



COMMUNITY ENVIRONMENTAL LEGAL DEFENSE FUND

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Mora County, NM: Court Finds that Fracking Ban Does Not Violate Certain Corporate “Rights”

**Strikes law as violating New Mexico Oil and Gas Law,
finds communities do not have authority to say “no” to fracking**

MEDIA STATEMENT

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MORA COUNTY, NM: In 2013, the Mora County Commission enacted the *Mora County Community Water Rights and Local Self-Government Ordinance* establishing the right to local, democratic self-governance, and rights to water and a healthy environment.

The Ordinance prohibits fracking for shale gas and oil as part of its ban on the extraction of hydrocarbons in the County. Those activities are prohibited as a violation of the rights of the people and ecosystems of the County.

In doing so, Mora County became the first County in the U.S. to adopt a local bill of rights banning commercial oil and gas extraction within a municipality.

Energy corporations promptly filed two lawsuits against Mora County, **claiming that the community does not possess the right to protect itself from fracking and oil and gas extraction.** Mora County is defending the Ordinance in both lawsuits.

A decision in one of the cases – *SWEPI v. Mora County* – was issued yesterday by the United States District Court for the District of New Mexico. In its decision, the Court found for Mora County in part, and for the corporations in part, and then determined that the Ordinance could not stand without the parts that had been struck.

In his decision, U.S. District Judge James Browning wrote that **Mora County had a “legitimate county interest”** in enacting the Ordinance, specifically because protecting the County from damage that could be caused by oil and gas extraction supported the adoption of the Ordinance.

However, **the Court found, the New Mexico Oil and Gas Act preempts the community's authority to ban commercial oil and gas extraction.** Judge Browning also held that even a temporary moratorium on oil and gas drilling would violate the state Act.

In its defense, Mora County argued that the people's right to local, community self-government provided the authority for the Ordinance to override corporate "rights" and state preemption, precisely because those "rights" and preemption are routinely used to override local lawmaking across the United States. **Mora argued that in a competition between corporate "rights" and the right of local, community self-government, that the people's rights must prevail over corporate ones.**

In his ruling, Browning affirmed that corporations have such rights, but indicated that the District Court did not have the authority to change them. He wrote:

"The Defendants' argument that corporations should not be granted constitutional rights, or that corporate rights should be subservient to people's rights, are arguments that are best made before the Supreme Court -- the only court that can overrule Supreme Court precedent -- rather than a district court."

In response to the Court's ruling, Executive Director of the Community Environmental Legal Defense Fund (CELDF), Thomas Linzey, Esq., stated, "With this decision, the **Court affirms what our communities already know, that the existing structure of law denies local, democratic self-governance.** The existing structure of law denies communities the authority to protect themselves from fracking. **The existing structure of law denies communities the authority to protect their water and the natural environment.**"

He stated further that, "Mora County has been at the forefront of a movement of communities that is building across the country, joining together to say that they are unwilling to live under a structure of law which denies their democratic decision making authority. Mora County, in enacting this Ordinance, said that it was no longer willing to accept the existing structure of law which denies people and their communities the authority to protect their water and environment."

Linzey added, "As with communities in other states, New Mexico communities must grapple with the way that the law is constructed by **building a statewide movement that eventually changes the state constitution to recognize the people's right to adopt laws like Mora's.**"

Late last year, the Court granted the Mora Land Grant the authority to intervene in the case. The parties are now considering appealing the Court's decision.

Through grassroots organizing and public interest law, the Community Environmental Legal Defense Fund works with communities across the country to establish Community Rights to democratic, local self-governance and sustainability. CELDF has assisted close to 200 communities to ban shale gas drilling and fracking, factory farming, water privatization, and other threats, and eliminate corporate "rights" when they violate community and nature's rights. This includes assisting the first communities in the U.S. to establish Rights of Nature in law, as

well as the first communities to elevate the rights of communities above the “rights” of corporations.

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