

Communities battle state preemption and corporate privilege to legalize sustainability

"We are going to defend our property rights like any other property owner would. That means defending our rights under the state and federal constitutions."

Those following the heroic efforts to stop the proposed Pacific Connector Gas Pipeline might attribute these words to any one of the more than 600 affected landowners along the 234-mile route.

Indeed, almost the identical words have been spoken by Ten Mile resident and second generation Marine, Frank Adams.

After serving in Vietnam, Adams spent decades fighting his government before it would acknowledge his chronic health issues are a direct result of exposure to Agent Orange. Now, that same government wants to allow a pipeline company to bisect his property with a 36" diameter pipeline and spray it regularly with herbicides all to benefit a handful of Canadian shareholders.

Those words could have been uttered by any of us in the course of a lifetime. In fact, those words came from Rob Boulware, a representative of Texas based Seneca Energy Resources. In

2013, the plucky little community of Highland Township, PA asserted its right to local self-government and democratically enacted, by a wide margin, an ordinance to prohibit Seneca from injecting fracking waste under the community. Last year Seneca, a multibillion dollar company, sued the township, population 495, in federal court claiming the ban violates the constitutional rights of the corporation.

This week, Josephine County Circuit Court Judge Pat Wolke struck down a pro-sustainable agriculture law democratically adopted by the people of Josephine County in May 2014 banning GMO crops.



A crop duster applies chemicals to a field of vegetation.

State preemption is a judicial invention dating back more than 60 years, legalizing state control over local communities. In Oregon, preemption laws like SB-863 passed in 2013 and dubbed the Monsanto Protection Act, are written and designed to protect industrial agriculture over sustainable agricultural practices by centralizing power at the state level.

“The state law says that the localities may not legislate in this area; and the voters of Josephine County have attempted to legislate in the exact same area.” Wolke said in the May 16 ruling.

One day after Wolke’s ruling Hood River County voters, again by a wide margin, passed an ordinance effectively banning Nestle Waters from bottling 100 million gallons annually from Oxbow Springs, near Cascade Locks and distributing under its Arrowhead brand.

For the moment, at least, Nestle, unlike Seneca, seems resigned to the outcome. A company spokesman said Nestle is ‘disappointed’ but, “we respect the democratic process.” Proponents of the measure, however, fully expect Nestle to sue.

It remains to be seen whether Nestle will have a change of heart and sue Hood River County but communities across the nation are discovering that democracy holds little sway when corporations claim their constitutional rights trump the fundamental rights of the community to clean air, water and sustainability.

Therein is the essence of a struggle taking place all over America. Under our current regulatory system, communities cannot say NO to corporate harm and the courts have little judicial discretion except to side with the corporation over the community. The net effect is that corporate boards of directors are making life changing decisions for communities rather than the people who live and work in them.

Tired of being constrained within the regulatory fallacy, more and more communities are nonetheless attempting to use law to defend against non-sustainable industrial practices that threaten their way of life. Hood River and Josephine counties are prime examples. Time and time again these efforts to determine their own fate are preempted by state and federal regulations.

These battles have become so contentious that another feisty community, Grant Township, PA, just made civil disobedience a civic duty. The township passed an ordinance that asserts "the right to participate in nonviolent acts of civil disobedience/direct action in the effort to prevent the construction of a deep injection well that's inconsistent with the township charter that ostensibly protects its members' right to clean water."

The Oregonians for Community Rights qualified a citizen initiative earlier this year to amend the Oregon Constitution to confirm the right to local self-government. The political arm to the Oregon Community Rights Network, the amendment would secure decision-making authority at the community level so that visions for sustainable agriculture, energy, and economies, can be adopted and protected from state action to overturn such laws. Oregon's Right of Local Community Self-Government amendment is currently involved in a legal challenge with the state regarding broader initiative petition circulation.

Coos County voters will have an opportunity to establish a countywide bill of rights this November that expands upon the existing Bill of Rights. Rather than leaving our fate to regulators, The Coos County Right to a Sustainable Energy Future Ordinance will affirm our right to be self-determining

and will elevate the rights of the community over corporate privilege.

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