
- **September 2009** – Proponents received a distorted legal interpretation of ballot title & summary. CELDF and GX supported the proponents’ request for a title & summary revision but City attorney refused. Proponents decided to accept distorted rendition rather than delay the process any further.
- **October 2009** – The ballot title & summary were prepared with ordinance petition and signature gathering process began.
- **October 2009** - Organizers invited the entire community to participate in the signature gathering process. Over 60 citizens attended the kick-off event and offered support. Teams gathered signatures by tabling at businesses and going door-to-door through the cold winter months with the combined intent of gathering signatures and educating the public.
- **October 2009** – Global Exchange created a 20-page Frequently Asked Question (FAQ) report to answer community questions, available in print and online locally, as well as on the Global Exchange and CELDF websites.
- **November 2009** – Organizers hosted a community screening of the documentary “Tapped” to educate public about the risks associated with water extraction, bottling and export.
- **March 2010** - Two organizers met with Councilors Russ Porterfield and Ned Boss to explain the purpose of the Ordinance and answer questions about it.
- **March 2010** – Organizers decided to merge informational website with the local “transition town” sustainability collaboration Shasta Commons. The campaign information clearinghouse changed from www.climatecouncil.us to www.shastacommons.org.
- **April 2010** - 700 signatures were submitted to the County Clerk for verification. The verification process ended when the requisite number of 15% of registered voters was reached.
- **April 2010** - Proponents offered to meet with Kevin Plett, City Manager to present the ordinance to him and city staff to answer any questions or concerns before the City Council meeting on April 26th. Mr. Plett declined and said city staff’s recommendation was to suggest a special report.
- **April 2010** - Proponents tried to arrange conference calls with City Council members, (except Ned Boss who couldn’t be reached) to answer questions, address concerns, and introduce them directly to Thomas Linzey, esq. of CELDF, prior to the April 26th Council meeting. Councilors Spelliscy and Stearns each talked at length by phone with proponents and Thomas Linzey.

- **April 26, 2010** – The ordinance appeared on MS City Council’s regularly scheduled meeting agenda. Over 150 people attended and over 45 people made public comment expressing support for the Ordinance. Two people expressed concern about the ordinance. Council members conveyed support for audience passion and the organizers’ impressive effort, and encouraged more regular attendance and citizen involvement in other public affairs. Council member Stearns discussed his previous experience with well-intended ordinances having unintended consequences and identified six specific areas of concern. The Council voted unanimously to issue a special report and take action at a future meeting scheduled for May 24, 2010. Councilor Spelliscy suggested an amendment that the report to be released in advance of the meeting so Councilors and community would have a chance to review report findings before taking action on 5/24. The amended motion was adopted.
- **May 2010** – Organizers responded to specific concerns expressed at Council meeting in a community letter and accompanying document entitled “Responding to Concerns: 1 Truth and 7 Misconceptions about the Community Rights Ordinance” that was e-mailed widely and posted on the www.shasta-commons.org web site.
- **May 2010** - Mayor Murray had a phone conversation with Thomas Linzey and organizers.
- **May 7 and 12** - Proponents supplied City staff and Council with contact information of several elected officials from other communities in other states that have passed rights based ordinances, along with the legal background on each community and the text of those ordinances.
- **May 17** - Proponents released this report: *“Mt. Shasta Water Rights: Who Decides?”*

B. About our Partners: Global Exchange and the Community Environmental Legal Defense Fund

Global Exchange and the Community Environmental Legal Defense Fund have offered and have been rendering free services and consultations to the Mt. Shasta Community Rights Project, as well as legal assistance with the drafting of a community water rights ordinance, research on initiative procedures, and other informal services as required. These services have also included reviews of historic and current U.S. law, constitutional concepts focusing on rights and self-government.

Global Exchange has pledged long-term partnership with the residents of Mt. Shasta by promising ongoing direct practical support, including free organizing, framing, media, research, writing and speaking tour support, cultivating a broad array of regional, statewide, national and international partnerships as well as California-based pro-bono legal support to augment CELDF’s commitment.

CELDF has pledged free legal support in the form of free consultation, assistance with drafting briefs, assembling arguments and acting in an advisory capacity to the City's chosen counsel if, after adoption of the ordinance, a legal challenge is brought against it and the City requests such assistance.

As partners, commitments of Global Exchange and CELDF are long-term, including services to be rendered throughout any period of litigation, including appeals.

Global Exchange Mission Statement

"Building People-to-People Ties"

Global Exchange is 22-year old non-profit research, education, and action center dedicated to promoting people-to-people ties around the world and here at home. We seek to address root causes of injustice locally and globally and foster grassroots movements for change.

Our *Community Rights Program*, directed by Shannon Biggs, focuses on assisting communities, confronted by corporate harms to enact binding laws that place the rights of communities and nature above the claimed legal "rights" of corporations, with a particular emphasis on California.

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Specialist in Human Rights in Africa,
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San Francisco, CA
Media/Events Consultant;
Specialist in grassroots community
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Harrington Investments;
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San Francisco, CA
Global Exchange Co-Founder

Nicola Armacost

Hastings, NY
Direct Arc Frame Ltd., Co-Founder

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San Francisco, CA
Global Exchange Founding Director

Eric Casher, esq.

Berkeley, CA
Thelen Reid Brown Raysman & Steiner
LLP Associate

Randy Durband

Irvine, CA
Travel Program Consultant

Delvis Fernandez

San Luis Obispo, CA
Cuban American Education Fund;
Specialist in Cuba and DC lobbying efforts

Michele Frank, MD

Havana, Cuba
Pediatric Neuro-psychologist;
Specialist in Health care and Cuba policy

Isao Fujimoto

Davis, CA
California Institute for Rural Studies

Allen Gunn

San Francisco
Aspiration Technology, Executive Director

Deborah James

Washington, DC
Center For Economic and Policy Research
Director of International Programs

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Staff Representative to the Board of Directors

De’Anthony Jones

San Francisco, CA
San Francisco Youth Advisory Board;
Environmental Service Learning

Pierre Labossiere

Berkeley, CA
State of California Agricultural Inspector;
Co-founder of Bay Area Haitian American Council;
Labor and human rights specialist

Tom Miller, Esq

San Francisco, CA
Attorney

Tony Newman

New York, NY
Linda Smith Center for Drug Policy
Alternatives;
Media and Communications Specialist

Thuyen Nguyen

Berkeley, CA
Executive Director of Vietnam Labor
Watch

Sneh Rao

San Francisco, CA
Staff Representative to the Board of Directors

Walter Riley, Esq.

Oakland, CA
Attorney
Civil-Rights and Anti-War Movement
Leader

Rick Tejada-Flores

Oakland, CA
Filmmaker;
Public television advocate

Bob Wing

Los Angeles, CA
War Times Editor

Ann Wright

Honolulu, Hawaii
Former US Military and International
Diplomat;

**Additional Legal Advisors for GX’s
Community Rights Program**

Tania Rose, Esq.

San Francisco, CA
Civil Rights Attorney

Linda Sheehan, Esq.

Oakland, CA
Executive Director California Coastkeepers;
Environmental Attorney

CELDF Mission Statement

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

We believe that we are in the midst of an escalating ecological crisis, and that the crisis is the result of decisions made by a relatively few people who run corporations and government. We believe that sustainability will never be achieved by leaving those decisions in the hands of a few – both because of their belief in limitless economic production and because their decisions are made at a distance from the communities experiencing the impact of those decisions. Therefore, we

believe that to attain sustainability, a right to local self-government must be asserted that places decisions affecting communities in the hands of those closest to the impacts. That right to local self-government must enable communities to reject unsustainable economic and environmental policies set by state and federal governments, and must enable communities to construct legal frameworks for charting a future towards sustainable energy production, sustainable land development, and sustainable water use, among others. In doing so, communities must challenge and overturn legal doctrines that have been concocted to eliminate their right to self-government, including the doctrines of corporate constitutional rights, preemption, and limitations on local legislative authority. Inseparable from the right to local self government - and its sole limitation - are the rights of human and natural communities; they are the implicit and enumerated premises on which local self government must be built.

CELDF Board of Directors

Michael Fiorentino, Esq.
32 Providence Road
Morton, PA 19070

Antionette Pennock
304 Bunker Hill Road
Robesonia, PA 19551

Tammy Belinsky, Esq.
9544 Pine Forest Road
Copper Hill, VA 24079

Daniel E. Brannen, Jr., Esq.
9 Glorieta Road
Santa Fe, NM 87508

Fred Walls
8048 Lincoln Way West
St. Thomas, PA 17252

Officers

Thomas Linzey, Esq., President
2816 West Broadway Avenue
Spokane, WA 99201

Stacey L. Schmader, Secretary/Treasurer
675 Mower Road
Chambersburg, PA 17202



The ordinance is crafted to protect the right to water. This is a fundamental right.

A Look Inside the City of Mt. Shasta Community Water Rights and Self-Government Ordinance

The ordinance is crafted to protect the right to water. This is a fundamental right that is diminished by laws that merely “regulate” the rate at which natural water sources are depleted or spoiled by corporate and industrial use. In this section you will find answers to common questions about the ordinance, an explanation about what it does and does not do, and the rationale for asserting unalienable rights, rather than enacting regulations. Here you will also find a list of the specific rights enumerated, an explanation of the practical effect of enumerating those rights, as well as a discussion about the mandatory responsibilities of the City Council in executing the legal processes of the citizens’ initiative.

See Appendix I for full text of the ordinance

A. Water Rights Protected through Local Self-Government

The people of the City of Mt. Shasta understand that responsibility for remedying or simply enduring harmful effects brought about by modifications to weather, the introduction of toxins into the environment, and the privatization of water, is carried predominantly by the public. State and federal authorities regularly sanction damaging industrial and corporate behavior, and state and federal lawmakers and courts exercise preemptive authority over community attempts to prohibit harmful corporate behavior locally. The people of the City of Mt. Shasta recognize that they have no commensurate authority under current state and federal law. The people of the City of Mt. Shasta adopt this Ordinance to correct that error.

See Mt. Shasta Community Water Rights and Self-Government Ordinance § 1.3.

Accordingly, more than 700 petitioners – over one third of the registered voters within city limits – have instructed their City Council, in accordance with California law defining the initiative procedures, to either enact this Ordinance unchanged or place it before the people for consideration.

There is a single topic addressed by the City of Mt. Shasta Community Water Rights and Self-Government Ordinance: the protection of the right to “sustainably access, use, consume, and preserve water drawn from natural water cycles.”

B. What Would the Ordinance Do?

There is a single topic addressed by the City of Mt. Shasta Community Water Rights and Self-Government Ordinance: the protection of the right to “sustainably access, use, consume, and preserve water drawn from natural water cycles.”

To protect the fundamental Right to Water, three other pre-existing broad and fundamental rights are enumerated, in the same way that the Bill of Rights spells out our rights without addressing specific violations or enforcement.

1. The inherent rights of the citizens to self-government in their place of residence.
2. The rights of people to live in a healthy environment and to protect local natural resources and ecosystems upon which they depend.
3. The rights of natural communities and ecosystems to exist, flourish, and evolve.

Additionally, this “Community Water Rights Ordinance” prohibits two specific activities within the City that would violate the Right to Water, and provides for the enforcement of these two prohibitions.

1. Corporate cloud seeding (including chemical trespass into the City from cloud-seeding chemicals released outside the City limits).
2. Corporate water extraction from within the City limits for exportation and sale.

There are the only two specific prohibitions, and violations of the ordinance that can be enforced with reference to the enumerated rights.

Although broad rights are recognized and articulated in the ordinance, it does not provide specific enforcement mechanisms to protect every aspect of these rights, and is enforceable only for violations of the two specific prohibitions that would violate the Right to Water. Recognition of broadly stated rights does, however, establish a legal foundation for adopting other enforceable protections in the future. Further, recognizing the broad encompassing nature of these rights conforms to the values and ethics of the community, and reflects the aspirations of the people who live here.

While the Right to Local Self-Government is spelled-out in some detail, the assertion of that right is manifested in two specific and narrowly defined prohibitions. The assertion of local self-governing authority possible under this ordinance is limited to these two prohibitions as community polices enacted for the protection of the Right to Water. The rights enumerated are fundamental and inalienable, but this ordinance presumes only to assert the Right to Water by exercising the Right to Local Self-Government to protect that right, specifically by implementing two specific prohibitions to protect that right.

The Right to Local Self-Government is not created by this ordinance; it is a cornerstone of the democratic principle, since democracy and government by the people

cannot exist if it they are denied the people this right in the communities where they live. The exercise of that right is unalienable; however, this ordinance asserts that right in only one area: the protection of the Right to Water by the banning of cloud seeding and any resulting chemical trespass and in the prohibition of corporations engaging in water extraction from within the City if the water is to be sold by a business corporation outside the City.

What the ordinance does specifically:

- **Uses the democratic process** to assert the right to local self-government and protect the right to water under law.
- **Ensures that only residents can make key decisions about our water resources.** Without this ordinance, water bottlers and cloud seeding corporations have free reign to operate in our community, without our permission. Who (or what) else but residents who live here should be in control over our destiny? This ordinance empowers us to say “no” to activities that we, as self-governing people, deem harmful (until such time as we as a community determine otherwise), and “yes” to our fundamental rights.
- **Stops water bottling corporations from withdrawing water within city limits for export.** Possible outcomes from corporate water bottling in town include: draining local aquifers to a point beyond repair, endangering property values and local businesses that depend on local wells for water (corporations could drain those local sources), lawsuits for water activities or violations of regulatory law could put town coffers in danger, and many other unforeseen dangers—all of which have happened to other small communities who have “welcomed” one or more big bottlers.
- **Stops corporations from cloud seeding within the city.** If cloud seeding is done outside city limits, but the wind blows those toxins over the city of Mt. Shasta and those chemicals are found in the bodies of local residents or in our water, this ordinance allows us to hold the culprits liable for chemical trespass.
- **Provides community protections that State Law has neglected to allow.** Because the state of California does not regulate corporate cloud seeding, without this ordinance we would have no ability to protect ourselves from increased risk from costly damage from flash floods, etc. or the toxic chemicals used – silver iodide in this case – which a growing body of evidence shows to be harmful.
- **Ensures specific unwanted corporate projects cannot be forced upon residents.** Corporations that violate the cloud seeding and water withdrawal provisions may not assert “rights” that would trump the rights of the people of Mt. Shasta.

While the rights in the ordinance are broadly stated, this ordinance addresses very specific and narrow prohibitions around corporate cloud seeding and water withdrawal.

C. What the ordinance does NOT do:

- While it addresses chemical trespass related to corporate cloud seeding ONLY - it does not prohibit any individual from purchasing or using any legal chemical substance whatsoever. It does not prohibit toxic trespass in a way that could outlaw substances such as plastics, cigarettes, hairspray, etc.
- It does not deny any resident their property rights. This ordinance ONLY applies to water bottling corporations whose activities take place within city limits and cloud seeding corporations. (It does not apply to the Coke water bottling factory, for example, because that is outside of city limits).
- It does not prevent any resident or corporation from withdrawing or using water within the city.
- It does not affect individuals or govern their activities in any way. While the ordinance lays out broad rights we are all entitled to as human beings – such as the right to water and the right to be free of toxic trespass – the ONLY actors affected by this ordinance are corporate actors who are in direct violation of the cloud seeding and water withdrawal provisions.
- This ordinance does not address in any way what is referred to as “Chem Trails.”
- It does not affect local businesses or strip local businesses of their corporate shield. The corporate shield protections are granted through the state chartering process. This state protection remains intact for all but those corporations that would violate the cloud seeding and water extraction for resale prohibitions. The ordinance will not impair legitimate business practices.
- It does not prevent a brewery or beverage manufacturing facility now or in the future.
- It does not prevent the City from delivering water to customers outside the City. Mt. Shasta is specifically exempted from the definition of a “corporation,” and the prohibitions apply only to corporations.

D. Specific rights asserted in the ordinance:

While the rights in the ordinance are broadly stated, this ordinance addresses very specific and narrow prohibitions around corporate cloud seeding and water withdrawal:

- It recognizes broad unalienable rights for every resident of our community including (but not limited to) the “Right to Natural Water Systems and Cycles, to Self-Government in the place of residence, to Self, to a Healthy Environment.”
- (Section 2.1.1) A Right to Water is recognized for all residents, natural communities and ecosystems in the City of Mt. Shasta, including the right to sustainably access, use, consume, and preserve water drawn from natural water cycles that provide water necessary to sustain life within the City.

The right to adopt laws through a citizen initiative is recognized in the California Constitution.

- (Section 2.2.1) The Right to Community Self-Government recognizes that all governing authority is inherent in the people affected by governing decisions, and all legitimate governments are founded on the people’s authority and consent. This includes people’s fundamental right to participate in a form of government in the community where they live which guarantees them authority to use governing power over questions of law that affect their lives, families, environment, quality of life, health, safety and welfare.
- (Section 2.3.2) The Right to a Healthy Environment asserts that all residents and persons within the City of Mt. Shasta possess a fundamental and inalienable right to unpolluted air, water, soils, flora, and fauna, the right to a natural environmental climate unaltered by human intervention, and the right to protect the rights of natural communities and ecosystems, of which each resident is both intrinsically a part and upon which all are dependent.
- (Section 2.3.3) The Right to Self asserts that all residents and persons living within the City of Mt. Shasta possess a fundamental and inalienable right to the integrity of their bodies, and to be free from unwanted invasions of their bodies by manufactured chemicals and toxins, including but not limited to, toxic substances and potentially toxic substances.
- (Section 2.4.1) The Rights of Natural Communities, including, wetlands, streams, rivers, aquifers, clouds, and other water systems, possess inalienable and fundamental rights to exist, flourish and naturally evolve within the City of Mt. Shasta.
- The rights asserted in this ordinance — and more — belong to the residents of Mt. Shasta, and it is because we are born with these rights that we have the right to determine which specific activities are appropriate or inappropriate for our community.

E. Who has the Authority to Decide if the Ordinance Becomes Law?

The right to adopt laws through a citizen initiative is recognized in the California Constitution. The process for participating in this form of direct democracy is defined by state law, and that law imposes mandatory requirements on petitioners. Once the people have fulfilled the procedural requirements, mandatory requirements are imposed on the City Council. The City Council is obliged to either adopt the ordinance unchanged or to place it on the ballot for the people to vote on the measure. The Council has no discretion to block the measure based on their opinion of its value or content.

1) The People Retain the Right to Democratic Self-Governance and Law-Making

Unlike many other state constitutions, the California Constitution more strongly protects the local autonomy of cities and counties and recognizes broad plenary

home rule powers (also known as charter cities)¹. In addition, many of the individual rights clauses in the state constitution have been construed as providing rights broader than the Bill of Rights in the U.S. Constitution.

The recognition that the people of California retain rights not enumerated in either the state or federal constitution was first articulated in the original California Constitution of 1849, in Article I, Section 21, which stated: "This enumeration of rights shall not be construed to impair or deny others retained by the people." And the current California Constitution, in Article I, Section 24 states that "Rights guaranteed by this Constitution are not dependent on those guaranteed by the United States Constitution."

Today, the people of Mt. Shasta have the right and authority to propose and adopt local laws, and the process for doing so is spelled out in state law.

Among the rights retained by the people and not subject to limitation by state or federal government is the Right to Community Self-Government. [See section of this Report titled "The People of Mt. Shasta Possess an Unalienable Right to Local Self-Governance"]. At a time of widespread outrage over the hijacking of the state legislature by large railroad corporations, California citizens organized to constitutionalize the power of direct local and state-wide democracy. In 1911, the state constitution was amended to recognize this right through adoption of the powers of initiative, referendum and recall.

Today, the people of Mt. Shasta have the right and authority to propose and adopt local laws, and the process for doing so is spelled out in state law. Accordingly, more than 700 petitioners have complied with all legal requirements and instructed their City Council to either enact this Ordinance unchanged or place it before the people for consideration, in adherence with California law defining the initiative procedures, and in accordance with Article I, Section 3 of the state constitution which states: "The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good."

2) Can a Citizen Initiative be kept Off the Ballot by the City Council?

It is a grave irony that any person or official body would seek to challenge a citizen initiative asserting local self-governing authority with the aim to protect the health, safety, and welfare of the community. The petitioners followed the democratic process set out by state law, and received overwhelming support of the community to put forward the ordinance. Governing authority resides within the people, and residents have the right to determine whether this ordinance becomes law by a vote of the people.

¹ Charter cities, or home rule cities: A charter city is a city in which the governing system is defined by the city's own charter document rather than by state, provincial, regional or national laws. In locations where city charters are allowed by law, a city can adopt or modify its organizing charter by a majority vote of its resident citizens. A charter gives a city's residents the flexibility to choose any kind of government structure allowed by law. For example, in California, cities which have not adopted a charter are organized by state law. Such a city is called a General Law City, which will be managed by a 5-member city council. A city organized under a charter may choose different systems, including the "strong mayor" or "city manager" forms of government.

The reality is that pre-election challenges to initiatives are generally barred by the courts; however, a member of the Mt. Shasta City Council has suggested that the Council might ask the Court to bar the ordinance from appearing on the November ballot, even though sufficient signatures have been collected to qualify the measure and the petitions have been certified by the elections office.

Such a move would constitute a pre-election challenge to the initiative, and an attempt by the representatives of the people to block the people from voting on a question they have sufficiently endorsed for ballot placement. Such an effort would be antithetical to the democratic responsibilities of the members of City Council.

If the municipal officials want to keep the ordinance off the ballot for what they believe to be flaws in its content, they are required to vote to put the ordinance onto the ballot first, and sue after that to keep it off the ballot. State law regarding their duty to follow procedure and either vote to adopt the ordinance unchanged or vote to place the ordinance on the ballot is non-discretionary. They must adopt the ordinance or put it before the people. If they choose to ask a court to order the measure be kept off the ballot, they cannot do so before voting to put it to a popular vote.

Due to the deadlines necessary for printing and circulating ballot materials, courts have little time to examine, digest, and rule on pre-election challenges to initiative measures, and appellate review of the trial courts' decisions are rarely possible. Thus, pre-election challenges can have a chilling effect on the right of the people to due process of law. A rush to judgment under the pressure of the ballot deadlines creates the possibility of an erroneous decision that would deprive voters of their constitutional right to adopt or reject an initiative measure as a matter of public policy. It is usually more appropriate to review constitutional challenges to ballot measures after an election if at all.

If the City Council is allowed to prevent the initiative from appearing on the ballot by mustering three votes of the City Council to stop it, the initiative power reserved to the residents of the City is all but nullified. Essentially, left unchanged, it would establish a rule that only those initiatives which have the support of the City Council are eligible to be placed onto the ballot. Such a rule establishes dangerous precedent, especially because the initiative process is often used when the local government has failed to respond to the needs of the people. Accordingly, the petitioners would ask the appropriate court to declare that the City Council does not have not the legal authority to prevent an initiative from reaching the ballot.

3) The Legitimate Legal Landscape

After submission of an initiative petition which meets all procedural and signature requirements, the legislative body of a municipality [the Mt. Shasta City Council] must take one of three non-discretionary actions – (a) adopt the proposed initia-

tive as an ordinance by action of the legislative body, (b) vote to place the proposed initiative onto the ballot at the next election for a vote of the electorate, or (c) vote to commission a special report on the potential impacts of the initiative with the requirement that the report be finalized within thirty days of the first consideration of the initiative by the legislative body. See §9214 of the California Elections Code.

If a report is prepared, the legislative body “shall either adopt the ordinance within 10 days or order an election” for the initiative. See 9214(c). The language here is mandatory, not discretionary, and “a city’s duty to adopt a qualified voter-sponsored initiative, or place it on the ballot, is ministerial and mandatory.” See *Blotter v. Farrell*, 42 Cal.2d 804, 812 (1954); *Citizens for Responsible Behavior v. Superior Court*, 1 Cal.App.4th 1013, 1021 (1991); *NASSEPA v. City of San Juan Capistrano*, 16 Cal. Rptr.3d 146, 149 (Cal.App.4 Dist.2004).

The mandatory nature of the duty imposed by the Elections Code is inherently related to the important right of the initiative that it protects. In the words of one court, “voter action by initiative is so fundamental that it is described ‘not as a right granted the people, but as a power reserved by them.’” *Associated Home Builders etc., Inc. v. City of Livermore*, 18 Cal.3d 582, 591, 135 Cal.Rptr. 41 (1976). Because of that fundamental nature, courts are “required to liberally construe this power and accord it ‘extraordinarily broad deference.’” *Pala Band of Mission Indians v. Board of Supervisors*, 54 Cal.App.4th 565, 573-574, 63 Cal.Rptr.2d 148 (1997).

After voting to place the initiative onto the ballot for voter approval, courts have generally been reluctant to bar initiatives from appearing on the ballot without clear evidence that the initiative lacks a proper subject, or that it contains procedural deficiencies. For example, in *Myers v. City Council of the City of Pismo Beach*, 50 Cal.Rptr. 402 (1966), the court declared invalid an initiative that sought to rescind a hotel tax that had previously been levied by the City Council. The court reasoned that the initiative process could not be used to levy or rescind a tax, because that authority had been lodged solely in the “legislative body” of the city by the state legislature. See also *Dare v. Lakeport City Council* (App. 1 Dist.), 91 Cal. Rptr. 124 (1970) (holding that initiative power cannot be used to exercise a taxation function to provide for connection and use of sewer facilities).

Courts have also struck initiatives based on procedural deficiencies, such as lacking the “text of the measure” as required by California elections law. See *Mervyn’s v. Reyes*, 69 Cal.App.4th 93, 81 Cal.Rptr.2d 148 (1998); *San Francisco Forty-Niners v. Nishioka*, 89 Cal.Rptr.2d 388 (Cal. App.1 Dist. 1999) (holding that false and misleading petition statements were grounds for striking an initiative from the ballot).

There are no reported cases dealing with pre-election challenges to municipal initiatives which involve challenges to the substance of the initiative. For guidance on how a substantive pre-election municipal challenge would be treated, a review of court treatment of pre-election substantive challenges to state initiatives

In adopting this ordinance, the people of the City of Mt. Shasta will follow other U.S. communities, as well as the nation of Ecuador, in recognizing Rights of Nature.

is warranted. The general rule in California is that “it is usually more appropriate to review constitutional and other challenges to ballot propositions or initiative measures after an election rather than to disrupt the electoral process by preventing the exercise of the people’s franchise, in the absence of some clear showing of invalidity.” *See Brosnahan v. Eu*, 31 Cal. 3d 1, 4 (1982).

Generally, California courts have refused to entertain pre-election challenges which contend that the substance of the initiative is unconstitutional, and will only entertain pre-election challenges which are jurisdictional in nature – in that “the challenge goes to the power of the electorate to adopt the proposal in the first instance.” *Id.* As summarized, “it is generally improper for courts to adjudicate pre-election challenges to a measure’s substantive validity”, but “pre-election review of challenges based on noncompliance with procedural requirements or subject matter limitations is proper.” *See Gordon and Magleby, Pre-Election Judicial Review of Initiatives and Referendums*, 64 Notre Dame L.Rev. 298 (1989).

Under that general standard, there are only three categories of pre-election challenges to statewide initiatives that have been considered by California courts: the first consists of challenges to initiatives that violate the “single-subject rule” which limits initiatives to a single subject or germane multiple subjects (*See Perry v. Jordan*, 34 Cal.2d 87 (1949)); the second consists of challenging initiatives that directly violate provisions of the California Constitution (*See Legislature v. Deukmejian*, 34 Cal.3d 658, 194 Cal.Rptr. 781 (1983) (striking an initiative that sought a second legislative redistricting within a 10-year period in violation of article XXI of the California Constitution); and the third consists of challenges to initiatives that are not legislative in character. *See American Federation of Labor v. Eu*, 36 Cal.3d 687, 206 Cal.Rptr. 89 (1984) (pre-election review of initiative requiring Legislature to adopt resolution asking Congress to pass a balanced-budget amendment); *But see, Farley v. Healey*, 62 Cal. Rptr.26 (1967) (upholding a San Francisco initiative which sought to establish policy at the city and county level calling for the immediate withdrawal of American soldiers from Vietnam).

F. Why the Ordinance Recognizes Inalienable Rights for Nature

In adopting this ordinance, the people of the City of Mt. Shasta will follow a dozen other U.S. communities in Pennsylvania, Maine and New Hampshire, as well as the nation of Ecuador, in recognizing Rights of Nature. The reasons for those municipalities to adopt this stance is as much pragmatic in that it is a tool for increased self-governance, as it is environmentally ideological. Both of these are explored in this section.

1) How Recognizing Rights of Nature Empowers Mt. Shasta Residents

Although this ordinance allows for enforcement of the Rights of Nature in very limited ways, there is a significant shift in the legal balance of power between citizens

and corporations that stems from the legal recognition of the Rights of Nature.

A real limitation imposed “legally” against people protecting their natural environment and quality of life pertains to the judicial concept of “standing.” In general, U.S. law recognizes property rights as the basis for court decisions, and only infrequently rules in favor of civil, human, and political rights. If citizens wish to protect their natural environment from destruction and sue to do so, the court will typically ask what harm will come to the citizens’ tangible property if the questionable activity is allowed to go forward. For instance, the judge will ask if the citizen owns the land that a proposed dump is to be sited on, or if the citizen owns adjacent land, the value of which will be reduced by the siting. If there is no property interest, the court will likely declare that the citizen has “no standing.” In other words, the siting of the dump, a legally permitted activity, will not inflict financial harm. Case dismissed.

The right to a clean, healthy, thriving natural environment is not easily argued in court, since the court sees no immediate and direct interest held by the citizen unless it is a quantifiable property interest. However, by legally recognizing that natural communities and ecosystems possess inalienable rights to exist and flourish, (a right that pre-exists this law, but has not been articulated in law before), the legal equation is changed. And by authorizing community residents to advocate for those rights, on behalf of the ecosystem, the ordinance empowers citizens to protect their natural environment even if they have no property interest in it.

Although the ordinance allows for such citizen enforcement of the rights of nature, they are authorized to do so only in cases associated with potential harms stemming from violation of the prohibitions against corporate cloud seeding and water extraction within the City of Mt. Shasta for sale outside the City. The rights recognized by the ordinance are stated broadly, but the enforcement provisions for those rights are narrowly drawn.

2) What the Ordinance Says about the Environment

The City of Mt. Shasta Community Water Rights and Self-Government Ordinance is unusual. It, along with just over a dozen other local laws in effect in U.S. communities, includes the legal recognition that all human and non-human beings are part of nature and that living in balance and harmony with nature is essential for life, liberty, and the pursuit of happiness – both for people and for the ecological systems which give life to all species. This ordinance, and the others in places like Virginia, Pennsylvania, New Hampshire and Maine, further declares that we the people have a duty to secure and enforce the inalienable Rights of Nature, upon which all life depends.

This ordinance recognizes that the species and ecosystems of the earth have been degraded by human use to the point where many will not recover. It recognizes that existing frameworks of law which treat nature as “property” under law are not preventing the degradation of nature and are in fact accelerating it. Only a bind-

ing legal framework that secures the Rights of Nature will reverse that course. The many people who endorsed this initiative through the legal instrument of a petition further recognize that the health and welfare of all beings, human and non-human, depends on a fundamental change in how human beings regard nature through law, culture, and behavior.

And so this ordinance and the people of Mt. Shasta who vote for its adoption declare that securing nature's rights under law continues a long and necessary history of securing rights for the "rightless" – including women, children, and others – who were once considered "property" under the law.

This extraordinary provision of the ordinance recognizes that the Rights of Nature are part of an ever expanding body of rights for all creatures on, and all parts of, the earth.

3) What Rights of Natural Communities and Ecosystems are Recognized?

There is a general recognition of the Rights of Nature that asserts rights for natural communities and ecosystems, not for individual animals, plants or other organisms:

- a) The right to exist, flourish, and evolve;
- b) The right to habitat;
- c) The right to maintain its identity and integrity as a distinct, self-regulating matrix of life;
- d) The right to be free from degradation, pollution, and contamination of its natural genetic systems and hence its ability to continue to exist;
- e) River systems have the right to flow and have water quality necessary to provide habitat for native plants and animals, and to provide clean drinking water;
- f) Aquifers have the right to sustainable recharge, flow, and water quality; and
- g) Species have the right to exist, flourish, and evolve.

"Ecosystems" generally include forests, species, wetlands, groundwater systems, surface-water systems, rivers, streams, aquifers, and the earth's climate. The recognition of legal rights for natural communities and ecosystems is not an "animal rights" policy, but a protection for the future viability of interdependent living systems and habitats.

"Natural communities" as defined by the ordinance: "Wildlife, flora, fauna, soil-dwelling, aerial, and aquatic organisms, as well as humans and human communities that have established sustainable interdependencies within a proliferating and diverse matrix of organisms within a natural ecosystem."

The natural community of Mt. Shasta is defined by the boundaries of the municipality and includes humans and other species of flora and fauna.



More than 120 municipal governments, prompted by their citizens, have adopted ordinances grounded in community rights.

Rights-Based Ordinances Adopted by Other Communities

Over the past decade, more than 120 municipal governments, prompted by their citizens, have adopted ordinances grounded in community rights. The Legal Defense Fund and its local partners have assisted in the drafting and adoption of ordinances in Pennsylvania, Virginia, New Hampshire and Maine that shift the focus of local governance away from regulating the amount of harm legalized by state permits, and they turned their attention instead to protecting the rights of people in the community against state-sanctioned corporate damage. Global Exchange has taken up this work in California, and Mt. Shasta is poised on the cutting edge, to bring rights-based local self-government to the West Coast.

Beginning in rural Pennsylvania, where agribusiness corporations lobbied hard and won passage of state laws preempting local control over the corporatization of agriculture and the rural disposal of urban sewage sludge, citizens began urging their municipalities to adopt prohibitions against factory farms and sludge dumping. Had they crafted traditional regulatory ordinances, state preemptions would have prevented them from protecting their communities any more strictly than the nearly non-existent regulations in place at the state level. But they rejected “regulation” as the acceptance of state-sanctioned corporate coercion of their communities. “Regulation,” they understood, meant allowing what they had determined to be harmful and spending all their energy attempting to have rules enforced that had been crafted to accommodate the regulated industries. Instead, they decided to take seriously their inalienable right to self-government, and to enact law enforceable prohibitions against damaging activities, as a way to finally legalize the aspirations of the community.

Beginning in 1998 in Pennsylvania, scores of communities adopted local laws challenging state preemptions of local self-governance. They succeeded in stopping factory farms, sewage sludge dumping, and importation of corporate waste of all sorts. Of the scores of communities adopting these laws, only a handful ever saw legal action as a result, and so far the ordinances have succeeded in preventing the prohibited harms.

The first Virginia community to adopt an ordinance banning corporate mining also recognized the right to be free from toxic trespass. Halifax Virginia enacted its law with looming concern over proposed uranium mining in southwestern Virginia.

A handful of communities in New Hampshire and Maine organized to protect their ground water against extraction by large international bottling corporations, and through the instrument of direct democracy at Town Meetings adopted water rights ordinances that are the precursor to the Mt. Shasta Water Rights ordinance.

What's the verdict on these ordinances? If success is measured by the exercise of democratic rights, then there is little doubt that these communities have come through with flying colors. Judged in terms of effectiveness, not one of these communities have suffered from imposition of the banned corporate activities, and the right to local control, though it has not gone unchallenged, has so-far prevailed in all but one case. Five of these communities have seen legal action. Two capitulated without a fight and surrendered their ordinances. One prevailed in County Court (Belfast, Fulton County, PA), with the court declining to overturn the ban on non-family corporate involvement in agriculture, one anti-corporate mining ordinance was overturned by Commonwealth Court, and one case is active currently, with the Commonwealth Court recently declining a request by the State Attorney General to strike the local ordinance as a matter of law.

In the final analysis, the question to be resolved relating to rights-based local laws is this: Who Decides? Will it be the people affected by governing decisions who have the last word when it comes to whether or not laws protecting rights are allowed to stand and be enforced? Or will it be someone else: a Court, a Corporate Board of Directors, a local governing body representing a municipal corporation and not the people, an agency bureaucrat? The answer to this question is our answer to one of history's long-standing questions: is democracy possible?

A. Adopting Rights-based Ordinances in New Hampshire and Maine

When several communities in New Hampshire were being approached by water companies with permits from their state regulatory agency, the Department of Environmental Services (DES), citizens began to ask the question, "Why is it that people who do not live in our town get to determine what will happen to the water that we all share?"

The business entities holding permits to engage in large, groundwater water withdrawals – anything over 57,000 gallons per day – had one interest in mind; to gain control over local aquifers for financial benefits reaped from the extraction and resale of the local water supply.

In 2001, Nottingham, NH, the town zoning board granted a variance for special exception for land use along Route 4. Zoned as residential, the parcel of property

purchased by the Garrison Place Real Estate Investment Trust, was suddenly approved for industrial use.

Despite opinions from the chief of police about traffic dangers from water trucks entering the highway, and despite scientific evidence to quell the permitting of a large scale bottling operation (such as warnings of contamination found on the abutting property), the pump tests went ahead as scheduled in 2002. Pump tests for 10 days contaminated the aquifer and resulted in no recharge for 180 days.

In 2003, DES denied the company's appeal for a New Source of Bottled Water Permit.

With a change in the State administration – Governor Benson elected and a new administrative head of DES appointed – the company resubmitted application and was approved.

Local voters passed a local restriction banning all bottling operations in town in 2004.

Their elected officials met with legal counsel and representatives of USA Springs, Inc., to overturn the ban, as legal counsel advised the regulatory ban was "illegal". This cleared the way for the permitted activity to proceed. [It was not until 2008 that people uncovered this unpublicized meeting and learned of the action taken to override the peoples' vote.]

In 2005, Department of Environmental Services (DES) issued a Certificate of No Further Action to USA Springs and closed the case. USA Springs, Inc. contested. Neighborhood Guardians formed (11/16/05) to take over the court appeal. In 2006, the NH Supreme Court ruled that citizens as well as members of Save Our Groundwater and Neighborhood Guardians had "no standing" in the case. The decision was made in favor of USA Springs (Town of Nottingham v. USA Springs, 2006)

Nottingham residents responded to the reward of a permit to extract water by adopting the **Nottingham Water Rights and Local Self-Government Ordinance at Town Meeting in 2008, with a vote of 173:111**. When someone in the crowd **invoked Article 40:10 in a motion to reconsider the vote, the motion for reconsideration failed, with people voting against it, 54:35. The vote in favor of the ordinance carried both times by a majority vote. No water has been extracted by USA Springs and the company is currently in bankruptcy proceedings.**

In the neighboring town of **Barnstead, NH**, residents wondered about other kinds of strategies that might be available to people wanting to ban a regulated land use like water extraction. Taking a proactive measure, they unanimously passed a Resolution to Protect Groundwater and one to ban the incineration of Construction and Demolition Debris (C&D) within the Town at Town Meeting in 2005.

The small group of people who volunteered to work on language for an ordinance to be presented at the next year's Town Meeting began researching large groundwater laws in the state and recently adopted ordinances around New England that

were groundwater-related. They did not find any regulatory schemes that allowed the community to say “no”. With the help of Olivia Zink, local student activist and Ruth Caplan of the Alliance for Democracy, they learned about the Community Environmental Legal Defense Fund in Chambersburg, PA (CELDF) and the rights based ordinance. Soon, working with Thomas Linzey and the Barnstead selectmen, they had drafted a water ordinance that protected the rights of people within the community to determine whether or not a large groundwater withdrawal would occur within town limits. The people of Barnstead decided that such an operation was an affront to the public trust and their ability to provide water for residents within the Town. The water group took a year to explain—through public meetings, film screenings and potluck suppers with discussions that followed—the intent and nature of the rights based ordinance. When the local law was presented to Barnstead voters **at the Town Meeting in 2006, it passed by a vote of 135:1. The Rights of Nature was added to the original document in 2008, at Town Meeting - the same year that Nottingham, NH adopted the full ordinance.**

In 2007, the town of **Atkinson NH** passed the Atkinson Water Rights and Local Self-Government Ordinance at a special Town Meeting on September with a vote of **753 to 368**.

In Atkinson, where residents placed the local law within their health ordinance in 2008, the Hampstead Water Company won permission to build a connector pipe from the Town of Hampstead to neighboring, Atkinson, NH for the purpose of moving water from Atkinson to Hampstead, with the provision that this only be done in cases of extreme drought. Residents of Atkinson made it clear that they wanted a meter put in place located at the border between the two towns, for proper monitoring. Challenges were brought to the local ordinance, which still remains imbedded within their health ordinance.

In 2008, in **Shapleigh and Newfield, Maine** the peoples’ Vernon Walker Wildlife Reserve was found to have over 20 test wells that had been drilled there by Nestle Waters, NA. Without any public hearings or local meetings, the company had gained access to the Vernon Walker through a handshake agreement to begin water extractions there in the near future. Upon learning of this possibility—and that selectmen had allowed the project to go forward without any input from the residents--outraged citizens, Ann Winn Wentworth, Shelly Gobeille, Eileen Hennessey, planning board member, Denise Carpenter, Gloria Dyer and others bonded together to correct the inappropriate action taken by their elected representatives. POWWR – Protect Our Water and Wildlife Resources was formed.

The residents tried working with their selectmen to find a way to correct the problem and soon found that their representatives were not interested in serving the will of the people, but were in fact, cooperating with Nestle to write and pass a regulatory ordinance to allow water extraction within the Reserve. Locals called in Emily Posner of Defending Water in Maine and community organizers Gail Dar-

rell (CELDf) and Ellen Hayes of Advocates for Community Empowerment (ACE) to begin discussing how to say “no” to Nestle. The result was a local law, **The Shapleigh (and Newfield) Water Rights and Local Self-Government Ordinance. This law passed at a Special Town Meeting in February, 2009 with a vote of 114 to 66.** Petitions circulated by residents forced a special meeting after their elected officials refused to place the ordinance on the ballot for regular Town Meeting in March. **Newfield elected officials agreed to place the ordinance on the ballot for the regular Town Meeting in March and it was voted in 228 to 146. Nestle Waters, NA removed all (23) test wells from the Vernon Walker in July, 2009.**

To view any information regarding the Shapleigh/Newfield timeline or other work in Maine, visit www.defendingwaterinmaine.org

B. Statements from Packer Township and Tamaqua Borough, Pennsylvania on their Rights-based Ordinances

From Tom J. Gerhard, Chairman of Packer Township Supervisors and Republican candidate for County Commissioner.

On June 11, 2008 the Packer Township Supervisors unanimously enacted the Packer Township Local Control Sewage Sludge and Chemical Trespass Ordinance.

The township solicitor urged the supervisors not to do so, but I feel that we are here to represent the people of Packer Township, not our solicitor. Knowing that the township would probably be sued, the supervisors moved forward.

August of 2009 the Attorney General brought a lawsuit against Packer Township and the Board of Supervisors. Many people have questioned me, asking if we were afraid of the outcome. I have made a statement that I am not intimidated by the Attorney General or our legislators in Harrisburg. One of the biggest responsibilities of any elected official is to provide a safe and healthy environment for our residents to live in. I am a lifetime resident of Packer Township for over fifty-three years and I am extremely proud of the township, which I live. It is our job to preserve the environment that we live in and pass it down to our children and grandchildren.

Nothing is going to change unless people like the supervisors and residents of Packer Township continue to fight for what is right.

Other townships and boroughs have passed the same or a similar ordinance like Packer, but have revised or rescinded their ordinance because of the pressure from the Attorney General. Strength comes in numbers. If more people would take a stand like Packer Township and hold their ground, things would probably run a little easier. Just because the state of Pennsylvania tells us this material is suitable for land application, we are say “No, it is not”, and we will not accept it in our township. Government has to change from the top down. We cannot have people governing us who represent special interest groups and big corporations. Excepting large monetary contributions

from these people leave their hands tied. I am an honest, tell-it-like-it-is, no-strings-attached supervisor who will fight until the end. The bottom line is that, we the people of Packer Township have the right to self government, no matter what the state or Attorney General has to say. Stand up for what is right and what you believe.

From Chris Morrison, Mayor of Tamaqua:

Tamaqua is where I live, and where I am going to stay and create my future. I ran for an office to protect and work for my community. Sometimes the things that you might do as an official in order to get that job might be deemed a legal liability. What it comes down to is, you still have the obligation to your constituents to fulfill your job by doing what is right. If it seems that the advice of the town solicitor is against that obligation, you still have to do what is right, I mean – What’s the option? To be sued for what you believe is right or have your community dumped on or some other damage to the community?

We can’t continue to lie down anymore, and those who attempt to frighten the community with tales of bankrupting the city? The city is bonded. Anyone can scare you on these issues. If the Attorney General or big business wants to come and threaten to bankrupt the city in order to do damage to the community, shame on them, I think this is part of the job as a city official: to break up the status quo and represent the interests of your community and its future well being. It’s not that complicated.

“I think this is part of the job as a city official: to break up the status quo and represent the interests of your community and its future well being. It’s not that complicated.”

–Mayor of Tamaqua



Issues and Questions Pertaining to Water Rights and Local Self-Government

Q 1: Could a water bottling corporation claim “lost future profits” due to the prohibition against water withdrawal in Mt. Shasta for sale outside the City?

NO -- Section 2.2.1.3.3. *Future Profits Not Property* says that “Within the City of Mt. Shasta, corporate claims to ‘future lost profits’ as a result of the enactment, implementation or enforcement of this Ordinance shall not be considered property interests under the law and, thus, shall not be recoverable by corporations seeking those damages as a result of the enforcement of this Ordinance within the City.” A corporation would have to successfully argue that future profits hypothetically derived from taking Mt. Shasta’s ground water DO legitimately belong to the corporation. Additionally, before making that argument, corporate attorneys would also have to win the argument that corporations can violate the rights of the community by asserting the corporation’s “rights.”

Section 2.2.1 reads in part: “Corporations and other business entities shall not be deemed to possess any legal rights, privileges, powers, or protections which would enable those entities to avoid the enforcement of, nullify provisions of, or violate the rights enumerated in this Ordinance.”

Section 2.2.1.3.2 *Corporations as State Actors* reads: “Corporations chartered by government acquire their being, their authority, and their ability to act from the State. Within the City of Mt. Shasta, corporations shall be prohibited from denying the rights of residents and natural communities and shall be civilly and criminally liable for any such deprivation or denial of rights.”

These sections act as barriers to the corporation ever prevailing against the ordinance. It is unlikely a corporation would test them since the corporate project could be sited somewhere else without having to explore these potentially damaging arguments in court.

Q 2: Can the ordinance's chemical trespass language be interpreted to apply to any chemical that would find its way into someone's body, including hairspray, gasoline, and other common products?

NO -- Although the Ordinance asserts that chemical trespass against natural communities, ecosystems, and human communities is illegitimate and illegal, it *prohibits only* chemical trespass of chemicals used in corporate cloud-seeding. The Ordinance only provides for enforcement against violations of this specific prohibition.

Section 2.1.1.4 of the ordinance defines chemical trespass, declaring that such trespass can only "result from corporate cloud seeding or weather modification." It is further reinforced in six different places in the ordinance (§ 2.1.1.4; 2.3.3.1; 2.3.3.2 ; 2.3.3.3; 2.3.3.4; and 2.3.3.5).

This ordinance is not about limiting choice for local residents or business; it is constructed carefully to assert our right to prevent damage resulting from corporate cloud seeding and water withdrawal. Finally, the "culpable parties" who could be sued for chemical trespass are defined as: "Culpable Parties: Persons owning or managing corporations which manufacture, generate, transport, sell, dispose of, or by any means apply toxic or potentially toxic substances detected within the body of any resident of the City of Mt. Shasta or within any natural community or ecosystem within the City, as a result of the violation of the prohibitions of this ordinance. This term shall also refer to government agencies, agents, and other entities that permit, license or empower a corporation to violate the provisions of this Ordinance."

Q 3: Would this ordinance impact the City's ability to provide water delivery to residents living outside of city limits?

NO -- The ordinance prohibits corporations from extracting water within the City of Mt. Shasta for resale outside the City, subject to the exceptions contained within the ordinance: The ordinance's definition of "corporation" *specifically exempts the municipality of the City of Mt. Shasta.* The relevant section (§ 3:Definition section) reads "the term does not include the municipality of the City of Mt. Shasta." In no way could this ordinance be interpreted to limit water delivery or any other normal operation or responsibility of city government to area residents. *This ordinance ensures that our local water is available to residents now and in the future, and not subject to corporate control.*

Q 4: Would City officials and employees be personally liable for issuing permits resulting in harm?

NO -- The enforceable provisions of this ordinance are limited. City officials responsible for issuing permits would be prohibited from issuing permits for cloud seeding and water extraction for export. They would have no liability for actions taken

illegally by other parties. They also enjoy sovereign immunity, which protects them from personal liability when acting in their official capacity, so long as they do not intentionally violate law or deprive rights. As with any law, personal liability arises in the case of illegal actions. City workers who knowingly issue permits in violation of the ordinance would be acting unlawfully, but the ordinance does not create a liability for lawful acts. The civil rights portion of the ordinance applies liability to actions taken willfully to violate the rights secured by the ordinance.

Q 5: Does the ordinance provide for criminal enforcement by the City, including prison time for "anyone" violating the ordinance?

NO -- If a criminal enforcement action is brought, it is taken before a court of law. The ordinance declares that an entity that violates the law "shall be imprisoned to the extent allowed by law." The law referenced here is State law that enables the City to ask for a more severe punishment than merely a monetary fine for repeat offenders. The court sentences violators of law according to State guidelines. It would be inappropriate for this ordinance to predetermine punishment for violation of the ordinance. Again, the ordinance only prohibits corporate water extraction and corporate cloud seeding. The only possible "persons" who could be liable for violating the prohibitions of the ordinance are corporate managers and directors, or anyone assisting the corporation to carry out activities prohibited by the ordinance.

Q 6: Does the ordinance require the City to fund testing to test everyone who wants to be tested for chemical trespass, resulting in a huge expense?

NO -- If the City Council has reason to believe the ordinance has been violated, the City would be required to fund the testing of 10 City residents to determine if chemical trespass has occurred. Beyond that, the ordinance does not require the City to fund the testing of additional individuals, but instead states that the City must "make all reasonable efforts to provide financial resources for the testing of additional residents." (§ 2.3.3.6). The determination that a violation has occurred resides, as always, with the City, unless a court with jurisdiction agrees with a resident that the City has not properly enforced the ordinance . *This ordinance lays out reasonable, limited, and minimal costs while offering substantive and enforceable protection of residents from exposure to corporate cloud seeding chemicals.*

Q 7: Would the "rights of nature" provisions prohibit people from cutting down a tree, or taking any actions that would affect nature?

NO -- The ordinance only applies to corporations engaged in cloud seeding or water withdrawal for resale and export, and "culpable parties" who can be sued are

defined as “Persons owning or managing corporations which manufacture, generate, transport, sell, dispose of, or by any means apply toxic or potentially toxic substances detected within the body of any resident of the City of Mt. Shasta or within any natural community or ecosystem within the City, as a result of the violation of the prohibitions of this ordinance.”

The provisions would not impact any individual person or the control that they exercise over their property, but would apply to the actions of corporations and government agencies or offices that would violate the ordinance. The rights of nature as outlined in § 2.4.1 of the ordinance are importantly broad in the same way that the right to free speech outlined in the First Amendment to the U.S. Constitution is broad. A law that bans a specific abuse of that broad right, such as a law forbidding the state from preventing protestors to assemble and display signs, does not address every form of free speech but only a specific instance. This ordinance works the same way. *The rights included in the ordinance are as broad as any in the Bill of Rights, but only specific corporate actions are prohibited by the ordinance. The “rights of nature” provision actually strengthens our rights as citizens to uphold our natural heritage and determine what happens to our shared resources.*

Q 8: Would the ordinance stop the City from building a pond, or making other improvements to property?

NO -- No way. The ordinance is very specific about what constitutes a violation of the ordinance. A local pond would not constitute a violation of the ordinance, and certainly any plan that included corporate bulk water withdrawal for export or cloud seeding could never be considered "improvements". *The “rights of nature” provisions codify the concept of locally controlled sustainable development - prohibiting those activities that would interfere with the functioning of whole ecosystems and communities. While the right is broadly stated, the only activities prohibited through the ordinance are corporate cloud seeding and water withdrawal for resale and export.*

Q 9: Does the ordinance enable any resident to sue the City to force it to enforce the ordinance against a corporation violating the law?

YES -- But to be clear, the ordinance calls on the City to act when the City determines a violation has occurred. However, if the City refuses to enforce the ordinance, and there has been a clear violation of the ordinance, a resident of the community could go to court and ask the judge to compel the City to enforce it. Suspicion that a violation has occurred would not be sufficient; the resident would have to persuade the court that a violation had actually occurred and that the City had failed to enforce.

Would the ordinance cut jobs in our City? No. This ordinance is not about stopping business.

In order for the City to take legal action, three items are necessary; 1. There must first be evidence that the ordinance has been violated, 2. Once reasonable suspicion of violation has been judged sufficient to proceed, citizens may request to be tested for cloud seeding chemicals in their bodies or environment. The City would be responsible for testing the first ten citizens to request this test, but no City funding of tests would occur unless the City Council had concluded a violation of the cloud seeding prohibition had occurred, 3. If any of the tests show clear evidence of trespass, the City must file suit for violation of the ordinance against the cloud seeding corporation and culpable parties, and if the evidence shows that a significant number of City residents have been similarly trespassed against, the City must select representative plaintiffs and file a class action lawsuit on behalf of City residents. The City Council has discretion to determine the definition of a 'significant' number of residents.

Why pass a law if we can't ensure it will be enforced? This ordinance reinforces the likelihood that control remains in the hands of the residents, and reinforces the duty our City Council has to protect and never surrender our rights.

Q 10: Would the ordinance cut jobs in our City?

NO -- This ordinance is not about stopping business. In fact, it's about encouraging business that Mt. Shasta residents want to come into the community. This ordinance recognizes that ecosystem health is the basis for human wealth. It says that citizens live here in part because of our environmental integrity, and we have a long range vision for ensuring the preservation and stewardship of our natural resources. This ordinance empowers us to say "no" to water bottling within the city and cloud seeding (until such time as we as a community determine otherwise), and "yes, yes!" to business that promotes dignified, reliable, living-wage jobs, sustainable livelihood and commerce.

Q 11: Is the Ordinance "illegal and unconstitutional?"

NO – Unalienable rights precede both statutes and constitutions. The ordinance carves a narrow path against state and federal preemption. It overrides state and federal laws that directly conflict with the ordinance's protection of the right to health, safety, and welfare of residents of the municipality. Without asserting the rights enumerated in it, and affirming that corporate privilege is subordinate to unalienable rights, the municipality and the people who live in Mt. Shasta would be at the mercy of the state and federal legal frameworks which permit two specific corporate activities that are harmful to the community and its environment.

Depriving local self-government and water rights may be arguably "legal and constitutional" if we presume that whatever government does is "legitimate," but the

deprivation of fundamental rights today is no more legitimate than the technical legality and constitutionality of slavery under the U.S. Constitution, up until 1868. Just as abolitionists had the right to oppose slavery, and just as civil rights activists had the right to oppose “legal” racial segregation, and just as women had the right to demand equal rights and the authority to vote, we have the right, authority, and duty to challenge current injustices by asserting our rights, using our community government to correct injustices, and codifying those rights and defending them in local law.

Not to democratically correct the errors in governance in our own time is to consign our children and our natural world to enslavement to the technical “legality” of “well-settled” law that denies fundamental rights. We lack the luxury or authority to so irresponsibly turn our backs on the future and remain indentured to the precedent and error of the past.

Q 12: When City legal counsel or City Council members oppose this ordinance, are they protecting the rights of residents?

NO -- The attorney retained by the municipal corporation of Mt. Shasta (the City) represents the interests of the municipal corporation, and when asked for legal advice by the City Council is obliged to counsel in a way that will most effectively shield the municipal corporation from potential legal challenges and liability. The City attorney does not represent the rights or interests of the residents of Mt. Shasta, not because those rights are not invaluable, in fact unalienable, but because the people of Mt. Shasta are not the clients of the City attorney. If there is a conflict between the interests of the municipal corporation and the rights of the people living within its jurisdiction, the City attorney will give legal advice that favors the municipal corporation and disadvantages the people. That is his duty.

When it comes to the rights of the citizens of Mt. Shasta, they have no public advocate if the elected officials claim they must follow the legal advice of counsel and obey the state, even if state law violates the rights of residents. The City attorney has no obligation to legally advocate for the rights of City residents. Again, if the interests of the municipal corporation (the City) conflict with the rights and interests of City residents, the municipal attorney is obliged to recommend that the City Council protect the public corporation and oppose the interests of the residents. However, City Council is not obliged to accept the opinion of the municipal attorney. They have sworn to protect the health, safety, and welfare of the community, not the municipal corporation. The City Council members must decide whether to represent the people or the state’s claim over the municipal corporation.

Q 13: Wouldn't it be better to "regulate" cloud seeding and water withdrawals, instead of prohibiting them?

NO -- Unfortunately, "regulation" of an activity has come to mean allowing it to occur and only limiting--often in a minor way--the harm it causes. A rights-based ordinance asserts the legitimate authority of those affected by governing decisions to be in control of the decision, and to say "no" to activities judged by the community to be against its best interests. A rights-based ordinance allows communities endangered by the corporate footprint to say "don't tread on me," because treading on community rights is illegal and punishable as an offense against the general welfare of the community.

Regulations do not allow us to say no. Regulatory laws are set at the state level, and generally written or advised by the industry to be regulated. These industry-friendly laws dictate how much harm we must accept in our communities. Municipalities cannot regulate more stringently than state law allows. The meaning of "preemption" is that the right of the people affected by governing decisions is usurped and given to specially privileged favorites of the legislature, usually corporate funders of political campaigns. And while the average person is encouraged to believe that "regulations" are to be trusted as protective of our health, safety and quality of life--or even overly restrictive to legitimate business--the truth is that the minimal prohibitions against community and environmental harms adopted as law are barely even enforced. An example: A recent article (ALTERNET) shows that in the last decade there were 500,000 violations of the Clean Water Act alone. Most were significant violations, and only 3% of those violations were ever followed up on.

The right to self-govern is fundamental. The right to self-govern is meaningless if it cannot be exercised in the places where the supposedly self-governing people live. Symbolic democracy is not democracy. Decision-making with the force of law is the essence of self-government. "Regulation" is capitulation to pre-determined outcomes with a veneer of "democratic" ritual.

Q14: Will enactment of this ordinance bankrupt our city?

NO -- Worst case scenario is that a cloud seeding corporation would insist on flying over Mt. Shasta, or a water bottling corporation would demand to be allowed to set up shop within the City....and would sue to overturn the ordinance. The ordinance is crafted with the understanding that corporations might sue to overturn the will of the people. It is built to force the corporate attorneys, who want judges to support corporate abuse of local communities, to address in their legal arguments every piece of settled law and judicial precedent that has given corporations the right to nullify community decision-making.

The worst fear of many local elected officials is that a corporation might sue for

“damages” in the form of “lost future profits.” If a corporation won such a suite, the amount of claimed damages could be substantial, if the corporation were delayed from taking our water for some significant length of time and if the claimed the value of the profits they would have made during that time as a “loss” that they want the City to pay for. The ordinance removes the “future lost profits” claim in Section 2.2.1.3.3:

“Within the City of Mt. Shasta, corporate claims to “future lost profits” as a result of the enactment, implementation or enforcement of this Ordinance shall not be considered property interests under the law and thus shall not be recoverable by corporations seeking those damages as a result of the enforcement of this Ordinance within the City.”

Are there
unintended
consequences
for FAILING to
adopt the
ordinance?

-YES

The City does carry insurance against law suits, and could increase its coverage at fairly minimal cost. Also, a corporation cannot take City property to pay for damages because it is public governmental property, and the court cannot force the City to raise taxes to raise money to cover claimed damages. Why? There is a legal separation of powers. The Judiciary cannot force the legislature (our City Council) to enact a law.

Because cloud seeding and water extraction can readily be engaged in elsewhere without violating the prohibitions of the ordinance or incurring legal costs, the likelihood of any legal action by a corporation as a result of adoption of this ordinance is negligible.

The Legal Defense Fund has pledged its pro bono support and assistance to local counsel in the event of such a legal challenge. That support might include drafting legal briefs, research, and consultations. Though CELDF does not practice law in California, its support and professional services are available at the discretion of City Council. If such a case went to federal court CELDF could engage in the lawsuit directly, if the City requested those services. Additionally, Global Exchange has also pledged pro bono legal support from attorney’s who do practice law in California to augment CELDF’s commitment.

Q15: Are there unintended consequences for FAILING to adopt the ordinance?

YES -- The costs to the community for NOT adopting this ordinance are potentially severe and irreversible.

We have already experienced local wells tapping out; allowing corporations to extract massive amounts of water for packaging and sale risks depletion of our precious resource. Property values may be affected. Local business owners who depend on wells for water would be at risk. Heavy truck traffic through town is a certainty. Increased costs to the City for road upkeep and costs for new roads would be unavoidable. Aesthetic harms like noise pollution and unsightly factory

facilities would impact our quality of life. Recovery of damages for ruined aquifers or toxic pollution from cloud seeding would require each individual harmed to engage in lawsuits few can afford to wage against large corporations. Enforcement of regulatory law could be costly to the City. Fishing and tourism could be damaged. Our community could become less desirable to legitimate businesses that generate real jobs for the community due to water concerns or the loss of our town character and charm. These are just a few of the unintended consequences that have damaged other small communities who have “welcomed” one or more big bottlers.

Additionally, an undemocratic precedent could be set if the City Council chooses to legally block the ballot question. The implication would be that only ballot measures favored by government employees will be allowed. Letting the legal elections process to proceed normally is vital.



The Delta begins in Siskiyou County. The Delta provides 2/3 of all water in the state and is unarguably at the brink of irreversible hydrological collapse.

Who Controls our Water – Communities or Corporations – and Why It Matters

“Everything we know about water in California is going to dramatically change.”

–Lt. Governor John Garamendi ¹

California is the 7th largest economy in the world. But the state often said to be “built on water” is confronting a serious question: “What happens when the well runs dry?” Water analysts and state and federal agencies all agree: the availability and quality of freshwater is in peril. California’s major water artery, the Delta, begins in Siskiyou County. The Delta provides 2/3 of all water in the state and is unarguably at the brink of irreversible hydrological collapse.

Water policy does not reflect this reality; in fact demands and contracts for this finite resource are rapidly increasing. Last year, water authorities promised 10 times more water than has ever existed in the state.

The question that must be asked then, are: Who determines demand? How are decisions about water made? And for whose benefit? The answers to these questions profoundly affect everyone, and at the front lines of our precarious water future stand “water rich” communities like Mount Shasta.

As citizens we are told that water delivery and decision-making in the state is complicated, and that it is a job best left to experts. Indeed there is a tangled matrix consisting of hundreds of local regional and state agencies, water districts, and other water experts that manage the sale and flow of water. And while it is nearly impossible to navigate the system, one thing is clear: our water politics and policies place corporate interests ahead of water security and the economic interests of residents.

Following a mandate by the Governor to find solutions to the ongoing water crisis and to find solutions to deal with drought and the impacts of climate change, a

¹ Bove, Rebecca. “Water Wars: How big agriculture and bad politics are killing the San Francisco Bay-Delta estuary.” The San Francisco Bay Guardian. September 2-8, 2009. Vol. 43, No. 49.

Estimates of California's water supply suggest we have as few as 25 years left of clean, available fresh water.

special Blue Ribbon Task Force was commissioned. Lawmakers have been tasked with finding legislative solutions. The appearance of taking action belies the truth of the actions being taken: The U.S. Bureau of Reclamation signed more than 170 contracts that lock in low rates to corporate customers for the next 40 years. Meanwhile, everywhere along the matrix the process encourages and even requires local water districts to sell more and more water to water bottlers and industry. Perhaps most curious, the Governor has *mandated* more dams to be built, and has said he will “sign no bill” that does not guarantee more water to the state’s thirstiest (and most heavily subsidized) customer: big agriculture.

As long as water decisions continue to be controlled by a handful of corporate elites, lobbyists, and their state and federal allies, communities like Mt. Shasta will increasingly bear the economic and ecological cost of short-term profits and increasing corporate demands. Meanwhile, they are excluded from decision-making. The solution – both at the community level and for the state – is to change the paradigm and assert the right of the people to democratic control of water, and to provide for local stewardship.

A. The Story of Water Economics in California

“We like to call it ‘legalized feudalism.’ We have a saying up here in Butte County: it’s like the tail wagging the dog. Of the 200,000 people in the county, there are only few people in the water districts making all the decisions about our water.”

–Lynn Barris, Butte County resident and almond grower, water policy analyst, Butte County Environmental Council

Water is perhaps the hot-button issue in the state, heightened by the current drought. As citizens, we’re told water management is complicated. Indeed, the matrix of water delivery and decision-making is unclear to most people.

Estimates of California’s water supply suggest we have as few as 25 years left of clean, available fresh water. Every California water report since 1957 has stated that there is not enough water to meet future needs. Currently, there is not even enough water to meet existing water contracts.

Despite decades of research predicting water shortages, the existence of water pollution from industrial run-off, the collapse of fisheries and saltwater encroachment into fresh water stocks statewide, state officials have consistently promoted unfettered growth, development, and an agricultural empire in what is essentially a desert in the Central Valley and Southern California. More recently water bottlers have been laying claim to “extra” community water by locking in long-term contracts.

Clearly, corporate profits are at the center of the state’s water decision-making. History reveals that economics for the few, rather than efficient water use for the many, has always ruled water policy.

California agribusiness supplies 50% of the nation's fruits, nuts, and vegetables, and yet agriculture represents less than 3% of the Gross State Product (GSP).

Even before statehood, corporations were orchestrating California's growth and rise as an economic powerhouse, and water was the key. The Gold Rush brought miners, and immediately instituted the notion of water claims on the "first in time, first in right" doctrine. Those claims gave miners and particularly mining corporations the ability to divert streams or operate water-intensive mining practices. Speculators quickly developed water monopolies for development infrastructure setting the stage for intense concentration of wealth. Large agricultural interests took root in the central valley to feed the booming population, pumping vast amounts of water to meet ever-expanding needs.²

Within two or three decades, groundwater was being depleted at such a rate that the ground in the Central Valley had sunk by up to 30 feet. Big agriculture and industry needed new sources of water, and their political muscle led to the Reclamation Act. The Act poured tax dollars into the construction of dams and piped that water to the Central Valley, in service of these agriculture barons. Along with the subsidized access to water, the corporations locked in "rights" to this water and long-term rates well below market value.

Industry also ushered in other mechanisms for the corporate control of water, including the creation of the water district, a system that creates a local dependency on water sales to corporations based on the "use it or lose it" doctrine. Essentially, water districts that do not "use" (aka "sell") their water lose control of it. Water conservation then, is a net loss for water districts. The district structure is more often than not property-weighted, meaning that large landowners make governing decisions directly.

The impact of big agriculture and industry on our water cannot be overstated.

California is the leading agricultural state, dominated by agribusiness with all the attendant social, environmental and economic issues such as pesticides, GMOs, migrant/labor issues, and desertification.

California agribusiness supplies 50% of the nation's fruits, nuts, and vegetables, and yet agriculture represents less than 3% of the Gross State Product (GSP). Despite the slim contribution to the state's declining economy, large-scale industrial agriculture continues to dominate politics and demand an ever-growing share of subsidies and support on a wide array of issues—in particular, water.

Agriculture alone accounts for over 85% of the state's water usage (this does not include damage to water from pesticide run-off and other waste). Water rates to agribusiness are heavily subsidized – over \$416 million per year. The largest 10% of factory farms receive 70% of these subsidies, allowing for the most water-inten-

² Thirsty for Justice: A People's Blueprint for California Water. A report by the Environmental Justice Coalition for Water. June 2005.

A growing number of communities who once welcomed water operators are now among the industry's leading critics.

sive low-yield crops and unsustainable farming practices.³ The impacts of damming to create more water for agriculture have also devastated fish populations to the point where many species may not recover, and the fishing industry has lost \$250 million this year alone.

Since individual water districts derive 80% of their income from water contracts from big agriculture and water bottlers, no significant change will be forthcoming. *Even as we face the catastrophic consequences of “business as usual” – which continues to be exacerbated by climate change – water policy remains firmly, structurally, in the hands of big agriculture, water corporations, and water-intensive industry and decisions will continue to be made on a profit agenda no matter what the risk to Californians.*

Communities in water-rich areas will be increasingly targeted for water extraction and diversion, and victimized by a system that ensures they will not receive fair compensation for the loss of their heritage and damage to their ecosystem.

B. Bottled Water: Doing Big Business at the Expense of Small Towns

Even following a slight dip in sales beginning in 2008, bottled water is a \$35 billion industry. Consumers pay upwards of \$1.29 for every 16 ounce bottle of water purchased (approximately \$10.32/gallon). Corporate bottlers pay municipalities roughly 8 cents for every 100,000 gallons taken from local aquifers, a rate far below that which individuals pay for tap water in their homes, for enormous quantities often undisclosed to the public (\$8,000 in water costs yields water bottlers \$1,032,000 in water sales).

Gallon for gallon, profit margins for water bottling outstrip even oil. In pursuit of the purest water at the lowest cost, corporate decision makers have targeted hundreds of rural and remote water-rich communities with limited economic clout, promising tax revenue to fill city coffers, and economic boon in the form of local job creation. A decade ago, most of the opposition to water bottling revolved around staggering and well documented environmental concerns. However, in recent years a growing number of communities who once welcomed water operators are now among the industry's leading critics, and several studies on the effects of bottling on local economies reveal a pattern of hidden economic costs and democratic damage heaped upon these small municipalities.

Among the studies, whose results are compiled in this section is the ECONorthwest report, “The Potential Economic Effects of the Proposed Water Bottling Facility in McCloud” commissioned by the McCloud Watershed Council, includes national data as well as providing a local/regional context.

³ Green, Dorothy. *Managing water: Avoiding Crisis in California*. University of California Press. October 2007. [This information is also recorded by the State Department of Agriculture; Water Resources Center Archives: LIQUID GOLD (University of California, Berkeley) and numerous other resources.

The false promise of Good Jobs in bottled water:

“God knows that people need jobs in this area. We've found that [water bottlers] mostly hire temp workers, They pay many of them \$10 an hour, no benefits, for a temp position, and then they can lay them off and not have to worry about compensation.”

–Donald Roy, resident of Mecosta County, Michigan⁴

Every water-bottling corporation seeking to site a facility in a small town promises an influx of new jobs. National community data reveal these promises to be empty.

Water facilities hire very few workers. In 2006, at the peak of the industry, 628 water-bottling plants across the nation employed fewer than 15,000 people.⁵ That averages to about 24 jobs per facility. But in a small community, the creation of two dozen jobs is an enticing prospect even at the cost of losing local control over a community's precious natural resources.

Moreover, most of the jobs promised do not go to local people. These include trucking, management and even administrative positions at the company's headquarters. Those promises also include temporary construction jobs, and seasonal jobs that do not create local employment growth. In fact most of the jobs are temporary and part-time, pay lower than the community average, and are without benefits. A plant promising 20 jobs is likely to actually employ as few as 2 full time employees, research suggests.

“Local residents that do secure jobs at bottled water plants likely will earn low wages. For a bottled water employee, annual earnings fall more than a thousand dollars short of what the average U.S. worker makes. Compared to a typical manufacturing job, bottled water workers are really losing out – to the tune of \$10,000 each year.”⁶

Jobs in the bottled water industry have also proven to be among the most dangerous available. They have one of the highest rates of injury of any industry; twice that of the typical private sector workers.

“The injury rate of bottled water workers is also 50 percent higher than both the broader manufacturing industry and the construction industry. What's more, nearly half of these cases were so serious that they required job transfer or restricted duties at work.”⁷

Evidence suggests that the long-term security of jobs in the extractive industry is poor in general. In the Pacific Northwest, the timber industry promised 500 years of employment. Mining for gold and coal in this country promised the same. But the corporate outlook for extractive industry isn't long-term job creation. The purpose is to simply vacuum the resources as quickly and as cheaply as possible, and

⁴ Snitow, Alan & Deborah Kaufman, *Thirst: Fighting the Corporate Theft of Our Water*. Jossey-Bass/Wiley & Sons, 2007.

⁵ The Unbottled Truth About Bottled Water Jobs: A Fact Sheet. Food and Water Watch.

⁶ Ibid.

⁷ Ibid.

“God knows that people need jobs in this area. We've found that [water bottlers] mostly hire temp workers. They pay many of them \$10 an hour, no benefits, for a temp position, and then they can lay them off and not have to worry about compensation.”

–Donald Roy,
resident of
Mecosta County,
Michigan

move on. Whenever possible, corporations mechanize and outsource jobs. Whenever possible, corporations will seek to “externalize” costs to the city itself, such as the creation or repair of easements, road repair from a constant parade of heavy trucking, or sewage treatment to name a few.

Water bottling in particular has proven to have a high negative impact on local businesses, tourism and new ventures seeking to set up shop in a picturesque town situated in a setting of natural beauty. Many of those aspects are explored in the next section, which reveals that the few jobs created by water extraction facilities are counter-balanced with job losses in other sectors, resulting in a net loss of jobs and fewer prospects for new job creation.

Decision-making about the community’s future, and the ability to create a welcoming environment for desirable business are taken out of the hands of residents, who in turn become dependent on few low-paying factory jobs. It is the nature of the corporation to increase profit margins while lowering costs. When the finite resources are gone, or the market declines, the corporation leaves town, abandoning the workers, the demoralized community, and far too often destroying the aquifers.

Local Economic Impacts of Water Bottling on small communities

"Nestlé has worked hard to create the illusion that McCloud residents are desperate for the economic boost the plant would supposedly provide, but they're not saying anything about what will be lost if the plant comes to town."

–Sid Johnson, McCloud Watershed Council board member⁸

Tourist from around the world are attracted to Mt. Shasta’s pristine and abundant waters. Atop and below the majesty of the iconic snow-capped volcano, tourists and retirees flock to Mt. Shasta to hike, fish, ski, camp, spa, and spend time in one of the most beautiful and tranquil places on earth.

The watershed and its health, vitality and attractiveness is a key component to attracting not only tourists and retirees, but business ventures who seek economic opportunity based on the area’s reputation as a destination.

Research from other communities, including neighboring Mc Cloud, points out that the existence of additional large-scale water bottling operation threatens to depress the local economy, diminish the draw for new residents and tourists, and creates a disincentive for new business ventures.

Most instructive is the research compiled by the group EcoNorthwest, commissioned by the Mc Cloud Watershed Council, in the wake of the campaign to stop the massive Nestle Corporation’s water bottling facility. Excerpted from that report:

8 Ibid.

“...The bottling plant could scare away several higher paying employers, partly by congesting public services and infrastructure. To transport the water bottles, large trucks will need to make 600 trips a day, which will considerably increase traffic on local roads, reduce the community, quality of life and repel other businesses.

“Because other employers leave town after a large plant opens, Nestlé’s plant would increase the county employment by at most 70 jobs – 10 to 40 percent of which will go to McCloud residents. This means the plant will add only a dozen or so jobs to McCloud’s economy. Bringing in so few jobs, the plant is unlikely to stimulate an economically depressed town and may ultimately cost McCloud more than its fresh mountain springs.”

Contracts for corporate bottlers lock in their “water take” for decades to come, regardless of local water stocks, drought considerations, or downstream affects. Additionally, they can drill many times deeper than citizens can, placing private wells and water supplies at great risk.

Potential businesses consider large water bottling operations to be a serious concern to their business plan because their water source is by definition, insecure. Those businesses that trade on the natural beauty of Mt. Shasta, are also concerned about the traffic and the unsightliness of constant trucking and the facility itself, but also the effect that water withdrawal has on the larger watershed and recreation activities.

That very localized risk is captured in the EcoNorthwest report, which states:

“The plant will also affect not just the McCloud River but an entire watershed, reducing stream flow to the McCloud River Falls, Squaw Creek, Soda Springs, Big Springs, Muir Springs and Mud Creek—all places that are important to McCloud's heritage and its future.”

Hidden costs and unnecessary risks are another issue that communities with water bottlers must accept. The contracts ensure that the bottlers get their water, but the health of the springs and the aquifer remain a local responsibility. Contracts are often crafted granting corporate bottlers priority water access over community members even during times of drought.

Sewage treatment needs for the plant can severely limit the ability of the city to service new customers, and places a cap on the number of residents and tourists that can be served. Had the CCDA (Coke facility) operating on the outskirts of Mt. Shasta not chosen to operate their own sewage treatment operation, the City would have faced that very problem, which would have greatly impacted existing and potential businesses and halted residential growth.

Another common risk is ground and surface water contamination, something Mt. Shasta has already had to contend with as a result of the CCDA plant. A 2006 inspection of the Mt. Shasta CCDA facility reported serious violations including contamination risk from effluent overflow.⁹

9 California Regional Water Quality Control Board, Central Valley Region. 2006. Executive Officer’s

At the heart of the question “Who decides how much rain the clouds should surrender?” is a more fundamental one: “should humans ‘own’ the weather?”

Many communities end up in ongoing litigation with the corporation in their midst from serious and repeated violations of their contract, unintended environmental damage or damage to private property. Many communities face lawsuits brought by the corporate bottler, seeking to force new contract terms including withdrawal increases, special services, lower rates, or other compensation.

The list of liabilities, uncertainties and risks placed on communities welcoming water bottlers is long, well documented, and far more extensive than this report details. Anecdotally, small rural towns report their local economies suffered overall. But one thing that all communities subjected to these activities share in common — whether bottling was welcomed or not — is the loss of local sovereignty, the ability to determine the course of their local future.

The Community Water Rights ordinance will empower Mt. Shasta to control their local destiny, and ensure our resources are viable for generations to come.

C. Cloud Seeding: Unregulated, Untested and Unsound for our Community

“Precipitation enhancement,” or “cloud seeding”, is a form of weather modification used to increase rainfall. Why would anyone want to change the amount of rain or snow that falls from the sky? The answer is: private monetary gain or savings for large corporations.

There are two principal ways that increased rainfall financially benefits corporations. In California, all precipitation enhancement projects are intended to increase water supply for agribusiness, thus reducing costs to transport or pipe water for irrigation, or for corporate-controlled hydroelectric power, which relies on high volumes of water cascading over turbines to create saleable electrical power.

At the heart of the question “*Who decides how much rain the clouds should surrender?*” is a more fundamental one: “Should humans ‘own’ the weather?” By engaging in cloud seeding, corporate managers have answered both of these questions at least for themselves, and by inducing precipitation chemically, communities that would benefit from rain distribution by natural processes become dependent on the priorities of private corporate interests. By dispersing substances into the air that serve as moisture condensers, clouds are “milked” of their water like so many confined cows on a factory farm.

Absurd as it may seem, large water management corporations have begun including in municipal contracts provisions that assert corporate ownership not only of the community water supply, but also of the rain, before it even touches the ground. Under these contracts, citizens collecting rainwater in a barrel is considered a “theft” of corporate property.

But in California, hydroelectric corporations don’t need municipal contracts to

Report. June 22-23. Retrieved June 20, 2007, from http://www.swrcb.ca.gov/rwqcb5/monthly_board_report/0606eo.pdf

Cloud seeding has not been scientifically proven to increase precipitation, the practice itself is poorly understood, and its effects are largely unknown.

claim ownership over rainwater. Corporate cloud seeding is an unregulated activity in the state. The “law of conquest” over earth’s life-giving waters is the law of the land in California. But the Right to Water trumps the archaic and unjust law of conquest. Fundamental rights are a higher law.

In Siskiyou county, Pacific Gas & Electric (PG&E), the large electric power marketing corporation, proposed the McCloud-Pit cloud seeding project that corporate decision makers are hoping will yield a 5% to 10% increase to their McCloud-Pit hydropower project. For residents, there is no local benefit—PG&E does not provide hydroelectric power to our community, and there is no hope for new jobs or profit sharing. Essentially, PG&E is proposing to alter our weather patterns with known toxic chemicals and literally ‘pull’ any benefits out of our community.

PG&E would not be responsible for compensating individuals or communities for damages or costs resulting from flooding, drought, snow removal, hail damage, job or livelihood loss, or other weather modification outcomes. Nor will the corporation accept responsibility for dispersing toxic chemicals into our fields, water, the air we breathe or the bodies we call ourselves.

Because corporate cloud seeding is unregulated in the State of California, PG&E is not required to conduct an environmental impact review, which would put on the record the statements from PG&E scientists who repeatedly stated during their October 2008 public meeting to the Siskiyou County Board of Supervisors that they anticipate “minimal adverse environmental effects” for Mount Shasta. Of course, “minimal” is a term of judgment and its meaning is likely to vary considerably if defined from the perspective of the profits to be made, rather than from the perspective of those suffering the immediate “adverse effects.”

There are no regulations or safety requirements for the amount of toxic chemicals used during the cloud seeding process; there is no legal accountability for potential adverse effects, no requirements to operate transparently, and no mitigation plan should unintended consequences result.

Corporations like PG&E are able to force residents of Mt. Shasta, and our local environment, to assume all the risk with no potential benefit. Cloud seeding has not been scientifically proven to increase precipitation, the practice itself is poorly understood, and its effects are largely unknown. The Mt. Shasta Community Water Rights and Self-Government Ordinance is our community’s answer to this untenable situation.

Under our current structure of law, concerned citizens have nowhere to turn to monitor—much less prohibit—cloud seeding in our community. The ordinance rectifies the inadequacy of our current system and empowers us to say ‘no’ to corporate cloud seeding, until we as a community determine otherwise.

Refer to APPENDIX III for a more comprehensive look into the practice of cloud seeding.



The recognition that the people of California retain rights not enumerated in either the state or federal constitution was first articulated in the original California Constitution of 1849.

Why the Ordinance is Legitimate

It is axiomatic that the people of these United States created local, state, and federal governments to protect, secure, and preserve their most cherished fundamental and inalienable right to self-government. It would be absurd for people to erect governments that have the effect of depriving rights, since government has no higher priority than the securing of rights. It is also axiomatic that the people of these United States have declared that when a system of government becomes destructive of that end, it is the right of the people constituting those governments to change the form of governance that has been imposed upon them.

The recognition that the people of California retain rights not enumerated in either the state or federal constitution was first articulated in the original California Constitution of 1849, in Article I, Section 21, which stated: "This enumeration of rights shall not be construed to impair or deny others retained by the people." The current California Constitution, in Article I, Section 24 states that "Rights guaranteed by this Constitution are not dependent on those guaranteed by the United States Constitution."

Among the rights retained by the people and not subject to limitation by state or federal government is the Right to Community Self-Government. In simplest terms, this means that the people of Mt. Shasta retain the unalienable right to democratically make decisions on questions of law and governance that directly affect the people and environment of this community. This right is limited only by the obligation that such decisions not conflict with the preservation of the rights of other people.

Following a long train of abuses and usurpations, pursuing invariably the object of reducing communities to little more than administrative extensions of state power and resource colonies for corporate exploitation, the people of Mt. Shasta have petitioned to place this Ordinance before the community in an attempt to correct some of these errors.

Corporations are created by State governments through the chartering process.

Over the past 150 years, the Judiciary has “found”¹ corporations within the United States Constitution. In doing so, Courts have bestowed upon corporations immense constitutional powers of the Fourteenth, First, Fourth, and Fifth Amendments, and the expansive powers afforded by the Contracts and Commerce Clauses. Wielding those constitutional rights and freedoms, corporations routinely nullify laws adopted by communities, states, and the federal government. Nullification of those laws denies the people’s inalienable and fundamental exercise of their right to govern themselves.

Under this Nation’s oft-cited framework of governance, such denials are beyond the authority of the corporation to exercise because they were beyond the authority of public officials or institutions to confer. The right to community self-government is nullified by the ability of those who direct corporations to intimidate and threaten local officials with municipal financial ruin. For elected officers of the community to be blackmailed into surrendering community rights to protect the financial interests of a state-chartered municipal corporation amounts to a breach of the public trust and a denial of both due process and equal protection of the law.

A. US Citizens; a History steeped in the Right to Local Self-Governance

Community law-making as the legitimate expression of self-government by people *where they live* has generated mostly negative attention from the courts and legislatures, state and federal, since the time of the American Revolution. Given the mythic quality attached to the idea of “democracy” in America, it is strange that the notion of communities making important decisions with the force of law is so foreign to American jurisprudence.

The American Revolution can fairly be characterized as nothing less than a rejection by American communities of the denial of local self-government by the British Empire. As noted by historian Jack P. Greene, “to emphasize their subordinate status. . . [English] authorities always insisted that the [colonial] assemblies existed not as a matter of right - not because they were necessary to provide for colonials their just rights as Englishmen - but only through the favor of the Crown.”²

That royal deprivation of community self-governance over issues of immediate local concern formed the impetus and rationale for people to ignore - and eventually to openly defy as illegitimate - British laws and expectations of compliance with those laws. Greene’s history of colonial governance before the American Revolution illustrates that the conflict arose predominantly over the English [“metropolitan,” as Greene refers to it] government’s repudiation of the natural right of communities to community self-government:

To the very end of the colonial period, metropolitan authorities persisted

1 This report refers to “finding” corporations in the various parts of the United States Constitution because corporations are not mentioned in that document.

2 Jack P. Greene, *Negotiated Authorities: Essays in Colonial Political and Constitutional History* 58 (1994).

in the views that colonial constitutions were static and that the lower houses were subordinate governmental agencies with only temporary and limited lawmaking powers --- in the words of one metropolitan official, merely 'so many Corporations at a distance, invested with an ability to make Temporary By Laws for themselves, agreeable to their respective Situations and Climates.'

Rather than consciously working out the details of some master plan designed to bring them liberty or self-government, the lower houses moved along from issue to issue and from situation to situation, primarily concerning themselves with the problems at hand and displaying a remarkable capacity for spontaneous action, for seizing any and every opportunity to enlarge their own influence.

Because neither fundamental rights nor imperial precedents could be used to defend practices that were contrary to customs of the mother country or to the British constitution, the lower houses found it necessary to develop still another argument: that local precedents, habits, traditions and statutes were important parts of their particular constitutions and could not be abridged by a royal or proprietary order.

Between 1689 and 1763, the lower houses' contests with royal governors and metropolitan officials had brought them political maturity, a considerable measure of control over local affairs, capable leaders, and a rationale to support their pretensions to political power within the colonies and in the empire. The British challenge after 1763 threatened to render their accomplishments meaningless and drove them to demand equal rights with Parliament and autonomy in local affairs, and eventually to declare their independence. At issue was the whole political structure forged by the lower houses over the previous century. In this context, the American Revolution becomes in essence a war for political survival, a conflict involving not only individual rights, as historians have traditionally emphasized, but assembly rights as well.

(*Id.* at 46-47, 58, 163, 170, 173 176, 183.)

During the late seventeenth and early eighteenth centuries, royal and proprietary governors of chartered colonies, who were to have been locally administering the power of the central British government, lost significant amounts of their coercive power over American communities. Apart from sheer distance from London, the English Civil War saw the agitation of groups such as the Levelers, Diggers, Quakers and Ranters for civil liberties and self-government. On the basis of false promises that they would see such reforms, they helped propel Oliver Cromwell's Parliament into power and made it possible for the rebellious legislature to behead a king. These and other events contributed to turning the empire's attention away from the American colonies.³

³ See Greene at 36-45, and particularly, at 83-84: "...as Carter has pointed out, another consequence of the [English] revolution was 'a distinct, though not complete, withdrawal of central authority from local affairs.'" (quoting Jennifer Carter, "Revolution and the Constitution," in Geoffrey Holmes, ed., *Britain and the Glorious Revolution, 1689-1715* at 53 (1969)).

With colonial governors increasingly dependent upon dissipating community cooperation, the autonomy of local assemblies blossomed. Two years before the Declaration of Independence was adopted by the Continental Congress, war had already been initiated against the oppressive British Empire by communities in western Massachusetts. Historian Ray Raphael has recounted how, in 1774, residents of several Massachusetts Towns, including Worcester, Springfield, and Great Barrington, forced appointed British officials to resign their posts:

When British Regulars fired upon a small group of hastily assembled patriots on the Lexington Green, they were attempting to regain control of a colony they had already lost. The real revolution, the transfer of political authority to the American patriots, occurred the previous summer when thousands upon thousands of farmers and artisans seized power from every Crown-appointed official in Massachusetts outside of Boston.

. . .

The Revolution of 1774 can be seen as the crowning achievement of communal self-government in colonial New England. More than ever before, people assumed collective responsibility for the fate of their communities.

Above all, the revolutionaries of 1774 pioneered the concept of participatory democracy, with all decisions made by popular consent. Half a century before the so-called Jacksonian Revolution, they seized control of their government. While more learned patriots expounded on Lockean principles, these country folk acted according to those principles by declaring their social contract with the established government null and void. Although the consequences were frightening and potentially disastrous, the townsfolk of Massachusetts were the first American colonists to follow revolutionary rhetoric to its logical conclusion.

All authority derives from the people, they proclaimed, as they deposed British officials. As much as any revolutionaries in history, they applied this statement reflexively to themselves. They abrogated no authority as they went about their business.

Ray Raphael, *The First American Revolution: Before Lexington and Concord* at 1, 218-219 (2002).

New England's role in leading the rest of the colonies toward independence from the British Empire is entirely attributable to the local habits and traditions of their self-governing communities. While elsewhere in the colonies, Committees of Correspondence and Congresses were devised as ad hoc community governing bodies to replace chartered colonial governments and municipal corporations, more inclusive and participatory local assemblies and town meetings were already well established in New England. It was this tradition – a rejection of the traditional English municipal corporation premised entirely on promoting commerce, rather than on self-governance - that formed the basis for the American Revolution. As historian Jon Teaford explains:

The basic unit of both urban and rural government in New England was the town...By the mid eighteenth century, each of these bodies had reviewed the respective merits of the town and municipal corporation and had specifically rejected the latter as an instrument of urban rule. For New Englanders had grown accustomed to the freedom of unfettered commerce and the privilege of direct participation in town meetings, and they were not ready to sacrifice these for a government of aldermen, councilors, markets, and monopolies.

Jon C. Teaford, *The Municipal Revolution in America: Origins of Modern Urban Government, 1650-1825* at 37 (1975).

When the American people declared independence from Great Britain in 1776, they did so with a fundamental document that marked the first time in western history that a nation state founded itself upon the inalienable right of the people to govern themselves.

When the American people declared independence from Great Britain in 1776, they did so with a fundamental document that marked the first time in western history that a nation state founded itself upon the inalienable right of the people to govern themselves. That document, the American Declaration of Independence, was not composed in a vacuum through the spontaneous inspiration of the colonial gentry. Before Thomas Jefferson and his committee penned it, Towns, Counties and Colonial Assemblies throughout the American settlements had drafted and adopted their own local declarations of independence. After adopting them, they gave them in varying forms to their delegates, and sent them to the Continental Congress with instructions to support a single Declaration of Independence for all the colonies.

Pauline Maier, in her book about the making of the Declaration of Independence, writes:

There are, in fact, at least ninety documents in that category, and perhaps still more waiting to be found. Most have been forgotten under the influence of our national obsession with 'the' Declaration of Independence, although the bulk of them were published almost a century and a half ago, scattered through the pages of Peter Force's voluminous *American Archives*.

....

...the differences that distinguished one set of instructions and resolution from another proved relatively insignificant. For all practical purposes, the contents of the various state and local resolutions on Independence are virtually identical...They characteristically 'empowered' their representatives to 'concur with the Delegates of the other Colonies in declaring Independency'...

Pauline Maier, *American Scripture: Making the Declaration of Independence*, at 48-49, 74-75 (1998).

The resulting document, now the cornerstone on which an independent America has been built, said:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.—That to secure these rights, Governments are instituted among Men, deriving their

just powers from the consent of the governed,—That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.

The Declaration of Independence, ¶ 2 (U.S. 1776).

Thomas Jefferson, the primary author of this document, packed many principles into these sentences. Government receives its power only from the consent of the governed, governmental power is constrained by foundational principles imposed by the people, and the people have the right to alter or abolish government that is destructive of the people's fundamental rights. These principles on the source, scope, and abolition of governmental power are nothing less than a statement of the inalienable right of self-government, a right held by all people in a free society.

The Declaration reflected the intent and values of the people who would have to fight to see it realized. It purported to secure not only the "consent" of the governed, but also to guarantee the participating will of the people over governing decisions having direct effect within and upon their communities. Among the reasons for separating from the British Empire (personified by the King), these were stated unequivocally, declaring that separation was necessary because

He has refused his Assent to Laws, the most wholesome and necessary for the public Good.

[He has] suspend[ed] our own Legislatures and declar[ed himself and others] invested with Power to legislate for us in all Cases whatsoever.

The Declaration of Independence, ¶¶ 3, 24 (U.S. 1776)

The Declaration's language on the right to self-government was a fundamental departure from prior statements on the rights of citizens. Whether in the Magna Carta of 1215, the Pennsylvania Frame of Government of 1682, or the Pennsylvania Charter of Privileges of 1701, prior foundational documents acknowledged only specific rights concerning property, religion, criminal procedure, and other aspects of individual freedom⁴ in the context of a civil structure devoid of community freedom. The Declaration of Independence was the first foundational document in western history to recognize - at least in theory - the fundamental notion that people as a community have a civil right to self-government that cannot be alienated to any person, power, or governmental institution.

Following the American Revolution, this right to self-governance was codified when the royal proprietorships and colonial corporations were dissolved and replaced by constitutionalized states. During this process, people acted from within

⁴ Freedom, at least, for the minority of humans counted as "free persons" at the time. Women, Native Americans, Slaves, indentured servants, white males without property, and others were not afforded those protections.

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness."

self-governing municipal units of government. The classic study of the first constitutions drafted by Americans during the Revolutionary era has this to say:

...In the Whig theory of social contract, 'the people' were the final authority to which all political power reverted in cases of flagrant abuse of delegated governmental power. But in the actual assumption of political power, no unit as vast and amorphous as 'the people' could possibly act as the vehicle of the political process. It was instead the remarkably stable territorial units of towns, cities, counties, and colonies that took control. The economic, political, and, in the broadest sense, social authority established within these familiar units did not actually melt away in a single stroke of revolutionary integration. Indeed, the system of political representation, which was generally accepted despite cries of 'Anarchy!' and 'Mob rule!' was itself based on the continuing existence of this local authority.

The very form of the organized resistance of the colonists was determined by a clear sense of the independence of territorial units that had evolved during the past 150 years. The borders England had drawn between the colonies continued to be respected as political demarcation lines even during the struggle against the mother country. Perhaps even more important for building a new governmental system was the integrity of the smaller units, called counties or districts in different colonies, and of the lowest level of political organization, cities, towns, townships, and parishes. All these units remained intact during the Revolution, and only the quasi-feudal manors in the Hudson River valley disappeared as political entities.

See Willi Paul Adams, The First American Constitutions: Republican Ideology and the Making of the State Constitutions in the Revolutionary Era at 4-5, 29-30 (1980).

When state governments gathered to form a national American government, the Federalists sought to construct a preemptive, centralized federal government, while the Anti-Federalists sought to preserve the right of self-government at the state level. This struggle, won by the Federalists in most respects, set the stage for a preemptive federal/state relationship which then influenced and steered the development of a preemptive state/local relationship. Thus, the counter-revolutionary tendencies of federalism undid the community self-governing institutions and traditions that the Revolution had established.

Before the 1830s, Hendrik Hartog tells us, "the law of municipal corporations had not been invented," and the courts had rarely ruled on issues about the nature and scope of local government authority.⁵

Turning to models of governance pioneered in the colonial era, federalist politics worked steadily until the state-municipal relationship came to look eerily similar to the one established earlier by Parliament's Board of Trade over the American colonies. Possessing the power to revoke local laws and charters, the Board had

⁵ Hendrik Hartog, *Public Property and Private Power: The Corporation of the City of New York in American Law, 1730-1870* at 184 (1983).

articulated a cluster of working assumptions about the nature of the relationship between Britain and the colonies...The first and most fundamental was implied in the familiar parent-child metaphor employed increasingly to describe the metropolitan-colonial connection. If England was the mother country and the colonies were her offspring, it clearly followed that the colonies were dependents, who needed the protection of, and who were obliged to yield obedience to their parent state. In any conflict of wills or judgment, the colonies had to defer to the superior strength and wisdom of the metropolitan government.”⁶

Former railroad bond lawyer and later Iowa Supreme Court Justice John Forrest Dillon had the dubious honor of codifying that prevailing argument as the frame for the new state-municipal legal framework. “Dillon’s Rule” continues to serve as legal shorthand for usurped local governing rights under which American communities continue to struggle for democratic survival. As Dillon explained,

It must be conceded that the great weight of authority denies *in toto* the existence, in the absence of special constitutional provisions, of *any inherent right of local self-government which is beyond legislative control*. Municipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so it may destroy. If it may destroy, it may abridge and control. Unless there is some constitutional limitation ... the legislature might, by a single act, if we can suppose it capable of so great a folly and so great a wrong, sweep from existence all of the municipal corporations in the State, and the corporation could not prevent it. We know of no limitation on this right so far as the corporations themselves are concerned. They are, to phrase it, the mere tenants at will of the legislature.

It is not necessary to a municipal government that the officers should be elected by the people. Local self-government is undoubtedly desirable where there are not forcible reasons against its exercise. But it is not required by any inexorable principle.

John Forrest Dillon, LL.D, *Commentaries on the Law of Municipal Corporations*, at 154-156 (5th Ed. 1911) (emphasis in original).⁷

This parallel between the governance of American colonies by the British Empire,

6 See Greene at 56.

7 For a sense of the prevailing attitude among Dillon’s contemporary municipal “reformers” see Martin J. Schiesl’s account. He writes:

Simon Sterne, a reform lawyer and member of the Tilden commission [formed in 1875 to investigate the Tweed ring in New York], argued in 1877 that the ‘principle of universal manhood suffrage’ only applied to ‘a very limited degree’ in municipal administration because the city was ‘not a government, but a corporate administration of property interests in which property should have the leading voice.’ In the same vein, Francis Parkman saw the notion of ‘inalienable rights’ as an ‘outrage of justice...when it hands over great municipal corporations...to the keeping of greedy and irresponsible crowds.’

Martin J. Schiesl, *The Politics of Efficiency: Municipal Administration and Reform in America: 1880-1920* at 9 (1977).

and of our municipalities by the State today, reveals the incompatibility of a colonial governing framework with one premised on the principles of self-government. The impulse to throw off the bonds of monopolistic governance, whether monarchical, aristocratic or incorporated, more truly comports with American ideals of justice than the structure of law under which municipalities, ruled by preemptive state fiat, are pitted against the rights of publicly chartered, privileged and empowered -- but privately governed -- business corporations.

The struggle for self-government on issues of direct import to communities is long-standing. More than one hundred years ago, local government reformers tried to drive first principles to the forefront of the struggle for community rights. Frederic C. Howe's words of a century ago make clear that Mt. Shasta's adoption of self-governing local laws is part of an enduring campaign for fundamental rights⁸:

This agitation for home rule is but part of a larger movement. It is more than a cry for charter reform; more even than a revolt against the misuse of the municipality by the legislature. It partakes of a struggle for liberty, and its aim is the enlargement of democracy and a substitution of simpler conditions of government. It is a demand on the part of the people to be trusted, and to be endowed with the privileges of which they have been dispossessed...The state at large can have no more interest in [local] matters than it has in the methods of the corporations which it creates."

Frederic C. Howe, *The City: The Hope of Democracy* at 167-168 (1905).

The people's right to self-governance is reflected in (though not dependent upon) the democratizing institutions of popular government that emerged from America's revolutionary period. An honest interpretation of history and law depends upon a correct deference to the "original intent" of those upon whose aspirations independence was contingent. The founders of America's independence, of its' pre-revolutionary local constitutions and post-revolutionary national constitutions, of its' commitment to rights and consent of the governed as the foundation of just government, were not the enfranchised few white men of wealth and prop-

⁸ "Public freedom [is] the ability to participate actively in the basic societal decisions that affect one's life." Gerald E. Frug, *The City As A Legal Concept*, 93 Harv. L.Rev. 1069 (1980).

erty who wrote the national constitution⁹ and privatized public institutions. Those revolutionary founders were the disenfranchised men and women who fought for - and thought they had won – the right to govern themselves in the communities where they live.

B. The People of Mt. Shasta Possess an Inalienable Right to Local Self-Governance

Although California did not adopt its first constitution until 1849, we know that the American Revolution was fought by people who believed its purpose was to establish the right to community self-government, based on the language in the Declaration of Independence, where we find the majority of complaints against the British Empire refer to the denial of local governing authority, the overturning of local laws and the refusal of the central government to allow local self-determination. The very first American state constitution reflects this commitment to community self-governance explicitly. Eleven days after the signing of the Declaration of Independence, a revolutionary committee convened in Pennsylvania to craft a constitution for the commonwealth¹⁰. The people of the commonwealth did not get to approve Pennsylvania's first constitution. Yet, it contained a preamble and a declaration of rights that, in sections III–V, acknowledged the peoples' inalienable right to "community" self-government in its formulation of the source, scope, and abolition of governmental power:

WHEREAS all government ought to be instituted and supported for the security and protection of the **community** as such, and to enable the individuals who compose it to enjoy their natural rights, and the other blessings which the Author of existence has bestowed upon man; and whenever these great ends of government are not obtained, the people have a right, by common consent to change it, and take such measures as to them may appear necessary to promote their safety and happiness...

9 In James Madison's own notes from the Philadelphia Convention of 1787, he expressed the irrelevance of determining what the will of the people was as the drafters of the U.S. Constitution went about their task. He wrote:

Mr. MADISON, observed that if the opinions of the people were to be our guide, it would be difficult to say what course we ought to take. No member of the convention could say what the opinions of his Constituents were at this time; much less could he say what they would think if possessed of the information & lights possessed by the members here; & still less what would be their way of thinking 6 or 12 months hence. We ought to consider what was right & necessary in itself for the attainment of a proper Government. A plan adjusted to this idea will recommend itself ---The respectability of this convention will give weight to their recommendation of it. Experience will be constantly urging the adoption of it, and all the most enlightened & respectable citizens will be its advocates. Should we fall short of the necessary & proper point, this influential class of Citizens will be turned against the plan, and little support in opposition to them can be gained to it from the unreflecting multitude.

James Madison, (June 12, 1787) in Adrienne Koch, *Notes of the Debates in the Federal Convention of 1787 Reported by James Madison*, at 107 (1987).

10 Ken Gormley, et al., *The Pennsylvania Constitution* at 877 (2004).

A Declaration of the Rights of the Inhabitants of the Commonwealth or State of Pennsylvania

. . . .

IV. That all power being originally inherent in, and consequently derived from, the people; therefore all officers of government, whether legislative or executive, are their trustees and servants, and at all times accountable to them.

V. That government is, or ought to be, instituted for the common benefit, protection and security of the people, nation or **community**; and not for the particular emolument or advantage of any single man, family, or set of men, who are only part of that **community**: And that the **community** hath an indubitable, unalienable and indefeasible right to reform, alter, or abolish government in such manner as shall be by **that community** judged most conducive to the public weal.

Pennsylvania Constitution of 1776, Ch. I, § III–V (emphasis added) (in Ken Gormley, *The Pennsylvania Constitution*, at 878 (2004)).

The language here is significant. People are the source of all governmental power – and in 1849 the framers of California’s constitution debated the rights they would enumerate in that document. On September 8th, 1849, delegate W.E. Shannon of Sacramento insisted that the first two Sections of Article I, the Declaration of Rights must be these:

Sec. 1. All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property: and pursuing and obtaining safety and happiness.

Sec. 2. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people; and they have the right to alter or reform the same, whenever the public good may require it.

Report of the Debates in the Convention of California, of the Formation of the State Constitution, in September and October, 1849, entry for Saturday, September 8, 1849, Morning Session

Delegate M. Norton of San Francisco affirmed the primacy of these statements of fundamental rights. The Report of the Debates record him as saying:

The first and second sections, introduced by the gentleman from Sacramento, (Mr. Shannon,) he believed the committee had agreed should be incorporated in the bill of rights. It was the proper place for them. The declaration of the sovereignty of the people, emanates from the foundation of our Republic. It has been adhered to ever since, and, he trusted, would be adhered to in all time to come.

Report of the Debates in the Convention of California, of the Formation of the State Constitution, in September and October, 1849, entry for Saturday, September 8, 1849, Morning Session

To ensure that this is so, the community has “the right to alter or reform [government], whenever the public good may require it.” The state doesn’t hold that right. Elected officials, governmental bodies, and corporate interests don’t hold that right. Rather, **communities of people** naturally have a right to self-government, and they are powerless only in their inability to alienate that right to anyone.¹¹

In his treatise on constitutional law and in various opinions, Chief Justice Thomas Cooley of the Michigan Supreme Court explained the basis of community governing authority thusly:

The doctrine that within any general grant of legislative power by the constitution there can be found authority thus to take from the people the management of their local concerns, and the choice, directly or indirectly, of their local officers, if practically asserted, would be somewhat startling to our people, and would be likely to lead hereafter to a more careful scrutiny of the charters of government framed by them, lest sometime, by an inadvertent use of words, they might be found to have conferred upon some agency of their own, the legal authority to take away their liberties altogether. If we look into the several state constitutions to see what verbal restrictions have heretofore been placed upon legislative authority in this regard, we shall find them very few and simple. We have taken great pains to surround the life, liberty, and property of the individual with guaranties, but we have not, as a general thing, guarded local government with similar protections. We must assume either an intention that the legislative control should be constant and absolute, or, on the other hand, that there are certain fundamental principles in our general framework of government, which are within the contemplation of the people when they agree upon the written charter, subject to which the delegations of authority to the several departments of government have been made....

[W]hen the state reaches out and draws to itself and appropriates the powers which from time immemorial have been locally possessed and exercised, and introduces into its legislation the centralizing ideas of continental Europe, under which despotism, whether of monarch or commune, alone has flourished, we seem forced back upon and compelled to take up and defend the plainest and most primary axioms of free government...

[L]ocal government is a matter of absolute right; and the state cannot take it away.

¹¹ In his treatise, Gormley writes, “[m]any modern-day lawyers are surprised to learn that Pennsylvania’s Constitution of 1776 was widely viewed as the most radically democratic of all the early state constitutions.” Ken Gormley, *The Pennsylvania Constitution*, at 3 (2004).

People v. Hurlbut, 24 Mich. 44 (1871) (Cooley, J., concurring);
See also Thomas M. Cooley, *A Treatise on the Constitutional Limitations which Rest Upon the Legislative Power of the States of the American Union* 47 (5th Ed. 1883).¹²

By petitioning for adoption of the Water Rights Ordinance, the people of Mt. Shasta have asserted their inalienable and fundamental right to community self-government. Their assertion is that community self-government is exempt from, and hence superior to, the general government of the state, especially when those layers of government interfere with a community's ability to protect the health, safety, and welfare of its residents.¹³

C. Corporations Are State Chartered Public Entities Empowered by the Judiciary to Deny the Rights of Communities

1. Corporations are Chartered by State Governments as Subordinate Entities

The cause of the American Revolution was the systemic usurpation of the rights of colonists by the English King and Parliament.¹⁴ Those usurpations occurred primarily through the King's empowerment of eighteenth century corporations of global trade, such as the East India Company.

12 The struggle between two theories of municipal self-governance pitted Cooley's jurisprudence on the innate right of community self-government against Dillon's theory that municipal governments were completely subservient to the State. As noted by author Nancy Burns,

On the one hand, Judge Thomas Cooley (one of the era's leading scholars of constitutional law) argued that cities received power directly from the people and thus they had a kind of limited autonomy:

The sovereign people had delegated only part of their sovereignty to the states. They preserved the remainder for themselves in written and unwritten constitutional limitations on governmental actions. One important limitation was the people's right to local self-government.

On the other hand, John Dillon (the foremost bond lawyer of his day) argued that cities were creatures of the state – nothing more than administrative divisions. As creatures of the states, these governments had no autonomy. Interestingly, Dillon's argument survived (displacing the very widely read and subscribed-to work of Cooley). Entrepreneurial incentives for creating new cities were now quite high.

Nancy Burns, *The Formation of American Local Governments: Private Values in Public Institutions*, 52-53 (1994).

13 As one writer has said, "The people, who are sovereigns of the state, possess a power to alter when and in what way they please. To say [otherwise] ... is to make the thing created, greater than the power that created it." Fed. Gazette, 18 Mar. 1789 (reprinted in Matthew J. Herrington, *Popular Sovereignty in Pennsylvania 1776–1791*, 67 Temp. L. Rev. 575 (1994)).

14 See, e.g., The Declaration of Independence, ¶1 et seq. (U.S. 1776) (listing the grievances of the colonists).

Often cited as the final spark of the Revolutionary War, the Boston Tea Party was the direct result of colonial opposition to the East India Company's use of the English government to enable the Company to monopolize the tea market in the colonies.¹⁵ After the Revolution – and in recognition of their experiences with those British corporations – the colonists placed corporations under strict control. Early legislatures granted charters, one at a time (as legislatively-adopted bills) and for a limited number of years,¹⁶ held business owners liable for harms and injuries, revoked corporate charters, forbid banking corporations from engaging in trade, prohibited corporations from owning each other, and established that corporations could only be chartered for “public purposes.”¹⁷

It is well-settled law that corporations are creations of the state.¹⁸ The United States Supreme Court has repeatedly reaffirmed the fundamental principle that

15 James K. Hosmer, *Samuel Adams* 212 (1885) stating that the English Parliament hoped that “the prosperity of the East India Company would be furthered, which for some time past, owing to the colonial non-importation agreements, had been obliged to see its tea accumulate in its warehouses, until the amount reached 17,000,000 pounds”.

16 See *Louis K. Liggett Co., v. Lee*, 288 U.S. 517 (1933) (Brandeis, J., dissenting), stating that “at first the corporate privilege was granted sparingly; and only when the grant seemed necessary in order to procure for the community some specific benefit otherwise unattainable.” Answering the question of why incorporation for business was commonly denied long after it had been freely granted for religious, educational, and charitable purposes, Justice Brandeis answered: “It was denied because of fear. Fear of encroachment upon the liberties and opportunities of the individual. Fear of the subjection of labor to capital. Fear of monopoly. Fear that absorption of capital by corporations, and their perpetual life, might bring evils similar to those which attended mortmain. There was a sense of some insidious menace inherent in large aggregations of capital, particularly when held by corporations.”

17 Robert Hamilton, *The Law of Corporations* 6 (1991). As the Supreme Court of Virginia reasoned in 1809, if the applicant’s “object is merely private or selfish; if it is detrimental to, or not promotive of, the public good, they have no adequate claim upon the legislature for the privileges.” Morton J. Horwitz, *The Transformation of American Law, 1780-1860* 112 (1977).

18 See *St. Louis, I.M. & S Ry. Co. v. Paul*, 173 U.S. 404 (1899) (declaring that corporations are “creations of state”); *Bank of Augusta v. Earle*, 38 U.S. 519, 520 (1839) (stating that “corporations are municipal creations of states”); *United States v. Morton Salt Co.*, 338 U.S. 632, 650 (1950) (explaining that corporations “are endowed with public attributes. They have a collective impact upon society, from which they derive the privilege as artificial entities”); *Hale v. Henkel*, 201 U.S. 43, 75 (1906) (declaring that “the corporation is a creature of the state. It is presumed to be incorporated for the benefit of the public. . . . Its rights to act as a corporation are only preserved to it so long as it obeys the laws of its creation”); *Chindeclamouche Lumber & Broom Co. v. Commonwealth*, 100 Pa. 438, 444 (Pa. 1881) (stating that “the objects for which a corporation is created are universally such as the government wishes to promote. They are deemed beneficial to the country”); See also, *People v. North River Sugar Refining Company*, 24 N.E. 834, 835 (NY 1890) (declaring that “[t]he life of a corporation is, indeed, less than that of the humblest citizen.”); *F.E. Nugent Funeral Home v. Beamish*, 173 A. 177, 179 (Pa. 1934) (declaring that “[c]orporations organized under a state’s laws. . . depend on it alone for power and authority”); *People v. Curtice*, 117 P. 357, 360 (Colo. 1911) (declaring that “[i]t is in no sense a sovereign corporation, because it rests on the will of the people of the entire state and continues only so long as the people of the entire state desire it to continue”).

corporations are “creatures of the state” in a myriad of rulings.¹⁹ It is also well-settled law that the Constitution not only protects people against the “State itself,” but also against “all of its creatures.” See *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 637 (1943).

During the debates that framed the first constitution for the State of California, with regard to allowing the Legislature to grant special privileges, delegate R.M. Price of San Francisco said this:

Let us not...allow any special privileges to corporations or associations to compete with, or paralyze, individual enterprise and industry. The people of California are peculiarly a laboring people – they are miners, sir, who live by the pick and shovel, and “by the sweat of their brow, earn their bread.” But, we have another large class of citizens, I mean those engaged in commercial pursuits, who are characterized by the greatest enterprise, and who also require this constitution restriction to prevent what I am so much opposed to under sanction of law, the raising up of any privileged class, or set of men...

Report of the Debates in the Convention of California on the Formation of the State Constitution in September and October, 1849, entry for Monday, September 17, 1849 Afternoon Session

¹⁹ See, e.g., *Virginia Bankshares v. Sandberg*, 501 U.S. 1083, 1093 (1991); *Kamen v. Kember Fin. Servs.*, 500 U.S. 90, 99 (1991); *Braswell v. United States*, 487 U.S. 99, 105 (1988); *Burks v. Lasker*, 441 U.S. 471, 478 (1979) (declaring that “corporations are creatures of state law [] and it is state law which is the font of corporate directors’ powers”); *First Nat’l Bank of Boston v. Bellotti*, 435 U.S. 765 (1978); *Santa Fe Industries, Inc. v. Green*, 430 U.S. 462, 479 (1977); *Cort v. Ash*, 422 U.S. 66, 84 (1975); *United Steelworkers of America v. R.H. Bouligny, Inc.*, 382 U.S. 145, 147 (1965); *Shapiro v. United States*, 335 U.S. 1, 66 (1948); *Ferry v. Ramsey*, 277 U.S. 88, 96-97 (1928); *Essgee Co. of China v. United States*, 262 U.S. 151, 155 (1923); *Yazoo & M.V.R.Co. v. Clarksdale*, 257 U.S. 10, 26 (1921); *United States v. American Tobacco Co.*, 221 U.S. 106, 142-143 (1911); *Wilson v. United States*, 221 U.S. 361, 383 (1911); *Hale v. Henkel*, 201 U.S. 43 (1906); *Terre Haute & I.R.Co. v. Indiana*, 194 U.S. 579, 584 (1904); *Fidelity Mut. Life Asso. v. Mettler*, 185 U.S. 308, 327 (1902); *Hancock Mut. Life Ins. Co. v. Warren*, 181 U.S. 73, 76 (1901); *Jellenik v. Huron Copper Mining Co.*, 177 U.S. 1, 11-13 (1900); *Woodruff v. Mississippi*, 162 U.S. 291, 299, 309 (1896); *Philadelphia & Southern Mail S.S. Co. v. Pennsylvania*, 122 U.S. 326 (1887); *Sinking-Fund Cases*, 99 U.S. 700, 718 (1878); *Railroad Co. v. Maryland*, 88 U.S. 456, 469, 471 (1874); *Dodge v. Woolsey*, 59 U.S. 331 (1855); *Bank of Augusta v. Earle*, 38 U.S. 519, 520 (1839); *Briscoe v. President & Directors of Bank of Kentucky*, 36 U.S. 257, 328 (1837).

2. Over the Past 150 Years, the Judiciary Has “Found” Corporations Within the U.S. Constitution and Bestowed Constitutional Rights Upon Them

Over the past 150 years, the United States judiciary has conferred constitutional protections - once intended to protect only natural persons - upon corporations.²⁰ The current California Constitution asserts in Article I, Section 24 that:

Rights guaranteed by this Constitution are not dependent on those guaranteed by the United States Constitution.

During the debates to create the first state constitution of California, delegate C.T. Botts of Monterey put the granting of special privileges to corporations into historical context, saying:

Corporations as they were originally known to the Roman law, had several beneficial properties. One was the power of succession, by which the property of the corporation does not become subdivided into the hands of the heirs, but remains subject to the rules of the corporation. Another was, to sue and be sued in their corporate capacity, instead of being regarded as a partnership merely of individuals. These were the useful properties of these corporations as known to the Roman law. The institution as it was known when adopted by the common law, had engrafted upon it this doctrine: that to establish a corporation was the great prerogative of the crown; and it followed soon with the numerous other prerogatives of the crown, that it was claimed by the crown; and certain great privileges and immunities were given to these corporations. This is the evil which we have followed so nearly in our own country, and of which we have such grievous cause to complain. I propose now to deny the Legislature the power of creating them for the purposes which we do not desire..."

Report of the Debates in the Convention of California on the Formation of the State Constitution in September and October, 1849, entry for Tuesday, September 18, 1849 Night Session

The observation of California's C.T. Botts preceded by nearly forty years a profound

²⁰ As a general principal of justice, rights have long been understood to accrue to the living, and not to the dead, nor to inanimate matter. Thomas Paine's *Common Sense* (1776), credited with inspiring the popular call for American independence, argued that hereditary government and the rule of the dead over the living - expressed as oppressive legal precedent - defined the "old form" of government, while deference to the rights of the living characterized the new. See also Thomas Jefferson, who asked:

Can one generation bind another, and all others, in succession forever? I think not. The Creator made the earth for the living, not the dead. Rights and powers can belong only to persons, not to things, not to mere matter unendowed with will. The dead are not even things... To what then are attached the rights and powers they held while in the form of men? A generation may bind itself as long as its majority continues in life; when that has disappeared, another majority is in its place, holding all the rights and powers their predecessors once held, and may change their laws and institutions to suit themselves. Nothing then is unchangeable but the inherent and inalienable rights of man!

Thomas Jefferson, *Letter to Major John Cartwright*, (June 5, 1824).

modification to the federal constitution asserted by the U.S. Supreme Court when it engaged in a long series of rulings that bestowed constitutional “personhood rights” upon the corporations.

The method by which the federal judiciary has conferred rights upon corporations has consisted of “finding” corporations in the various constitutional guarantees of the Fourteenth Amendment²¹, the Bill of Rights to the United States Constitution²², and the Contracts and Commerce Clauses²³ of the United States Constitution.

The protection of corporations within these constitutional guarantees - and especially within the Fourteenth Amendment’s guarantees of due process and equal protection, however, has been challenged by even Supreme Court jurists.²⁴ Attempts by the legal community to justify these conferrals paralleled the judiciary’s conferral of these constitutional rights.²⁵

21 Corporations were declared to be “persons” entitled to Fourteenth Amendment protections in *Santa Clara County v. Southern Pacific Railroad Company*, 118 U.S. 394 (1886) and *Minneapolis & St. Louis Railroad Company v. Beckwith*, 129 U.S. 26 (1889).

22 Corporations were declared to be entitled to First Amendment protections in *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978); to Fourth Amendment protections in *Hale v. Henkel*, 201 U.S. 43 (1906); and to Fifth Amendment protections in *Noble v. Union River Logging R. Co.*, 147 U.S. 165 (1893); *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922); and *Fong Foo v. United States*, 369 U.S. 141 (1962). Corporations have been discovered in other Amendments, including the Seventh Amendment, but this Brief focuses solely on those Amendments relevant to the instant suit.

23 Courts conferred Contracts Clause protections to corporate charters in *Dartmouth College v. Woodward*, 4 Wheat. 518 (1816). For an example of how courts have blanketed corporations in the Commerce Clause, see, e.g., *South Dakota Farm Bureau, Inc. et al. v. Hazeltine*, 340 F.3d 583 (8th Cir. 2003) (striking down the State’s anti-corporate farming law as violating agribusiness corporations’ rights under the Commerce Clause).

24 Several United States Supreme Court justices have authored extensive dissenting opinions challenging the discovery of corporations in the Fourteenth Amendment. See *Connecticut General Life Insurance Co. v. Johnson*, 303 U.S. 77, 85-90 (1938) (Black, J., dissenting) (declaring that “[n]either the history nor the language of the Fourteenth Amendment justifies the belief that corporations are included within its protection”); *Wheeling Steel Corp. v. Glander*, 337 U.S. 562, 576-581 (1949) (Douglas, J., and Black, J., dissenting) (declaring that “I can only conclude that the *Santa Clara* case was wrong and should be overruled”); See also, *Hale v. Henkel*, 201 U.S. 43, 78 (1906) (Harlan, J., concurring) (declaring that “in my opinion, a corporation – an artificial being, invisible, intangible, and existing only in contemplation of law – cannot claim the immunity given by the 4th Amendment; for it is not a part of the “people” within the meaning of that Amendment. Nor is it embraced by the word “persons” in the Amendment”); *Bell v. Maryland*, 378 U.S. 226, 263 (1964) (Douglas, J., dissenting) (declaring that “[t]he revolutionary change effected by affirmance in these sit-in cases would be much more damaging to an open and free society than what the Court did when it gave the corporation the sword and shield of the Due Process and Equal Protection Clauses of the Fourteenth Amendment”); *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 822 (1978) (Rehnquist, J., dissenting) (declaring that “[t]his Court decided at an early date, with neither argument nor discussion, that a business corporation is a ‘person’ entitled to the protection of the Equal Protection Clause of the Fourteenth Amendment”).

25 During this period, legal theorists sought to legitimate corporations as having natural rights. According to Professor Morton Horwitz, “[b]eginning in the 1890’s and reaching a high point around 1920, there is a virtual obsession in the legal literature with the question of corporate personality. Over and over again, legal writers attempted to find a vocabulary that would enable them to describe the corporation as a real or natural entity whose existence is prior to, and separate from, the state.” Morton J. Horwitz, *The Transformation of American Law 1870-1960* 101 (1992). Professor Horwitz explains that “[t]he basic problem of legal thinkers after the Civil War was how to articulate a conception of property that could accommodate the tremendous expansion in the variety of forms of ownership spawned by a dynamic industrial society. . . . The efforts by legal thinkers to legitimate the business corporation during the 1890’s were buttressed by a stunning reversal in American economic thought – a movement to defend and justify as inevitable the emergence of large-scale corporate concentration.” *Id.* at 80, 145.

3. Corporations Routinely Use Those Constitutional Rights to Deny Communities the Right of Local Self-Governance

Constitutional guarantees bestowed upon corporations are wielded against communities to override their right to local self-governance. Corporate First Amendment rights have been used to strike food labeling laws as being violative of the corporations' right not to be compelled to speak under the Amendment²⁶, bar utility ratepayers from using space within the utility's monthly billing envelopes²⁷, overturn regulations aimed at banning utility corporations from promoting the increased use of electricity during the 1970's energy crisis²⁸, and ban States from curtailing corporate participation in electoral activities.²⁹

Corporate Fourth Amendment rights are routinely wielded to prohibit warrantless inspections of corporate workplaces, to bar federal agencies from requiring the production of corporate books and papers in the course of Congressional investigations, and to challenge overflights of manufacturing facilities by the Environmental Protection Agency³⁰.

The Fifth Amendment's due process, double jeopardy, and "takings" guarantees have been wielded by corporations to stop anti-trust enforcement actions³¹, apply due process guarantees to stop Congressional action to recover invested public monies³², prohibit the revocation of a public land right-of-way to railroad corporations by the Secretary of the Interior³³, declare that State laws requiring coal corporations to leave pillars of coal in place to prevent surface subsidence violated the "takings" provisions of the Fifth Amendment³⁴, and bar corporations from being retried in criminal anti-trust actions.³⁵

Contracts Clause protections are wielded by corporations to prevent States from

26 See *International Dairy Foods Association v. Amestoy*, 92 F.3d 67 (2nd Cir. 1996) (striking a law that required that all dairy products sold in the State of Vermont that contained artificial Bovine Growth Hormone (BGH) be labeled as such).

27 See *Pacific Gas & Elec. Co. v. Public Utilities Comm'n*, 475 U.S. 1 (1986) (declaring that the First Amendment created a corporation's "negative speech" rights, preventing envelope space from being used by utility ratepayers).

28 See *Central Hudson Gas & Electric Corp. v. Public Utilities Comm'n*, 447 U.S. 557 (1980).

29 See *Jacobus v. State of Alaska*, 338 F.3d 1095 (9th Cir. 2003).

30 See *Dow Chemical Corporation v. U.S.*, 476 U.S. 227 (1986) (ruling that the EPA's overflights would have violated the corporations' Fourth Amendment rights if the overflights were deemed to be "searches" for the purposes of the Fourth Amendment).

31 See, e.g., *United States v. Armco Steel Corporation*, 252 F. Supp. 364 (S.D. CA 1966).

32 See *United States v. Union Pac.R.Co.*, 98 U.S. 569 (1978) (holding that Congressional action to recover public monies invested in the Union Pacific Railroad Company circumvented due process guarantees for the corporation and its managers). See also *Cincinnati Bridge Co. v. United States*, 105 U.S. 470 (1881) (holding that a chartered bridge corporation possessed a vested right that could not arbitrarily be removed by an Act of Congress); *Sinking-Fund Cases*, 99 U.S. 700 (1878) (holding that Congress is prohibited from depriving corporations of property without due process of law).

33 See *Noble v. Union River Logging R. Co.*, 147 U.S. 165 (1893).

34 See *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922).

35 See *United States v. Martin Linen Supply Co.*, 430 U.S. 564 (1977); *Fong Foo v. United States*, 369 U.S. 141 (1962).

This Water Rights Ordinance pits the “rights” of corporations directly against the rights of the residents of a municipality to protect their health, safety, and welfare through the exercise of their right to local self-governance.

unilaterally altering corporate charters issued by State governments³⁶, and to challenge laws that alter corporate livestock production contracts in attempts to ensure open, competitive agricultural markets.³⁷ Commerce Clause protections have been wielded by corporations to strike down laws regulating corporate involvement in hog production³⁸, and to overturn local laws aimed at protecting residents from land applied sewage sludge in their communities.³⁹ The Commerce Clause has been routinely used over the past hundred years to overturn laws regulating oleomargarine corporations, and has served as the template for international trade agreements that empower international trade tribunals to nullify local, state, and national laws in the name of corporate commerce. See Jane Anne Morris, *Gaveling Down the Rabble* 1-3 (2008) (providing a “historic overview of the ebb and flow in use of the Commerce Clause to invalidate local, state, and national legislation.”).

In addition to the direct denial of the right of local self-government – through the nullification of local and State laws aimed at protecting health, safety, and welfare – these assertions of corporate constitutional rights indirectly deny the right of local self-government by “chilling” the actions of legislators. For example, when Chemical Waste Management, Inc. successfully sued the State of Alabama on the claim that the State’s differential taxation of out-of-state generated hazardous waste violated the corporation’s rights under the Commerce Clause⁴⁰, the decision served to eliminate legislative options in all States that sought to protect residents from the influx of out-of-state generated hazardous waste.

This Water Rights Ordinance pits the “rights” of corporations directly against the rights of the residents of a municipality to protect their health, safety, and welfare through the exercise of their right to local self-governance. It challenges a body of law that has stripped the authority of the people to govern corporations as creatures of State government, while stripping municipal corporations of the authority

36 See *Dartmouth College v. Woodward*, 4 Wheat. 518 (1816) (declaring that corporate charters were contracts protected by the Constitution’s Contracts Clause, and therefore, States were prohibited from unilaterally altering those charters. Interestingly, the Court also explained that municipal charters were not subject to the same prohibitions, thus enabling States to alter laws governing municipalities at will).

37 See, e.g., *Smithfield Foods, Inc. v. Miller*, 367 F.3d 1061 (8th Cir. 2003).

38 See *South Dakota Farm Bureau, Inc. et al., v. Hazeltine*, 340 F.3d 583 (8th Cir. 2003);

39 See *Synagro-WWT, Inc. v. Rush Township*, 204 F. Supp. 2d 827 (M.D. Pa. 2002); 299 F. Supp. 2d 410 (M.D. Pa. 2003).

40 See *Chemical Waste Management, Inc. v. Hunt*, 504 U.S. 334 (1992).

to serve as instruments for community self-government by citizens.⁴¹ What has been left to municipalities is a tentative power to enforce the “law of the land,” as merely local administrators of State law, against private self-governing corporations empowered with the rights and privileges of super-citizens. The outcomes of that matchup are all too familiar to citizens living in municipal jurisdictions who attempt to decide health, safety, welfare, and quality of life issues for their communities, families, and natural environments. Predictably, the results are unfavorable to the municipal tenants. This is the forecast, however, for the residents of Mt. Shasta, absent an assertion of their fundamental rights to the contrary.

4. Governments Do Indirectly What They are Prohibited from Doing Directly by Empowering Corporations to Deny Community Rights

If there is one bedrock principle upon which the people of these United States established local, state, and federal governments, it is that governments are instituted to secure and protect the people’s inalienable rights, including their right to self-government.

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As eloquently proclaimed by the Declaration of Independence,

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness - That to secure these rights, Governments are instituted among Men, deriving their just powers from the *consent of the governed*.

The Declaration of Independence, ¶1 (U.S. 1776) (emphasis added).

That principle, echoed by this nation’s colonists throughout the Resolves of the

⁴¹ In addition to having their actions bounded by corporate constitutional protections, municipal governments are generally regarded as “children” to their State “parent.” Former railroad bond lawyer and later Iowa Supreme Court Justice John Forrest Dillon had the dubious honor of codifying that prevailing argument as the frame for the state-municipal legal framework. “Dillon’s Rule” continues to serve as legal shorthand for usurped local governing rights under which American communities continue to struggle for democratic survival. As Dillon explained,

It must be conceded that the great weight of authority denies in toto the existence, in the absence of special constitutional provisions, of *any inherent right of local self-government which is beyond legislative control*. Municipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so it may destroy. If it may destroy, it may abridge and control. Unless there is some constitutional limitation ... the legislature might, by a single act, if we can suppose it capable of so great a folly and so great a wrong, sweep from existence all of the municipal corporations in the State, and the corporation could not prevent it. We know of no limitation on this right so far as the corporations themselves are concerned. They are, to phrase it, the mere tenants at will of the legislature.

It is not necessary to a municipal government that the officers should be elected by the people. Local self-government is undoubtedly desirable where there are not forcible reasons against its exercise. But it is not required by any inexorable principle.

John Forrest Dillon, LL.D, *Commentaries on the Law of Municipal Corporations*, at 154-156 (5th Ed. 1911) (emphasis in original).

Continental Congress⁴², early state Constitutions⁴³, and the Articles of Confederation⁴⁴, is reflected throughout the writings of Locke, Hume, and Montesquieu⁴⁵ that the early colonists used to deepen and strengthen the American Revolution – to frame their dispute as one in which the King and Parliament were incapable of providing a remedy premised on self-governance.⁴⁶

The Revolution thus reflected the understanding that people, otherwise existing in a state of nature, do not relinquish their inalienable rights when governments are instituted, but that *governments are instituted specifically to guarantee and protect those freedoms and rights*. Thomas Gordon once summarized that fundamental principle in the form of a question, asking:

What is Government, but a Trust committed by All, or the Most, to One, or a Few, who are to attend upon the Affairs of All, that every one may, with the more Security, attend upon his own?

Thomas Gordon, *Cato's Letters*, No. 38 (July 22, 1721)

State laws, codes, and practices that favor the privileges of private business corpo-

42 Continental Congress, *Declaration of Resolves*, (Oct. 14, 1774) (stating that colonial representatives “in behalf of themselves, and their constituents, do claim, demand, and insist on, as their indubitable rights and liberties; which cannot be legally taken from them, altered or abridged by any power whatsoever. . .”).

43 See, e.g., Virginia Constitution, (June 29, 1776) (declaring that “some regular adequate Mode of civil Polity [must be] speedily adopted” to reverse the “deplorable condition to which this once happy Country” has been reduced); Virginia *Declaration of Rights* (June 21, 1776) (stating that “all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot. . . deprive or divest their posterity; namely, the enjoyment of life and liberty. . . and pursuing and obtaining happiness and safety”); Massachusetts Constitution (March 2, 1780) (proclaiming that “the end of the institution, maintenance and administration of government, is to secure the existence of the body politic; to protect it; and to furnish the individuals who compose it, with the power of enjoying, in safety and tranquility, their natural rights, and the blessings of life”).

44 Articles of Confederation (March 1, 1781) (declaring that the “said states hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their Liberties, and their mutual and general welfare”).

45 Those democratic philosophies were, in turn, fomented by widespread Tudor rebellions and urban insurrections driven by popular movements that arose in England against monarchy and nobility. In response to expropriation, enclosures of the commons, impressments, enslavement, industrial exploitation, and unprecedented military mobilizations, England experienced the Cornish Rising (1497), the Lavenham Rising (1525), the Lincolnshire Rebellion (1536), the Ludgate Prison Riot (1581), the Beggars’ Christmas Riot (1582), the Whitsuntide Riots (1584), the Plaisterers’ Insurrection (1586), the Felt-Makers Riot (1591), Bacon’s Rebellion in the Virginia Colony (1675-1676) and others. See Peter Linebaugh and Marcus Rediker, *The Many-Headed Hydra: Sailors, Slaves, Commoners, and the Hidden History of the Revolutionary Atlantic* 19, 136 (2000). “Years of attendance at town meetings had attuned the majority to elementary concepts, if not to detailed systems; to the idea of a state of nature, of a social compact, and of consent of the governed.” Oscar Handlin and Mary Flug Handlin, *Commonwealth: A Study of the Role of Government in the American Economy, Massachusetts 1774-1861* 6-7 (1969).

46 In demanding independence, the colonists abandoned other remedies that fell short of creating a new nation, including a request for representation in the English parliament and other proposals that continued to recognize the English King as the Sovereign. See, e.g., *Letter from the House of Representatives of Massachusetts to Henry Seymour Conway*, (Feb. 13, 1768) (declaring that “[t]he people of this province would by no means be inclined to petition the parliament for representation”) (reprinted in Harry Alonzo Cushing, ed., *The Writings of Samuel Adams* 191 (1968)).

The people of Mt. Shasta are asserting the proposition that the rights of the people are superior to corporate creatures of the state.

rations over the local self-governing rights of Californians are just as oppressive as the exercise of crown-granted authority by colonial governors and proprietors to overturn local laws in pre-revolutionary America. Having bestowed those privileges, the State exceeds the bounds of generosity toward its corporate creations and erects law that directly usurps the authority of the people to govern those creations. The State and federal governments thus place themselves in company with British colonial overlords when they apply preemptive State law to matters of local concern, and when they enforce a body of corporate “rights” that is so clearly illegitimate: all to protect the special privileges of a favored minority.

Such acts are beyond the powers of any government, yet they are currently treated as “well-settled” law by federal and state governments.

In the words of delegates writing the first Massachusetts Constitution, “[n]o man, nor corporation, or association of men, [shall] have any other title to obtain advantages, or particular and exclusive privileges, distinct from those of the community” and, if governments are subverted for the “profit, honor, or private interest of any one man, family, or class of men,” then the fundamental principle underlying the institution of governments is usurped.⁴⁷

Even John Forrest Dillon, author of “Dillon’s Rule,” entertained misgivings about the power that his Rule implicitly conferred upon corporations. He wrote:

One important subject I must briefly refer to. It is the growth of corporations or the use of aggregated capital by corporate associations. The results of an examination of the comparative extent of corporate and private litigation surprised me. In May, 1879, Chief Justice Waite wrote me that the court had at the recent term disposed of three hundred and seventy-nine causes, of which ninety-one related to the United States, one hundred and eighty three were corporation cases, and only one hundred and five were between private individuals.

How wisely and satisfactorily to govern our populous public and municipal corporations is yet an unsolved problem. The facts here brought to view, however, present statesmen and lawyers questions in political economy and practical legislation of exceeding interest and difficulty. They are not, I am persuaded, insoluble, but the future must considerably deal with them in the light of time and experience, which alone can supply the needed wisdom.

John Forrest Dillon, *The Laws and Jurisprudence of England and America*, 376-377 (1894).

The future that John Dillon postulated is now upon us. The Ordinance is the expression in life of the rights held in fact by the people of Mt. Shasta. The ordinance is protective of the physical, natural, social, governmental, psychological, cultural, moral, and community values and attributes of the people and environment of the City.

⁴⁷ Massachusetts Const., arts. VI and VII (March 2, 1780). See also, *Virginia Declaration of Rights* at 4 (June 12, 1776); Pennsylvania Constitution of 1776 at fifth provision (reprinted in Pennsylvania Legislative Reference Bureau, *Constitutions of Pennsylvania/ Constitution of the United States* 235 (1967)).

The people of Mt. Shasta are asserting the proposition that the rights of the people are superior to corporate creatures of the state. The solution to Dillon’s “unsolved problem” requires citizens in other communities to do as the people of Mt. Shasta are doing and for state and federal governments to correct the errors of the past. The State and the Courts had, and still have, no authority to delegate away the people’s sovereignty to private business corporations, or other entities, and to then legislate and rule that the people may not govern the recipients of that grant.

Finally, to state the facts in their starkest terms: when the people are denied self-government where they live, they are denied self-government everywhere. No one can partake in the governance of his or her own affairs while being deprived of the right and authority to govern in the affairs of the community in which he or she resides. If community self-government is denied, the entire right to self-government is denied. One cannot have a “right to ride a horse” if no horse is ever allowed under the rider.

The California Constitution of 1849 asserted fundamental rights that have not been and cannot be revoked, whether or not they are enumerated in the current state constitution. Article I, Section 1 of that constitution reads:

All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property: and pursuing and obtaining safety and happiness.

And Article I, Section 2 reads:

All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people; and they have the right to alter or reform the same, whenever the public good may require it.

With prior peoples’ movements before them, the people of Mt. Shasta are making real the promises contained in those constitutional provisions. And, with communities across the United States over the past 150 years – they have been constantly reminded by courts, legislatures, and State agencies that the corporations operating within their midst have more rights than the people within the community. They are discovering that these creatures of the State now carry the legal authority and raw power to nullify democratically-enacted Ordinances that seek to protect the health, safety, and welfare of people and nature within their community.

At Pennsylvania’s 1839 Constitutional Convention, major debates occurred over the proper role of the State in defining the nature of corporations. One speaker, Charles J. Ingersoll – an eminent lawyer of his day who practiced before the United States Supreme Court – declared that:

[o]ld charters were asylums of liberty; modern charters are strongholds of privilege. . . It is a great mistake to suppose that charters of corporate rights are more sacred than personal rights. Judicial speculations and pro-

Because the people of Mt. Shasta possess an unalienable right to local, community self-government, and because the state and federal governments have empowered large and multi-national business corporations to assert special privileges that have the effect of nullifying the rights of Mt. Shasta residents, and because the ordinance corrects those errors, the ordinance is legitimate and enforceable.

fessional obsequiousness have tended, if not endeavored, to place property on higher ground than persons. But this is a mischievous error, without the least foundation in justice or authority. . . No charter vests corporate rights more firmly than every individual right.

....

The pedigree of American corporations is extremely base. Privileges inconsistent with American government proceed from acts of legislatures having no constitutional power expressly to grant them. . . Corporation power is now an overshadowing influence in this State whose very prepotency requires investigation.

United States Magazine & Democratic Review, Vol. V., No. XIII
101, 104-5 (January, 1839).

Right and justice are on the side of the people of Mt. Shasta. They now need their City Council to take up their cause and stand with them.

D. The Ordinance is Legitimate and any Preemption of it is Illegitimate

The ordinance carves a narrow path against state and federal preemption. It overrides state and federal laws that directly conflict with the ordinance's protection of the health, safety, and welfare of residents of the municipality. Without asserting the rights enumerated in it, the municipality and the people who live in Mt. Shasta would be at the mercy of the state and federal legal frameworks which permit two specific activities that are harmful to the community and its environment.

Because the people of Mt. Shasta possess an unalienable right to local, community self-government, and because the state and federal governments have empowered large and multi-national business corporations to assert special privileges that have the effect of nullifying the rights of Mt. Shasta residents, and because the ordinance corrects those errors, the ordinance is *legitimate* and *enforceable*.

The legitimacy and enforceability of the ordinance are rooted in the distinction between legitimate laws vs. illegitimate laws. Any law that violates unalienable rights is by definition illegitimate. Slavery was "legal and constitutional" but illegitimate, in that the U.S. Constitution "legalized" slavery when it was ratified. But slavery was a denial and violation of the fundamental human and civil rights of those held in bondage. While the defenders of slavery argued that its abolition would deprive the slaveholders of vested property rights, the claim to legal rights in human property, and the "right" to inflict harm on that human "property" was institutionally and profoundly illegitimate. Similarly, the claim to ownership of weather patterns and natural water sources, and the "right" to damage them is profoundly illegitimate, because injustice results from the claim.

Laws, including the Constitution, which asserted that the slaveholder's "property rights" were superior to the human and civil rights of the slave, were illegitimate and indefensible on legal, ethical or moral grounds, although they were backed by the might of the U.S. government. The federal and state slave laws and the U.S. Constitution were wrong, and they were only changed when their illegitimacy and resulting injustice were called-out, confronted for what they were, and they were directly challenged by people who refused to obey them. Stories of those people are remembered in tales of the "underground railroad," the northern juries that refused to obey the "Fugitive Slave Laws" that legally compelled them to return escaped slaves to their "property owners," and others who didn't ask if they'd be sued for standing up for fundamental rights. They simply did what was right and did not weigh the financial or personal consequences.

Depriving local self-government and water rights may be arguably "legal and constitutional," but the deprivation of fundamental rights today is no less illegitimate than the technical legality and constitutionality of slavery. Today, we have the same right, authority and duty to challenge current injustices by asserting our rights, using our community government to correct injustices and codifying those rights and defending them in local law. Not to correct the errors in governance in our own time is to consign our children and our natural world to enslavement to the technical "legality" of "well-settled" law that denies fundamental rights. We lack the luxury or authority to so irresponsibly turn our backs on the future and remain indentured to the precedent and error of the past.

On the final day of the California Constitutional Convention of 1849, we find this statement placed in the record

Mr. Steuart, from the committee appointed to prepare an Address to the People of California, presented the following...

"A free people, in the enjoyment of an effective government, capable of securing their civil, religious, and political rights, may rest assured these inestimable privileges can never be wrested from them, so long as they keep a watchful eye on the operations of their government, and hold to strict accountability, those to whom power is delegated. No people were ever yet enslaved, who knew and dared maintain the co-relative rights and obligations of free and independent citizens."

Report of the Debates in the Convention of California, of the Formation of the State Constitution, in September and October, 1849, entry for Saturday, October 13, 1849, Morning Session

Today, the people of Mt. Shasta hold those rights and obligations sacred, and to secure those rights and fulfill those obligations they begin by recommending the City of Mt. Shasta Community Water Rights and Self-Government Ordinance to the judgment of their friends and neighbors.



Knowing that the consequences of inaction jeopardize our lives and livelihoods, we have no choice but to advance solutions that secure our rights to life, liberty and the pursuit of happiness.

Conclusion

The City of Mt. Shasta Community Water Rights and Self-Government Ordinance is a rights-based ordinance mandating that local government represent public over private interests in regards to water. If implemented, the ordinance will prevent the contamination and depletion of precious Shasta water resources by prohibiting cloud seeding as well as additional water mining for resale and export within City jurisdiction. Preserving the pristine quality and abundant quantity of water at the headwaters of the Sacramento River will have direct benefits not only for the citizens of Mt. Shasta and its outlying areas, but for the many people who come to Mount Shasta for physical, mental and spiritual renewal, as well as diverse interests downstream. As a regional pioneer for reclaiming our rights to local self-government by adopting this legislation, Mt. Shasta City will inspire and serve as a model for the democratic stewardship of our natural resources in Siskiyou County, California, the State of Jefferson and beyond.

Standing in sovereign solidarity with over 125 communities throughout America, the City of Mt. Shasta Community Water Rights and Self-Government Ordinance embraces precautionary, participatory, local self-government as an 11th hour collaborative effort to realign human systems and ecosystems. Decades of fragmented, issue-oriented, reactive environmental regulation have failed to achieve the protections necessary to ensure human survival in the 21st century. When federal and state judicial malfunction deprives people of natural rights to water and life, it becomes the job of local government to exercise our human rights to healthy ecosystems. Knowing that the consequences of inaction jeopardize our lives and livelihoods, we have no choice but to advance solutions that secure our rights to life, liberty and the pursuit of happiness.

APPENDIX I. FULL TEXT of the ORDINANCE

Initiative Measure to be Submitted Directly to the Voters

The people of the City of Mt. Shasta do ordain as follows:

AN ORDINANCE

City of Mt. Shasta, California

AN ORDINANCE TO ASSERT AND SECURE THE RIGHT OF THE PEOPLE OF THE CITY OF MT. SHASTA TO NATURAL WATER SYSTEMS AND CYCLES THROUGH THE EXERCISE OF COMMUNITY SELF-GOVERNMENT BY ENUMERATING CERTAIN RIGHTS HELD BY THE PEOPLE AND NATURAL COMMUNITY AND PROHIBITING ACTIVITIES THAT WOULD DENY THOSE RIGHTS; BY PROTECTING THE HEALTH, SAFETY, AND GENERAL WELFARE OF THE CITIZENS AND ENVIRONMENT OF THE CITY OF MT. SHASTA; BY BANNING CORPORATIONS FROM ENGAGING IN WEATHER MANIPULATION; BY ESTABLISHING STRICT LIABILITY AND BURDEN OF PROOF STANDARDS FOR CHEMICAL TRESPASS; BY BANNING CORPORATIONS FROM ENGAGING IN WATER WITHDRAWAL FOR EXPORT AND SALE OUTSIDE THE CITY; BY REMOVING CLAIMS TO LEGAL RIGHTS AND PROTECTIONS FROM CORPORATIONS THAT WOULD ALLOW THEM TO SUBORDINATE THE PEOPLE AND ENVIRONMENT OF THE CITY OF MT. SHASTA TO THE WILL OF A FEW; AND BY RECOGNIZING AND ENFORCING THE RIGHTS OF RESIDENTS TO DEFEND THE RIGHTS OF NATURAL COMMUNITIES AND ECOSYSTEMS

Section 1. Preamble, Name and Purpose

Section 1.1: Preamble

WHEREAS Mount Shasta is considered one of Earth's seven sacred mountains, serving as a global destination and refuge for fresh air and clean water; and

WHEREAS Mount Shasta serves headwaters to the critical Sacramento River, providing 75% of Northern California's water; and

WHEREAS pristine spring water is Mount Shasta's most valuable natural asset and continually ranks among the top three in state and national water quality contests; and

WHEREAS atmospheric, surface and ground waters are intricately connected, they are currently vulnerable to mismanagement under separate jurisdictions; and

WHEREAS objective scientific studies proving sustainable thresholds for groundwater extraction from Mount Shasta's volcanic hydrogeology are non-existent, while two multinational corporations extract and export undisclosed amounts of Shasta water from their respective basins; and

WHEREAS the water bottling industry increases reliance upon fossil fuels, creating excessive non-biodegradable waste and carbon emissions; and

WHEREAS comprehensive, objective scientific studies proving the safety and efficacy of cloud seeding are non-existent, the State of California allows private corporations to cloud seed without regulation, while regulating municipal entities that experiment with cloud seeding; and

WHEREAS anecdotal evidence indicates that cloud seeding produces catastrophic weather events;

including lightening, floods, crippling snow loads and drought in regions where cloud seeding is conducted; and

WHEREAS the people and natural environment of Mount Shasta have no protection against chemical trespass from cloud seeding; and

WHEREAS Mount Shasta's average decrease in annual snow pack and precipitation leads to surface and groundwater depletion, thereby increasing risk of toxicity, forest fires, drought, species extinction, desertification and reduced property values; and

WHEREAS human survival on planet earth relies upon local, state and national governments to respond proportionately to the challenges of climate change by employing conservative natural resource policies that respect biological systems; and

WHEREAS regulatory policies function to limit, rather than prevent environmental damage and the time has come to prohibit, not mitigate, continued needless environmental destruction; and WHEREAS conservative natural resource policies have been proven to stimulate green, local, innovative, resilient, sustainable commerce; and

THEREFORE be it ordained that the people of the City of Mt. Shasta do hereby declare our rights and responsibility to preserve watershed integrity as the foundation for environmental and economic security, by enacting the Mount Shasta Community Water Rights & Self-Government Ordinance.

Section 1.2: Name

This Ordinance shall be known and may be cited as the "City of Mt. Shasta Community Water Rights and Self-Government Ordinance."

Section 1.3: Purpose

One purpose of this Ordinance is to recognize and protect the inalienable rights of residents of the City of Mt. Shasta, including but not limited to those enumerated in this Ordinance, particularly the Right to Natural Water Systems and Cycles, to Self-Government in the place of residence, to Self, to a Healthy Environment, to Home and Livelihood, and to Cultural Heritage.

Another purpose of this Ordinance is to recognize and protect the inalienable rights of the natural environment of the City of Mt. Shasta, including the right to exist and flourish, free from damage caused by alteration of natural water systems and cycles or introduction of toxic and potentially toxic substances. Disturbing natural water cycles, including rainfall, the recharging of aquifers, and interfering with access to water by human and natural communities are explicit prohibitions imposed by this Ordinance, to protect Rights.

A further purpose of this Ordinance is to recognize that it is an inviolate, fundamental, and inalienable right of each person residing within the City of Mt. Shasta to be free from involuntary invasions of their bodies by the application of corporate chemicals into the environment as a result of the violation of the provisions of this Ordinance.

The people of the City of Mt. Shasta understand that certain activities controlled by large corporations have and continue to cause damage to climate, weather, water systems, the soil and air, and that it is the people's responsibility to prohibit behavior that they deem to be destructive of the

natural and human environment within the jurisdictions where they enjoy self-governing rights.

The people of the City of Mt. Shasta understand that responsibility for remedying or simply enduring harmful effects brought about by modifications to weather, the introduction of toxins into the environment, and the privatization of water, is borne predominantly by the public. State and federal authorities regularly sanction damaging industrial and corporate behavior, and state and federal lawmakers and courts exercise preemptive authority over community attempts to prohibit harmful corporate behavior locally. The people of the City of Mt. Shasta recognize that they are forced to endure or attempt to repair the harm to their environment that they have no commensurate authority to prevent, under current state and federal law. The people of the City of Mt. Shasta adopt this Ordinance to correct that error.

While the State of California and the federal government have bestowed legal protections and immunities upon corporations and those who benefit from them, they have concurrently disallowed the people from making those persons reaping financial benefits from harmful corporate activities bear responsibility for damage inflicted. In light of this fundamental denial of the right of the people to self-determination, the interference with ecosystems' right to exist and flourish, the denial of peoples' freedom from chemical trespass, the denial of peoples' right to natural water cycles, and the denial of the right to demand restitution for harms, the City of Mt. Shasta, under authority of the people, subordinates corporations to the rights and self-governance of the people, prohibits corporations from violating rights, and to achieve the purposes herein outlined, enacts this Ordinance.

Section 2. Statements of Law

All Rights delineated in this Ordinance, and all provisions, findings and purposes of this Ordinance, without exception, are self-executing and legally enforceable.

Section 2.1: The Right of the People and Ecosystem to Natural Water Cycles

Section 2.1.1: *Right to Water*. All residents, natural communities and ecosystems in the City of Mt. Shasta possess a fundamental and inalienable right to sustainably access, use, consume, and preserve water drawn from natural water cycles that provide water necessary to sustain life within the City.

Section 2.1.1.1: It shall be unlawful for any corporation to engage in cloud seeding or weather modification within the City of Mt. Shasta. It shall be unlawful for any person to assist a corporation to engage in cloud seeding or weather modification within the City of Mt. Shasta.

Section 2.1.1.2: It shall be unlawful for any director, officer, owner, or manager of a corporation to use a corporation to engage in cloud seeding or weather modification within the City of Mt. Shasta.

Section 2.1.1.3: Corporations and persons using corporations to engage in activities prohibited by this Ordinance in a neighboring municipality, county or state shall be strictly liable for all violations of the rights of residents, ecosystems and natural communities; for all harms caused to ecosystems and natural communities, and for all harms caused to the health, safety, and welfare of the residents of the City of Mt. Shasta from those activities.

Section 2.1.1.4: The deposition of toxic substances or potentially toxic substances within the body of any resident of the City of Mt. Shasta, or into any natural community or ecosystem, which results from corporate cloud seeding or weather modification, whether engaged in, within or beyond the City of Mt. Shasta, is declared a form of trespass and is hereby prohibited.

Section 2.1.1.5: It shall be unlawful for any corporation to engage in water withdrawal in the City of Mt. Shasta. It shall be unlawful for any person to assist a corporation to engage in water withdrawal in the City of Mt. Shasta.

Section 2.1.1.6: It shall be unlawful for any director, officer, owner, or manager of a corporation to use a corporation to engage in water withdrawal within the City of Mt. Shasta.

Section 2.1.1.6.1: Exceptions. The people of the City of Mt. Shasta hereby allow the following exceptions to the Statements of Law contained within Section 2.1.1.5, or 2.1.1.6 of this Ordinance:

- (1) Municipal authorities established under the laws of the State of California engaged in water withdrawals providing water only to residential and commercial users within the City of Mt. Shasta;
- (2) Nonprofit educational and charitable corporations organized under state non-profit corporation law, qualified under §501(c)(3) of the federal Tax Code, which do not sell water withdrawn within the City of Mt. Shasta outside of the City of Mt. Shasta;
- (3) Utility corporations operating under valid and express contractual provisions in agreements entered into between the City of Mt. Shasta and those utility corporations, for the provision of service within the City of Mt. Shasta;
- (4) Corporations operating under valid and express contractual provisions in agreements entered into between persons in the City of Mt. Shasta and those corporations, when the withdrawn water is used solely for on-site residential, household, agricultural, or commercial use within the City of Mt. Shasta, provided that such commercial use does not involve the withdrawal of water for export and sale outside of the City of Mt. Shasta, or involve the purchase of water withdrawn from the City of Mt. Shasta for export and sale outside of the City.
- (5) Corporations operating under valid and express contractual provisions in agreements entered into between persons in the City of Mt. Shasta and those corporations, when the withdrawn water is used for the manufacture of beverages within the City of Mt. Shasta, provided that such commercial use does not involve the withdrawal of water for export and sale, either in bulk or packaged as water, outside of the City of Mt. Shasta.

Section 2.2: The Right of the People to Self-Government

Section 2.2.1: Right to Community Self-Government. All residents of the City of Mt. Shasta possess the fundamental and inalienable right to participate in a form of government in the community where they live which guarantees them authority to use, assert and enforce plenary governing power over questions of law that affect their lives, families, environment, quality of life, health, safety and welfare. That right includes the right to exercise un-preempted legislative authority through the government closest to them. All governing authority is and shall remain inherent in the people affected by governing decisions, and all legitimate governments are founded on the people's authority and consent. The recognition, protection and enforcement of the rights enumerated in this Ordinance are rooted in the foundation of valid government; law gains its legitimacy when it serves this purpose.

Section 2.2.1.2: The foundation for the making and adoption of this law is the people's fundamental and inalienable right to govern themselves in the community where they live, and thereby secure their rights to life, liberty, and the pursuit of happiness. Any attempts to use other units and levels of government to preempt, amend, alter, or overturn this Ordinance, or parts of this Ordinance, shall require the City Council to hold public meetings that explore the adoption of measures to overcome the usurpation and protect the ability of residents to exercise their fundamental and inalienable right to self-government.

Section 2.2.1.3: To ensure that the rights of the people to make self-governing decisions are never subordinated to the privileges of a few, within the City of Mt. Shasta corporate entities and their directors and managers shall not enjoy special powers or protections under the law, nor shall any class of people enjoy such privileges, protections or powers. Corporations and other business entities shall not be deemed to possess any legal rights, privileges, powers, or protections which would enable those entities to avoid the enforcement of, nullify provisions of, or violate the rights enumerated in this Ordinance.

Section 2.2.1.3.1 Corporate Privilege: Within the City of Mt. Shasta, corporations that violate the provisions of this Ordinance shall not be "persons" under the United States or California Constitutions, or under the laws of the United States, California, or the City of Mt. Shasta, and so shall not have the rights of persons under those constitutions and laws. Nor shall they be afforded the protections of the Contracts Clause or Commerce Clause of the United States Constitution, or similar provisions from the California Constitution, within the City of Mt. Shasta, nor shall those corporations possess the authority to enforce State or federal preemptive law against the people of the City of Mt. Shasta. Corporations shall not be afforded the protections of any international agreement or treaty which would enable the corporation to nullify local laws adopted by the City of Mt. Shasta or the people of the City of Mt. Shasta.

Section 2.2.1.3.2 Corporations as State Actors: Corporations chartered by government acquire their being, their authority, and their ability to act from the State. Within the City of Mt. Shasta, corporations shall be prohibited from denying the rights of residents and natural communities and shall be civilly and criminally liable for any such deprivation or denial of rights.

Section 2.2.1.3.3 Future Profits Not Property: Within the City of Mt. Shasta, corporate claims to “future lost profits” as a result of the enactment, implementation or enforcement of this Ordinance shall not be considered property interests under the law and thus shall not be recoverable by corporations seeking those damages as a result of the enforcement of this Ordinance within the City.

Section 2.2.1.4: Any permit, license, privilege or charter issued to any person or any corporation, the use of which would violate the prohibitions and provisions of this Ordinance or deprive any City resident, natural community, or ecosystem of any rights, privileges, or immunities secured by this Ordinance, the California Constitution, the United States Constitution, or other laws, shall be deemed invalid within the City of Mt. Shasta. Additionally, any employee, agent or representative of government who issues a permit, license, privilege or charter which results in the violation of the provisions of this Ordinance or deprives any City resident, natural community, or ecosystem of any rights, privileges, or immunities secured by this Ordinance, the California Constitution, the United States Constitution, or other laws, shall be liable to the party injured and shall be responsible for payment of compensatory and punitive damages and all costs of litigation, including, without limitation, expert and attorney’s fees. Compensatory and punitive damages paid to remedy the violation of the rights of natural communities and ecosystems shall be paid to the City of Mt. Shasta for restoration of those natural communities and ecosystems.

Section 2.2.2: People as Sovereign. The City of Mt. Shasta shall be the governing authority responsible to, and governed by, the residents of the City. Use of the “City of Mt. Shasta” municipal corporation by the sovereign people of the City to make law shall not be construed to limit or surrender the sovereign authority or immunities of the people to a municipal corporation, or to the State, which are subordinate to them in all respects at all times. The people at all times enjoy and retain an inalienable and inalienable right to self-governance in the community where they reside.

Section 2.2.2.1: Nullification of Official Rights Denial. The authority of the State of California to enforce any State law that removes authority from the people of the City of Mt. Shasta to decide the future of their community, and to protect the health, safety, welfare, environment and quality of life of City residents, natural communities, and ecosystems, shall be deemed null within the City of Mt. Shasta.

Section 2.2.3: Authority to Enact This Ordinance. The residents of the City of Mt. Shasta have legitimate power and authority to use the municipality known as the “City of Mt. Shasta” as their convenient instrument for asserting their right to community self-government, and in accord with that authority and right they enact this Ordinance.

Section 2.2.3.1: Authority: This Ordinance is also enacted pursuant to the authority of the City of Mt. Shasta, as recognized by all relevant Federal and State laws and their corresponding regulations, and by the inherent right of the citizens of the City of Mt. Shasta to self-government, including, without limitation, the following:

The Declaration of Independence, which declares that people are born with “certain inalienable rights” and that governments are instituted among people to secure those rights;

The Tenth Amendment of the U.S. Constitution, which declares that “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people;”

The California Constitution, Article 1, Section 1, which declares that “All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy;”

The California Constitution, Article 1, Section 24, which declares that “Rights guaranteed by this Constitution are not dependent on those guaranteed by the United States Constitution;”

The California Constitution, Article I, Section 24, which further provides that “This declaration of rights may not be construed to impair or deny others retained by the people;”

The California Constitution, Article II, Section 1, which asserts that “All political power is inherent in the people. Government is instituted for their protection, security, and benefit, and they have the right to alter or reform it when the public good may require;”

The California Constitution, Article XI, Section 5 (a), which declares that “City charters adopted pursuant to this Constitution shall supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith;”

The California Constitution, Article XI, Section 7, which declares that “A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws;”

The California Constitution, Article XI, Section 11(a), which declares that “The Legislature may not delegate to a private person or body power to make, control, appropriate, supervise, or interfere with county or municipal corporation improvements, money, or property, or to levy taxes or assessments, or perform municipal functions.”

Section 2.2.3.2 Interpretation: Anyone interpreting, implementing, or applying this Ordinance shall give priority to the findings and purposes stated in Section 1 over such considerations as economy, eminent domain, efficiency, national security and scheduling factors.

Section 2.2.3.3: Administration: This Ordinance shall be administered by the City of Mt. Shasta.

Section 2.3: Enumerated Rights of the People within this Community

Section 2.3.2: Right to a Healthy Environment. All residents and persons within the City of Mt. Shasta possess a fundamental and inalienable right to a healthy environment, which includes the right to unpolluted air, water, soils, flora, and fauna, the right to a natural environmental climate unaltered by human intervention, and the right to protect the rights of natural communities and ecosystems, of which each resident is both intrinsically a part and upon which all are dependent.

Section 2.3.3: Right to Self. All residents and persons living within the City of Mt. Shasta possess a fundamental and inalienable right to the integrity of their bodies, and to be free from unwanted invasions of their bodies by manufactured chemicals and toxins, including but not limited to, toxic substances and potentially toxic substances.

Section 2.3.3.1: The deposition, by corporations in violation of the provisions of this ordinance, of toxic substances or potentially toxic substances within the body of any resident of the City of Mt. Shasta, or into any natural community or ecosystem, is declared a form of trespass and is hereby prohibited.

Section 2.3.3.2: Persons owning or managing corporations which manufacture, generate, sell, transport, apply, or dispose of, toxic or potentially toxic substances, which are detected within the body of any resident of the City of Mt. Shasta or within any natural community or ecosystem within the City, having violated the provisions of this Ordinance, shall be deemed culpable parties, along with the corporation itself, for the recovery of trespass damages, compensatory damages, punitive damages, and the instatement of permanent injunctive relief. If more than one corporation manufactured or generated the detected substance, persons owning and managing those corporations, along with the corporations themselves, shall be held jointly and severally liable for those damages, in addition to being subject to injunctive relief.

Section 2.3.3.3: Corporations manufacturing, using, selling or generating toxic or potentially toxic substances in violation of the provisions of this Ordinance that are detected within the body of a City resident shall provide information about the manufacture or generation of those substances to the municipality sufficient for a determination by the municipality of the culpability of that particular corporation for the manufacturing or generation of a particular toxic or potentially toxic substance.

Section 2.3.3.4: It shall be the duty of the City to protect the right of City residents, natural communities and ecosystems to be free from trespass under the provisions of this Ordinance, and to obtain damages for any violation of that right. If the presence of toxic and/or potentially toxic substance is detected within the body of any City resident, or within a natural community or ecosystem within the City, the municipality shall initiate litigation to recover trespass, compensatory, and punitive damages – and permanent injunctive relief – from all culpable parties. If a significant number of City residents have been similarly trespassed against, the municipality shall select representative plaintiffs and file a class action lawsuit on behalf of all City residents to recover trespass, compensatory, and punitive damages – and permanent injunctive relief – from

all culpable parties. City residents retain all individual legal rights to pursue damages and relief.

Section 2.3.3.5: Persons or corporations engaged in activities prohibited by this Ordinance shall be strictly liable for the deposition of toxic substances and potentially toxic substances into the bodies of residents of the City and within natural communities and ecosystems within the City. Culpable parties shall be deemed strictly liable if one of their toxic or potentially toxic substances or chemical compounds is discovered within the body of a City resident or into any natural community or ecosystem within the City. The municipality's showing of the existence of that substance or chemical compound within the body of a resident living in the City or within a natural community or ecosystems within the City, and the municipality's showing that the Defendant(s) are responsible for the manufacture, generation, sale, or deposition of that substance within the City, shall constitute a prime facie showing of causation under a strict liability standard. Current and future damages resulting from the culpable parties' trespass shall be assumed, and the burden of proof shall shift to the culpable parties for a showing that the substance or chemical compound could not cause harm or contribute to causing harm, either alone or in combination with other factors, or that the culpable parties are not responsible for the trespass of that particular substance into the body of residents of the City or within a natural community or ecosystems within the City.

Section 2.3.3.6: The City of Mt. Shasta shall select a laboratory with expertise in the testing for toxic substances and potentially toxic substances and chemical compounds associated with weather modification, and other substances including, but not limited to, those listed in the Definitions Section of this Ordinance. The City shall provide financial resources for the first ten residents, determined by postage mark, who request in writing to be tested for the presence of toxic substances and potentially toxic substances and chemical compounds within their bodies, and make all reasonable efforts to provide financial resources for the testing of additional residents.

Section 2.4: The Rights of Natural Communities and Ecosystems

Section 2.4.1: *Rights of Natural Communities.* Natural communities and ecosystems, including, but not limited to, wetlands, streams, rivers, aquifers, clouds, and other water systems, possess inalienable and fundamental rights to exist, flourish and naturally evolve within the City of Mt. Shasta. Consequently, no private claim to ownership of natural communities, whole ecosystems or the genetic material of any organism shall be recognized within the City of Mt. Shasta.

Section 2.4.1.1: It shall be unlawful for any corporation or its directors, officers, owners, or managers to interfere with the existence and flourishing of natural communities or ecosystems, or to cause damage to those natural communities and ecosystems. Such interference shall include, but not be limited to, the deposition of toxic substances and potentially toxic substances into natural communities and ecosystems in the City, the extraction of "resources" and the manipulation of elements of the environment that affect the ability of natural

communities to exist, flourish and evolve. The City of Mt. Shasta, along with any resident of the City, shall have standing to seek declaratory, injunctive, and compensatory relief for damages caused to natural communities and ecosystems within the City, regardless of the relation of those natural communities and ecosystems to City residents or the City itself. City residents, natural communities, and ecosystems shall be considered to be “persons” for purposes of the enforcement of the civil rights of those residents, natural communities, and ecosystems.

Section 2.4.1.2: Corporations and persons using corporations to engage in activities prohibited by this Ordinance in a neighboring municipality, county or state shall be strictly liable for all harms caused to the health, safety, and welfare of the residents of the City of Mt. Shasta from those activities, and for all harms caused to ecosystems and natural communities within the City of Mt. Shasta.

Section 3: Definitions

The following terms shall have the meanings defined in this section wherever they are used in this Ordinance.

Cause damage to natural communities and ecosystems: This term and equivalent terms shall include but not be limited to alteration, removal, destruction, eradication, or other actions inflicted upon natural communities and ecosystems, in whole or in part, that bring about the cessation of the ability of natural communities and ecosystems to exist and flourish independent of human intervention.

City: The City of Mt. Shasta in Siskiyou County, California, its City Council, or its representatives or agents.

City resident: A natural person who maintains a primary residence within the City of Mt. Shasta.

Cloud Seeding: The spraying, spreading, injection, incorporation, introduction or deposition by any means, of substances by a corporation or an agent of a corporation, into the atmosphere, onto a land surface, body of water, air space, residential area, structure, fixture, public space, or natural feature within the City which would have the effect of inducing or suppressing precipitation from clouds or the atmosphere.

Corporation: Any corporation organized under the laws of any state of the United States or under the laws of any country. The term shall also include any limited partnership, limited liability partnership, business trust, or limited liability company organized under the laws of any state of the United States or under the laws of any country, and any other business entity that possesses State-conferred limited liability attributes for its owners, directors, officers, and/or managers. The term shall also include any business entity in which one or more owners or partners is a corporation or other entity in which owners, directors, officers and/or managers possess limited liability attributes. The term does not include the municipality of the City of Mt. Shasta.

Culpable Parties: Persons owning or managing corporations which manufacture, generate, transport, sell, dispose of, or by any means apply toxic or potentially toxic substances detected within the body of any resident of the City of Mt. Shasta or within any natural community or ecosystem within the City, as a result of the violation of the prohibitions of this ordinance. This term shall also refer to government agencies, agents, and other entities that permit, license or empower a corporation to violate the provisions of this Ordinance.

Deposition: The placement of a toxic chemical or potentially toxic chemical within the body of a person. The act of deposition shall be assumed if a toxic chemical or potentially toxic chemical is detected within the body of a person.

Ecosystem: The term shall include but not be limited to, wetlands, streams, rivers, aquifers, and other water systems, as well as all naturally occurring habitats that sustain wildlife, flora and fauna, soil-dwelling or aquatic organisms.

Engage in Water Withdrawal: The term shall include, but not be limited to, the physical extraction of water from subsurface aquifers or surface bodies of water and the buying and/or selling of water that has been extracted within the City of Mt. Shasta outside the City.

Exist and flourish: The term shall include but not be limited to, the ability of natural communities and ecosystems to sustain and continue to exercise natural tendencies to promote life, reproduction, non-synthetic interactions and interdependencies among proliferating and diverse organisms; the term shall also include the ability of natural communities and ecosystems to establish and sustain indefinitely the natural processes and evolutionary tendencies that promote well-being among flora, fauna, aquatic life, and the ecosystems upon which their mutual benefit depends.

Natural Communities: Wildlife, flora, fauna, soil-dwelling, aerial, and aquatic organisms, as well as humans and human communities that have established sustainable interdependencies within a proliferating and diverse matrix of organisms, within a natural ecosystem.

Natural Water System: The term shall include but not be limited to the natural and unmanaged circulation of water between atmosphere, land, and sea by evaporation, precipitation, and percolation through soils and rocks.

Ordinance: City of Mt. Shasta Community Water Rights and Self-Government Ordinance.

Person: A natural person, or an association of natural persons that does not qualify as a corporation under this Ordinance.

Rights of Natural Communities: This term and its equivalents shall include, but not be limited to, the inalienable and fundamental rights of natural communities and ecosystems to exist, flourish and naturally evolve. The term shall also include the right to be free from corporate activities that cause damage to natural communities and ecosystems, the deposition of toxic substances and potentially toxic substances, the extraction of "resources" and the manipulation of elements of the environment that affect the ability of natural communities and ecosystems to exist, flourish and evolve.

Self Government: The inalienable and legitimate authority of the people of the City of Mt. Shasta to decide as a community the future of their community, and to protect the health, safety, welfare, environment and quality of life of City residents, natural communities, and ecosystems, free from preemptive usurpations and constrained only by the rights of natural persons, natural communities and ecosystems.

Substantially Owned or Controlled: A person, corporation, or other entity substantially owns or controls another person, corporation, or other entity if it has the ability to evade the intent of Section 4.6 of this Ordinance by using that person, corporation, or other entity to violate the provisions of this Ordinance in the City of Mt. Shasta.

Sustainable Interdependencies: Co-existence of human and non-human organisms and communities, where human health and survival can be maintained and where human activities do not cause damage to natural communities and ecosystems.

Toxic substances and potentially toxic substances: The phrase shall include all substances that have been found to cause or are suspected of causing adverse effects to animals, humans, or ecosystems, including those chemicals, chemical compounds, sources of radiation, and all other substances deemed to be mutagenic, neurotoxic, carcinogenic, teratogenic, reproductive or developmental toxicants, or any other toxic chemical or hazardous substance identified by the City of Mt. Shasta by resolution as subject to this Ordinance. The phrase shall specifically include, but shall not be limited to, silver iodide.

Trespass: As used within this Ordinance, the deposition of toxic or potentially toxic substances, as defined in this Ordinance, which are detected within a human body, natural community or ecosystem.

Weather Modification/Weather Manipulation: These terms shall include any activity which intentionally changes natural weather and climate conditions that would affect the quality and character of the atmosphere, precipitation, temperature, available water supplies or related aspects of the natural environment, and shall include but not be limited to cloud seeding.

Section 4: Enforcement

Section 4.1: The City of Mt. Shasta shall enforce this Ordinance by an action brought before a court of competent jurisdiction.

Section 4.2: Any person, corporation, or other entity that violates any provision of this Ordinance shall be guilty of a summary offense and, upon conviction thereof by a court of competent jurisdiction, shall be sentenced to pay the maximum allowable fine for first-time and for each subsequent violation, and shall be imprisoned to the extent allowed by law.

Section 4.3: A separate offense shall arise for each day or portion thereof in which a violation occurs and for each section of this Ordinance that is found to be violated.

Section 4.4: The City of Mt. Shasta may also enforce this Ordinance through an action in equity brought in a court of competent jurisdiction. In such an action, the City of Mt. Shasta shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees and all related costs.

Section 4.5: All monies collected for violation of this Ordinance shall be paid to the Treasurer of the City of Mt. Shasta.

Section 4.6: Any person, corporation, or other entity chartered, permitted or licensed by the State, or acting under authority of the State or any government agency, that violates,

or is convicted of violating this Ordinance, two or more times shall be permanently prohibited from business activities in the City of Mt. Shasta. This prohibition applies to that person's, corporation's, or other entity's parent, sister, and successor companies, subsidiaries, and alter egos, and to any person, corporation, or other entity substantially owned or controlled by the person, corporation, or other entity (including its officers, directors, or owners) that twice violates this Ordinance, and to any person, corporation, or other entity that substantially owns or controls the person, corporation, or other entity that twice violates this Ordinance.

Section 4.7: Any City resident or group of resident, not a corporation, shall have the authority to enforce this Ordinance through an action in equity brought in a court of competent jurisdiction. In such an action, the resident shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees, as well as any damages, compensatory or punitive.

Section 5: Civil Rights Enforcement

Section 5.1: Any person acting under the authority of a permit issued by a government agency, any corporation operating under a state charter, any person acting on behalf of the State or any government agency, or acting under the authority of the state, or any director, officer, owner, or manager of a corporation operating under a state charter, who deprives any City resident, natural community, or ecosystem of any rights, privileges, or immunities secured by this Ordinance, the California Constitution, the United States Constitution, or other laws, shall be liable to the party injured and shall be responsible for payment of compensatory and punitive damages and all costs of litigation, including, without limitation, expert and attorney's fees. Compensatory and punitive damages paid to remedy the violation of the rights of natural communities and ecosystems shall be paid to the City of Mt. Shasta for restoration of those natural communities and ecosystems.

Section 5.2: Any City resident shall have standing and authority to bring an action under this Ordinance's civil rights provisions, or under state and federal civil rights laws, for violations of the rights of natural communities, ecosystems, and City residents, as recognized by this Ordinance.

Section 6: Enactment

Pursuant to California Election Code, Section 9214, the City Council, is advised and requested to submit this Ordinance immediately to a vote of the people at a special election.

Section 7: Effective Date

This Ordinance shall be effective immediately upon its enactment.

Section 8: Severability

The provisions of this Ordinance are severable. If any court of competent jurisdiction decides that any section, clause, sentence, part, or provision of this Ordinance is illegal, invalid, or unconstitutional, such decision shall not affect, impair, or invalidate any of the remaining sections, clauses,

sentences, parts, or provisions of the Ordinance. The City Council of the City of Mt. Shasta hereby declares that in the event of such a decision, and the determination that the court's ruling is legitimate, it would have enacted this Ordinance even without the section, clause, sentence, part, or provision that the court decides is illegal, invalid, or unconstitutional.

Section 9: Repealer

All inconsistent provisions of prior Ordinances adopted by the City of Mt. Shasta are hereby repealed, but only to the extent necessary to remedy the inconsistency.

ENACTED AND ORDAINED this ____ day of _____, 2009.

APPENDIX II. Anatomy of the Ordinance

The City of Mt. Shasta Community Water Rights and Self-Government Ordinance

ANATOMY of the ORDINANCE

Section 1. Preamble, Name and Purpose: Gives the reasons for enacting the ordinance, tells the name by which the Ordinance will be referred and summarizes the reasons the Ordinance is needed.

Section 1.1 Preamble (“Whereas” statements)

Section 1.2 Name “City of Mt. Shasta Community Water Rights and Self-Government Ordinance

Section 1.3 Purpose Recognize and protect the inalienable rights of residents of the City of Mt. Shasta, including but not limited to the Right to Natural Water Systems and Cycles, to Self-Government in the place of residence, to Self, to a Healthy Environment, to Home and Livelihood, and to Cultural Heritage.

Section 2. Statements of Law: Enumerates Rights, and asserts prohibitions necessary for the upholding of those Rights.

Section 2.1: The Right of the People and Ecosystem to Natural Water Cycles

Section 2.1.1: Right to Water. Asserts right of residents to access, use and preserve water from natural sources and water cycles, and asserts rights that protect the natural environment within Shasta City.

Section 2.1.1.1: Prohibits corporate cloud seeding

Section 2.1.1.2: Prohibits people from using corporations to engage in cloud seeding in Mt. Shasta.

Section 2.1.1.3: Makes anyone engaging in prohibited cloud seeding activities in a neighboring municipality culpable for damages in Shasta City.

Section 2.1.1.4: Prohibits Chemical Trespass resulting from prohibited cloud seeding activities.

Section 2.1.1.5: Prohibits corporate water withdrawals, with certain exceptions.

Section 2.1.1.6: Prohibits people from using corporations to engage in water withdrawal within the City of Mt. Shasta.

Section 2.1.1.6.1: Exceptions

- (1) Municipal authorities
- (2) Nonprofit corporations
- (3) Utility corporations

(4) Corporations under City contract

(5) Corporations manufacturing beverages other than bottled water

Section 2.2: The Right of the People to Self-Government

Section 2.2.1: *Right to Community Self-Government*. People in the City have a right to participate in decision-making on issues that affect them, their families, environment and quality of life.

Section 2.2.1.2: Obligation of the municipality to defend the people's inalienable right to self-government and convene community meetings to decide on action if that right is violated.

Section 2.2.1.3: Strips corporations of certain legal rights and protections that could be used to challenge the provisions or enforcement of this Ordinance.

Section 2.2.1.3.1 Corporate Privilege: Corporations that violate the prohibitions of the ordinance are not "persons" with constitutional protections.

Section 2.2.1.3.2 Corporations as State Actors: Because the state creates all corporations, they are instruments or "creatures" of the state, and the state is responsible for their actions.

Section 2.2.1.3.3 Future Profits Not Property: Corporations can't claim that money they have not yet earned is property to which they have a legal claim.

Section 2.2.1.4: Removes legitimacy from any permit or license issued by government that would violate the prohibitions of the ordinance or violate rights of human and natural communities to water.

Section 2.2.2: *People as Sovereign*. The people of Shasta City are not subordinate to the municipality. The City is not their master; they are the governing authority within the City.

Section 2.2.2.1 Nullification of Official Rights Denial: Since we are born with unalienable rights and they exist even before constitutions and laws, any state law that would have the effect of depriving the people in Mt. Shasta of their self-governing right to protect their community and environment is null and void.

Section 2.2.3: *Authority to Enact This Ordinance*. The residents of Shasta City have legitimate power and authority to use the municipality to assert Rights and enact laws.

Section 2.2.3.1: *Authority*: outlines CA and U.S. constitutional authority for the adoption of this Ordinance.

Section 2.2.3.2 *Interpretation*: The Ordinance is to be interpreted according to Purposes in Section 1.

Section 2.2.3.3: Administration: This Ordinance shall be administered by the City of Shasta.

Section 2.3: Enumerated Rights of the People within this Community

Section 2.3.2: Right to a Healthy Environment. Including unpolluted air, water, soil, and the right to protect natural communities and ecosystems.

Section 2.3.3: Right to Self. The Right to be free from poisoning.

Section 2.3.3.1: Chemical poisoning of people and ecosystems declared a form of trespass, and prohibited when it results from a violation of the prohibitions against cloud seeding and water withdrawals.

Section 2.3.3.2: People involved with corporate chemical trespass are culpable parties, liable for damages if they have violated the prohibitions of the ordinance.

Section 2.3.3.3: Corporations violating the Ordinance must provide information about the toxic substances.

Section 2.3.3.4: Obliges the City to initiate litigation to recover trespass, compensatory, and punitive damages – and permanent injunctive relief - from all culpable parties that violate the prohibitions of the ordinance.

Section 2.3.3.5: Establishes a strict burden of proof standard for violators of the specific prohibitions of the Ordinance.

Section 2.3.3.6: Allows the City of Shasta to select a laboratory and requires the City to test up to ten residents who request testing to detect toxic substances and chemical compounds associated with cloud seeding activities (weather modification).

Section 2.4: The Rights of Natural Communities and Ecosystems

Section 2.4.1: Rights of Natural Communities. Natural communities and ecosystems possess inalienable and fundamental rights to exist, flourish and naturally evolve within the City of Shasta.

Section 2.4.1.1: Makes it unlawful for any corporation or its directors, officers, owners, or managers to interfere with the existence and flourishing of natural communities or ecosystems, or to cause damage to those natural communities and ecosystems by violating this Ordinance.

Section 2.4.1.2: Corporations and persons using corporations to engage in activities prohibited by this Ordinance in a neighboring municipality are held strictly liable for harms caused to residents and ecosystems within the City of Shasta.

Section 3. Definitions: Lists definitions for terms as they will be used in this Ordinance.

Section 4. Enforcement: provides for monetary fines for violation of the Ordinance, and provides a mechanism for citizen enforcement of the Ordinance.

Section 4.1: Defines the way the City will enforce the Ordinance: by an action brought before the appropriate court.

Section 4.2: Defines unlawful violation of the Ordinance as action taken by people or corporations who violate the prohibitions of the Ordinance and imposes the maximum fine allowed by established law.

Section 4.3: Every day that a law-breaker continues to break the law will be counted as a separate violation, and fines will be assessed for each violation.

Section 4.4: The City Council has the option, but is not obligated to enforce the Ordinance through an equity law suit, in which the City could ask the court for recovery of expenses related to the suit.

Section 4.5: Fines collected for violations go to the City Treasurer.

Section 4.6: Prohibits law-breakers who violate the cloud seeding or water-withdrawal prohibitions who are convicted of those crimes two or more times from continuing to do business in the City.

Section 4.7: Authorizes City residents to ask a local court to enforce the Ordinance and ask for recovery of court costs.

Section 5. Civil Rights Enforcement: Provides for monetary fines, including punitive damages, for the violation of the Rights of people and ecosystems, and provides for citizen enforcement of these provisions.

Section 5.1: Establishes responsibility for the violation of rights by corporations and government officials who deprive any City resident, natural community, or ecosystem of any rights, privileges, or immunities secured by this Ordinance, the California Constitution, the United States Constitution, or other laws.

Section 5.2: Authorizes City residents to sue for the legal protection of the rights enumerated in this Ordinance, and to stand as advocates in court to protect the rights of natural communities and ecosystems.

Section 6. Enactment: Advises the City Council of Mt. Shasta to submit the Ordinance to the people of the City for a vote.

Section 7. Effective Date: Makes the Ordinance effective immediately upon the vote of the people.

Section 8: Severability: Provides that striking of one section by a court will not invalidate other sections of the law.

Section 9: Repealer: Repeals existing City laws to the extent they are inconsistent with this Ordinance.

APPENDIX III. Cloud Seeding

Background

The first significant “precipitation enhancement” program in California began in 1948 on Bishop Creek in the Owens River basin for California Electric Power Co. Precipitation enhancement, also known as “cloud seeding,” has been practiced in several California river basins since the early 1950s. Most projects are along the central and southern Sierra Nevada with some in the coast ranges. The projects use silver iodide as the active cloud-seeding agent, supplemented at times by dry ice for aerial seeding. The silver iodide is often applied from ground generators but can also be applied from airplanes. Occasionally other agents, such as liquid propane, have been used. Recently, some projects have also been applying hygroscopic materials (substances that take up water from the air) as supplemental seeding agents (DWR 2005).

Appeal

In California, all precipitation enhancement projects are intended to increase water supply or hydroelectric power (DWR 2008). The draft of the 2009 California Water Plan Update (DWR 2008) introduced the new PG&E McCloud-Pit cloud seeding project. If successful, PG&E predicts that the project would yield an estimated maximum additional 5% to their McCloud-Pit hydropower project (DWR 2008). While the efficacy of cloud seeding has not been scientifically proven (see Concerns), the associated costs – given the potential for increased hydropower generation and associated revenue – are relatively low. Average costs for cloud seeding are generally less than \$20 per acre-foot per year. Unlike other large scale resource management practices with potential environmental impacts, where costs would also include environmental impact review under The California Environmental Quality Act (CEQA), corporate cloud seeding is largely unregulated at the State level, and at present, requires no extensive review. Additionally, state law says that water gained from cloud seeding is treated the same as natural supply in regard to water rights. (DWR 2005).

Concerns and Potential Impacts

Poorly understood

Despite cloud seeding’s long history in California, the practice itself is poorly understood and its effects are largely unknown. No complete and rigorous comprehensive study has been made of all of California’s precipitation enhancement projects (DWR 2005). Part of the reason for this is that it is difficult to target seeding materials to the right place in the clouds at the right time, and there is an incomplete understanding of how effective operators are in their targeting practices (DWR 2005).

In the fall of 2003, the National Research Council released a report entitled “Critical Issues in Weather Modification Research,” which examined the status of the science underlying weather modification in the U.S. This report concluded that there was no conclusive scientific proof of the efficacy of weather modification (DWR 2005). Also noteworthy among the research concerning the effectiveness for its intended goal of precipitation enhancement are reports published in *Science* (one

of the two top ranked Scientific journals) by Kerr (1982, 2000) which point to only a very few cases where success was believed to be measurable in a combined period of over 50 years.

Silver Toxicity

Similarly, research on the potential toxic effects of Silver (AgI) from cloud seeding is also very sparse. However, accumulation of AgI in the environment from cloud seeding operations has been well documented elsewhere. In 1996, the U.S. National Biological Service published a biological contaminant hazard report focused on silver. The report specifically identifies cloud seeding operations as a cause for elevated silver concentrations in both non-biological material and biota in cloud seeded areas (Eisler 1996). Specifically, in rural areas, silver levels in non-biological materials were one to two orders of magnitude higher in cloud seeded areas than in non-cloud seeded areas (Eisler 1996). Elevated levels were also found in the bone, tissue and organs of trout in cloud seeded areas (Eisler 1996). The U.S. NBS report also addresses the general toxicity of silver, as well as its potential for transformation and remobilization once introduced to the environment calling its ionic form “one of the most toxic metals known to aquatic organisms in laboratory testing” (Eisler 1996).

Research on the potential for transformation of silver (and silver iodide specifically) in the environment as well as its potential for synergistic effects in the presence of other compounds has been around for quite some time. Two studies from the mid 1970s investigated the impact of AgI from cloud seeding, and specifically examined the potential for both AgI impact on soil processes, and the potential for AgI transformation in soils (Klein and Sokol 1974, and Klein and Molise 1975). In the concluding lines of the first of these studies, the authors remark that

“...it is necessary to consider free [Ag] ion effects on microbial processes in soil even if at low and transient levels. The full significance of these silver modification reactions for prediction of long-term ecological effects of weather modification-derived silver remains to be determined” (Klein and Sokol 1974).

Klein and Molise (1975) also address the potential for silver transformation in the environment. Findings from this study confirmed biological impacts from silver toxicity (Klein and Molise 1975). Though the impacts detected here were at silver levels above those levels known at the time (i.e. 30+ years ago) to accumulate as the result of cloud seeding activities, the researchers urged continued study in this area to examine the long term effects of silver exposure, as well as the potential for increased environmental accumulation with time (Klein and Molise 1975). Examples of further study in this area since that time include Hatte (1999) who did a review of silver transformations in the environment, finding that aquatic invertebrates were most susceptible to silver toxicity, and Reutova (2001) who found that synergistic effects from AgI in combination with other compounds were possible, and specifically that the presence of Copper Iodide (CuI) significantly increased the mutagenic potential of AgI.

Unfortunately, the body of research on the potential for remobilization and transformation of silver introduced into the environment by cloud seeding operations has (again, unfortunately) been all but ignored in the limited environmental impact evaluation of cloud seeding operations in the state of California (and the associated documentation). These key constituents of silver toxicity risk do not factor into the recent Draft 2009 California Water Plan Update (DWR 2008) or into the chapter devoted to precipitation enhancement in the 2005 DWR California Water Plan Update (DWR 2005). In fact, the latter states that “silver compounds have a relatively low order of toxicity” (a statement which stands in stark contrast to the information in Eisler (1996) as well as a large body of other work on the toxicity of silver to aquatic organisms (Morgan et al 1995; Nebecker et al 1983, Wood et al 1994, 1995, 1996a, 1996b)).

The available research suggests the likelihood of accumulation of toxic silver compounds in the environment and the associated potential for a range of poorly understood impacts. However, the majority of the existing research concerning these critical issues has been essentially ignored by the limited private, state, and federal agency-driven environmental impact investigation that has occurred for California cloud seeding programs. The draft of Draft California Water Plan Update (DWR 2008) that introduced the new PG&E McCloud-Pit cloud seeding project based its discussion of the potential for environmental toxicity from silver released during cloud seeding (and conclusion of non-toxicity) on two research efforts by the Bureau of Land Management, the most current of which is over 25 years old (DWR 2008; SSCP 1981). Unfortunately, most of the key discoveries about the sub-lethal impacts of low levels toxins in the environment on humans and on ecosystems have been made in the last 10-15 years and that is only increasing. Interestingly, the limited current research that is mentioned in the Water Plan Update consists primarily of findings from sediment monitoring PG&E performed in the vicinity of some of their existing programs that demonstrate multiple instances of low level AgI accumulation in the environment (DWR 2008). Unfortunately, these studies are not actually referenced in the water plan update, only mentioned.

Altered hydrologic cycle

The least understood – but perhaps most disconcerting of the potential affects of cloud seeding – is alteration to the regional hydrologic cycle that are unpredicted and or unintended. To date, no conclusive research exists evaluating the risks of “downstream effects” from cloud seeding operations, including effects from current operations on neighboring regions, effects from proliferation of operations within a geographic area, or carrying capacity for a given landscape and climate before different thresholds of downstream effects occur. Typically, questions like these would be among those necessitating a thorough investigation under CEQA as a component of an Environmental Impact Report (EIR). As a result of Cloud Seeding being largely unregulated at the state level, and not subject to environmental review, the degree of impact to water supply in neighboring regions, or seasonal and long term weather patterns remains unknown.

REFERENCES

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