

# HUNDREDS OF COMMUNITIES ARE BUILDING LEGAL BLOCKADES TO FIGHT BIG CARBON



In *This Changes Everything*, Naomi Klein explores one of the decisive roles that Indigenous peoples and their allies are playing in the struggle to keep this planet habitable. Simply put: many Indigenous communities possess unique legal rights that are proving indispensable to the climate change fight, allowing them to block new carbon frontiers from being opened on ancestral lands.

As Klein also explains, “long protected ways of seeing are spreading in a way that has not occurred for centuries. . . . [Indigenous] legal concepts are now being adopted and proposed in non-Indigenous contexts.” She gives the example of Pittsburgh, PA, whose city council passed a 2010 ordinance introducing the right to local self-governance and the legal “rights of nature,” while also prohibiting natural gas extraction as a violation of those rights.

As the Pittsburgh experience demonstrates, some communities threatened by fossil fuel extraction are finding that their rights to protect themselves and the natural systems they rely on for survival do not exist, even on paper. In the Indigenous context, the tactical key is the creative enforcement of existing rights; in the U.S., introducing new ones is also critical. The Community Environmental Legal Defense Fund, which advised the Pittsburgh city council on its pioneering ordinance, is helping to do exactly that.

CELDF has provided free legal council to some 500 municipalities, townships and counties in the U.S., 200 of which have adopted CELDF-drafted ordinances that establish “Community Rights” and the rights of nature. As of September 2014, states where communities have passed these laws—at town meetings, or through initiative processes or simple votes by local representatives—include Maine, New Hampshire, Massachusetts, New York, Pennsylvania, Maryland, California, Virginia, Colorado, Ohio, and New Mexico. CELDF also aided the special Ecuadorian Constituent Assembly in its successful effort to include enforceable rights of nature in the country’s most recent constitution.

Communities like Mora County, New Mexico, whose arid lands and precious water face contamination from fracking, have learned that defining new rights is not enough.

In 2013, Mora introduced the rights of la Querencia de La Tierra—local Indigenous peoples’ conception of homeland—along with the right to self-government, becoming the first U.S. county to ban all fossil fuel extraction. Mora’s ordinance, passed by a vote of the county council, is currently being challenged in federal court by a subsidiary of Royal Dutch Shell. It is the first such legal test of Community Rights and the rights of nature in the U.S.

To be fully enjoyed, local rights must trump the legal privileges that allow unfettered extraction. Seeing this, the localities CELDF works with *explicitly* elevate their Community Rights and the rights of nature above corporate ones.

This is a clear challenge to the legal paradigm that has favored property and commerce in Western democracies and that has been used to displace Indigenous and other communities for centuries. The US Constitution’s foundational Commerce Clause is a primary example, having long limited the ability of local and state lawmakers to interfere with the flow of trade.

U.S. law rightfully prohibits local, state and federal governments from violating human rights, but it also bars us from passing laws that violate the rights of corporate “people.” This power structure has deep roots.

In interpreting the 14th Amendment in 1886, the U.S. Supreme Court granted “equal protection” to corporations; as early as 1819, it had redefined charters given by state governments to private corporations as contracts, or agreements among *equals*.

Sovereignty on the scale at which we live, as well as respect for the natural systems on which we all depend, have long eluded our legal systems in the West. For communities fighting Big Carbon, it is becoming increasingly evident that a movement to abolish fossil fuel extraction must include winning democratic rights for local life, human and otherwise.

Looking to past social movements, these communities recognize that exposing unjust laws—like those permitting oil and gas extraction against the will of local majorities—is the first step in the process of overturning them. By passing “Community Bills of Rights” that establish the rights of self-government, the rights of nature, and other rights linked to health, safety and welfare, such as the right to water—and by clearly elevating them above corporate privileges—they are committing civil disobedience. It’s an organizing strategy.

As in Pittsburgh and Mora County, many communities are also striving to actually keep carbon in the ground, by banning oil and gas extraction as violations of newly created rights.

As CELDF executive director Thomas Linzey, Esq., tells me: “Our work is about stopping pipelines, infrastructure, fossil fuel extraction, etc., and stopping the doctrines that have generally overridden the authority of communities to say ‘no’ to those projects.” As growing numbers of cities, towns, and counties decide to assert that authority, the fossil fuel industry will surely fight back—and CELDF expects that more court challenges like the Mora County case will help to further expose our corporate-friendly laws.

Currently, CELDF-drafted ordinances have only been adopted by local communities, but organizers are beginning the drive for change at the state level. There are now statewide Community Rights Networks in Maine, New Hampshire, Pennsylvania, Ohio, Colorado, New Mexico, Oregon and Washington, all working to pass laws similar to one recently proposed in Colorado. There, Community Rights advocates petitioned to get a state constitutional amendment on the ballot asking voters if there should be an “inherent right to local self-government in counties and municipalities, including the power to enact laws to establish and protect fundamental rights of individuals, communities, and nature and the power to define or eliminate the rights and powers of corporations.” Though they did not gather enough signatures to qualify for the 2014 ballot, they vow to try again in 2016.

These laws are not only acts of civil disobedience and legislative rebellion: they are also visions of a new legal structure that prioritizes self-governance and the rights of nature over corporate bottom lines. As Linzey says, they “are about revealing to more and more people the system under which they live, and helping them to then put into place the system that they want and need.” And when enough state governments get on board, driving this Indigenous-inspired framework into the federal constitution will be next.

Source: <http://readthedirt.org/hundreds-of-communities-are-building-legal-blockades-to-fight-big-carbon>