



COMMUNITY ENVIRONMENTAL LEGAL DEFENSE FUND

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Danby Community Water Rights and Self-Government Ordinance

Town of Danby, Tompkins County, New York

AN ORDINANCE PROHIBITING THE USE OF NATURAL WATER CYCLES AND SOURCES WITHIN DANBY FOR MINING, PROTECTING NATURAL WATER SYSTEMS FROM DAMAGE RELATED TO THE EXTRACTION OF NATURAL GAS, REMOVING LEGAL PRIVILEGES AND POWERS FROM CORPORATIONS WHICH VIOLATE THIS LAW, ASSERTING THE RIGHT TO COMMUNITY SELF-GOVERNMENT, AND SECURING FUNDAMENTAL RIGHTS FOR HUMAN AND NATURAL COMMUNITIES

Section 1 Name and Purpose

Section 1.1 Name: This Ordinance shall be known and may be cited as the “Danby Community Water Rights and Self-Government Ordinance.”

Section 1.2 Purpose: The People of Danby recognize that water is essential for the life, prosperity, sustainability and health of the community and that damage to natural water sources imposes great tangible loss, to the People, natural communities and ecosystems of Danby, not just for today but for future generations. The People of Danby recognize that they are forced to endure or attempt to repair harm inflicted on their environment and to their vital water supply, which they have no commensurate authority to prevent, under current state and federal law. The people of Danby adopt this Community Water Rights and Self-Government Ordinance to correct that error.

Section 2 Authority

The authority to enact this Ordinance is inherent in the inalienable right of the citizens of the Town of Danby to govern their own community. That authority precedes government and is asserted in the Declaration of Independence, which states that governments are instituted to secure the rights of people, “deriving their just powers from the consent of the governed.” As additional authority, the people of the Town of Danby possess the authority under the New York Constitution which states, “No member of this state shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof,” and the home rule act of 1963 which states that “every local government shall have power to adopt and amend local laws” pertaining to “the protection and enhancement of its physical and visual environment; the government, protection, order, conduct, safety, health and well-being of persons or property therein. This provision shall include but not be limited to the power to adopt local laws providing for the regulation or licensing of

occupations or businesses.”

Section 3 Statements of Law: Rights

Section 3.1 Rights Self-Executing Rights enumerated in this Ordinance, without exception, are self-executing and legally enforceable.

Section 3.2 Right to Local Self-Government All residents of Danby possess the fundamental and inalienable right to 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 and to a form of community governance that recognizes that all power is inherent in the People and that all free governments are founded on the People's authority and consent.

Section 3.3 Right to a Healthy Environment All residents of Danby possess a fundamental and inalienable right to a healthy environment, which includes the right to unpolluted air, water, soil, flora, and fauna, and the right to protect the rights of natural communities and ecosystems, upon which each resident is both intrinsically a part and dependent.

Section 3.4 Right to Water All residents, natural communities and ecosystems in Danby possess a fundamental and inalienable right to sustainably access, use, consume, and preserve water drawn from natural water cycles and sources that provide water to the residents of Danby, and to ecosystems and natural communities within the Town. That right includes but is not limited to the right to make laws that prohibit certain corporate activities, including but not limited to water withdrawal for export outside the Town, and damage to surface and subsurface water sources resulting from mining and resource extraction. The phrase “natural water cycles and sources” shall include but not be limited to subsurface aquifers, surface and subsurface springs, wetlands, brooks, streams, creeks, lakes, ponds, rivers, and all other naturally occurring sources of water.

Section 3.5 Rights of Natural Communities Natural communities and ecosystems, including, but not limited to, wetlands, streams, rivers, aquifers, and other water systems, possess inalienable and fundamental rights to exist, flourish and naturally evolve within Danby. Consequently, no private claim to ownership of natural communities, whole ecosystems or the genetic material of any organism shall be recognized within Danby. The term “exist and flourish” 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.

Section 3.6 Corporations Subordinate to Town Residents Rights of Danby residents secured by this Ordinance and by other local, state, or federal law, cannot be subordinated to the claimed rights of corporations. Accordingly, public and private corporations shall not enjoy privileges or powers under the law that make community majorities subordinate to them or have the effect of nullifying this and other local laws. Nor shall corporations possess the authority to enforce State or federal preemptive law against the people of Danby. Within Danby, corporations shall not be “persons” under the United States or New York Constitutions, or under the laws of the United States, New York, Danby, or any other law, and so shall not have the rights of persons under those constitutions and laws.

Section 3.7 Corporations Not Afforded Same Rights As Town Residents Corporations chartered by government acquire their being, their authority, and their ability to act from the government of New York State. Within Danby, corporations shall be prohibited from denying the rights of residents and shall be liable for any such deprivation or denial of rights. To ensure that the rights of the people to make self-governing decisions are never subordinated to the privileges of a few, corporations shall not be afforded the protections of the Contracts Clause or Commerce Clause of the United States Constitution, or of the First or Fifth Amendments to the U.S. Constitution, or similar provisions from the New York Constitution, within Danby. Claims to “future lost profits” by corporations shall not be considered property interests under the law and thus shall not be recoverable by corporations seeking damages as a result of the enforcement of the Danby Charter or laws of Danby.

Section 4 Statements of Law: Water Rights Policy

Section 4.1 Water Not to be Used for Mining It shall be unlawful for any corporation, or any director, officer, owner, or manager of a corporation to use a corporation, to extract water from any source, whether surface or subsurface, within Danby, for the purpose of engaging in mining activities. It shall be unlawful for any

corporation, or any director, officer, owner, or manager of a corporation to use a corporation, to deposit waste water, "produced" water, "frack" water, brine or other materials or by-products of mining activities, into the land or waters within the Town of Danby. The term "mining" shall include any commercial activity conducted within Danby in which water, mineral resources, radioactive materials, petroleum or fossil fuels are extracted by any means from the ground within the Town. The term shall specifically include, but not be limited to, water withdrawals intended for export and for sale outside the Town; long-wall mining; room and pillar mining; mountaintop removal and valley fill; drilling and extraction of natural gas, oil, or water; "fracking" and all other methods and practices used for the removal of minerals, liquids and gasses from the earth, where those materials will be removed from the Town and sold.

Section 4.2 Compensation to Town for Corporate Damage to Water Corporations and their directors, officers, owners and managers shall be liable to the Town for full compensation of damaged water sources when surface or subsurface water sources are extracted, diverted, lost, damaged, altered, chemically trespassed upon or lessened in quality to any degree in the course of mining activities anywhere in the Town. The amount of compensation to be paid to the Town shall be equal to or greater than the fair market value for all the water, mineral, fossil fuel or energy sources mined and extracted by the corporation from beneath that surface estate, as calculated from the time this Ordinance takes effect until mining activities permanently cease and the natural water source is restored to its original state.

Section 4.3 Surface Estate Compensation for Corporate Damage to Water Corporations and their directors, officers, owners and managers shall be liable to the owner of the surface rights upon land where surface or subsurface water sources are extracted, diverted, lost, damaged, altered or chemically trespassed upon in the course of mining activities. The amount of compensation to be paid to the owner of those surface rights shall be equal to or greater than the fair market value for all the water, mineral, fossil fuel or energy sources mined and extracted by the corporation from beneath that surface estate, as calculated from the time this Ordinance takes effect until mining activities permanently cease and the natural water source is restored to its original state.

Section 5 Administration This Ordinance shall be administered by the Town of Danby.

Section 6 Enforcement This Ordinance, including its enumerated rights, prohibitions and policies, shall be enforced by the Town of Danby, or by the People as herein stated.

Section 6.1 The Town of Danby shall enforce this Ordinance by an action brought before a court of competent jurisdiction. The Town of Danby may also enforce this Ordinance through an action in equity brought in a court of competent jurisdiction. In such an action, the Town of Danby shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees and all related costs.

Section 6.2 Any Town resident 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 6.3 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. Compensation by corporations that damage natural water sources shall be calculated according to the statements of law in sections 4.4 and 4.5 of this Ordinance.

Section 6.4 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 6.5 All monies collected for violation of the prohibitions in this Ordinance shall be paid to the Town of Danby. Compensation to the Town and to land owners, in compliance with Sections 4.4 and 4.5 of this Ordinance, shall not be delayed, and shall be subject to an interest penalty of 10 per cent per annum.

Section 6.6 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 Town of Danby. 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 7 Civil Rights Enforcement

Section 7.1 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 Town resident, natural community, or ecosystem of any rights, privileges, or immunities secured by this Ordinance, the New York 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 Town of Danby for restoration of those natural communities and ecosystems.

Section 7.2 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 Town and within natural communities and ecosystems within the Town. Culpable parties shall be deemed strictly liable if one of their toxic or potentially toxic substances or chemical compounds is discovered within a natural water cycle or source within the Town. The municipality's showing of the existence of that substance or chemical compound within a natural water cycle or source within the Town, and the municipality's showing that the Defendant(s) are responsible for the manufacture, generation, sale, or deposition of that substance within the Town, 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 natural water cycles or sources within the Town.

Section 7.3 Any Town 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 Town residents, as recognized by this Ordinance.

Section 8 Effective Date This Ordinance shall be effective immediately upon its enactment.

Section 9 People's Right to Self-Government

Section 9.1 The foundation for the making and adoption of this law is the people's fundamental and inalienable right to govern themselves, and thereby secure their rights to life, liberty, and 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 Town Council 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. Such consideration may include actions to separate the municipality from the other levels of government used to preempt, amend, alter, or overturn the provisions of this ordinance or other levels of government used to intimidate the People of Danby or their elected officials.

Section 9.2 The People of Danby recognize the need to elevate the law delineated within this ordinance into the State and federal constitutions, to create a constitutionally-based right to community self-government that is preempted only by the securing of greater people's rights by state and federal constitutional frameworks. Towards that end, the People of Danby call for a New York constitution which codifies that structure of government.

Section 10 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 Town Council of the Town of Danby 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 11 Repealer

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

ENACTED AND ORDAINED this ___ day of _____, 2010

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