

# Establishing a Bill of Rights for the Ohio River Watershed Ecosystem

“The cycle of life is intricately linked with the cycle of water. The water system has to remain alive if we are to remain alive on earth.” (Jacques Cousteau.)

## Introduction:

The Ohio River Watershed Ecosystem comprises all the landscapes, forests, prairies and meadows, tributaries and streams that drain rainwater toward the Ohio River. The benefits of a healthy ecosystem, often undervalued, are essential to and interconnected with humanity’s cultural, environmental, and economic well-being. And yet it has endured a long history of ecological degradation, habitat destruction, agricultural and industrial pollution, and raw sewage discharge. It faces new and emerging threats from climate change, combined sewer storm water overflows, and from leaching of hazardous chemicals not covered by the Clean Water Act. Consequently, the communities along the river have witnessed their source of drinking water turn into the most dangerously polluted river in the country.

Growing industrial pressure has weakened regulatory protections as evidenced by ORSANCO’s 2019 shift in policy. Indeed, over the last five years, evidence indicates that government pollution protection and enforcement are not working. Violations of the Clean Water Act are going unprosecuted, and the number of permit violations only appears to be growing. Government permits for the Appalachian Petrochemical Hub along the river put the health, biodiversity, and safety of our river ecosystem in critical danger. This, as well as state preemption of local protective laws, deprives local communities of democratic decision-making about their own health and safety and from advocating for the inherent rights of the Ohio River Watershed Ecosystem to thrive. Government policies are clearly more responsive to the voices of corporations than to the voices of communities.

This must change!

We, concerned residents of the Ohio River Watershed Ecosystem, have a compelling obligation to protect each other and the living ecosystem of which we are a part. Clean, safe water is imperative for all life and for our collective security. To protect the Ohio River Watershed Ecosystem and to empower its communities, we must rethink our environmental laws and policies. Our legal system traditionally views nature as property, a resource from which wealth is extracted, and allows environmental costs to be externalized. To ensure a more resilient future, we must change assumptions about our place in the natural world as well as the presumed “right” of property holders to inflict irreversible harm upon it. We therefore affirm the rights and the responsibilities of the human community to protect its own health and safety and to advocate for the inherent rights of the Ohio River Watershed Ecosystem to thrive, regenerate, and flourish. It is urgent that this Bill of Rights be adopted as law.

We are proposing to codify into law our rights to restore and protect our watershed from the systemic threats and irreparable harm to its ecological integrity. This “new” approach is in fact rooted in the

ancient world view of the Indigenous people of this land who regard streams, lands and forests as a sacred heritage and a living legacy. It is also rooted in ecology and the living Earth story coming from cutting edge science. As of 2019, Rights of Nature laws exist at local or national levels in 12 countries, including dozens of cities and counties across the United States in the form of provisions, treaties, statutes, local ordinances and court decisions. The Rights of Nature movement is proposing a paradigm shift that would align contemporary environmental law with the nature-centered principles of Indigenous law, as well as with cutting edge scientific knowledge.

## Preamble:

Whereas:

*We the people of the Ohio River Watershed Ecosystem recognize* that the watershed covers 205,000 square miles across parts of 15 states and includes about 25 million people; and that the watershed ecosystem is comprised of landscapes, shorelines, wetlands, soils, groundwater, aquifers, and tributaries that drain water toward the Ohio River and provide the major source of drinking water for residents living within the Ohio River basin; and that the Ecosystem is exceptional habitat for many species of aquatic and terrestrial organisms including thousands of species of native plants, animals, and microbial life; and that the Ecosystem provides opportunities to live, work, and play near waters that are beautiful and life-sustaining; and that damage to the Ecosystem thereby causes an existential threat to our local land community; and

*We the people of the Ohio River Watershed Ecosystem contend* that this Ecosystem has suffered for more than a century under continuous degradation due to toxic contamination, topsoil erosion, and sediment and nutrient runoff which in turn triggers toxic algae blooms that starve waters of oxygen and harm aquatic life; and that the Ecosystem is in imminent danger of irreversible devastation due to continued violations by government policies, permitting and licensing of activities such as the proposed massive natural gas storage caverns that create cumulative harm; and

*We the people of the Ohio River Watershed Ecosystem also contend* that the increased flash flooding and strain on the municipal water services and aging sewer systems shift the burden of cost from industries to individuals; that the adverse impacts of global climate change unequally affect disadvantaged groups; that the laws ostensibly enacted to protect us and to foster our health, prosperity, and fundamental rights do neither; and that the very air, soil, and water – upon which our lives and happiness depend – are threatened.

Therefore:

*We the people of the Ohio River Watershed Ecosystem affirm* Article 1, Section 2, of the Ohio State Constitution, which states:

*“All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the general assembly;”* and

*We the people of the Ohio River Watershed Ecosystem hereby proclaim* that no person, institution, or nation has the right to participate in activities that contribute to irreversible changes to Earth's biogeochemical cycles or undermine the genetic and species diversity nor the integrity and resilience of its ecological functioning, the consequences of which would fall on succeeding generations as an irrevocable form of remote tyranny;

*We the people of the Ohio River Watershed Ecosystem reclaim, reaffirm, and assert* our fundamental and inalienable rights; and in recognition that our very survival relies on a healthy watershed ecosystem, we seek to ensure that the inherent rights of the natural world, including the values, the interests, and the rights of the human community, are no longer subordinated to the accumulation of surplus wealth and unaccountable political power; and

*We the people of the Ohio River Watershed Ecosystem declare and enact* the following Bill of Rights, which establishes the irrevocable rights for our ecosystem to flourish, regenerate and persist. This charter amendment empowers us to speak for the local land community to which we belong and to elevate its rights over the powers claimed by corporations and governments.

## **Now therefore the Charter of the City of Cincinnati, Article 1, is amended as follows:**

### **(existing section amended, with additions underlined and strike through of removed text) Section 1. - Powers of the People of the City and the City Government**

The people of the City of Cincinnati have the inherent and inalienable right of local community self-government, which includes the right to a system of government capable of protecting their lives, liberty, and happiness. The City ~~has~~ shall have all powers of local self-government and home rule, and all other powers possible for a City to have under the constitution of the state of Ohio. ~~The city shall have all powers that now are or hereafter may be granted to municipalities by the laws of the state of Ohio.~~ All such powers shall be exercised in the manner prescribed in this charter, or if not prescribed herein, in such manner as shall be provided by ordinance of the council or initiated by the people.

The mayor, members of the council and all officers and employees holding office at the time an amendment to the charter takes effect shall continue in office without further appointment subject to the provisions of the charter.

In the event that any provision of this charter is found by a court ~~of competent jurisdiction~~ in a final decision to be unconstitutional or impermissibly in conflict with state or federal law, then the state or federal government making a ruling on the invalidity of the provision shall provide for a level of protection equal to or greater than the stricken provision, and the remainder of this charter will remain in full force and effect.

## **(new section) Section 2. - Definitions**

**“Ohio River Watershed Ecosystem”** or **“the Ecosystem”** is the interdependent community of microbes, plants and animals (including humans) living within the cycling water, soil and air, energized by sunlight. This community includes the entire land area draining into the Ohio River and its tributaries. The Ecosystem encompasses all the shorelines, soils, wetlands, forests, rivers, creeks, ponds, and aquifers that drain water to the Ohio River and embraces all aquatic and terrestrial communities.

**“A Healthy Ecosystem”** is a community of interacting organisms which preserves its own integrity, stability, resilience, and beauty. Integrity involves optimum biological, racial, and cultural diversity as well as optimum cooperative relationships.

**“Ecosystem’s interests”** means the Ohio River Watershed Ecosystem’s inherent rights as described in this Article, as well as other laws that protect the Ecosystem. While people are an integral part of the Ecosystem (see **“Ohio River Watershed Ecosystem”** and **“resident”**), the Ecosystem’s interests only include residents’ interests when residents act in support of the Ecosystem’s rights.

**“Resident”** means a natural person who resides or dwells within the Ecosystem and whose domicile is located within the City of Cincinnati’s jurisdiction.

**“Natural person”**, according to current law, refers to a living human being.

**“Person”**, according to current law, means a natural person, firm, partnership, limited partnership, partnership association, syndicate, joint-stock company, unincorporated association, trust or trustee except where the trust was created or the trustee designated by law or judicial authority or by a will, and a corporation or limited liability company organized under the laws of any state, federal or any foreign government, or any political subdivision of a state, federal or foreign government.

## **(new Section) Section 3. - Human rights to a healthy environment, local democracy, Indigenous self-determination, and relationship to other rights**

All natural persons within the City of Cincinnati's jurisdiction, as well as future generations, enjoy the inherent, inalienable, and indefeasible right to a healthy ecosystem, including pure water, clean air, and a stable climate.

As all political power is inherent in the people, the people form governments to secure their rights, the people live necessarily within ecological systems, and it is impossible for people to live separate and apart from the ecosystems that sustain us, it is therefore necessary and appropriate for this government to take action to protect the human rights and ecosystem rights recognized in this Article. This Article requires any party wishing to take action that may violate the Ecosystem’s rights, to first show cause to the Ecosystem Advocate for why the proposed action will not violate the Ecosystem’s rights. This government explicitly shifts the legal presumption that currently requires Ecosystem Advocates and other environmental defenders to argue for protection as an exception to the rule that corporate property interests take precedent, and instead establishes the legal presumption that the Ecosystem’s rights and interests, as represented by the human communities that are an intrinsic part of the

Ecosystem, are to be protected as a primary objective, and that any profit and property interests are secondary to the Ecosystem's interests.

This government is aware that by recognizing and enforcing the Ecosystem's rights and interests, corporate special interests may raise alarms and bring legal challenges, either through the courts or by exerting pressure on state or federal legislatures. This government shall realize, to the fullest extent the intent of this Article and the ecosystem rights established herein and shall defend them from such challenges, including arguments based on corporate constitutional rights and "ceiling preemption" by state agencies, which interferes with local democracy.

Nothing in this amendment is intended to, nor should be interpreted to, interfere with the rights described by the United Nations Declaration on the Rights of Indigenous Peoples, the Universal Declaration of Human Rights, Tribal treaty rights, or natural persons' rights in the Constitution of any state or the United States Constitution.

## **(new section) Section 4. - Ecosystems are rights-bearing entities with specific rights, and are entitled to damages for violation of those rights**

The Ohio River Watershed Ecosystem within the City of Cincinnati's jurisdiction has rights, but not liabilities. The Ecosystem can sue, but not be sued. The Ecosystem can contract only to the extent needed to effectuate its rights. The Ecosystem cannot own property, but can be the beneficiary of property held in trust, such as damages paid by a violator to be used for Ecosystem restoration. The Ecosystem asserts its interests through the Ecosystem Advocate or a proxy Ecosystem Advocate.

The Ecosystem has specific rights to:

- (1) Exist: no person (means a natural person, firm, partnership, limited partnership, partnership association, syndicate, joint-stock company, unincorporated association, trust or trustee except where the trust was created or the trustee designated by law or judicial authority or by a will, and a corporation or limited liability company organized under the laws of any state, federal or any foreign government, or any political subdivision of a state, federal or foreign government) or any government may harm the Ecosystem, nor make any plans, issue any permits, or otherwise take any actions that would harm the Ecosystem, nor contribute to cumulative effects that lead or are leading to the Ecosystem's destruction;
- (2) Flourish: no person or any government may reduce the Ecosystem's ecological health or ecological integrity, nor decrease its ability to flourish;
- (3) Self-Organize: no person or any government may own or control species' genetics within the Ecosystem, nor inhibit the capacity of the Ecosystem to increase its biodiversity, species richness, or complexity, or sustain itself through self-organization;

(4) Regenerate: no person or any government may impair the Ecosystem’s preservation, rehabilitation, or restoration;

(5) Instream flow: no person or any government may impair, including by cumulative effect, adequate instream flow to sustain native fish and amphibian populations and aquatic biodiversity;

(6) Floodplain connectivity: no person or any government may impair, including by cumulative effect, the diversity of instream and riparian habitats and biodiversity, nor hydrogeological processes including but not limited to horizontal and longitudinal connectivity, flooding outside designated urban areas, movement and deposition of sediments, and sustainable groundwater recharge; and

(7) Freedom from toxic trespass: no person or any government may pollute the Ecosystem with “pollution” as defined in ORC 6111.01. This provision complements and expands upon existing regulatory laws and rules by the State of Ohio, the United States, and their agencies.

(8) Health: no person or any government may impair the Ecosystem’s health, meaning generally, but not limited to, the integrity, stability, resilience, and beauty of the Ecosystem as a biodiverse community of interacting organisms. With the flow of sunlight energy, a healthy ecosystem fosters nutrient and mineral cycling, carbon storage, sedimentation control, flourishing biodiversity, favorable water quality, steady soil formation, vibrant wildlife corridors, water storage and filtration, aquifer recharging, flood control, and reduced vulnerability to disease and invasive species. These multiple benefits, often undervalued, are also essential to humanity’s cultural, environmental, and economic well-being. *“A thing is right when it tends to preserve the integrity, stability, and beauty of the biotic community. It is wrong when it tends otherwise”* (Aldo Leopold’s Land Ethic.)

These rights are self-executing as described in this Article and require no further implementing legislation. The Ecosystem Advocate is authorized to create procedural rules to effectuate this Article.

When there is danger of serious or irreversible damage, the lack of scientific certainty or full evidence should not be used as a reason to delay the adoption of protective, effective, and opportune measures to prevent potential violation of an ecosystem’s rights.

Any person or any government found to have violated these rights is liable to the Ecosystem in the amount necessary to restore the ecosystem, plus attorney fees and costs awarded to the Ecosystem Advocate or proxy Ecosystem Advocate. A person, government, or any corporate or governmental agent who knew or should have known of a repeated violation of these rights may be liable for punitive damages to deter future violations.

## **(new section) Section 5. - Ecosystem Advocate qualifications, appointment, and appointment appeal**

Any resident may apply to be an Ecosystem Advocate for the Ecosystem within the City of Cincinnati’s legal jurisdiction, by submitting an application of qualifications to the City Council and providing full disclosure of all connections to corporations and governments.

The City Council must appoint a resident to serve as an Ecosystem Advocate to advocate for the ecosystem's interests within sixty days of certification of this Charter Amendment. The Ecosystem Advocate must be selected based on qualifications that demonstrate an ability to protect the Ecosystem, not based on balancing the Ecosystem's interests against other governmental or stakeholder interests. Given the complexity contained within the Ecosystem, due diligence should be taken to ensure an Ecosystem Advocate embodies or is informed by local Indigenous knowledge as well as by ecological science.

If any resident believes the City Council did not appoint an Ecosystem Advocate who will best advocate for the Ecosystem's interests or deems that a different Ecosystem Advocate applicant would better protect the Ecosystem's interests, then the resident may trigger selection of the Ecosystem Advocate by a vote of the City of Cincinnati electorate, by submitting a petition with 100 resident-electoral signatures at least 100 days before the next regular or general election. The City Council has a ministerial duty to place the measure on that next regular or general election ballot.

## **(new section) Section 6. - Ecosystem Advocate advisory commission**

An Ohio River Ecosystem Advisory Commission will support the Ecosystem Advocate in protecting the Ecosystem's interests, and may create its own bylaws to effectuate its purpose.

All Advisory Commission members should be selected based on their demonstrated advocacy for the ecosystem. Commission positions must include, but are not limited to, one neighborhood representative from each police district, elected by the residents of their respective district, and three Indigenous representatives selected by local Indigenous organizations. The Cincinnati City Council may appoint one additional at-large member of the Ohio River Ecosystem Advisory Commission by the same procedure, including appeal to the electorate, as appointment of the Ecosystem Advocate.

The Ecosystem Advisory Commission is responsible for providing updates to the Ecosystem Advocate regarding the status of the Ecosystem within their district or anywhere in the Ohio River Watershed. If projects or permits are applied for within or outside the Ohio River Watershed Ecosystem, the advisory commission is responsible for providing data and information to the Ecosystem Advocate on how the project could impact or affect the Ecosystem.

## **(new section) Section 7. - Ecosystem Advocate powers and responsibilities**

The Ecosystem Advocate must act to protect the Ecosystem's interests. The Ecosystem Advocate is authorized to represent the Ecosystem's interests in any legal proceeding, before other governments, and in any other formal or informal forums.

The Ecosystem Advocate has independent authority to bring claims in the name of the Ecosystem, or advocate for the Ecosystem's interests in any way. The City Council must provide the Ecosystem Advocate with a budget of at least 1% of the City of Cincinnati's general fund revenue. The Ecosystem

Advocate will submit an annual budget for review following the same guidelines as other city departments. The Ecosystem Advocate has complete discretion over choosing staff for the office of the Ecosystem Advocate, including choosing legal counsel for the ecosystem, and may select outside counsel paid for by the City of Cincinnati even if in-house counsel is available.

The Ecosystem Advocate has all other powers necessary for protecting the Ecosystem's interests.

## **(new section) Section 8. - Procedure for initiating an enforcement action**

The Ecosystem Advocate may commence enforcement of the Ecosystem's interests by:

1. Providing a notice letter to an alleged violator that describes the violative action, orders that the violator cease and desist the violative action, and which outlines the necessary steps to remedy the violation;
2. Publishing the notice letter as broadly as would be done for a public hearing;
3. Providing the alleged violator with 60 days from receipt of the notice letter to remedy the violation or mediate a resolution with the Ecosystem Advocate.

Any resident may request the Ecosystem Advocate provide the resident with updates on an enforcement, may observe mediation, and if not satisfied with the mediated outcome, and eligible to serve as proxy Ecosystem Advocate as described in Section 7, may petition for a hearing to set aside the mediated outcome before the Ecology Court. In the event that the Court determines that the mediated outcome is deficient and should be set aside, the Ecology Court may appoint a proxy Ecosystem Advocate as described in Section 10, in order to adjudicate the violation as described in Section 10.

If the violator does not remedy the violation, the Ecosystem Advocate or proxy may take any action to remedy the violation, including enforcement through Ecology Court, state court, or federal court. Where circumstances warrant immediate action, the Ecosystem Advocate or proxy can shorten the above timeline or waive the mediation option.

## **(new section) Section 9. - Enforcement through Ecology Court**

The Ecosystem Advocate may convene an Ecology Court to adjudicate the violation. The Ecology Court consists of thirteen residents, selected at random from the Hamilton County Municipal Court jury pool, voluntarily serving without coercion, and screened for conflicts of interest by the Ecosystem Advocate and by the alleged violator with conflicts resolved by a Hamilton County Municipal Court Judge who chairs the proceeding until the jury appoints a new chair. The thirteen residents select one of their members to chair the proceeding, and the other twelve members act as jury, although they retain the power to recall the chair and appoint a new chair by a vote of at least nine members. The chair does not vote as part of the jury.



The Ecology Court hears evidence and argument by the Ecosystem Advocate, the alleged violator, and any fact and expert witnesses called by the Ecosystem Advocate, the alleged violator, the chair, or by the jury by a vote of at least four members.

The jury decides both matters of fact and matters of law, and is to decide by a vote of at least seven members and by the preponderance of the evidence, whether the alleged violator violated the Ecosystem's interests, and if so, order an appropriate remedy.

Appeal of the Ecology Court's decision may be made one time, in which case a second Ecology Court jury will be seated, which will review the proceeding of the first Ecology Court and also consider any new evidence or defense brought before it, and may choose, by a vote of at least ten members, to issue a new order that would supersede the prior jury's order.

## **(new section) Section 10. - Proxy Ecosystem Advocates**

Any resident advocating for greater rights and protections for the Ohio River Watershed Ecosystem may choose to step into the shoes of the Ecosystem Advocate either by observing mediation and not agreeing with the outcome, or requesting in writing that the Ecosystem Advocate initiate an enforcement action against an alleged violator and either receiving confirmation from the Ecosystem Advocate that the Advocate will not take the requested action, or after 30 days of the Ecosystem Advocate's receipt of the request (or 24 hours where circumstances warrant immediate action). The proxy Ecosystem Advocate acts as the Ecosystem Advocate in Ecology Court or any other court in which violations are brought. .

Any resident who substantially prevails in such an action is entitled to attorney fees and costs as if the resident were the Ecosystem Advocate, except that if the resident, after reasonable effort, is not able to fully recover fees and costs (such as against a judgment-proof defendant), the Ecosystem Advocate will pay the remaining fees and costs.

If a proxy Ecosystem Advocate is successful, the proxy Ecosystem Advocate may choose to replace the current Ecosystem Advocate.

## **Severability**

All provisions of this act are severable.