

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

MARY L. VERMILLION; JAY LAND LTD. CO.; YATES RANCH PROPERTY LLC; and the INDEPENDENT PETROLEUM ASSOCIATION OF NEW MEXICO,

Plaintiffs,

v.

MORA COUNTY, NEW MEXICO; MORA COUNTY BOARD OF COUNTY COMMISSIONERS; PAULA A. GARCIA, Mora County Commissioner, District 1; JOHN P. OLIVAS, Chairman and Mora County Commissioner, District 2; ALFONSO J. GRIEGO, Vice-Chairman and Mora County Commissioner, District 3,

Defendants.

Case No.

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

Plaintiffs, Mary L. Vermillion, JAY Land Ltd. Co. (“JAY”), Yates Ranch Property LLC (“Yates”), and the Independent Petroleum Association of New Mexico (“IPANM”) (collectively “Plaintiffs”) by and through their undersigned attorneys, hereby file this Complaint against Defendants and allege as follows:

## NATURE OF THE CLAIMS

1. This civil rights lawsuit seeks declaratory and permanent injunctive relief to redress and prevent the further deprivation of Plaintiffs' rights, as guaranteed by the First, Fifth, and Fourteenth Amendments to the Constitution of the United States, by Defendants acting under color of state law.

2. Plaintiffs' rights have been violated by Defendants' enactment of Mora County Ordinance 2013-01 ("Ordinance"), which expressly prohibits all hydrocarbon extraction within Mora County and all other activities necessary to hydrocarbon extraction. The Ordinance further eliminates corporate Plaintiffs' rights under the First and Fifth Amendments to the United States Constitution and the corresponding rights under the New Mexico Constitution. The Ordinance restricts the rights of Plaintiffs to invoke applicable New Mexico state laws that preempt Mora County's authority to enact or enforce the Ordinance. Therefore, Plaintiffs seek declaratory and permanent injunctive relief to abate and correct Defendants' unconstitutional actions.

### **JURISDICTION AND VENUE**

3. This Court has subject-matter jurisdiction, pursuant to 28 U.S.C. § 1331, because the matter in controversy arises under the Constitution and laws of the United States, including, but not limited to, the First, Fifth, and Fourteenth Amendments to the United States Constitution.

4. This case is also brought under 42 U.S.C. § 1983, which provides for redress of the deprivation, under color of state law, of rights, privileges, and immunities secured to Plaintiffs by the United States Constitution, particularly the First, Fifth, and Fourteenth Amendments thereto. Thus, this Court also has subject-matter jurisdiction under 28 U.S.C. § 1343(a)(3), (4).

5. This Court also has supplemental jurisdiction over Plaintiffs' state law claims because those claims are so related to Plaintiffs' federal claims that they form part of the same case or controversy under Article III of the United States Constitution. 28 U.S.C. § 1367.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because it is the judicial district where Defendants reside, and in “which a substantial part of the events or omissions giving rise to the claim occurred.” 28 U.S.C. § 1391(b).

### **PARTIES**

7. Plaintiff Mary L. Vermillion owns in fee 0.775 acres, more or less within projected Section 9, Township 21 North, Range 17 East, N.M.P.M in Mora County, New Mexico. As the owner in fee simple, Ms. Vermillion also owns the mineral estate underlying this tract. This mineral estate includes the oil and gas estate. The oil and gas estate is a property interest protected by the Fifth and Fourteenth Amendments to the United States Constitution. But for the Ordinance, Ms. Vermillion would seek to lease her oil and gas estate to a corporation for the purposes of exploring for and extracting the oil and natural gas.

8. Plaintiffs JAY and Yates own in fee simple, as tenants in common 125,000 acres, more or less, within Mora County, New Mexico. This property is known as the Ojo Feliz Ranch. As fee simple owners, JAY and Yates also own the mineral estate underlying this tract. The mineral estate includes the oil and gas estate. This oil and gas estate is a property interest protected by the Fifth and Fourteenth Amendments to the United States Constitution. But for the Ordinance, JAY and Yates would seek to lease their oil and gas estate to a corporation for the purposes of exploring for and extracting oil and natural gas, or otherwise seek to extract these minerals themselves.

9. Plaintiff IPANM is a non-profit, membership, trade association organized under the laws of the State of New Mexico. Formed in 1978, IPANM has over 300 members, who employ thousands of New Mexico residents.

10. IPANM's purpose is to promote the general welfare and long-term interests of independent oil and natural gas producers, mineral and royalty owners, and the State of New Mexico. IPANM seeks to accomplish its purposes by encouraging the discovery, development, production, and conservation of the oil and natural gas resources in New Mexico. IPANM also seeks to accomplish its purposes by educating the public about the benefits provided by the oil and natural gas industry to the State and by responding to the misinformation disseminated by those who oppose the development of oil and natural gas resources and hydraulic fracturing. For example, IPANM disseminates news, updates and information to its email distribution list of over 1000 persons who include federal, state and local legislators, regulators, educators, and members of the media. IPANM also posts announcements and news updates to its website, [www.ipanm.org](http://www.ipanm.org), and distributes newsletters to its members, legislators, regulators, educators and the media. IPANM hosts events to educate the public, policy makers and the media regarding oil and natural gas extraction in New Mexico. IPANM also hosts industry events and conferences where industry members assemble to discuss and debate topics related to oil, natural gas, and hydrocarbon extraction in New Mexico.

11. IPANM reviews and comments on state and federal regulations relating to oil, natural gas, and hydrocarbon extraction and has taken steps to submit official comments or appeal local, state, and federal regulations that are overbroad, duplicative, arbitrary and capricious, or otherwise unlawful.

12. IPANM has, at least, one member who owns mineral interests in Mora County, which includes an oil and gas estate. This member has leased those oil and natural gas rights. This lease grants the lessee the right to explore for and extract oil and natural gas from the

mineral interests owned by this member within Mora County. Therefore, by and through its member, IPANM may be deemed a corporation that is seeking to engage in activities prohibited by the Ordinance.

13. IPANM members also hold valid oil and gas leases within Mora County, including leases covering state public trust lands that were issued by the New Mexico Commissioner of Public Lands. But for the Ordinance, the IPANM members would exercise their right to explore for and extract oil and natural gas within Mora County. Therefore, by and through its members, IPANM may be deemed a corporation that is seeking to engage in activities prohibited by the Ordinance.

14. Defendant Mora County, New Mexico is a territorial division of the State of New Mexico with governing authority and powers to act under color of state law. Under New Mexico law, “[a] county is but a political subdivision of the State, and it possesses only such powers as are expressly granted to it by the Legislature, together with those necessarily implied to implement those express powers.” *El Dorado at Santa Fe, Inc. v. Board of Cnty Comm’rs of Santa Fe Cnty.*, 551 P.2d 1360, 1364 (1976); *see* N.M. Stat. § 4-37-1.

15. Defendant Mora County Board of County Commissioners has been vested with authority under New Mexico law to exercise the county’s political and corporate powers on its behalf. N.M. Stat. § 4-38-1. Pursuant to New Mexico law, the Board of County Commissioners consists of three elected commissioners. *Id.* § 4-38-2; *see also* *id.* §§4-38-1 to 4-38-42.

16. Defendant Paula A. Garcia is a Mora County Commissioner for District 1. Defendant Garcia is sued in her official capacity.

17. Defendant John P. Olivas is a Mora County Commissioner for District 2 and the Chairman of the Commission. Defendant Olivas is sued in his official capacity.

18. Defendant Alfonso J. Griego is a Mora County Commissioner for District 3 and the Vice-Chairman of the Commission. Defendant Greigo is sued in his official capacity.

### **FACTUAL ALLEGATIONS**

#### **A. OIL AND NATURAL GAS DEVELOPMENT.**

19. New Mexico has been a major producer of oil and natural gas since hydrocarbons were first discovered in the State during the early 1920s.

20. The oil and gas industry, while primarily occupying the sparsely populated southeast and northwest areas of New Mexico, is a lynchpin of the State's economy and is essential for its continued fiscal health. New Mexico's independent oil and natural gas producers are also known for the countless community projects, scholarships and mentorship programs, which make New Mexico a unique and wonderful place to work and live. In 2012, the State of New Mexico derived more than 27 percent of its general fund revenues from taxes and royalties on oil, natural gas, and carbon dioxide production. These taxes and royalties have contributed more than 90 percent of the principal in the Severance Tax and Land Grant Permanent Funds, the earnings on which are used to fund the common schools (including those in Mora Country), specific education or eleemosynary and institutions, and other state governmental operations. Other petroleum tax receipts are placed directly in the State's general budget. In addition, more than 88,000 citizens of the State are directly employed by the oil and gas industry.

**B. MINERAL ESTATES IN NEW MEXICO.**

21. 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, protected by the Fifth and Fourteenth Amendments to the United States Constitution.

**C. HYDRAULIC FRACTURING.**

22. Hydraulic fracturing is a process in which fluid is injected into a well bore at high pressures in order to either widen and deepen existing cracks or create new fractures in productive formations that contain oil and natural gas.

23. Hydraulic fracturing is applied to the majority of the Nation's oil and natural gas wells to enhance well performance, minimize drilling and recover otherwise inaccessible resources. In fact, roughly 90 percent of the wells in operation today have been fractured, and the process continues to be applied in new and innovative ways to boost production of the Nation's energy in unconventional formations, such as "tight" gas sands, shale deposits, and coal beds.

24. Hydraulic fracturing has been safely used for over sixty years, throughout the United States and in the State of New Mexico.

25. Types of fluid used for fracturing depend upon the rock type, depth or other factors such as well bore design. Typically the fluids used are water based and contain “proppant,” which is commonly sand of various sizes. The proppant is carried into the productive formation where it remains in the newly created or enlarged fracture, keeping it open and allowing the oil or natural gas to flow. In general, nearly 99.5 percent of the materials used in any given fracturing job are water and sand. The remaining 0.5 percent is made up of chemicals that enhance the viscosity or thickness of the fluid, which helps carry the proppant.

26. The use of hydraulic fracturing has been estimated to contribute to 30 percent of recoverable hydrocarbon reserves in the United States. Fracturing is believed to provide an additional 5,600 trillion cubic feet of natural gas and seven billion barrels of oil that would not be recoverable without this process.

**D. NEW MEXICO PUBLIC TRUST LANDS.**

27. 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.

28. The intent and purposes of the Enabling Act are carried out in the New Mexico Constitution. Article XIII of the New Mexico Constitution accepts the grant of public trust lands. 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.”

29. 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.”

30. 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). 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).

#### **E. THE NEW MEXICO OIL AND GAS ACT.**

31. 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 Oil Conservation Division (“Division”). N.M. Stat. §§ 70-2-4, 70-2-5. These bodies have been vested with “jurisdiction and authority over all matters relating to the conservation of oil and gas and the prevention of waste of potash as a result of oil or gas operations.” *Id.* § 70-2-6. Further, the Commission and Division both have

“jurisdiction, authority and control of and over all persons, matters or things necessary or proper to enforce effectively the provisions of this act or any other law of this state relating to the conservation of oil or gas. . . .” *Id.*

32. The Division regulates oil and natural gas extraction within the state as provided by Title 19, Chapter 15 of the New Mexico Code of Rules. The Rules developed by the Division aim to protect, among other things, fresh water, public health, safety and the environment. N.M. Code R. § 19.15.39. The Rules also “establish safety procedures for drilling and production of oil and gas wells.” *Id.* § 19.15.10.6. The Rules further consider the use of hydraulic fracturing within the state and include provisions that must be followed by all operators that engage in hydraulic fracturing in New Mexico. *Id.* § 19.15.16.17; 19.15.15.19; 19.15.35.13 (D); 19.15.12.11 (A)(3).

**F. MORA COUNTY ORDINANCE 2013-01.**

33. On April 29, 2013, the members of the Mora County Board of County Commissioners voted 2-1 to enact the Ordinance, entitled “Mora County Community Water Rights and Local Self-Government Ordinance.” A copy of the Ordinance, as signed by Chairman John P. Olivas and Vice-Chairman Alfonso J. Griego is attached hereto as Exhibit 1.

34. The Ordinance is expressly described as:

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.*

(Emphasis added).

35. The stated purpose of the Ordinance is as follows:

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 their 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 their consent, to endure or attempt to repair harm inflicted on their environment and their 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.

36. The real purpose of the Ordinance is to: (1) the prevent the lawful development of oil and natural gas resources located within Mora County; (2) ban hydraulic fracturing in Mora County; and (3) eliminate the constitutional rights and privileges of corporations.

37. 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.”

38. 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.”

39. 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.”

40. 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.

41. 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.

42. 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.

43. 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.

44. 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.

45. 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)

46. 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.”

47. 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.

48. N.M. Stat. § 4-37-3 provides that the maximum penalty for violations of County Ordinances is a fine of three hundred dollars, or imprisonment for ninety days, or both.

49. 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.”

50. 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.”

51. 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.

52. 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.

**FIRST CLAIM FOR RELIEF**  
**(Substantive Due Process)**  
**(Fourteenth Amendment)**

53. Plaintiffs reallege and incorporate by reference each and every allegation set forth above.

54. 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.

55. The Due Process Clause of the Fourteenth Amendment applies to local governments, such as counties. *Pembaur v. City of Cincinnati*, 475 U.S. 469, 485 (1986) (ruling that counties may be held liable for violations of Fourteenth Amendment rights); *Monell v. Dep’t. of Social Services of City of New York*, 436 U.S. 658, 690 (1978) (“Local governing bodies, therefore, can be sued directly under [43 U.S.C.] § 1983 for monetary, declaratory, or injunctive relief where, as here, the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body’s officers.”) (internal citations omitted).

56. The Due Process Clause of the Fourteenth Amendment has two components that limit local government actions, i.e., the procedural due process component and the substantive due process component.

57. “[T]he touchstone of due process is protection of the individual against arbitrary action of government.” *County of Sacramento v. Lewis*, 523 U.S. 833, 845 (1998) (quoting *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974)). The substantive due process clause essentially asks whether the government has an adequate reason for depriving a person of life, liberty, or

property and “bar[s] certain government actions regardless of the fairness of the procedures used to implement them.” *Daniels v. Williams*, 474 U.S. 327, 331 (1986). The rights protected by the substantive due process clause are rights “so rooted in the traditions and conscience of our people as to be ranked as fundamental.” *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934).

58. Property rights are fundamental rights. As such, property interests and concomitant property rights are explicitly protected from government infringement by the Fourteenth Amendment. *See Reno v. Flores*, 507 U.S. 292, 301–02 (1993). The Supreme Court “interprets the Fifth and Fourteenth Amendments’ guarantee of “due process of law” to include a substantive component, which forbids the government to infringe certain “fundamental” liberty interests *at all*, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest.” *Id.* (emphasis in original) (citing *Collins v. Harker Heights*, 503 U.S. 115, 125 (1992); *Salerno*, 418 U.S. at 746; *Bowers v. Hardwick*, 478 U.S. 186, 191 (1986)); *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997)). This standard of review is known as the strict scrutiny standard.

59. “Property interests are not created by the Constitution, ‘they are created and their dimensions are defined by existing rules or understanding that stem from an independent source such as state law. . . .’” *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 538 (1985) (quoting *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972)).

60. New Mexico recognizes a mineral estate as an interest in real property, severable from the surface estate. *Johnson*, 410 P.2d at 950. Mineral estates may be conveyed, leased, or reserved. *Id.* The mineral estate includes estates in particular minerals, such as the oil and gas estate. The oil and gas estate includes the following rights: the right to explore for and produce

the oil and natural gas, the right to access the surface, the right to execute an oil and gas lease, and the right to receive bonuses, delay rentals, and royalties. *HNG Fossil Fuels Co*, 656 P.2d at 882. The right to execute an oil and gas lease, commonly referred to as the executory right, is one of the primary sticks in the bundle of rights comprising the oil and gas estate.

61. Section 5.1 of the Ordinance makes it unlawful for corporations to extract oil, natural gas, or other hydrocarbons in Mora County.

62. Section 5.2 of the Ordinance makes it unlawful for corporations to use surface or subsurface water in oil, natural gas, or other hydrocarbon extraction. Corporations are further prohibited from importing water or any other substances into Mora County for use in oil, natural gas, or other hydrocarbon extraction.

63. Section 5.4 of the Ordinance makes it unlawful for corporations and their directors, officers, owners, or managers to construct or maintain infrastructure relating to the extraction of oil, natural gas, or other hydrocarbons.

64. Plaintiff Mary L. Vermillion owns property in Mora County. Ms. Vermillion owns a mineral estate in this tract. This mineral estate is a property right protected by the Fifth and Fourteenth Amendments to the United States Constitution. But for the Ordinance, Ms. Vermillion would seek to exercise her executory right and lease her minerals to a corporation for the purposes of extraction.

65. Plaintiffs JAY and Yates own the Ojo Feliz Ranch in Mora County. JAY and Yates also own a mineral estate in this tract. This mineral estate is a property right protected by the Fifth and Fourteenth Amendments to the United States Constitution. But for the Ordinance, JAY and Yates would seek to exercise their executory right and lease their minerals to a

corporation for the purposes of extraction, or otherwise engage in exploration and extraction activities.

66. IPANM has members who own mineral interests, including oil and natural gas, in Mora County. Some of these members have leased their mineral interests. These leases give lessees the right to explore for and extract any oil and natural gas beneath the lease acreage. The lease rights are protected by the Fifth and Fourteenth Amendments to the United States Constitution.

67. IPANM also has members who hold leases on property in Mora County, including leases executed by the Commissioner of Public Lands for public trust lands. These lessees have the right to explore for and develop any oil, natural gas, or other hydrocarbons found on their leases. These rights are protected by the Fifth and Fourteenth Amendments to the United States Constitution. But for the Ordinance, these members would exercise their valuable lease rights.

68. The Ordinance does not serve a compelling state interest. The purpose of the Ordinance has been veiled to appear as though it is in the interest of public health, safety, morals, or general welfare. The preamble to the Ordinance provides that the citizens of Mora have a “duty to safeguard the water both on and beneath the Earth’s surface.” However, the true purpose of the Ordinance is to prevent the lawful development of oil and natural gas and to ban hydraulic fracturing within Mora County. If Defendants’ true goal was to protect surface and groundwater supplies within the County, the Ordinance would address other industries that are known sources of water pollution, such as the agricultural industry. Pesticides and fertilizers contaminate surface and groundwater, yet the Ordinance does not regulate any other industries

having the potential to pollute sources of drinking water. Therefore, the Ordinance does not further a compelling state interest.

69. Even if the goal of protecting water sources is taken as sincere and found to be sufficiently compelling, the blanket elimination of the First and Fifth Amendment rights of corporations engaging or seeking to engage in activities prohibited by the Ordinance is not narrowly tailored to achieving that interest. Mora County could ensure water sources are adequately protected through much less restrictive means. The ban reaches all aspects of oil and natural gas industry by prohibiting nearly all activities related to oil and natural gas extraction. The Ordinance includes broad and extreme eradication of the First and Fifth Amendment rights of any corporation that engages in a prohibited activity. Therefore, the Ordinance is not narrowly tailored.

70. Even if this court does not accept property as a fundamental right, the Ordinance is unable to withstand the less rigorous test of intermediate scrutiny. Intermediate scrutiny requires government actions which burden constitutionally protected rights to be substantially related to the achievement of an important governmental objective. *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 220 (1995); *Clark v. Jeter*, 486 U.S. 456, 461 (1988).

71. The Ordinance is not substantially related to the achievement of an important governmental objective. Banning oil and natural gas extraction within the County does not constitute an important governmental objective. Even if the governmental objective of protecting water sources is taken as sincere, the act of eliminating the First and Fifth Amendment rights of corporations that engage in oil and natural gas extraction activities is not substantially related to that objective.

72. The Ordinance also fails the rational basis test because it is not rationally related to a legitimate state interest. *See Seegmiller v. LaVerkin City*, 528 U.S. 762, 771–72 (10th Cir. 2008) (citing *Reno*, 507 U.S. at 305). Even assuming Defendant’s interest in protecting water sources is legitimate, the act of eliminating the First and Fifth Amendment rights or corporations that engage in oil and natural gas extraction activities is not rationally related to that interest.

73. Because the Ordinance cannot survive any level of scrutiny, it must be declared unconstitutional and permanently enjoined in its entirety.

74. The presence of a severability clause in the Ordinance does not change this outcome. *Bradbury & Stamm Constr. Co. v. Bureau of Revenue*, 70 N.M. 226, 230–31, 372 P.2d 808, 811 (1962).; *Baca v. New Mexico Dept. of Safety*, 47 P.3d 441, 444 (N.M. 2002). *Alaska Airline, Inc. v. Brock*, 480 U.S. 978, 685 (1987) (citing *Hill v. Wallace*, 259 U.S. 44, 70–72 (1922)).

75. Defendants would not have enacted the Ordinance without all of the provisions outlawing oil and natural gas extraction 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.

76. 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.

77. If Section 8.5 were allowed to stand, it would nullify the effect of striking down the Ordinance in its entirety. Therefore, to prevent continuing harm to Plaintiffs' constitutionally protected rights, this Court must strike down the Ordinance in its entirety and expressly enjoin Defendants from enforcing Section 8.5.

78. 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.

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

80. Plaintiffs have no adequate legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights.

81. Plaintiffs are therefore entitled to declaratory and permanent injunctive relief pursuant to 28 U.S.C. §§ 2201, 2202.

**SECOND CLAIM FOR RELIEF**  
**(First and Fourteenth Amendments)**

82. Plaintiffs reallege and incorporate by reference each and every allegation set forth above.

83. The First Amendment to the United States Constitution provides "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.

84. 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 their political subdivisions, such as counties. *Edwards v. South Carolina*, 372 U.S. 229, 235 (1963) (citing *Gitlow v. New York*, 268 U.S. 652 (1937); *Whitney v. California*, 274 U.S. 357 (1927); *Stromberg v. California*, 283 U.S. 359 (1931); *DeJonge v. Oregon*, 299 U.S. 353 (1937); *Cantwell v. Connecticut*, 310 U.S. 296 (1940)).

85. 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 their political subdivisions, enures to the benefit of Plaintiff Mary L. Vermillion, corporate Plaintiffs JAY and Yates, and IPANM (a corporation), and its corporate members. *See Citizens United v. Fed. Election Comm’n*, 558 U.S. 318, 340 (2010).

86. Although the First Amendment protects multiple fundamental rights related to freedom of speech, the Supreme Court has held:

[T]he rights to assemble peaceably and to petition for a redress [of] grievances are among the most precious of the liberties safeguarded by the Bill of Rights. These rights, moreover, are intimately connected both in origin and in purpose, with the other First Amendment rights of free speech and free press. All these, though not identical, are inseparable. The First Amendment would, however, be a hollow promise if it left government free to destroy or erode its guarantees by indirect restraints so long as no law is passed that prohibits free speech, press, petition, or assembly as such. We have therefore repeatedly held that laws which actually affect the exercise of these vital rights cannot be sustained merely because they were enacted for the purpose of dealing with some evil within the State’s legislative competence, or even because the laws do in fact provide a helpful means of dealing with such an evil.

*United Mine Workers of America, Dist. 12 v. Illinois State Bar Ass’n*, 389 U.S. 217, 222 (1967) (internal quotations and citations omitted).

87. In the context of the First Amendment, a law is void if it is overbroad. *United States v. Salerno*, 481 U.S. 739, 745 (1987). A statute may only be invalidated following a facial challenge if a court finds the overbreadth “substantial.” *Board of Airport Comm’rs of City of Los Angeles v. Jews for Jesus, Inc.*, 482 U.S. 569, 574 (1987) (citing *Houston v. Hill*, 482 U.S. 451, 458-459 (1987); *New York v. Ferber*, 458 U.S. 747, 769 (1982); *Broadrick v. Oklahoma*, 413 U.S. 601, 615 (1973)).

88. The Supreme Court has held that “[t]he first step in overbreadth analysis is to construe the challenged statute; it is impossible to determine whether a statute reaches too far without first knowing what the statute covers.” *United States v. Williams*, 553 U.S. 285, 293 (2008).

89. “Under the First Amendment overbreadth doctrine, an individual whose own speech or conduct may be prohibited is permitted to challenge a statute on its face ‘because it also threatens others not before the court—those who desire to engage in legally protected expression but who may refrain from doing so rather than risk prosecution or undertake to have the law declared partially invalid.’” *Board of Airport Comm’rs of City of Los Angeles*, 482 U.S. at 574 (quoting *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 503 (1985)). Therefore, an overbreadth challenge is proper so long as there is “a realistic danger that the statute itself will significantly compromise recognized First Amendment protections of parties not before the Court.” *City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 801 (1984).

90. 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*, 482 U.S. at 575.

91. Under Article III of the United States Constitution, Plaintiffs have standing to bring this action to vindicate their First Amendment rights and the First Amendment rights of IPANM’s corporate members that seek to engage in activities prohibited by the Ordinance. *Hunt v. Washington State Apple Advertising Comm’n*, 432 U.S. 333, 343 (1977) (An organization has Article III “standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.”).

92. Under Supreme Court rulings, Plaintiffs also have standing to challenge the Ordinance directly because of the Ordinance’s possible chilling effect on protected speech. More specifically, those who desire to engage in constitutionally protected forms of expression may choose to refrain rather than risking criminal repercussions or challenging the Ordinance themselves. *Board of Airport Comm’rs of City of Los Angeles*, 482 U.S. at 574.

93. Section 5.5 of the Ordinance eliminates the First and Fifth Amendment rights of corporations “seeking to engage in activities prohibited by this ordinance.”

94. Plaintiffs JAY and Yates are corporate owners of a mineral estate in Mora County. As the owners of a mineral estate, JAY and Yates have the right to assign their mineral estate to third parties, who will drill wells, explore for, and extract any oil and natural gas found

beneath their property. JAY and Yates also have a right to search for and develop oil and natural gas on the Ojo Feliz Ranch themselves. But for the Ordinance, JAY and Yates would seek to lease or develop their mineral estate. Therefore, JAY and Yates may be deemed corporations “seeking to engage in activities prohibited by” the Ordinance. Accordingly, Section 5.5 of the Ordinance deprives JAY and Yates of their First Amendment rights to freedom of speech, freedom of the press, freedom of assembly, and freedom to petition for redress of grievances.

95. IPANM has corporate members that seek to engage in activities prohibited by the Ordinance, such as drilling for and extracting oil and natural gas within Mora County.

96. IPANM has corporate members who hold valid oil and gas leases in Mora County, including leases for public trust land issued by the Commissioner of Public Lands. These members wish to exercise their valuable lease rights by drilling for and extracting the oil and natural gas resources under their leased acreage. IPANM further has members who would seek to engage in the construction and maintenance of infrastructure relating to oil and natural gas production within Mora County, but for the Ordinance. Therefore, IPANM has corporate members who seek to engage in activities prohibited by the Ordinance.

97. Plaintiff IPANM regularly hosts educational events, conferences, and debates for its members and industry groups. IPANM members regularly assemble to attend these events. IPANM exercises its corporate rights to freedom of speech to inform the public and encourage debate about local, state, and federal regulation of the oil and natural gas industry. IPANM exercises its corporate right to freedom of press by publishing news and information on its website regarding oil and natural gas exploration and extraction activities that are of interest to its members and the general public. IPANM also distributes informational newsletters to its

members. As a trade association with corporate members that wish to engage in First Amendment activities prohibited by the Ordinance, Section 5.5 of the Ordinance denies IPANM and its member their First Amendment rights of freedom of speech, freedom of the press, freedom of assembly, and freedom to petition for redress of grievances.

98. 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 Plaintiffs' First Amendment rights can be justified. *Board of Airport Comm'rs of City of Los Angeles*, 482 U.S.at 575.

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

100. 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.

101. The Ordinance is overly broad and deprives Plaintiffs of their 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 Plaintiffs under 42 U.S.C. § 1983.

102. Plaintiffs have no adequate legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights.

103. Plaintiffs are therefore entitled to declaratory and permanent injunctive relief pursuant to 28 U.S.C. §§ 2201, 2202.

**THIRD CLAIM FOR RELIEF**  
**(Preemption)**

104. Plaintiffs reallege and incorporate by reference each and every allegation set forth above.

105. The legislature in New Mexico 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.

106. 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).

107. “[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 (1983)).

108. Under the Enabling Act of 1910, the New Mexico Constitution, and the statutes based thereupon, the Commissioner of Public Lands has the authority and duty to lease and sell State lands, including issuing oil and gas leases, 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.

109. The New Mexico Oil and Gas Act further confers authority over oil and natural gas extraction within the state to the Oil Conservation Commission and Oil Conservation

Division. N.M. Stat. §§ 70-2-4, 70-2-5. This authority includes the ability to enact rules to “protect fresh water, public health, safety and the environment,” N.M. Code R. § 19.15.39, and to “establish safety procedures for drilling and production of oil and gas wells.” N.M. Code R. § 19.15.10.6.

110. IPANM has corporate members who hold valid oil and gas leases in Mora County, including leases for public trust land issued by the Commissioner of Public Lands. But for the Ordinance, these members would seek to exercise their valuable lease rights by drilling for and extracting the oil and natural gas, and other hydrocarbons under their leased acreage.

111. 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 state’s exclusive administration of public trust lands.

112. 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 New Mexico Oil and Gas Act and the body of rules created by the Oil Conservation Division, which already occupy the field. Defendants lack authority to interfere with the exclusive jurisdiction of the Oil Conservation Commission and Oil Conservation Division.

113. Defendants enacted the Ordinance, under color of state law, which conflicts with the Commissioner of Public Land’s complete dominion over public trust lands and the duties of the both Oil Conservation Commission and Oil Conservation Division to oversee oil and natural gas production within the state. The Ordinance conflicts directly with the Enabling Act, the New

Mexico Constitution, the New Mexico Oil and Gas Act, and New Mexico Rules, Title 19, Chapter 15.

114. In enacting the Ordinance, Defendants acted 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.

115. Plaintiffs have no adequate legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their rights.

116. Plaintiffs are therefore entitled to a determination that the Enabling Act, the New Mexico Constitution, the New Mexico Oil and Gas Act and other State rules regulating oil and natural gas conservation and production preempt the Ordinance and therefore, the Ordinance is invalid, unlawful, and unenforceable.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request the following relief:

1. Entry of judgment declaring that Mora County Ordinance 2013-01 deprives Plaintiffs of their property rights and thus, Plaintiffs are deprived of their rights, privileges and/or immunities secured by the Fourteenth Amendment to the United States Constitution, and therefore, Defendants are liable to Plaintiffs under 42 U.S.C. § 1983;

2. Entry of judgment declaring that Mora County Ordinance 2013-01 deprives Plaintiffs of their rights guaranteed by the First Amendment as applied to Defendants through the Fourteenth Amendment, and therefore, Defendants are liable to Plaintiffs under 42 U.S.C. § 1983;

3. Entry of judgment declaring that Mora County Ordinance 2013-01 violates and is preempted by the Enabling Act of 1910, the New Mexico Constitution, the New Mexico Oil and Gas Act, and New Mexico Rules, Title 19, Chapter 15;
4. Entry of judgment declaring that Defendants exceeded their authority under N.M. Stat. §§ 3-17-1, 4-37-1 in enacting Mora County Ordinance 2013-01;
5. Entry of judgment permanently enjoining Defendants and their agents and/or employees from enforcing Mora County Ordinance 2013-01;
6. Award Plaintiffs their costs, expenses, and attorneys' fees in accordance with law, including 42 U.S.C. § 1988; and
7. Award Plaintiffs such further relief as is just and equitable.

DATED this 11<sup>th</sup> day of November 2013.

Respectfully Submitted by:

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# **EXHIBIT 1**

County Commissioners

JOHN P. OLIVAS  
CHAIRMAN

ALFONSO J. GRIEGO  
VICE-CHAIRMAN

PAULA A. GARCIA  
MEMBER



State of New Mexico  
County of Mora

P.O. BOX 580  
MORA, NEW MEXICO 87732  
(575) 387-5279  
Fax: (575) 387-9022

**Ordinance 2013-01**

**Mora County, New Mexico**

WHEREAS, We, the residents in Mora County, are a multi-cultural community with indigenous roots of Many; and

WHEREAS, We recognize the Earth, water, and air as a source of life for all living in Mora County; and

WHEREAS, We are convinced that the quality of life for residents in Mora County, for both the present and the future, will be destroyed if we allow at-risk exploitation and pollution of the Earth, water, and air; and

**WHEREAS, We the People of the County of Mora declare that we have the duty to safeguard the water both on and beneath the Earth's surface, and in the process, safeguard the rights of people within the county of Mora and the rights of the ecosystems of which Mora County is a part; and**

**WHEREAS, We the People of Mora County declare that all of our water is held in the public trust as a common resource to be used for the benefit of Mora residents and of the natural ecosystems of which they are a part. We believe that industrial use of water supplies in this county placing the control of water in the hands of a corporate few, rather than the county would constitute abuse and usurpation; and that we are therefore duty bound to oppose such abuse and usurpation. That same duty requires us to recognize that two centuries' worth of governmental conferral of constitutional powers upon corporations has deprived people of the authority to govern their own communities, and requires us to take affirmative steps to remedy that usurpation of governing power; and**

WHEREAS, we are conscious of the urgency of taking decisive action to protect our collective rights and the rights of future generations, and of ensuring a balanced environment for the survival of all residents of Mora County;  
THEREFORE,

**BE IT ORDAINED BY THE GOVERNING BODY OF MORA COUNTY, NEW MEXICO . . . 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.**

**Section 1. Name and Purpose**

**Section 1.1 Name:** This Ordinance shall be known and may be cited as the "Mora County Community Water Rights and Local Self-Government Ordinance."

Section 1.2 Purpose. 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 their 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 their consent, to endure or attempt to repair harm inflicted on their environment and their 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.

## **Section 2. Authority**

This Ordinance is enacted pursuant to the inherent right of the residents of Mora County to govern their own community. That authority precedes government and is secured, without limitation, by:

The Treaty of Guadalupe Hidalgo, Article VIII & Article IX, which guarantees the "free enjoyment of their liberty and property" of the inhabitants of what became Mora County, and which states that property of every kind "shall be inviolably respected." According to a 2001 Government Accounting Office report (<http://www.gao.gov/new.iemts/d01951.pdf>), this guarantees traditional communal use rights under the Treaty, including, but not limited to, the following rights - hunting "caza," pasture "pastos," wood gathering "leña," and watering "abrevederos;"

The Declaration of Independence, which states that governments are instituted to secure the rights of people, "deriving their just powers from the consent of the governed;"

The New Mexico Constitution, Article 2, which declares that "all political power is vested in and derived from the people: all government of right originates with the people, is founded upon their will and is instituted solely for their good." That section also declares that the people "have the sole and exclusive right to govern themselves as a free, sovereign, and independent state" and that "all persons are born equally free, and have certain natural, inherent and inalienable rights" and that "[t]he enumeration in this constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people;"

The Mora County Comprehensive Land Use Plan, which states that "[t]he connection between our land, our water and our people has sustained our culture since the first settlements in Mora County, and our future depends on keeping these connections strong. Water is a vital link, which, if severed from the land, will also fragment our people from their land. The allocation of our limited water resources must recognize traditional subsistence agricultural and grazing activities as a priority over other types of more profitable land uses. Water is not just a commodity to be bought and sold, or exploited for short-term gains. Water is the lifeblood of Mora County's traditions, culture and land use. A sustainable future for Mora County requires protection of the most valuable resource for our communities--the Water!"

## **Section 3. Definitions**

Section 3.1: "Corporation" shall mean 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.

Section 3.2: "Extraction" shall mean the digging or drilling of a well for the purposes of exploring for, developing or producing oil, natural gas, or other hydrocarbons.

Section 3.3: "Horizontal drilling" shall mean intentional deviation of a wellbore from the vertical for the purpose of reaching subsurface areas laterally remote from the point where a well drilling bit or similar equipment enters the earth at the surface.

Section 3.4: "Hydraulic fracturing" shall mean an activity in which water, propane, diesel, chemicals and a solid proppant or any other agent are pumped into a wellbore at a rate sufficient to increase the pressure downhole to a value in excess of the fracture gradient of the formation rock, causing the formation to crack, thus allowing the fracturing fluid to enter and extend the crack farther into the formation, forming passages through which natural gas, oil, or other hydrocarbons can flow.

Section 3.5: "Hydrocarbons" shall mean any of numerous organic compounds, such as benzene and methane, that contain only carbon and hydrogen.

Section 3.6: "La Querencia de la Tierra" shall mean the loving respect which Mora County residents have towards the land and Earth, which is rooted in our indigenous worldview—the Earth is living and holy, is the habitat that sustains us, and is composed of all natural & living systems, flora and fauna - interrelated, interdependent and complementary - which share our common destiny: The right to live free from contamination.

Section 3.7: "Natural Gas" shall mean any gaseous substance, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarified state at standard temperature or pressure conditions, and/or gaseous components or vapors occurring in, or derived from, petroleum or natural gas.

Section 3.8: "Oil" shall mean any thick, flammable, yellow-to-black mixture of gaseous, liquid, and solid hydrocarbons that occur naturally beneath the earth's surface.

#### **Section 4. Statements of Law – Rights of Mora County Residents and the Natural Environment**

Section 4.1. Right to Water: All residents, natural communities and ecosystems in Mora County possess a fundamental and inalienable right to sustainably access, use, consume, and preserve water drawn from natural water cycles that provide water necessary to sustain life within the County.

Section 4.2. Right of Water for Agriculture: All Mora County residents possess the fundamental and inalienable right to unpolluted natural water to produce healthy food, to nourish our bodies, livestock and land and to continue "La Querencia de la Tierra," Love of the Land.

Section 4.3. Rights of Natural Communities: Natural communities and ecosystems, including, but not limited to, wetlands, streams, rivers, aquifers, and other water systems, possess inalienable and fundamental rights to exist and flourish within Mora County against oil and gas extraction. Residents of the County, along with the Mora County Commission, shall possess legal standing to enforce those rights on behalf of those natural communities and ecosystems. Natural communities and ecosystems protected by this ordinance shall be protected on all lands within Mora County, including those owned by the state and federal government

Section 4.4. Right to a Sustainable Energy Future: All residents, natural communities, and ecosystems in Mora County possess a right to a sustainable energy future, which includes, but is not limited to, the development, production, and use of energy from renewable fuel sources, and the right to have an energy system based on fuel sources other than fossil fuel sources. This right shall also include the right to energy practices that do not cause harm, and which do not threaten to cause harm, to people, communities, or the natural environment.

Section 4.5. Right to Self-Government: All residents of Mora County possess the fundamental and inalienable right to a form of governance where they live which recognizes that all power is inherent in the people, that all free governments are founded on the people's authority and consent, and that corporate entities and their directors and managers shall not enjoy special privileges or powers under the law which make community majorities subordinate to them.

Section 4.6. *People are Sovereign.* The Mora County Commission shall be the governing authority responsible to, and governed by, the residents of the County. Use of the "Mora County" municipal corporation by the sovereign people of the County to make law shall not be construed to limit or surrender the sovereign authority or immunities of the people to a municipal corporation that is subordinate to them in all respects at all times. The people at all times enjoy and retain an inalienable and indefeasible right to self-governance in the community where they reside.

Section 4.7. *Rights of La Querencia de la Tierra.* The farm-based indigenous/mestizo (mixed blood) people who created the original Mora County culture considered the Earth to be living and holy; thus they referred to their homeland as "La Querencia de la Tierra," Love of the Land. This sacredness connotes an intrinsic right of the land to exist without defilement.

Section 4.8. *Rights are Self-Executing.* All rights delineated and secured by this ordinance shall be self-executing and these rights shall be enforceable against both public and private actors, and shall not require implementing legislation for their enforceability.

Section 4.9. *Exemption.* Nothing in this ordinance shall be construed in such a manner as to impact the water rights of acequias, Mutual Domestic Water Consumers Associations or land grant, or to affect or color any negotiations regarding water rights, distribution or usage between these political subdivisions and the County of Mora.

## **Section 5. Statements of Law – Prohibitions Necessary to Secure Bill of Rights' Protections**

Section 5.1: It shall be unlawful for any corporation to engage in the extraction of oil, natural gas, or other hydrocarbons within Mora County.

Section 5.2: It shall 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.

Section 5.3: It shall 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.

Section 5.4: It shall 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.

Section 5.5: 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 1<sup>st</sup> or 5<sup>th</sup> 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.

Section 5.6: 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 law 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.

Section 5.7: No permit, license, privilege or charter issued by any state or federal agency, Commission or Board to any person or any corporation operating under a State charter, or any director, officer, owner, or manager of a corporation operating under a State charter, which would violate the prohibitions of this 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 Hidalgo, the New Mexico Constitution, the United States Constitution, or other laws, shall be deemed valid within Mora County.

Section 5.8: The New Mexico Constitution's Bill of Rights, and the United States Constitution's Bill of Rights and amendments thereto, shall be recognized as preemptive law within the County of Mora only to the extent that their interpretation and application 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.

Section 5.9: Laws adopted by the legislature of New Mexico and rules adopted by any State agency, and laws adopted by the United States Congress and rules adopted by any federal agency, shall be recognized as preemptive law within the County of Mora only if those laws and rules both expressly preempt County ordinances and charters, and provide greater protections for the health, safety, and welfare of the people of Mora County than County ordinances and charters.

## **Section 6. Strict Liability**

Section 6.1: Persons using corporations to engage in the extraction of oil, natural gas or other hydrocarbons in a neighboring municipality shall be strictly liable for all harms caused to the health, safety, and welfare of the residents of Mora County from those activities, and for all harms caused to ecosystems and natural communities within Mora County.

## **Section 7. Future Lost Profits**

Section 7.1: Within the County of Mora, corporate claims to "future lost profits" shall not be considered property interests under the law, and thus, shall not be recoverable by corporations seeking those damages.

## **Section 8. Enforcement**

Section 8.1: 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.

Section 8.2: 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.

Section 8.3: 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.

Section 8.4: Any person or municipality who brings an action to secure or protect the rights of natural communities or ecosystems against oil and gas extraction within Mora County shall bring that action in the name of the natural community or ecosystem in a court of competent jurisdiction. Damages shall be measured by the cost of restoring the natural community or ecosystem to its pre-damaged state, and shall be paid to the County of Mora or other applicable governmental entity, to be used exclusively for the full and complete restoration of the natural community or ecosystem.

Section 8.5. Reinstatement of Moratorium on Oil and Gas Extraction. 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.

### **Section 9 Effective Date and Existing State Permit Holders**

This Ordinance shall be effective five (5) days after the date of its enactment, at which point the Ordinance shall apply to any and all extractions of oil, natural gas, or other hydrocarbons in Mora County regardless of the date of any applicable governmental permits.

### **Section 10. County Commission Action and Voter Referenda to Repeal Ordinance**

The foundation for the making and adoption of this law is the people's fundamental and inalienable right to govern themselves, and thereby secure their rights to life, liberty, and the pursuit of happiness. Accordingly, this Ordinance automatically suspends the operating rules of the Mora County Commission when the question of repealing this Ordinance is introduced. Repeal of this ordinance shall require both a unanimous vote of the Mora County Commissioners voting in favor of the repeal of the ordinance, and a voter referenda following that vote which shall make the repeal effective only if two thirds of the Mora County electorate vote to repeal the ordinance.

### **Section 11. People's Right to Self-Government - Preemption**

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 their 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 their elected officials.

### **Section 12. New Mexico Constitutional Changes**

Through the adoption of this local law, the people of Mora County call for amendment of the New Mexico Constitution to explicitly secure a community right to local self-government that cannot be preempted by the State if the community's laws enforce rights or standards more protective of the health, safety, and welfare of the people of Mora County and the natural environment, communities, and ecosystems. The people of Mora County also call for a state constitutional amendment that explicitly elevates community rights above corporate property rights, and that recognize the rights of nature enforceable by the residents of a community.


### **Section 13. Severability**

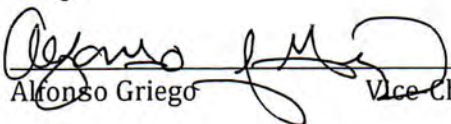
The provisions of this Ordinance are severable. If any court of competent jurisdiction decides that any section, clause, sentence, part, or provision of this Ordinance is illegal, invalid, or unconstitutional, such decision shall not affect, impair, or invalidate any of the remaining sections, clauses, sentences, parts, or provisions of the Ordinance. The 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.

All inconsistent provisions of prior Ordinances adopted by the Mora County Commission are hereby repealed, but only to the extent necessary to remedy the inconsistency.

ENACTED AND ORDAINED this 29 day of April 2013, by the Mora County Commission.

**Mora County Board of Commissioners**

  
John Olivias Chair

  
Alfonso Griego Vice Chair


Paula Garcia Member

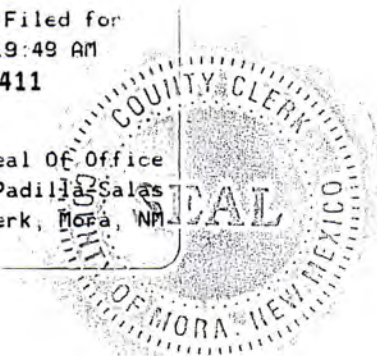
Attest:   
Joanne E. Padilla Salas County Clerk



COUNTY OF MORA )  
STATE OF NEW MEXICO ) ss  
ORDINANCE COUNTY RECORDS NO FE  
PAGES: 7

I Hereby Certify That This Instrument Was Filed for  
Record On The 2ND Day Of May, 2013 at 08:19:49 AM  
And Was Duly Recorded as Instrument **20130411**  
Of The Records Of Mora County

Deputy  Witness My Hand And Seal Of Office  
Joanne E. Padilla Salas  
County Clerk, Mora, NM



## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) \_\_\_\_\_

**DEFENDANTS**

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) \_\_\_\_\_

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question  
(U.S. Government Not a Party)
- ☐ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding    ☐ 2 Removed from State Court    ☐ 3 Remanded from Appellate Court    ☐ 4 Reinstated or Reopened    ☐ 5 Transferred from Another District (specify)    ☐ 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    DEMAND \$

CHECK YES only if demanded in complaint:

**JURY DEMAND:**    ☐ Yes    ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE \_\_\_\_\_ SIGNATURE OF ATTORNEY OF RECORD \_\_\_\_\_

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

# INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

Attachment 1 to Civil Cover Sheet

I. (c) Plaintiffs' Attorney Information

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