

Water Withdrawal Control Ordinance
Special Town Meeting
Adopted September 12, 2007
Amended September 9, 2008
Adopted as a Health Ordinance October 20, 2008

Section 1.

Preamble and Purpose: We, the People of the Town of Atkinson declare that water is essential for life, liberty and the pursuit of happiness – both for people and for the ecological systems which give life to all species. We, the People of Atkinson, declare that we have the duty to safeguard the water both on and beneath the earth's surface, and in the process, safeguard the rights of the people of Atkinson and the rights of the ecosystems of which Atkinson is a part. We the people of Atkinson declare that all of our water is held in the public trust as a common resource to be used for the benefit of Atkinson residents and of the natural ecosystems of which they are a part. We believe that the corporatization of water supplies in this community – placing the control of water in the hands of a corporate few, rather than the community – would constitute tyranny and usurpation; and that we are therefore duty bound, under the New Hampshire Constitution, to oppose such tyranny and usurpation. That same duty requires us to recognize that two centuries' worth of governmental conferral of constitutional powers upon corporations has deprived people of the authority to govern their own communities, and requires us to take affirmative steps to remedy that usurpation of governing power.

Section 2.

Authority: This Ordinance is adopted and enacted pursuant to the inherent, inalienable, and fundamental right of the citizens of the Town of Atkinson to self-government and under the authority granted to the people of the Town by all relevant state and federal laws including, but not limited to the following:

Part First, Article 10 of the N.H. Constitution, which declares that government is instituted for the common benefit, protection and security of the whole community, and not for the private interest of any class of men;

Part First, Article 1 of the N.H. Constitution, which declares that the government is founded upon the consent of the people and instituted for the common good;

The spirit of Part Second, Article 5 and Part Second, Article 83 of the N.H. Constitution, which subordinate corporations to the body politic;

N.H. RSA 31:39 I(a) and III which, under powers and duties of "Towns, permit bylaws for the care, protection, preservation of the commons; the ordering of their prudential affairs; and the enforcement of such bylaws by suitable penalties.

The Declaration of Independence which declares that governments are instituted to secure people's rights, and that government derives its just powers from the consent of the governed;

The General Comment of the United Nations Covenant on Economic, Social and Cultural Rights, which declares that "the right to drinking water is fundamental to life and health. Sufficient and safe drinking is a precondition to the realization of human rights."

Section 3.

Statement of Law: No corporation, syndicate, or business entity shall engage in water withdrawals and depletion from within the boundaries of the Town of Atkinson. The term "corporation" means any corporation organized under the laws of any state of the United States or any country. The term "syndicate" includes any limited partnership, limited liability partnership, business trust or Limited Liability Company organized under the laws of any state of the United States or any country. The term "engage" shall include, but not be limited to, the physical extraction of water, and the buying and/or selling of water extracted within the Town of Atkinson.

Section 4.

Statement of Law: No corporation doing business within the Town of Atkinson shall be recognized as a "person" under the United States under the United States or N.H. Constitution, or laws of the U.S. or N.H., nor shall the corporation be afforded the protections of the Contracts Clause or Commerce Clause of the U.S. Constitution, or similar provisions found within the N.H. Constitution, with the Town of Atkinson.

Section 4.1

Rights: All residents of the Town of Atkinson possess a fundamental and inalienable right to access, use, consume and preserve water drawn from the sustainable natural water cycles that provide water necessary to sustain life within the Town.

Natural communities and ecosystems possess inalienable and fundamental rights to exist and flourish within the Town of Atkinson. Ecosystems shall include, but not be limited to wetlands, streams, rivers, aquifers, and other water systems.

Section 5.

Exceptions: The people of the Town of Atkinson hereby allow the following exceptions to the Statement of Law contained with Section 3 of this Ordinance:

Municipal authorities established under the laws of the State of New Hampshire engaged in water withdrawals providing water only to residential and commercial used within the Town of Atkinson;

Non-profit educational and charitable corporations organized under state non-profit corporation law, and qualifying under Section 501(c)(3) of the Federal Tax Code, which do not sell water withdrawn within the Town of Atkinson outside of the Town of Atkinson; Utility corporations operating under valid and express contractual provisions in agreements entered into between the Town of Atkinson and those utility corporations operating under valid and express contractual provisions in agreements entered into between the Town of Atkinson and those utility corporations, for the provision of service within the Town of Atkinson; Corporations operating under valid and express contractual provisions in agreements entered into between residents of the Town of Atkinson and those corporations, when the withdrawn water is used solely for on-site residential, household, agricultural, or Commercial facilities within the Town of Atkinson, as long as such commercial facilities do not withdraw water for sale outside of the Town of Atkinson, or purchase water withdrawn from the Town of Atkinson for sale outside of the Town.

Section 6.

Enforcement: Any corporation planning to engage in water withdrawals within the Town of Atkinson must notify the Town of such activity at least sixty (60) days prior to engaging in water withdrawals. Such notification shall contain a claim to one of the exemptions listed in Section 5 of this Ordinance. Any violation of this Ordinance shall be considered a criminal summary offense, and will subject the Directors of the non-compliant corporation to joint and several liability with the corporation itself. The Atkinson Board of Selectmen authorizes a fine of up to \$1,000.00 per day of violation. Each act of water withdrawal shall be considered a separate violation of this Ordinance. The Atkinson Board of Selectmen may also file an action in equity in Rockingham County Superior Court or any other Court of competent jurisdiction to abate any violation defined in Section 3 of this Ordinance. If the Atkinson Selectmen fail to bring an action to enforce this Ordinance, any resident of the Town has standing in front of the Court for enforcement.

Section 6.1

Civil Rights: Any person acting under the authority of a permit issued by the Department of Environmental Services, any corporation operating a State charter or certificate of authority to do business, or any director, officer, owner, or manager of a corporation operating under a State charter or certificate of authority to do business, who deprives any Town resident, natural community, or ecosystem of any rights, privileges, or immunities secured by this Warrant Article, the N.H. Constitution, the U.S. 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 to satisfy that liability, including, without limitation, expert and attorney's fees.

Section 6.2

Environmental Protection: It shall be unlawful for any corporation or its directors, officers, or managers to interfere with the rights of natural communities and ecosystems to exist and flourish, or to cause damage to those natural communities and ecosystems.

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

Section 6.3

Civil Rights Enforcement: Any Town resident shall have standing and authority to bring an action under this Warrant Article’s civil rights provisions, or under state and federal civil rights laws, for violations of the rights of natural communities, ecosystem, and Town residents, as recognized by this Warrant Article.

Section 6.4

Town Action Against Pre-emption: The foundation for the making and adoption of this law is the people’s fundamental and inalienable right to govern themselves, and thereby secure rights to life, liberty, property, and pursuit of happiness. Any attempts to use county, state, or federal levels of government to pre-empt, amend, alter, or overturn this Warrant Article or parts of this Warrant Article, or to intimidate the people of the Town of Atkinson or their elected officials, shall require the Board of Selectmen to hold public meetings that explore the adoption of other measures that expand local control and the ability of residents to protect their fundamental and inalienable right to self-government.

Section 6.5

Strict Liability: Persons using a corporation to engage in water withdrawal in a neighboring municipality shall be strictly liable for all harms caused to the health, safety, and welfare of the residents of Atkinson from those activities, and for all harms caused to ecosystems and natural communities within Atkinson.

Section 6.6

Liability: No permit, license, privilege or charter issued by any State or federal Regulatory Agency, Commission or Board to any person or any corporation operating under a State charter, or any director, officer, owner, or manager of a corporation operating under a State charter, which would violate the provisions of this Warrant Article or deprive any Atkinson resident, natural community, or ecosystem of any rights, privileges, or immunities secured by this Warrant Article, the N.H. Constitution, the U.S. Constitution, or other laws, shall be deemed valid within the Town of Atkinson.

Additionally, any employee, agent or representative of any State or federal Regulatory Agency, Commission or Board who issues a permit, license, privilege or charter to any person or any corporation operating under a State charter, which would violate the provisions of this Warrant Article or deprive any resident, natural community, or ecosystem of any rights, privileges, or immunities secured by this Warrant Article, the N.H. Constitution, the U.S. 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.

Section 6.7

Future Lost Profits: Within the Town of Atkinson, corporate claims to “future lost profits” shall not be considered property interests under the law, and thus, shall not be recoverable by corporations seeking those damages.

Section 6.8

Prohibition on Board of Selectmen Challenge: The Board of Selectmen of the Town of Atkinson or any other agent or agency of the Town shall be prohibited from taking any action to annul, amend, or overturn this Warrant Article, unless such action is approved by a prior Town Meeting at which two-thirds (2/3) of the residents of the Town attending the Town Meeting approve such action.

Section 7.

Severability: The provisions of this Ordinance are severable, and if any section, clause, sentence, part or provision thereof shall be held illegal, invalid or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect, impair, or invalidate any of the remaining sections, clauses, sentences, parts or provisions of this Ordinance. It is hereby declared to be the intent of the people of Atkinson that this Ordinance would have been adopted if such illegal, invalid, or unconstitutional section, clause, sentence, part, or provision has not been included herein.

Section 8.

Effect: This Ordinance shall be effective immediately upon its enactment.

September 12, 2007 **Yes: 753** No: 368

September 9, 2008 **Yes: 632** No: 219