

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

SWEPI LP,
A DELAWARE LIMITED
PARTNERSHIP,

Case No. _____

Plaintiff,

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF AND
DAMAGES**

vs.

MORA COUNTY, NEW MEXICO;
MORA COUNTY BOARD OF
COUNTY COMMISSIONERS;
PAULA A. GARCIA, MORA
COUNTY COMMISSIONER;
JOHN P. OLIVAS, MORA
COUNTY COMMISSIONER; and
ALFONSO J. GRIEGO, MORA
COUNTY COMMISSIONER,

Defendants.

Plaintiff SWEPI LP, through its undersigned counsel, brings this action for declaratory and injunctive relief and damages and alleges as follows:

Introductory Allegations

1. On April 29, 2013, the Mora County Board of County Commissioners, acting under color of state law, passed Ordinance 2013-01, which is entitled the “Mora County Water Rights and Local Self-Government Ordinance” (the “Ordinance”). A true and correct copy of the Ordinance is attached as Exhibit 1. As detailed below, in addition to disclaiming the supremacy and validity of the Constitution and laws of the United States and threatening Mora County’s secession from the State of New Mexico and the United States, the Ordinance explicitly strips Plaintiff of its constitutional rights as guaranteed by the First, Fifth, and Fourteenth Amendments

to the United States Constitution. Of particular relevance to this action, the Ordinance divests Plaintiff of its property interest by purporting to criminalize virtually any activity, undertaken by a corporation, relating to oil and gas exploration and production in Mora County.

2. Plaintiff brings this action to prevent any further injury to its constitutionally protected rights. Through this action, Plaintiff seeks declaratory relief in the form of an Order that the enforcement of the Ordinance as written violates Plaintiff's constitutional rights. Plaintiff further seeks an injunction prohibiting Defendants from enforcing the Ordinance in further violation of Plaintiff's constitutional rights. Finally, Plaintiff seeks damages as compensation for a regulatory taking of its property.

The Parties

3. Plaintiff SWEPI LP (SWEPI") is a Delaware limited partnership, with its principal place of business in Houston, Texas. SWEPI is a Corporation as that term is defined in the Ordinance.

4. SWEPI is the lessee under an oil and gas lease dated April 1, 2010, by which SWEPI leased the mineral rights associated with certain lands located in Mora County, New Mexico for the purposes of exploring for and producing hydrocarbons from said land. A true and correct copy of this lease is attached as Exhibit 2. The rights afforded to SWEPI under this oil and gas lease constitute a property interest under New Mexico law. Aside from the right to explore for and extract hydrocarbons, the mineral rights associated with this oil and gas lease have no economic value.

5. SWEPI is party to oil and gas lease No. 70390000 dated August 1, 2010, by which SWEPI leased from the State of New Mexico, acting through the Commissioner of Public Lands, the mineral rights associated with certain state lands located in Mora County, New

Mexico for purposes of exploring for and producing hydrocarbons from said land. A true and correct copy of this lease is attached as Exhibit 3. The rights afforded to SWEPI under this oil and gas lease constitute a property interest under New Mexico law. Aside from the right to explore for and extract hydrocarbons, the mineral rights associated with this oil and gas lease have no economic value.

6. SWEPI presently seeks to, and is prepared to, exercise its rights under these leases by engaging in the exploration for, and production of, hydrocarbons within Mora County, New Mexico. Specifically, SWEPI is prepared to engage in various activities, including but not limited to:

- a. drilling wells within Mora County for the purpose of exploring for gas, oil, and other hydrocarbons;
- b. transporting into Mora County, and storing within Mora County, materials and equipment used in the exploration for and extraction of gas, oil, and other hydrocarbons;
- c. constructing and maintaining, within Mora County, infrastructure relating to the exploration for and extraction of gas, oil, and other hydrocarbons.

7. The Ordinance prohibits SWEPI from conducting such activities and from otherwise exercising its constitutionally protected rights. The Ordinance further contains a credible threat of criminal prosecution for violations of the Ordinance. But for the fact that such activities are prohibited by the Ordinance, SWEPI would engage in its oil and gas development rights under these leases.

8. Defendant Mora County, New Mexico is a political subdivision of the State of New Mexico with governing authority and power to act under color of state law as expressly granted by the New Mexico State Legislature.

9. Defendant Mora County Board of County Commissioners (“MCBOCC”) is the governing body responsible for the exercise of the powers vested in Mora County by the State of New Mexico.

10. Defendant Paula A. Garcia is one of three members of the MCBOCC. For purposes of this action, Garcia is sued in her official capacity.

11. Defendant John P. Olivas is one of three members of the MCBOCC. For purposes of this action, Olivas is sued in his official capacity.

12. Defendant Alfonso J. Griego is one of three members of the MCBOCC. For purposes of this action, Griego is sued in his official capacity.

Jurisdiction and Venue

13. This Complaint asserts claims arising under the Constitution and laws of the United States, including the First, Fifth, and Fourteenth Amendments to the United States Constitution. Accordingly, this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331.

14. Plaintiff is a citizen of the States of Texas and Delaware. For jurisdictional purposes, each Defendant is a citizen of the State of New Mexico. The value of the declaratory and injunctive relief sought through this Complaint exceeds \$75,000. Accordingly, this Court has jurisdiction pursuant to 28 U.S.C. § 1332.

15. Pursuant to 42 U.S.C. § 1983, this Complaint also seeks redress for the deprivation, under color of state law, of Plaintiff’s Constitutional rights as guaranteed by the First, Fifth, and Fourteenth Amendments to the United States Constitution. Accordingly, this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1343(a)(3) and (4).

16. This Complaint also alleges a claim for relief under state law. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 because Plaintiff's state law claims are so related to the claims over which this Court has original jurisdiction that such claims form part of the same case or controversy under Article III of the Constitution.

17. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because all Defendants reside in this district and a substantial part of the events giving rise to this complaint occurred in this district.

Factual Allegations

A. Mineral Estates In New Mexico

18. New Mexico recognizes a mineral estate as an interest in real property, severable from the surface estate. *Johnson v. Gray*, 410 P.2d 948, 950 (N.M. 1966) (citing *Duvall v. Stone*, 213 P.2d 212, 216 (N.M. 1949); *Terry v. Humphreys*, 203 P. 539 (N.M. 1922)). Mineral estates may be conveyed, leased, or reserved. *Id.* Once severed, taxes are assessed against mineral estates, separate from the taxes assessed against the surface estate. *Sims v. Vosburg*, 91 P.2d 434, 435 (N.M. 1939). All of the rights in a mineral estate are interests in real property, *Padilla v. Roller*, 608 P.2d 1116, 1117 (1980), and therefore, are protected by the Fifth and Fourteenth Amendments to the United States Constitution.

B. New Mexico Public Trust Lands

19. The Enabling Act of 1910 granted New Mexico its statehood, thereby granting the state authority to enact a state constitution and state laws. Act of June 20, 1910, ch. 310, §§ 1–18, 36 Stat. 557. The Enabling Act further transferred certain federal lands to the State of New Mexico to be held in trust for the benefit of public schools, including lands in Mora County. Under Section 10 of the Enabling Act, New Mexico has the authority to sell or lease its state

public lands, with proceeds from those sales or leases going towards public schools, public universities, and other public purposes. *Id.* § 10.

20. The intent and purposes of the Enabling Act are carried out in the New Mexico Constitution. Article XIII, Section 2 provides that “[t]he commissioner of public lands shall select, locate, classify and have the direction, control, care and disposition of all public lands, under the provisions of the acts of congress relating thereto and such regulations as may be provided by law.”

21. N.M. Stat. § 19-1-1 created the state land office and deemed the Commissioner of Public Lands the executive officer of the state land office. This statute reiterates that the Commissioner has “jurisdiction over all lands owned . . . by the state.”

22. The Commissioner of Public Lands is authorized to lease any state land for oil and gas development on such terms as may be provided by the Legislature. N.M. Const. art XXIV, § 1. The Legislature has expressly granted the Commissioner of Public Lands authority to issue oil and gas leases on lands received by the State under the Enabling Act. N.M. Stat. § 19-10-1 (1941).

23. Under each of the oil and gas lease forms that the Commissioner of Public Lands is authorized to use, the lessee is granted the exclusive right on the specified state lands of “exploration, development and production of oil or gas (including carbon dioxide gas and helium), or both thereon and therefrom” together with various rights ancillary and attendant to the drilling for and production of oil and gas. *See, e.g.*, N.M. Stat. § 19-10-4.1 (1985).

24. As an exercise of his authority, the Commissioner of Public Lands has promulgated rules designed to ensure that oil and gas exploration and extraction is done with minimal disruption and damages to the surface estate and to prevent contamination of surface

and subsurface waters. *See, e.g.*, NMAC § 19.2.100.67.

C. The New Mexico Oil And Gas Act

25. In 1978, New Mexico's state legislature passed the New Mexico Oil and Gas Act, codified at N. M. Stat. §§ 70-2-1 through 70-2-38. The Oil and Gas Act created the Oil Conservation Commission ("Commission") and its sub agency the Oil Conservation Division ("Division"). N.M. Stat. §§ 70-2-4, 70-2-5.

26. The Oil and Gas Act directs that the Commission be comprised of "persons who have expertise in the regulation of petroleum production by virtue of education or training." NMSA 1978, § 70-2-4.

27. The Commission is empowered by the Oil and Gas Act to conserve oil and gas, prevent waste, protect correlative rights, and to ensure that oil and gas operations throughout the state are conducted safely and do not impose an unreasonable risk to water, public health and the environment. *Id.* § 70-2-6 and § 70-2-12.

28. The Oil and Gas Act adopts and defines the common law right of correlative rights for owners of oil and gas interests as follows:

'correlative rights' means the opportunity afforded, so far as it is practicable to do so, to the owner of each property in a pool to produce without waste his just and equitable share of the oil or gas or both in the pool, being an amount, so far as can be practicably determined and so far as can be practicably obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas or both under the property bears to the total recoverable oil or gas or both in the pool and, for such purpose, to use his just and equitable share of the reservoir energy

N.M. Stat. § 70-2-33(H).

29. Under its broad statutory authority, the Commission has adopted an extensive set of detailed rules and regulations to prevent waste, to ensure that correlative rights are protected,

to ensure that oil and gas operations are conducted safely and do not impose an unreasonable risk to water, public health and the environment. *See* NMRA 19.15.2.1 *et. seq.*

30. The Oil and Gas Act grants the Commission authority to obtain injunctions and seek monetary penalties for violations of the Oil and Gas Act or any rule, regulation or order issued thereunder. NMSA 1978, § 70-2-28 and § 70-2-31.

D. Mora County’s Anti Oil and Gas Ordinance

31. On April 29, 2013, the members of the Mora County Board of County Commissioners voted 2-1 to enact an anti-oil and gas ordinance, entitled “Mora County Community Water Rights and Local Self-Government Ordinance.”

32. The Ordinance eliminates all legal privileges held by corporations engaging in the extraction of oil natural gas or other hydrocarbons:

AN ORDINANCE PROTECTING THE RIGHT OF HUMAN COMMUNITIES, NATURE, AND NATURAL WATER, BY ESTABLISHING A LOCAL BILL OF RIGHTS FOR MORA COUNTY THAT PROTECTS THE NATURAL SOURCES OF WATER FROM DAMAGE RELATED TO THE EXTRACTION OF OIL, NATURAL GAS, OR OTHER HYDROCARBONS, BY AFFIRMING THE RIGHT TO LOCAL AUTONOMY AND SELF GOVERNANCE, AND *BY ELIMINATING LEGAL PRIVILEGES AND POWERS FROM CORPORATIONS VIOLATING THE ORDINANCE.*

Ordinance, Preamble, (Emphasis added).

33. The Ordinance erroneously suggests that no governing authority currently exists to protect Mora County’s water and other natural resources:

The People of the County of Mora are a cohesive community of diverse elements, united by common culture, social bonds and a common destiny, and are represented politically in various aspects by the Mora County Government, numerous Acequias, Land Grants and Mutual Domestic Water Consumers Associations. The People of Mora County recognize that water is essential for the life, prosperity, sustainability, and health of its community and that damage to natural groundwater and surface water sources imposes great tangible loss, to the People, natural communities and ecosystems of Mora County, not just for today but for future generations. The People of Mora County recognize that they may be

forced, without its consent, to endure or attempt to repair harm inflicted on its environment and its vital water supply, *which they have no equivalent governing authority to prevent under current state and federal law*. The governing body of Mora County adopts this Mora County Community Water Rights and Local Self-Government Ordinance to overcome that liability, to provide for community health and safety, to promote a sustainable lifestyle, and to secure the comfort and convenience of the people.

Ordinance Section 1.2 (emphasis supplied).

34. The Ordinance on its face: (1) prevents the lawful development of oil and natural gas resources located within Mora County by corporations or anyone acting on behalf of a corporation; and (2) eliminates the constitutional rights and privileges of corporations.

35. Section 3.1 of the Ordinance defines “corporation” as “any corporation, 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.”

36. Section 3.2 of the Ordinance defines “extraction” as “the digging or drilling of a well for the purposes of exploring for, developing or producing oil, natural gas, or other hydrocarbons.”

37. Section 5.1 of the Ordinance declares that it “shall be unlawful for any corporation to engage in the extraction of oil, natural gas, or other hydrocarbons within Mora County.”

38. Section 5.2 of the Ordinance declares that it:

[S]hall be unlawful for any corporation to engage in the extraction of water from any surface or subsurface source within Mora County for use in the extraction of subsurface oil, natural gas, or other hydrocarbons, 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 Mora County, for use in the extraction of subsurface oil or natural gas or other hydrocarbons. It shall be unlawful for a

corporation to import water or any other substance, including but not limited to, propane, sand, and other substances used in the extraction of oil, natural gas, or other hydrocarbons, into Mora County for use in the extraction of subsurface oil, natural gas, or other hydrocarbons; or for any director, officer, owner, or manager of a corporation to do so.

39. Section 5.3 declares that it:

[S]hall be unlawful for any corporation, or any director, officer, owner, or manager of a corporation to use a corporation to deposit, store, transport or process waste water, 'produced' water, 'frack' water, brine or other materials, chemicals or by-products used in the extraction of oil, natural gas, or other hydrocarbons, into the land, air or waters within Mora County.

40. Section 5.4 declares that it:

[S]hall be unlawful for any corporation, or any director, officer, owner, or manager of a corporation to use a corporation to construct or maintain infrastructure related to the extraction of oil, natural gas, or other hydrocarbons within Mora County. 'Infrastructure' shall include, but not be limited to, pipelines or other vehicles of conveyance of oil, natural gas, or other hydrocarbons, and any ponds or other containments used for wastewater, 'frack' water, or other materials used during the process of oil, gas, or other hydrocarbon extraction.

41. Section 5.5 of the Ordinance provides that:

Corporations in violation of the prohibitions enacted by this ordinance, or seeking to engage in activities prohibited by this ordinance, shall not have the rights of "persons" afforded by the United States and New Mexico Constitutions, nor shall those corporations be afforded rights under the 1st or 5th amendments to the United States Constitution or corresponding sections of the New Mexico Constitution, nor shall those corporations be afforded the protections of the commerce or contracts clauses within the United States Constitution or corresponding sections of the New Mexico Constitution.

42. Section 5.6 of the Ordinance provides that:

Individuals or corporations in violation of the prohibitions enacted by this ordinance, or seeking to engage in activities prohibited by this ordinance, shall not possess the authority or power to enforce State or federal preemptive laws against the people of Mora County, or to challenge or overturn County ordinances adopted by the Mora County Commission, when that enforcement or challenge interferes with the rights asserted by this ordinance or interferes with the authority of the county to protect the health, safety, and welfare of its residents.

43. Section 5.7 of the Ordinance provides that no permits, licenses, privileges, or charters issued by any state or federal agencies, Commissions or Boards, which violate the provisions of the Ordinance, or “deprive any County resident(s), natural community, or ecosystem of any rights, privileges, or immunities secured by this Ordinance, the Treaty of Guadalupe Hildalgo, [sic] the New Mexico Constitution, the United States Constitution, or other laws, *shall be deemed valid within Mora County.*” (Emphasis added)

44. Section 5.8 of the Ordinance limits the application of the United States and New Mexico Constitutions to the extent they “are not inconsistent with the provisions of this Ordinance regarding the powers and ‘rights’ of corporations, and to the extent that they do not otherwise elevate property interests over rights secured by this Ordinance.”

45. Section 8.1 of the Ordinance provides:

Any violation of any provision of this Ordinance shall be considered a criminal offense, punishable by maximum penalties and imprisonment as authorized by applicable New Mexico law. Each instance of a violation of the provisions of this Ordinance shall be treated as a separate offense subject to penalties authorized by applicable New Mexico law.

46. Section 8.2 of the Ordinance provides that “Mora County may enforce this Ordinance through an action brought in any court of competent jurisdiction. In such an action, Mora County shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees, in addition to damages caused by the violation of this ordinance.”

47. Section 8.3 of the Ordinance provides “any County resident shall have the authority to enforce this Ordinance through an action 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.”

48. Section 8.5 of the Ordinance provides that:

In the event that this ordinance is overturned or nullified, for any reason, a moratorium on the extraction of oil and gas within the County of Mora shall become effective on the date that this ordinance becomes inactive. That temporary moratorium shall have a duration of no more than six months, during which the Board of County Commissioners shall adopt another ordinance which permanently bans hydrocarbon extraction within the County of Mora.

49. Section 11 of the Ordinance suggests that if a Court finds the Ordinance unconstitutional, Mora County may consider secession as a means to protect its right to self-government:

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 County Commission to hold public meetings that explore the adoption of other measures that expand local control and the ability of residents to protect its fundamental and inalienable right to self-government. *Such consideration may include actions to separate the County 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 Mora County or its elected officials.*

(emphasis supplied)

50. Section 13 of the Ordinance provides that the provisions within the Ordinance are severable. More specifically, the Ordinance provides that:

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 Mora County Commission 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.

51. Responding to a recently filed lawsuit challenging the Ordinance, Defendant Olivas is quoted in the Albuquerque Journal on November 14, 2013, as saying "It's very unfortunate that municipalities and communities cannot say no to corporations without getting sued."

First Claim For Relief
(Supremacy Clause)

52. Plaintiff realleges and reincorporates the allegations in Paragraphs 1-51, as though fully set forth verbatim.

53. Section 5.5 of the Ordinance provides that corporations shall not be considered “persons” for purposes of the rights afforded by the United States Constitution and that corporations shall not have any rights afforded by the Contracts Clause and the Commerce Clause of the United States Constitution.

54. The Supreme Court of the United States, however, has clearly held that corporations are considered persons for purposes of the rights afforded by the United States Constitution, including the Equal Protection Clause, the Contracts Clause, the Commerce Clause, the First Amendment and Fourteenth Amendment of the United States Constitution.

55. The Ordinance conflicts with the United States Constitution and therefore violates the Supremacy Clause of the United States Constitution.

56. Given the Ordinance’s conflict with the United States Constitution, the Ordinance is invalid.

57. Specifically, the Ordinance asserts that corporations are not afforded the rights of persons under the United States Constitution within Mora County, while Plaintiff asserts that corporations have such rights.

58. Plaintiff is therefore entitled to declaratory and permanent injunctive relief pursuant to 28 U.S.C. §§ 2201, 2202.

Second Claim for Relief
(Equal Protection of the Laws)

59. Plaintiff realleges and reincorporates the allegations in Paragraphs 1-51 as though fully set forth verbatim.

60. The Fourteenth Amendment to the United States Constitution provides that no State shall “deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend XIV, section 1. Plaintiff is a “person” within the meaning of the Fourteenth Amendment and is entitled to the protections afforded thereunder, including that of equal protection of the laws.

61. The Ordinance denies to Plaintiff the equal protection of the laws because it arbitrarily restricts the activities of corporate persons, while imposing no similar restriction on activities undertaken by natural persons or unincorporated associations. *See Frost v. Corporation Commission of Oklahoma*, 278 U.S. 515 (1929).

62. In particular, Section 5.1 of the Ordinance prohibits corporations from “engag[ing] in the extraction of oil, natural gas, or other hydrocarbons within Mora County.” *See* ¶ 37, *supra*. The Ordinance, however, contains no similar prohibition against individuals or unincorporated associations engaging in the same activities.

63. The imposition of such blanket restrictions on corporations alone, to the exclusion of natural persons or unincorporated associations, bears no rational relationship to any legitimate governmental interest. Rather, the Ordinance’s exclusive restriction on the activities of corporations is unreasonable, arbitrary and invidious.

64. The Ordinance is facially invalid because it denies to Plaintiff the equal protection of the laws. The Ordinance must be declared unconstitutional in its entirety.

65. The presence of a severability clause in the Ordinance does not change this outcome. Defendants would not have enacted the Ordinance without all of the provisions outlawing oil and natural gas extraction by corporations within Mora County. In addition, the valid and invalid provisions of the Ordinance are so intertwined that the Ordinance would be rendered meaningless if the offending portions were severed.

66. This is especially true with respect to Section 8.5, which provides:

In the event that this ordinance is overturned or nullified, for any reason, a moratorium on the extraction of oil and gas within the County of Mora shall become effective on the date that this ordinance becomes inactive. That temporary moratorium shall have a duration of no more than six months, *during which the Board of County Commissioners shall adopt another ordinance which permanently bans hydrocarbon extraction within the County of Mora.*

If Section 8.5 were allowed to stand, it would nullify the effect of striking down the Ordinance in its entirety.

67. To prevent continuing harm to Plaintiff's constitutionally protected rights, this Court must strike down the Ordinance in its entirety and expressly enjoin Defendants from enforcing it.

68. Under 42 U.S.C. § 1983, every person who, under color of state law, subjects any citizen of the United States to the deprivation of "rights, privileges, or immunities secured by the Constitution and laws," shall be liable to the injured party.

69. Because the Ordinance deprives Plaintiff of its rights, privileges and/or immunities as secured by the Fourteenth Amendment, Defendants are liable to Plaintiff under 42 U.S.C. § 1983.

70. Plaintiff has no adequate legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to its constitutional rights.

71. Plaintiff is therefore entitled to declaratory and permanent injunctive relief pursuant to 28 U.S.C. §§ 2201, 2202.

Third Claim for Relief
(Dormant Commerce Clause)

72. Plaintiff realleges and reincorporates the allegations in Paragraphs 1-51, as though fully set forth verbatim.

73. The Ordinance purports to prohibit all activities relating to the exploration for and extraction of hydrocarbons within Mora County by corporations or their representatives.

74. If Plaintiff is not allowed to conduct such activities within Mora County because of the Ordinance, it will be unable to realize the benefits of the oil and gas leases described above. *See* ¶¶ 4-5, *supra*.

75. The Ordinance has and will continue to have a substantial burden on interstate commerce because it curbs the supply of natural gas and other hydrocarbons. This burden clearly exceeds the putative benefits to Mora County.

76. The Ordinance does not provide any local benefit because the health, safety and welfare of the residents of Mora County and the environment are already protected by the comprehensive and exclusive regulatory scheme for development of hydrocarbons promulgated by the New Mexico Oil Conservation Division.

77. The Ordinance does not serve a legitimate public interest because it directly conflicts with the statewide interest in the development and production of oil and gas reflected by the New Mexico State Legislature in the Enabling Act of 1910 and the Oil and Gas Act.

78. The Ordinance does not serve its purported purpose because it only prohibits oil and gas activities by corporations and imposes no limitations or regulations on such activities conducted by natural persons.

79. Accordingly, the Ordinance violates the dormant Commerce Clause of the United States Constitution.

80. Plaintiff is therefore entitled to declaratory and permanent injunctive relief pursuant to 28 U.S.C. §§ 2201, 2202.

Fourth Claim for Relief
(Substantive Due Process – Arbitrary Action)

81. Plaintiff realleges and reincorporates the allegations in Paragraphs 1-51, as though fully set forth verbatim.

82. The Due Process Clause of the Fourteenth Amendment to the United States Constitution prohibits a State from “depriv[ing] any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1.

83. As described above, through its oil and gas leases, Plaintiff possesses property interests in Mora County, New Mexico. *See* ¶¶ 4-5, *supra*. These property interests are protected by the Fourteenth Amendment. By prohibiting Plaintiff from engaging in the exploration for, or extraction of, hydrocarbons within Mora County, Defendants, through their adoption of the Ordinance, have deprived Plaintiff of these protected property interests.

84. Under the Due Process Clause, “[p]rocedural due process ensures the state will not deprive a party of property without engaging fair procedures to reach a decision, while substantive due process ensures the state will not deprive a party of property for an arbitrary reason regardless of the procedures used to reach that decision.” *Nichols v. Bd. of County Commissioners*, 506 F.3d 962, 969 (10th Cir. 2007). Here, Plaintiff has been deprived of its property interests for an arbitrary reason—the fact that it is a corporation within the meaning of the Ordinance.

85. Under 42 U.S.C. § 1983, every person who, under color of state law, subjects any citizen of the United States to the deprivation of “rights, privileges, or immunities secured by the Constitution and laws,” shall be liable to the injured party.

86. Because the Ordinance deprives Plaintiff of its rights, privileges and/or immunities as secured by the Fourteenth Amendment, Defendants are liable to Plaintiff under 42 U.S.C. § 1983.

87. Plaintiff has no adequate legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to its constitutional rights.

88. Plaintiff is therefore entitled to declaratory and permanent injunctive relief pursuant to 28 U.S.C. §§ 2201, 2202.

Fifth Claim for Relief
(Substantive Due Process – No Compelling or Legitimate County Interest)

89. Plaintiff realleges and reincorporates the allegations in Paragraphs 1-51, as though fully set forth verbatim.

90. The Due Process Clause of the Fourteenth Amendment to the United States Constitution prohibits a State from “depriv[ing] any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1.

91. As described above, through its oil and gas leases, Plaintiff possesses property interests in Mora County, New Mexico. *See* ¶¶ 4-5, *supra*. These property interests are fundamental rights protected by the Fourteenth Amendment.

92. By prohibiting Plaintiff from engaging in the exploration for, or extraction of, hydrocarbons within Mora County, Defendants, through their adoption of the Ordinance, have deprived Plaintiff of fundamental property interests without a compelling or legitimate county interest.

93. The Legislature has determined that oil and gas development is important to the State of New Mexico and empowered the New Mexico State Land Office to issue oil and gas leases on state lands.

94. In addition, the Legislature has issued the Oil and Gas Act to protect correlative rights and to empower the Oil Conservation Commission with special expertise and authority to regulate oil and gas operations across the state.

95. The very purpose of the Oil and Gas Act is to ensure that correlative rights are protected, that oil and gas reserves within the state are properly and efficiently developed without waste, and to ensure that oil and gas operations are conducted safely and without an unreasonable risk to water, public health or the environment.

96. Mora County, as a political subdivision of the State of New Mexico, does not possess a compelling or legitimate governmental interest that authorizes it to ban the oil and gas development the New Mexico State Legislature has concluded is important to the state.

97. The deprivation of Plaintiff's property rights as reflected in the Ordinance are not rationally related to any compelling or legitimate state interest, and is instead directly contrary to the state interests expressed by the legislative body of the State of New Mexico.

98. Because the Ordinance cannot survive any level of scrutiny under the due process clause, it must be declared unconstitutional and permanently enjoined in its entirety.

99. Under 42 U.S.C. § 1983, every person who, under color of state law, subjects any citizen of the United States to the deprivation of "rights, privileges, or immunities secured by the Constitution and laws," shall be liable to the injured party.

100. Because the Ordinance deprives Plaintiff of its rights, privileges and/or immunities as secured by the Fourteenth Amendment, Defendants are liable to Plaintiff under 42 U.S.C. § 1983.

101. Plaintiff has no adequate legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to its constitutional rights.

102. Plaintiff is therefore entitled to declaratory and permanent injunctive relief pursuant to 28 U.S.C. §§ 2201, 2202.

Sixth Claim for Relief
(Ultra Vires Legislation)

103. Plaintiff realleges and reincorporates the allegations in Paragraphs 1-51, as though fully set forth verbatim.

104. New Mexico law is clear that local bodies have no power to enact zoning ordinances that regulate lands owned by the State of New Mexico absent express statutory delegation. *See County of Santa Fe v. Milagro Wireless, LLC*, 32 P.3d 214, 216 (N.M. 2001).

105. Here, the legislature has not expressly delegated to Defendants the right to enact zoning or other ordinances affecting oil and gas development on state owned lands.

106. By purporting to prohibit the exploration for and extraction of oil and gas on all lands within Mora County, including lands owned by the State of New Mexico, Defendants have exceeded their authority as delegated by the State Legislature.

107. Plaintiff is therefore entitled to a declaration that the Ordinance violates New Mexico law because it seeks, without an express delegation of authority, to regulate lands owned by the State, as well as permanent injunctive relief prohibiting Defendants from enforcing the statute as written.

Seventh Claim for Relief
(Conflict Preemption)

108. Plaintiff realleges and reincorporates the allegations in Paragraphs 1-51, as though fully set forth verbatim.

109. The New Mexico State Legislature has granted all counties “the same powers that are granted municipalities except for those powers that are inconsistent with statutory or constitutional limitations placed on counties.” N.M. Stat. § 4-37-1.

110. In New Mexico, “[t]he governing body of a municipality may adopt ordinances or resolutions *not inconsistent with the laws of New Mexico*.” N.M. Stat. § 3-17-1 (emphasis added).

111. “[A]ny New Mexico law that clearly intends to preempt a governmental area should be sufficient without necessarily stating that affected municipalities must comply and cannot operate to the contrary.” *Casuse v. City of Gallup*, 746 P.2d 1103, 1105 (N.M. 1987) (citing *Westgate Families v. County Clerk of Los Alamos*, 667 P.2d 453 (N.M. 1983)).

112. Under the Enabling Act of 1910, the New Mexico Constitution, and the statutes based thereon, the Commissioner of Public Lands has the authority and duty to issue leases for oil and gas development on state lands for the benefit of the common schools, other educational institutions, and other worthy state functions that benefit less fortunate citizens of the State of New Mexico.

113. The New Mexico Oil and Gas Act further confers regulatory authority and expertise over oil and natural gas extraction within the state to the Oil Conservation Commission N.M. Stat. §§ 70-2-4, 70-2-6, and 70-2-12. This authority includes the conservation of oil and gas, the preventing of waste of oil and gas, and the protection of correlative rights. N.M. Stat. §§ 70-2-11 and 70-2-12.

114. The correlative rights afforded by the Oil and Gas Act to mineral owners within the state is the opportunity to produce without waste its share of the oil or gas underlying its lands:

‘correlative rights’ means the opportunity afforded, so far as it is practicable to do so, to the owner of each property in a pool to produce without waste his just and equitable share of the oil or gas or both in the pool, being an amount, so far as can be practicably determined and so far as can be practicably obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas or both under the property bears to the total recoverable oil or gas or both in the pool and, for such purpose, to use his just and equitable share of the reservoir energy

N.M. Stat. § 70-2-33(H).

115. By prohibiting the extraction of oil, natural gas, and other hydrocarbons, the Ordinance nullifies valid existing oil and gas leases, including leases issued by the Commissioner of Public Lands. As a result, the Ordinance is in actual conflict with the Enabling Act, the New Mexico Constitution, and the Commissioner of Public Lands’ exclusive administration of public trust lands.

116. By prohibiting all oil, natural gas, and other hydrocarbon exploration and extraction related activities within Mora County, the Ordinance is in actual conflict with the correlative rights granted by the New Mexico Oil and Gas Act and the body of rules created by the Oil Conservation Division to permit and regulate oil and gas development within the state.

117. By prohibiting all oil, natural gas, and other hydrocarbon exploration and extraction related activities within Mora County, the Ordinance is in actual conflict with the statewide interest in the development and production of oil and gas reflected by the New Mexico State Legislature in the Enabling Act of 1910 and the Oil and Gas Act.

118. Defendants enacted the Ordinance in excess of any statutory authority conferred upon them under N.M. Stat. § 4-37-1. Defendants further violated N.M. Stat. § 3-17-1 by enacting the Ordinance, which is inconsistent with the laws of New Mexico.

119. Plaintiff has no adequate legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to its rights.

120. Plaintiff is therefore entitled to a determination that the Enabling Act, the New Mexico Constitution, the New Mexico Oil and Gas Act and other State rules providing for and regulating oil and natural gas development preempt the Ordinance and therefore, the Ordinance is invalid, unlawful, and unenforceable.

Eighth Claim for Relief
(First and Fourteenth Amendments)

121. Plaintiff realleges and reincorporates the allegations in Paragraphs 1-51, as though fully set forth verbatim.

122. The First Amendment to the United States Constitution provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” U.S. Const. amend. I.

123. The First Amendment’s guarantees of freedom of speech, freedom of the press, freedom of assembly, and freedom to petition for redress of grievances are “protected by the Fourteenth Amendment from invasion by the states[,]” and its political subdivisions, such as counties. *Edwards v. South Carolina*, 372 U.S. 229, 235 (1963).

124. The First Amendment’s guarantees of freedom of speech, freedom of the press, freedom of assembly, and freedom to petition for redress of grievances, as protected by the

Fourteenth Amendment from invasion by the states and its political subdivisions, inures to the benefit of corporations, including Plaintiff SWEPI.

125. Plaintiff is a corporation, as that term is defined in the Ordinance, seeking to engage in activities prohibited by the Ordinance. *See* ¶¶ 6-7, *supra*. Therefore, Section 5.5 of the Ordinance strips Plaintiff of its rights under the First Amendment to the United States Constitution.

126. A resolution or ordinance that does not merely regulate expressive activity, but instead expansively prohibits First Amendment activities cannot be justified “because no conceivable governmental interest would justify such an absolute prohibition of speech.” *Board of Airport Comm’rs of City of Los Angeles v. Jews for Jesus, Inc.*, 482 U.S. 569, 575 (1987).

127. In light of the Supreme Court’s holding that “no conceivable governmental interest would justify such an absolute prohibition of speech,” the text of Section 5.5 is substantially overbroad and no circumstances exist, under which a blanket elimination of Plaintiff’s First Amendment rights can be justified. *Board of Airport Comm’rs of City of Los Angeles*, 482 U.S. at 575.

128. Defendants have no governmental interest so compelling as to justify the denial of Plaintiff’s rights as guaranteed by the First Amendment to the United States Constitution. As such, the Ordinance is overly broad.

129. Under 42 U.S.C. § 1983, every person who, under color of state law, subjects any citizen of the United States to the deprivation of “rights, privileges, or immunities secured by the Constitution and laws,” shall be liable to the injured party.

130. The Ordinance is overly broad and deprives Plaintiff of its First Amendment rights of freedom of speech, freedom of the press, freedom of assembly, and freedom to petition

for redress of grievances in contravention of the Fourteenth Amendment. Therefore, Defendants are liable to Plaintiff under 42 U.S.C. § 1983.

131. Plaintiff has no adequate legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to its constitutional rights.

132. Plaintiff is therefore entitled to declaratory and permanent injunctive relief pursuant to 28 U.S.C. §§ 2201, 2202.

Ninth Claim for Relief
(Inverse Condemnation—Fifth and Fourteenth Amendments)

133. Plaintiff realleges and reincorporates the allegations in Paragraphs 1-51, as though fully set forth verbatim.

134. The Fifth Amendment to the United States Constitution provides that “private property [shall not] be taken for public use without just compensation” U.S. Const. amend, V. That protection applies as against action by a State through operation of the due process clause of the Fourteenth Amendment.

135. As noted above, New Mexico law recognizes a mineral estate as an interest in real property, severable from the surface estate. *See* ¶ 18, *supra*. Plaintiff’s interests in mineral estates associated with lands located in Mora County, New Mexico, as afforded to them under the oil and gas leases described above, *see* ¶¶ 4-5, *supra* are valid property interests protected by the Fifth and Fourteenth Amendments.

136. Through its prohibition on corporations engaging in any activities related to the exploration for, or extraction of, hydrocarbons within Mora County, the Ordinance denies corporate owners, including Plaintiff, all economically beneficial or productive use of its mineral estates in the name of the common good. Such action constitutes a categorical regulatory taking.

See Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992); *Penn Coal Co. v. Mahon*, 260 U.S. 393 (1922).

137. In the alternative, even if the Ordinance does not effect a categorical regulatory taking of Plaintiff's property, the Ordinance nonetheless effects a compensable taking under the three-factor test set forward in *Penn Central Transp. Co. v. New York City*, 438 U.S. 104 (1978). In particular, the Ordinance's complete prohibition on all activities relating to the extraction of hydrocarbons thwarts Plaintiff's reasonable investment-backed expectations. As noted above, Plaintiff's obtained its property rights for the sole purpose of extracting the hydrocarbons located within those properties. *See* ¶¶ 4-5, *supra*.

138. Under 42 U.S.C. § 1983, every person who, under color of state law, subjects any citizen of the United States to the deprivation of "rights, privileges, or immunities secured by the Constitution and laws," shall be liable to the injured party.

139. Because the Ordinance deprives Plaintiff of its rights, privileges and/or immunities as secured by the Fourteenth Amendment, Defendants are liable to Plaintiff under 42 U.S.C. § 1983.

140. Plaintiff has no adequate legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to its constitutional rights. In particular, the Ordinance provides no mechanism through which Plaintiff may obtain just compensation for the regulatory taking of its property.

141. Plaintiff is therefore entitled to declaratory relief pursuant to 28 U.S.C. §§ 2201, 2202 and damages.

Prayer For Relief

WHEREFORE, Plaintiff respectfully requests the following relief:

142. Entry of judgment declaring that Mora County Ordinance 2013-01 is unconstitutional because it violates the Supremacy Clause of the United States Constitution;

143. Entry of judgment declaring that Mora County Ordinance 2013-01 is unconstitutional because it deprives Plaintiff of the equal protection of the laws as guaranteed by the Fourteenth Amendment;

144. Entry of judgment declaring that Mora County Ordinance 2013-01 is unconstitutional because it violated the dormant Commerce Clause of the United States Constitution;

145. Entry of judgment declaring that Mora County Ordinance 2013-01 is unconstitutional because it deprives Plaintiff of right to substantive due process as guaranteed by the Fourteenth Amendment;

146. Entry of judgment declaring that Mora County Ordinance 2013-01 is unconstitutional because it deprives Plaintiff of its rights guaranteed by the First Amendment as applied to Defendants through the Fourteenth Amendment;

147. Entry of judgment declaring that Mora County Ordinance 2013-01 violates and is preempted by the Enabling Act of 1910, the New Mexico Constitution, and the New Mexico Oil and Gas Act;

148. Entry of judgment declaring that Mora County Ordinance 2013-01 violates New Mexico law because it seeks, without an express delegation of authority, to regulate activities on lands owned by the State of New Mexico;

149. Entry of judgment declaring that Defendants exceeded its authority under N.M. Stat. §§ 3-17-1, 4-37-1 in enacting Mora County Ordinance 2013-01;

150. Entry of judgment declaring that Mora County Ordinance 2013-01 is unconstitutional because it effects a taking of Plaintiff's property without just compensation in violation of Plaintiff's rights under the Fifth and Fourteenth Amendments and awarding Plaintiff just compensation in the form of money damages;

151. Entry of judgment permanently enjoining Defendants and its agents and/or employees from enforcing Mora County Ordinance 2013-01.

152. Granting such other and further relief as the Court may deem just and proper under the circumstances.

DATED this 10th day of January, 2014.

Respectfully submitted,

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