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Van Etten Community Water Rights and Self-Government Ordinance

Town of Van Etten, Chemung County, New York

AN ORDINANCE OF THE TOWN OF VAN ETTEN, CHEMUNG COUNTY IN THE STATE OF NEW YORK, ASSERTING THE RIGHT TO ESTABLISH A SUSTAINABLE WATER POLICY; ASSERTING AND SECURING THE RIGHT OF THE PEOPLE OF THE TOWN OF VAN ETTEN 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 BY PROHIBITING ACTIVITIES THAT WOULD DENY THOSE RIGHTS; BY PROTECTING THE HEALTH, SAFETY, AND GENERAL WELFARE OF THE CITIZENS AND ENVIRONMENT OF THE TOWN OF VAN ETTEN; BY NOT ALLOWING CORPORATIONS TO ENGAGE IN WATER WITHDRAWAL FOR EXPORT AND RESALE BEYOND THE TOWN OF VAN ETTEN ; BY REMOVING CLAIMS TO LEGAL RIGHTS AND PROTECTIONS FROM CORPORATIONS THAT WOULD ALLOW A FEW PEOPLE HIDING BEHIND THE CORPORATE SHIELD TO SUBORDINATE THE PEOPLE AND ENVIRONMENT OF THE TOWN OF VAN ETTEN TO THEM; AND BY RECOGNIZING AND ENFORCING THE RIGHTS OF RESIDENTS TO DEFEND THE RIGHTS OF NATURAL COMMUNITIES AND ECOSYSTEMS.

Section 1 Name and Purpose

Section 1.1 Name: This Ordinance shall be known and may be cited as the "Van Etten Community Water Rights and Self-Government Ordinance."

Section 1.2 Purpose: The People of Van Etten understand that responsibility for remedying or simply enduring harmful effects brought about by the privatization of water and corporate damage to natural water sources, 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. Water is essential for the life, prosperity, sustainability and health of the community and damage to natural water sources imposes great tangible loss, to the People, natural communities and ecosystems of Van Etten, not just for today but for future generations. The People of Van Etten recognize that they are forced to endure or attempt to repair the harm to 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 Van Etten adopt this Sustainable Water Policy to correct that error.

While the State of New York 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 Van Etten, 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 Interpretation Anyone interpreting, implementing, or applying the provisions of this policy shall give priority to the findings and purposes stated in Section 1.2 of this Ordinance, over such accounting and business terms characterized as "economy," "efficiency," and "scheduling factors."

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 Van Etten 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 Van Etten 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 Self All residents of Van Etten possess a fundamental and inalienable right to the integrity of their bodies, and to be free from unwanted invasions of their bodies by any means, including but not limited to trespass by manufactured chemicals, toxins, pathogens, genetically modified life forms or radioactive substances and their progeny.

Section 3.5 Right to Water All residents, natural communities and ecosystems in Van Etten possess a fundamental and inalienable right to sustainably access, use, consume, and preserve water drawn from natural water cycles and sources that provide water necessary to sustain life 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.

Section 3.6 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 Van Etten. Consequently, no private claim to ownership of natural communities, whole ecosystems or the genetic material of any organism shall be recognized within Van Etten.

Section 3.7 Corporations Subordinate to Township Residents Rights of Van Etten residents secured by this Ordinance and by other local, state, or federal law, cannot be subordinated by the 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 local law. Nor shall corporations possess the authority to enforce State or federal preemptive law against the people of Van Etten. Within Van Etten, corporations shall not be "persons" under the United States or New York Constitutions, or under the laws of the United States, New York, Van Etten, or any other law, and so shall not have the rights of persons under those constitutions and laws.

Section 3.8 Corporations Not Afforded Same Rights As Township Residents Corporations chartered by government acquire their being, their authority, and their ability to act from the State. Within Van Etten, 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 similar provisions from the New York Constitution, within Van Etten. 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 Van Etten Charter or laws of Van Etten.

Section 4 Statements of Law: Water Rights Policy

Section 4.1 Corporate Water Withdrawal Prohibited Within Van Etten it shall be unlawful for any corporation to engage in water withdrawal for export and sale outside the Town. It shall be unlawful for any person to assist a corporation to engage in water withdrawal within Van Etten for export and resale outside of Van Etten. It shall be unlawful for any director, officer, owner, or manager of a corporation to use a corporation to engage in water withdrawal within Van Etten for export and resale outside Van Etten.

(a) Exceptions The people of Van Etten hereby allow the following exceptions to the Statements of Law contained within Section 4.1 of this Ordinance:

(1) Municipal authorities established under the laws of the State of New York engaged in water withdrawals providing water only to residential and commercial users within Van Etten;

- (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 Van Etten outside of Van Etten;
- (3) Utility corporations operating under valid and express contractual provisions in agreements entered into between Van Etten and those utility corporations, for the provision of service within Van Etten;
- (4) Corporations operating under valid and express contractual provisions in agreements entered into between persons in Van Etten and those corporations, when the withdrawn water is used solely for on-site residential, household, agricultural, or commercial use within Van Etten, provided that such commercial use does not involve the withdrawal of water for export and sale outside of Van Etten, or involve the purchase of water withdrawn from Van Etten for export and sale outside of the Town.

Section 4.2 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 Van Etten, 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 surface or subsurface natural water sources.

Section 4.3 Water Not to be Damaged by Corporations It shall be unlawful for any corporation or any director, officer, owner, or manager of a corporation to use a corporation to trespass upon or damage natural water sources, whether surface or subsurface, within Van Etten, including but not limited to aquifers, springs, wetlands, streams, creeks, rivers, lakes and ponds. The compensatory value for loss or damage to those natural water resulting from or associated with mining activities shall be set at a dollar amount equal to or greater than the fair market value of all the mineral, fossil fuel or energy sources mined and extracted from Van Etten by a mining corporation, as calculated from the time this Ordinance takes effect until such mining activities permanently cease. For damage to water sources resulting from or associated with non-mining corporate activities, the compensatory lost value of the water source shall be equal to or greater than the full market value of all materials produced, extracted, processed or sold by a corporation in Van Etten, as calculated from the time this Ordinance takes effect until such production, extraction, sale or processing activities permanently cease.

Section 4.4 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 upon 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 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. For damage to water sources resulting from or associated with non-mining corporate activities, the compensatory lost value of the water source shall be equal to or greater than the full market value of all materials produced, extracted or processed by a corporation in Van Etten, as calculated from the time this Ordinance takes effect until such production, extraction or processing activities permanently cease and the natural water source is restored to its original state.

Section 4.5 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 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. For damage to water sources resulting from or associated with non-mining corporate activities, the compensatory lost value of the water source shall be equal to or greater than the full market value of all materials produced, extracted, sold or processed by a corporation in Van Etten, as calculated from the time this Ordinance takes effect until such production, extraction, sale or processing 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 Van Etten.

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

Section 6.1 The Town of Van Etten shall enforce this Ordinance by an action brought before a court of competent jurisdiction. The Town of Van Etten may also enforce this Ordinance through an action in equity brought in a court of competent jurisdiction. In such an action, the Town of Van Etten 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 Van Etten. 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 Van Etten. 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 Van Etten 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 the body of a Town resident or in any natural community or ecosystem within the Town. The municipality's showing of the existence of that substance or chemical compound within the body of a resident living in the Town or within a natural community or ecosystems 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 the body of residents of the Town or within a natural community or ecosystems within the Town.

Section 7.3 The Town of Van Etten shall select a laboratory with expertise in the testing for toxic substances and potentially toxic substances and chemical compounds including, but not limited to, those listed in the Definitions Section of this Ordinance. The Town 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 7.4 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 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 Van Etten 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 10 Repealer

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

Section 11 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.

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 Town of Van Etten.

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 Town of Van Etten or within any natural community or ecosystem within the Town, 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 Town of Van Etten outside the Town.

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.

Frack Water: The term includes but is not limited to water, brine, total dissolved solids (TDS), friction reducers, biocides, surfactants, scale inhibitors and other materials recovered from high-volume hydraulic fracturing (HVHF), slick water fracturing, and other mining and drilling techniques used to extract natural gas from the earth.

Mining: Any commercial activity conducted within Van Etten in which mineral resources, unsustainable energy sources or fossil fuels are extracted by any means from the ground within the Town. The term shall specifically include, but not be limited to, 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.

Mining Corporation: Any corporation engaged in, or planning to engage in, mining.

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 Source: The term 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.

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: Town of Van Etten 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.

Right: Any universal, inalienable and indefeasible legal, ethical or moral possession, power or liberty to which living things are inherently entitled and which they inherit and merit through birth. Also, those qualities, authorities and powers that are legally, morally and ethically unassailable which are not bestowed or granted by law, but which precede and preempt law, have in their character the legitimacy and weight of law, and which constitutions, law and judicial mandates may not legitimately abrogate.

Self Government: The inalienable and legitimate authority of the people of the Town of Van Etten to decide as a community the future of their community, and to protect the health, safety, welfare, environment and quality of life of Town 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 this Ordinance by using that person, corporation, or other entity to violate the provisions of this Ordinance in the Town of Van Etten.

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.

Town: The Town of Van Etten in Chemung County in the state of New York, its Town Council, or its representatives or agents.

Town resident: A natural person who maintains a primary residence within the Town of Van Etten.

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 Town of Van Etten by resolution as subject to this Ordinance. The phrase shall specifically include, but shall not be limited to, substances used in gas extraction and "fracking" as well as produced wastes, such as "frack water."

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.

ENACTED AND ORDAINED this ___ day of _____, 2009