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Lehman Township Community Water Rights and Self-Government Ordinance

Lehman Township, Luzerne County, Pennsylvania

AN ORDINANCE PROTECTING NATURAL WATER CYCLES AND SOURCES WITHIN LEHMAN TOWNSHIP FROM GAS EXTRACTION; PREVENTING NATURAL WATER SYSTEMS FROM DAMAGE RELATED TO THE EXTRACTION OF NATURAL GAS; REMOVING LEGAL PRIVILEGES AND POWERS FROM CORPORATIONS THAT VIOLATE THIS LAW; ASSERTING THE RIGHT TO COMMUNITY SELF-GOVERNMENT, AND ENUMERATING 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 "Lehman Township Community Water Rights and Self-Government Ordinance."

Section 1.2 Purpose: The People of Lehman Township 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 Lehman Township, not just for today but for future generations. The People of Lehman Township recognize that they may be forced to endure or attempt to repair harm inflicted on their environment and to their vital water supply by certain corporate activities, which they have no commensurate authority to prevent under current state and federal law. The people of Lehman Township 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 Lehman Township to govern their own community. That authority 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." The authority of the People of Lehman Township is additionally recognized in Section 2 of the Declaration of Rights in the Constitution of the Commonwealth, which states that "All power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety and happiness. For the advancement of these ends they have at all times an inalienable and indefeasible right to alter, reform or abolish their government in such manner as they may think proper." This authority may not be limited or denied to the people by the state, as made explicit in Section 25 of the Declaration of Rights, which states, "To guard against the transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate."

Section 3 Statements of Law: Rights

Section 3.1 Applicability and Scope of Rights The rights enumerated in Section 3 of this Ordinance and its subsections precede and exist independent of this Ordinance and all other laws. They are among the unenumerated rights referred to in the Ninth Amendment to the United States Constitution as being retained by the People. The People of Lehman Township articulate these rights to guarantee their protection and their applicability to the specific authority and prohibitions defined and exercised by this Ordinance. As such, the full scope and effect of rights asserted within the context of this Ordinance are limited to enforcement of the prohibitions of this Ordinance and the authority exercised to enforce those prohibitions. Enforcement of this Ordinance and protection of these rights in this limited context shall not be construed to limit, deny or disparage the authority of the people to assert these and all other rights, in full measure, whether enumerated here or elsewhere in law or retained without codification.

Section 3.2 Right to Local Self-Government All residents of Lehman Township 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 Lehman Township possess a fundamental and inalienable right to a healthy environment, as stated in the Pennsylvania Constitution, Article I, Section 27, which includes the right to unpolluted air, water, soil, flora, and fauna, as well as the right to protect the rights of natural communities and ecosystems in whose life they partake and upon which each resident's well-being depends.

Section 3.4 Right to Water All residents, natural communities and ecosystems in Lehman Township possess a fundamental and inalienable right to sustainably access, use, consume, and preserve water from natural water cycles and sources within Lehman Township. This right includes but is not limited to the right to make laws that prohibit certain corporate activities that would harm or deny this right. 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 Ecosystems and the natural communities dependent upon them possess inalienable and fundamental rights to exist, flourish and naturally evolve within Lehman Township. Consequently, no private claim to ownership of whole ecosystems, including but not limited to wetlands, streams, rivers, aquifers, and other water systems, shall be recognized within Lehman Township. 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 and reproduction; 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 they depend.

Section 3.6 Corporations Subordinate to Township Residents Rights of Lehman Township residents secured by this Ordinance and by other local, state, or federal law, shall not be subordinated to the claimed rights of state-chartered corporations. Accordingly, public and private corporations that violate the prohibitions of this Ordinance shall not enjoy privileges or powers under the law that make community majorities subordinate to them or have the effect of nullifying this Ordinance. Nor shall corporations possess the authority to enforce State or federal preemptive laws against the people of Lehman Township that would have the effect of nullifying this Ordinance. Within Lehman Township, corporations in violation of this Ordinance shall not be "persons" under the United States or Pennsylvania Constitutions, or under the laws of the United States, Pennsylvania, Lehman Township, 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 Township Residents Corporations chartered by government acquire their being, their authority, and their ability to act from the government of the Commonwealth of Pennsylvania. Within Lehman Township and the context of this Ordinance as defined in Section 3.1, 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 that violate the prohibitions of this Ordinance 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 Pennsylvania Constitution, within Lehman Township. Claims to "future lost profits" by corporations that violate the prohibitions of this Ordinance 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 this Ordinance.

Section 4 Statements of Law: Water Rights Policy

Section 4.1 Water Not to be Used for Extraction of Natural Gas It shall be unlawful for any corporation to engage in the extraction of water from any surface or subsurface source within Lehman Township for use in the extraction of subsurface natural gas, or for any director, officer, owner, or manager of a corporation to use a corporation to extract water from any

surface or subsurface source, within Lehman Township for use in the extraction of subsurface natural gas. It shall be unlawful for a corporation to import water into Lehman Township for use in the extraction of subsurface natural gas; or for any director, officer, owner, or manager of a corporation to do so. 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, chemicals or by-products of gas extraction, into the land, air or waters within Lehman Township. "Extraction" shall mean the digging or drilling of a well for the purposes of exploring for, developing or producing natural gas or other hydrocarbons. The term shall specifically include, drilling and removal of natural gas, injection of water, "fracking" and all other methods and practices used for the removal of gasses from the earth, where the natural gas will be removed from the Township and sold. "Natural Gas" shall mean any gaseous substance, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarified state at standard temperature or pressure conditions and/or gaseous components or vapors occurring in or derived from petroleum or natural gas.

Section 4.2 Compensation to Township for Corporate Damage to Water Corporations and their directors, officers, owners and managers shall be liable to the Township 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 gas drilling activities anywhere in the Township. The amount of compensation to be paid to the Township shall be equal to or greater than the fair market value of all the gas extracted by the corporation from within Lehman Township and sold outside the Township, 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, minus the compensation awarded to surface estate owners.

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 natural gas extraction activities. This liability shall apply to both lease holding and non-lease-holding owners of surface rights. 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 gas extracted by the corporation from beneath that surface estate and sold outside the Township, regardless of the location of the gas well, as calculated from the time this Ordinance takes effect until gas extraction activities permanently cease and the natural water source is restored to its original state.

Section 4.4 Culpable Parties and Burden of Proof All corporations engaged in the extraction of natural gas within Lehman Township in violation of the prohibitions of this ordinance shall be strictly liable to the Township and to the residents of Lehman Township. Evidence showing that one or more corporation has engaged in gas extraction within the Township, and that surface or subsurface water sources have been imported, extracted, diverted, lost, damaged, altered, chemically trespassed upon or lessened in quality to any degree during the gas extraction process, shall constitute a prime facie showing of causation under a strict liability standard. Current and future damages shall be assumed to have resulted from those violations, and the burden of proof shall shift to the culpable parties for a showing that the gas extraction activities 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 violations and damages. If more than one corporation is in violation of the prohibitions of this ordinance, each corporation shall be severally liable for full costs, damages and compensation. "Corporation" shall mean 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 shall also mean any parent, sister, and successor companies, subsidiaries, and alter egos, and to any corporation, or other entity substantially owned or controlled by the corporation, or other entity (including its officers, directors, or owners), and to any person, corporation, or other entity that substantially owns or controls the corporation.

Section 5 Administration This Ordinance shall be administered by Lehman Township.

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

Section 6.1 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 6.2 Lehman Township may also enforce this Ordinance through an action in equity brought in a court of competent jurisdiction. In such an action, Lehman Township shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees and all related costs.

Section 6.3

Any Township 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.

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. For civil actions seeking compensatory damages under this Ordinance,

compensation shall be calculated according to the statements of law in sections 4.2, 4.3 and 4.4 of this Ordinance.

Section 6.5 All monies collected for summary violation of the prohibitions in this Ordinance shall be paid to Lehman Township.

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 Lehman Township. 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 Township resident, natural community, or ecosystem of any rights, privileges, or immunities secured by this Ordinance, the Pennsylvania Constitution, the United States Constitution, or other laws, as limited by Section 3.1 of this Ordinance, 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 Lehman Township 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 into the bodies of residents of the Township and within natural communities and ecosystems within the Township. Culpable parties shall be deemed strictly liable if one of their toxic substances or chemical compounds is discovered within a natural water cycle or source within the Township. The municipality's showing of the existence of that substance or chemical compound within a natural water cycle or source within the Township, and the municipality's showing that the Defendant(s) are responsible for the manufacture, generation, sale, or deposition of that substance within the Township, 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 Township.

Section 7.3 Any Township 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 Township residents, as recognized by this Ordinance and limited by Section 3.1 of 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 Board of Supervisors 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 Lehman Township or their elected officials.

Section 9.2 The People of Lehman Township 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 Lehman Township call for a Pennsylvania 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 Board of Supervisors of Lehman Township 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 Lehman Township are hereby repealed, but only to the extent necessary to remedy the inconsistency.

ENACTED AND ORDAINED this ___ day of _____, 2010

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