

August 2, 2016

Water Concerns Unite Citizen Activists

A Community Rights Movement Transcends Party, Age, and Gender

Cliff Brown

Summary

This study focuses on an instance of sustained local activism in which citizens in three New Hampshire communities mobilized to protect community groundwater against threats from commercial use. Beginning in 2001, despite strong citizen opposition, state-issued permits allowed a private company, USA Springs, to commence work on a large water-bottling operation that would have pumped over 400,000 gallons daily from Nottingham and Barrington. Activists fought back through state agencies and the courts, engaging in a lengthy campaign that involved petitioning, lobbying, community meetings, rallies, public protests, and a State Supreme Court case. Meanwhile, and absent an immediate threat to their own town's water, Barnstead residents worked proactively with a public interest law firm based in Pennsylvania to develop the nation's first local ordinance prohibiting the taking of community water by corporations. Ultimately, Nottingham and Barrington followed suit, crafting their own ordinances and joining a growing community rights movement that has taken hold in at least twelve states. After a fight that spanned more than a decade, the Nottingham and Barrington activists ultimately prevailed. The company went bankrupt, and water bottling never commenced. Although many factors—including the dedication and persistence of the activists themselves—contributed to the victory, the case suggests that local ordinances can be an effective tool for mobilizing and educating residents, encouraging deliberative dialogue around environmental and resource issues, and deterring unwanted commercial activity.

Introduction

Engaging government through established channels, such as voting and speaking at town meetings, resonates with our sense of citizenship and is a partial fulfillment of the shared responsibility of living in a democratic society. But when people perceive that established channels are deficient or have broken down, social movements sometimes arise. Campaigns supporting labor

About Carsey Perspectives

Our "Carsey Perspectives" series presents new, innovative ideas and ways of looking at issues affecting our society and the world.

KEY FINDINGS



Unlike other natural resource and environmental issues, threats to community water precipitate a high level of concern and activism, even among those lacking prior experience with environmental or political protest.



Water concerns and interest in preserving community control transcend political divisions. The campaign to protect local water united residents from across the political spectrum, distinguishing the effort from other movements that tend to speak to distinctly liberal or conservative constituencies.



Barnstead's first-in-the-nation prohibition on corporate water privatization and the passage of similar bans in other New Hampshire towns suggest that rights-based ordinances, though sometimes controversial, provide a focal point for activism that meshes well with a tradition of local, town-based politics.



Activism during the USA Springs campaign has fostered subsequent civic engagement. Participants have become involved in local government, creating an enduring legacy of political engagement and vigilance.

protections, civil rights, women's rights, environmentalism, and same-sex marriage, and movements opposing war, nuclear power, and abortion, give voice to groups who believe that the routine operation of government does not serve their interests well. Consequently, social movements typically challenge established practices through petition drives, lobbying, vigils, performances, marches, strikes, boycotts, demonstrations, or violent acts that draw attention to a cause, shape public opinion, and influence those in authority.¹

This brief presents a case study of one particular movement, with deep roots in New Hampshire, that intersects with a larger campaign for community rights. Although its agenda overlaps with environmentalism and shares with the Occupy Movement a critique of corporate power, a defining characteristic of this movement is a belief in the power of community civil engagement for wresting political authority from non-local state and economic actors.² The following case study of the fight against USA Springs draws on published accounts, public documents, materials produced by social movement organizations, observations from meetings, and interviews with activists to show how the larger community rights movement shaped the campaign in Nottingham, Barrington, and Barnstead. In this particular case, a threat to a vital natural resource—water—galvanized citizens and brought many into the larger campaign for community rights.³

Threats to Water: The Context of Community Activism

In 2010, the United Nations declared access to clean water a basic human right, yet over 1 billion people worldwide lack clean drinking water.⁴ Climate change has increased variability in rainfall, and as societies rich and poor have compromised water quality, water is being extracted from below the surface at an unsustainable rate.⁵ California's ongoing drought, the West Virginia chemical spill that tainted water for 300,000 Charleston residents, an algae-related tap-water ban for 400,000 in Toledo, the Flint, Michigan water crisis, and recent revelations about the probable carcinogen perfluorooctanoic acid (PFOA)

Box 1: The Community Rights Movement and 'Rights-Based Ordinances'

The community rights movement is associated with a legal strategy developed by the Community Environmental Legal Defense Fund (CELDF), a Pennsylvania public interest law firm founded in 1995. Rather than fight local environmental threats through state permitting and appeals processes, CELDF helps communities develop their own local ordinances (called rights-based ordinances, or RBOs), described as “collective nonviolent civil disobedience through municipal lawmaking.”^a RBOs allow residents to formally restrict or ban corporate activities considered to be incompatible with local priorities. They shift “the focus from merely regulating environmental harms to subordinating corporations to community control.”^b RBOs provide a focal point for engaging citizens and public officials in a deliberative dialogue that prioritizes local values, establishes the acceptable scope of corporate activity, and allows voters to define their own vision of sustainability.

Because RBOs directly confront federal and state laws that preempt local statutes and grant personhood rights to corporations, CELDF maintains that corporate challenges to RBOs in many ways reveal how regulatory and permitting processes protect commercial interests at the expense of local democracy and environmental sustainability. In the last decade, nearly 200 communities in a dozen states have passed RBOs targeting factory farming, sludge dumping, mining, hydraulic fracturing, energy projects, and corporate water withdrawals as part of a grassroots movement that may ultimately lead to state and federal constitutional reforms. Since 2010, state-level community rights networks have emerged in Colorado, New Hampshire, New Mexico, Ohio, Oregon, Pennsylvania, and Washington to coordinate geographically dispersed, issue-diverse community RBO efforts across the nation.^c

a. Barry Yeoman, “Rebel Towns,” *The Nation*, January 16, 2013, <http://www.thenation.com/article/172266/rebel-towns>.

b. Thomas Linzey and Anneke Campbell, *Be the Change: How to Get What You Want in Your Community* (Salt Lake City: Gibbs Smith, 2009), 15.

c. CELDF, *On Community Civil Disobedience in the Name of Sustainability* (Oakland, CA: PM Press, 2015), 26-29; “State and National Networks,” <http://celdf.org/join-the-movement/where-we-work/state-national-networks/>.

in the nation's water supplies all underscore the perilous state of water in the United States.⁶ Threats to water have evolved in tandem with increased corporate control through a variety of mechanisms, including large-scale water-bottling operations.⁷ Federal laws such as the Clean Water Act (1972) and

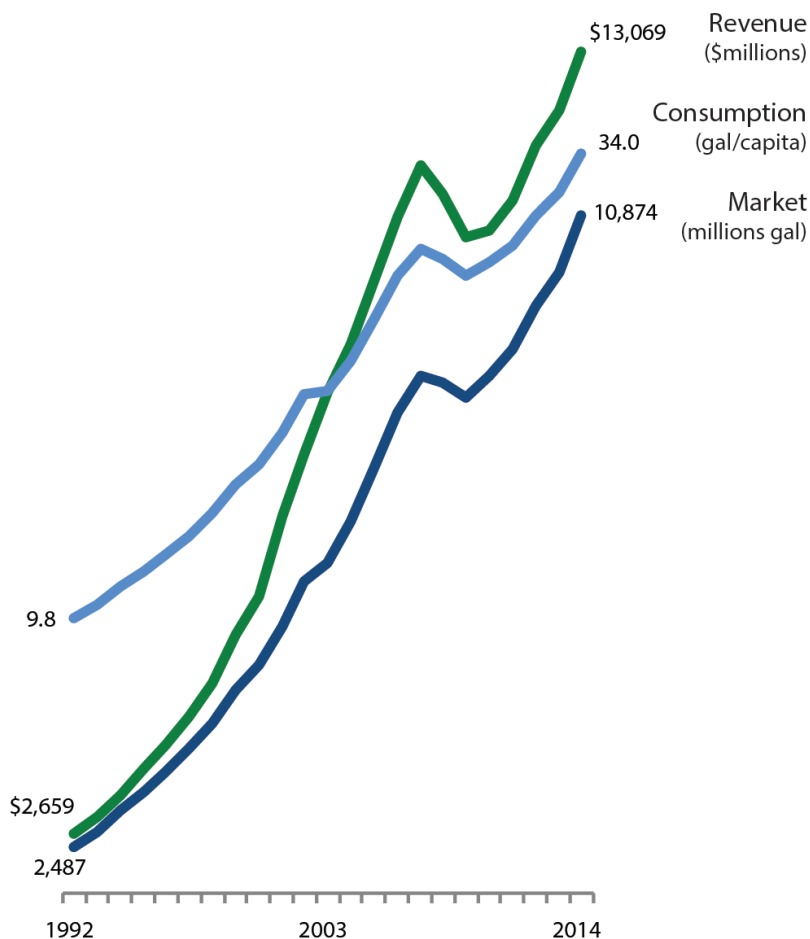
the Safe Drinking Water Act (1974) regulate water quality, but groundwater withdrawals are managed through a patchwork of state-level statutes and permitting processes.⁸ As a result, citizens in many small, rural, and water-rich communities have organized to limit bottled-water operations.

Bottled water is ubiquitous: it is marketed and sold globally, but specific locales feel the industry's impact. The rapid ascendancy of the industry (Figure 1) has sparked strong opposition in communities across California, Florida, Michigan, Maine, Massachusetts, New Hampshire, New York, Oregon, Texas, Vermont, and Wisconsin. The three northernmost New England states host over thirty water-bottling or extraction sites, with most of those in Maine owned by Nestlé.⁹ Activists and residents cite many concerns about bottled-water operations, including threats to local groundwater, ecosystem impacts, and truck traffic that may bring noise, congestion, accidents, and higher infrastructure costs.¹⁰ Although industry defenders suggest that the quantity of water used for bottling is comparatively small, opinions differ on both the consequences of withdrawing several hundred thousand gallons daily from local aquifers and the relative benefits for local employment and tax revenue the industry provides.¹¹ More broadly, bottled water operations often stoke anti-corporate sentiment and raise questions about whether state regulatory structures adequately protect citizens' interests. In some cases, residents have been surprised to find that bottled-water companies have received state permits, drilled wells, initiated water testing, and started to negotiate long-term agreements without any public input.¹²

The Fight Against USA Springs

In the summer of 2001, residents in Nottingham and Barrington, New Hampshire began what would become a thirteen-year effort to prevent USA Springs from taking up to 439,000 gallons of groundwater per day from a site straddling the two largely rural,

FIGURE 1. BOTTLED WATER IN THE UNITED STATES



Sources: International Bottled Water Association (<http://www.bottledwater.org/>); Beverage Marketing Corporation (<http://www.beveragemarketing.com/>)

wildlife-rich communities.¹³ In April, the company had applied to the State Department of Environmental Services (DES) for water-pumping permits, and the next month the Town of Nottingham Zoning Board of Adjustment gave USA Springs a special exemption that allowed the site, zoned as residential land, to be used for commercial purposes.¹⁴ In June, DES hosted a public meeting in Nottingham. Area residents dependent on private wells were alarmed by potential impacts on groundwater quantity and quality, traffic flow, public safety, and infrastructure costs. Many also had reservations about

bottled water in general, citing the waste and toxicity linked to the manufacture of plastic, the climate impacts of transporting bottled water to supply national or international markets, and the ethics of water privatization.¹⁵ Citizens quickly organized, forming Save Our Groundwater in 2001, Neighborhood Guardians in 2005, and the Nottingham Water Alliance in 2007.¹⁶

The rapid mobilization of grassroots opposition to USA Springs stands in contrast with some indications that environmental activism is on the wane. For instance, the share of General Social Survey¹⁷ (GSS)

respondents who were a member of an environmental group declined from 10.3 percent in 1993 to 5.5 percent in 2010. Despite the slump, interest in the state of the environment remains high. In 2014, 41.2 percent of GSS respondents claimed to be “very interested” in environmental pollution, and 58.3 percent said that the United States spends “too little” on protecting the environment. Water concerns are particularly acute, with 70.2 percent viewing the pollution of the nation’s rivers, lakes, and streams as “very dangerous” or “extremely dangerous.”¹⁸

Scholars have long observed that pro-environmental beliefs may be insufficient to incite activism, but the urgent, localized nature of the USA Springs operation and the view that water is fundamentally different from other resources compelled many residents to get involved.

Scholars have long observed that pro-environmental beliefs may be insufficient to incite activism, but the urgent, localized nature of the USA Springs operation and the view that water is fundamentally different from other resources compelled many residents to get involved. As one Maine activist stated, “If people don’t have drinkable water, nothing else can happen.”¹⁹ Demonstrators frequently carried signs or wore T-shirts that read, “Water Is Life!” or “Our Water Is Not for Sale!” One long-time water activist in Maine said, “Water is so basic to human life. If you pump and carry your water, if your water freezes in the winter, you get a real idea

about its value.” A participant with no prior history of activism said, “Communities need a certain threat and a particular mindset” to mobilize. Another offered, “It’s not until it hits home that you think about it.” The corporate taking of water privatizes a resource that many perceive as a public good. “Going back to Rome, access to water has always been a common right.” One Nottingham resident suggested, “Water is a basic human need and a shared resource. It isn’t to be mined or stolen.” Many activists shared this view, believing that officials who allowed bottled-water operations over their objections had betrayed the public trust.

‘There is something fundamental about water’

The fight against USA Springs attracted a politically diverse group of activists, all of whom were involved in community and state-level struggles against USA Springs in New Hampshire and Nestlé Waters in Maine. Most had no prior activist experience, although a few had served on town planning or zoning boards and one was a former state legislator. Another interviewee had worked on behalf of regional anti-nuclear and anti-war groups in the past. Two-thirds were women, and activists ranged in age from the mid-twenties to mid-seventies. Interviewees identified as liberals, conservatives, libertarians, and independents and, when asked, contended that the movement brought people together irrespective of political views. One small-business owner, in his fifties and “more of a conservative person,” suggested, “Connections emerged from the threat that crossed [differences in] political beliefs. Folks that normally wouldn’t be together

came together through this. People go through life like a horse with blinders, and when you remove those blinders, a lot of personal growth can occur.” An activist in her twenties stated more pointedly, “There is something fundamental about water that crosses party lines.”

The larger community rights movement with which the USA Springs fight later connected has also garnered support from across the political spectrum. Community Environmental Legal Defense Fund founder Tom Linzey suggests that the community rights campaign “is unique in defying the usual red state–blue state or liberal versus conservative delineations.”²⁰ In New Hampshire and Maine, more than twenty towns have worked with CELDF to develop—and in many cases, enact through a town vote—rights-based ordinances that restrict projects involving water bottling, industrial wind, utilities and energy transmission, and transportation. Two projects have been a particular focus. The Northern Pass, which would bring hydroelectric energy from Canada to New England along a 192-mile path through New Hampshire, has been targeted by RBOs in Easton, Plymouth, Sugar Hill, Grafton, and Thornton. The East-West Corridor, a roughly 220-mile transportation route through central and northern Maine, has initiated RBOs in Charleston, Parkman, Sangerville, and Cambridge. Other RBOs in the two states have had water issues as their central focus.

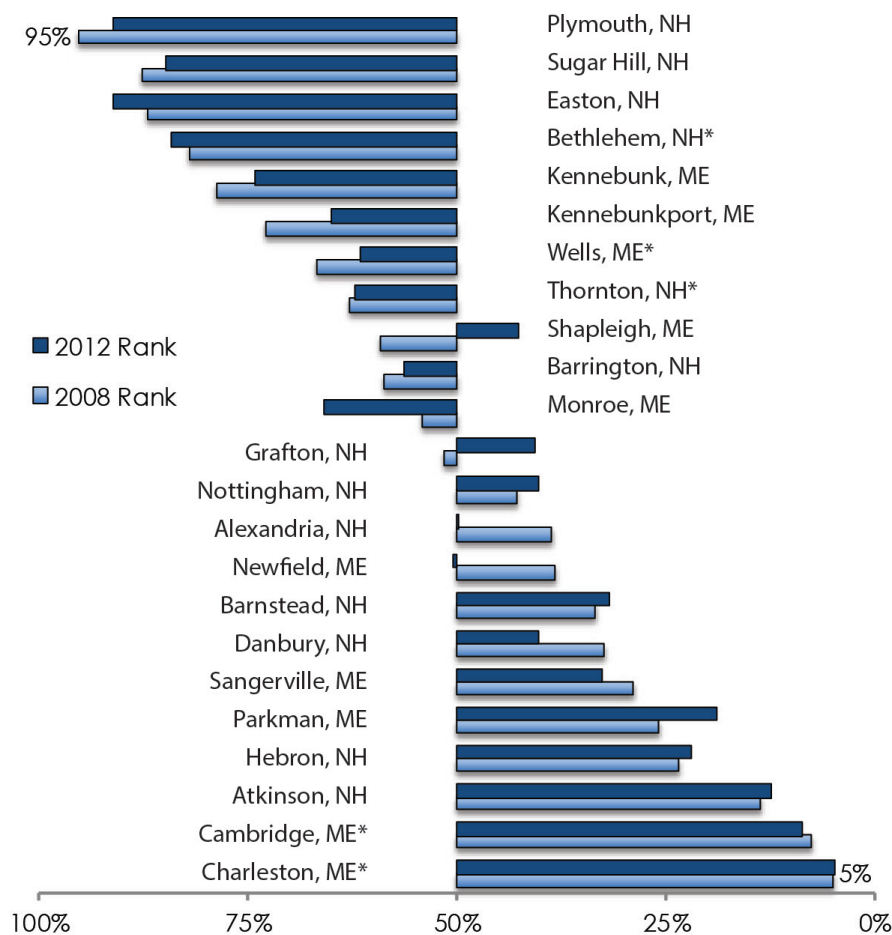
The bipartisan nature of the community rights movement is evident in the range of town-level support for/opposition to the Democratic candidate during the last two presidential elections.

Figure 2 plots the percentile rank of the vote for Barack Obama in towns that have drafted or adopted RBOs since 2006.²¹ The rankings are based on election results for all towns in the states of Maine and New Hampshire. For instance, Obama received 69.7 percent of the 2008 vote in Plymouth, putting it in the top 95th percentile (that is, among the most liberal) for some 850 towns in the two states. In contrast, Obama received only 32.1 percent of the 2008 vote in Charleston, which put the town in the bottom 5th percentile (that is, among the least liberal). Although Obama lost some supporters between 2008 and 2012 in many Democratic-leaning (top half of the graph) and Republican-leaning communities (bottom half of the graph), towns tended to vote the same way in both elections. The fact that the twenty-three RBO towns so completely represent the breadth of the political spectrum in Maine and New Hampshire speaks to the broad appeal of the community rights movement and its ability to galvanize activists across a range of issues, all of which have an environmental dimension. As one interviewee explained, “In rural areas, we are much closer to what is happening in the natural environment. It is visceral. And it’s all connected. You can’t abuse any piece of the system and expect to get away with it.”

‘Corporations Are Not Good Citizens’

An early indication that USA Springs might be not just a huge consumer of water but also a poor environmental steward came in August 2001, when a DES inspection found numerous wetlands violations at the nearly 100-acre

FIGURE 2. PERCENTILE RANK OF OBAMA VOTE IN 2008 AND 2012 ELECTIONS, RBO TOWNS



Note: * Asterisk indicates RBO failed to pass or has not come up for a vote.

Sources: Department of the Secretary of State for New Hampshire (<http://sos.nh.gov/>) and Maine (<http://www.maine.gov/sos/index.html>); New Hampshire Community Rights Network (<http://nhcommunityrights.org/>); CELDF (<http://www.celdf.org/index.php>)

site in Nottingham and Barrington. State officials ordered the company to submit a restoration plan and required water pump testing to assess impacts on area wells and possible hazardous waste migration from an adjacent property. In an effort to forestall the project, activists mobilized to block the testing throughout late 2001 and for most of the following year. They urged residents to contact DES and their town officials, state legislators, and congressional representatives. They contested permit applications

needed to conduct the tests and (unsuccessfully) sought an injunction.²² Save Our Groundwater staged several public protests prior to and throughout the ten-day test period in late November 2002. Activists also petitioned to subject Article 20, “Are you in favor of the removal of 439,000 gallons of water daily (160 million gallons yearly) as proposed by USA Springs,” to an advisory vote at the 2002 town meeting. There was only one affirmative vote out of 154 cast.²³ The pump test results, submitted to the state in February

2003, showed significant movement of contaminants from the adjacent property into the aquifer, and water levels in area wells up to one-half mile away had dropped. A real estate trust affiliated with USA Springs purchased the neighboring 14-acre parcel in June 2003 to initiate a cleanup, but the problems revealed by the pump tests, including the contamination, effects on abutters' wells, low aquifer recharge rates, and potential wetlands and surface water impacts led DES to deny the pump permits in August 2003.²⁴

DES rejected a subsequent appeal by USA Springs on December 11, 2003, prompting the company to submit a new permit application only a few weeks later.²⁵ Cleanup of the hazardous waste on the neighboring site began, and on July 1, 2004, the DES commissioner issued a conditional permit allowing USA Springs to pump over 307,000 gallons daily. Opponents appealed the decision, which DES denied the following month.²⁶ The reasons for the DES reversal are unclear. The scientific, technical, and environmental evidence that had served as a basis for denial of the pump permits the previous summer were not challenged in the second permit application, and USA Springs submitted no new evidence to allay those concerns. However, a political shift in the state—including a new governor and DES commissioner—may have contributed to the outcome.²⁷ As one activist stated, “The state didn’t listen once the politics shifted.” In August 2004, the state denied new appeals by residents of Nottingham, Barrington, and Save Our Groundwater, and USA Springs submitted a permit application to build a 400,000-square-foot bottling facility.²⁸

For some, the events that unfolded between 2001 and 2004 confirmed the sentiments of one long-time water activist, who suggested, “Corporations are not good citizens and don’t contribute unless it is in their interests.”

For some, the events that unfolded between 2001 and 2004 confirmed the sentiments of one long-time water activist, who suggested, “Corporations are not good citizens and don’t contribute unless it is in their interests.” Undeterred, Save Our Groundwater activists and the towns of Barrington and Nottingham fought back, each filing appeals with the New Hampshire Supreme Court in September 2004.²⁹ Save Our Groundwater based its case on the argument that “the DES permit violated the public trust doctrine because it allowed privatization” of groundwater.³⁰

‘The Regulatory Process Is a Rigged Game’

From the beginning, USA Springs forced the community into a reactive stance by drawing activists into a lengthy, tedious, and expensive regulatory fight that coalesced around efforts to block or revoke permits granted to the company. Frequently, state officials and agencies told the affected towns and activist groups that municipalities and residents did not have legal standing to appeal state decisions. As one activist said, “The regulatory process is a rigged game. Municipal governments have been made subservient to the state, and DES functions to facilitate the permitting of business and industry.

When we showed up in numbers, officials said they couldn’t do anything.” Disappointed that the pump test results and analyses conducted by hydrology experts did not give the community grounds to deny the project, one activist stated, “All of us had really counted on the science. We wanted verifiable science that the bottled-water extraction would not harm the community or the water, but once the permit went forward, it was like nothing could stop it.” Another stated, “I was just as naïve as the next person [and assumed that] if we don’t want them, they can’t come. Once a permit is granted, residents can do little.” An activist and town planning board member from Maine involved in the fight against Nestlé said, “Once large-scale water extraction gets into your town, you’ll have a hard time limiting them.”³¹ In addition, the preemptive nature of state law, which subordinates local decision making to the permitting process, was often a source of frustration. “Local communities lack the resources and experience to evaluate risks, and local boards do not have the technical expertise. Once the state gave the [water withdrawal] permit, the planning board felt that it could not legally deny the building permit for the bottling plant.”

Less than 20 miles away, and in response to events in Nottingham and Barrington, citizens of Barnstead mobilized to protect the town from any future efforts to initiate corporate water withdrawals. Given its older, more conservative profile and the lower economic endowments of its citizens (see Table 1), Barnstead might seem an unlikely site for anti-corporate community activism. However, Nottingham and Barrington’s fight

TABLE 1. SNAPSHOTS OF BARNSTEAD, BARRINGTON, AND NOTTINGHAM, NEW HAMPSHIRE

	Barnstead	Barrington	Nottingham
Population	4,605	8,842	4,855
White	99.9%	98.4%	97.2%
Median age	44.1	43.4	43.7
Over 65	15.4%	9.5%	9.3%
BA degree or higher	18.1%	29.1%	21.8%
Median household income	\$66,838	\$82,431	\$86,250
Median home value	\$179,300	\$252,900	\$270,000
Poverty	4.8%	6.3%	3.0%
2016 primary: Dem/Rep votes	43.3% (56.7%)	51.7% (48.3%)	46.8% (53.2%)
Dem vote for Sanders	71.4%	65.1%	63.4%
Rep vote for Trump	44.9%	37.2%	40.6%

Note: “White” is “white alone,” BA degree is for those 25 or older, and poverty is for individuals. In all three communities, Sanders and Trump won the town-level primary vote by a large margin. Sources: U.S. Census Bureau, American FactFinder (<http://factfinder.census.gov/>); New Hampshire Public Radio (<http://nhpr.org/post/2016-presidential-primary-results>).

against USA Springs made salient in Barnstead what had previously been only an abstract concern about incursions on water. At its 2005 annual town meeting, attendees unanimously resolved to craft an ordinance that would safeguard the community’s water. Six residents volunteered for a committee that would draft language for the ordinance, which would be presented at the next annual town meeting. The committee sought help from Thomas Linzey and CELDF, held regular monthly meetings, and hosted community education activities.³² Once the ordinance was drafted, the committee began a letter-writing campaign to educate area residents. Some—including local business owners, hunters, and loggers—were concerned that the ordinance, which put significant restrictions on the abilities of corporations to infringe on the “rights of natural communities and ecosystems,” might limit their own

freedoms. Organizers petitioned residents and secured more than three times the number of signatures necessary to bring the ordinance to a town vote. In February 2006, the CELDF provided a weekend education and training session, or “Democracy School,” for residents.³³

By the time of the March 2006 annual town meeting, members of the community had a good understanding of the issues. The public education campaign largely allayed concerns voiced by local businesspeople and hunters, and residents voted overwhelmingly in favor of the ordinance. There was only one dissenting vote.³⁴ Citing authorities granted by the New Hampshire State Constitution, state law, the Declaration of Independence, and the United Nations, the ordinance preempted large-scale bottled water operations of the type that already existed by the dozens in New Hampshire, Maine, and Vermont. The ordinance went further, however, by stripping corporations of the “right of

personhood,” preventing corporate claims to “future lost profits,” and, as later amended, recognizing and protecting the “rights of nature.”³⁵

Key to its passage was the example of what was happening in the ongoing USA Springs fight to the southeast. As one Barnstead activist recalled, there was widespread sentiment that “We don’t want to be Nottingham.” Another resident noted that the “ordinance would not have passed if it weren’t for the legal fees of Nottingham and Barrington. It’s as if people have to have something that’s threatening before they’re willing to move.”³⁶ By providing a framework for codifying local priorities that dovetailed with the citizens’ sense of urgency and the culture of town-based governance in New Hampshire, the ordinance provided a template for action that aligned well with residents’ concerns. The outcome made Barnstead the first community in the nation to prohibit corporate privatization of local water. To date, the ordinance has not been challenged.

Gail Darrell spearheaded local organizing, led the effort to educate residents, and, later, became the New England community organizer for CELDF. With no prior history of activism, Darrell’s interest in environmental issues developed in 2002 as part of an effort to ban the dumping of sewage sludge in her community. Her attention turned to water issues as the USA Springs case evolved. Noting the need to listen to residents’ concerns, she said, “The people who are doing the organizing matter. I knocked on every door, hung out at the dump and at the stores” to educate people about the ordinance. Darrell hosted regular potluck suppers to educate fellow residents, attended all meetings of the town select board,

and continually “processed questions from the community.” Noting the dilemma that faces town officials, she said, “Local politicians and town planners need to protect the health, safety, and welfare of residents. Every elected official is in that hot seat. They have a duty to residents, but they also have to implement state laws and policies. If we have to challenge state law to protect our residents, so be it.” The USA Springs case highlights the state-level permitting and regulatory processes that often override local priorities, and when such overriding occurs, citizens can feel powerless. “RBOs fundamentally confront the hierarchical structure of permitting and regulating” by defining the scope of permissible economic activity and resource use before outside agents apply for permits. According to Barnstead Selectman Gordon Preston, “New Hampshire is a good state to pioneer this law in. Because of our structure of town meetings and the wording of our constitution, our judges are extremely reluctant to go after an existing town vote, so it’s therefore unlikely it would be overturned.”³⁷

On May 19, 2006, the State Supreme Court unanimously ruled in favor of USA Springs and the state, which had filed a brief supporting the corporation, and against Save Our Groundwater and the towns of Nottingham and Barrington.³⁸ Nottingham officials were relatively powerless to deny building and other permits given the ruling and DES’s approval of the water withdrawals.³⁹ In essence, the state had preempted residents’ local control, and town officials were obligated to fulfill their duties. Members of Save Our Groundwater and Neighborhood Guardians fought to block approval of the USA Springs site plan and

associated transportation permits, wetlands permits, building permits, and driveway permits. However, in November 2006, USA Springs obtained its building permit, and began construction of its 176,000-square-foot bottling plant in the following month.⁴⁰ Anticipating this possibility, some Nottingham residents connected with the Barnstead activists and attended a “Democracy School” community organizing session put together by CELDF. Inspired by the Barnstead example and armed with the model of a rights-based approach, they led a group called the Nottingham Tea Party (later changed to the Nottingham Water Alliance following the rise of the Tea Party Movement nationally). Their goal was to draft an ordinance like Barnstead’s and bring it to a town vote.⁴¹

‘Government Is Pro-Corporation and Anti-Person’

Nottingham’s support for the RBO approach was more muted than had been the case in Barnstead. A leading activist noted skepticism over the anti-corporate language of the RBO. “The move against corporate personhood seemed very theoretical,” and for that reason, “was a distraction to the main issues.” Challenging corporate rights seemed to invite expensive legal battles that were “really scary for a lot of people.” Opponents sometimes made spurious arguments, such as suggesting that the ordinance would make it illegal to take a cup of coffee out of town, but skepticism of the RBO initiative was also linked to broader concerns. For instance, some local activists felt that groundwater protections needed to be addressed through state and federal law, including the Clean Water Act.

Nevertheless, reluctance to entrust the community’s water to a private company was widely shared. One activist, a political conservative who had mixed views about corporate personhood and related rights, nevertheless stated, “Corporations become huge organizations that aren’t accountable. USA Springs was only interested in lining their pockets.” One Nottingham resident who was strongly opposed to the extension of citizen rights to corporations said, “Personhood gives corporations the right to utilize the entire Constitution.” Another suggested, “Government is pro-corporation and anti-person. Corporations are driven by profit and your humanity goes by the wayside.” As one resident explained, “It offended my sense of justice that [a corporation] could lay claim to the water that belongs to us all and that all of us have a mutual obligation to safeguard.” None of the activists interviewed were convinced that the water bottlers had the long-term interests of the community in mind. Although bottled water is sometimes touted as a “clean industry that will bring tax revenue and jobs, once the water is gone or compromised, they will pack up and leave.”

At its March 2008 meeting, Nottingham’s selectmen and town attorney opposed the ordinance, but it passed with 63 percent of the vote. The measure stipulated that any future effort to overturn the ordinance would require a two-thirds majority. The Nottingham Tea Party sent a registered letter to USA Springs, informing the company that its business plan was now in violation of local law. One activist said, “The nibbling away of the rights of people has occurred through the courts....The RBO

The sustained and visible engagement around RBOs in Barnstead, Nottingham, and Barrington served as a potent, ongoing symbol of local resistance to corporate control of water.

was crucial for empowering the local community to take action. The RBO reinforced the outcome, but didn't cause the outcome. It said 'this is what the town wants' and helped to build momentum." A Nottingham resident and Save Our Groundwater activist said, "The sense that we were being ignored got people upset. The only way that public officials take action is when citizens rise up and demand that they do something different." Another offered, "The RBO has had an ongoing deterrent effect." A leader in Neighborhood Guardians stated that, "Activism deterred development and put in roadblocks, but it was bad management that killed USA Springs." Following the passage of the Nottingham ordinance, USA Springs ceased construction of its bottling plant and fought a protracted battle to find new investors and stave off bankruptcy. On July 1, 2014, its ten-year permit from the state expired. The Save Our Groundwater and Nottingham Water Alliance activist groups, with the latter holding a "Burn the Permit" gathering on August 23, 2014, celebrated the event.⁴²

The sustained and visible engagement around RBOs in Barnstead, Nottingham, and Barrington served as a potent, ongoing symbol of local resistance to corporate control of water. In Barrington, activists

brought versions of a similar ordinance up for votes in 2009 and 2014, and again in 2016. Despite opposition to the ordinance by the Board of Selectmen, on March 8, 2016, Barrington voters approved Article 34, an RBO to "override state and federal regulations on waterways" to protect "town rivers, streams, ponds, wetlands, watersheds, and aquifers" from corporations. As activist Cilia Bannenberg stated in a press release, "In our corporate-run world, a few people wield corporations as a sword for their own benefit, harming our communities. Not after today. Our Town is not a resource colony for the profit of a few. We are proud to join the growing Community Rights Movement, and are ready to stand by our Community Bill of Rights."⁴³

Conclusion

In Nottingham, Barrington, and Barnstead, New Hampshire residents worked together in a dedicated and sustained campaign against what they saw as a threat to local water resources. They pursued channels that were open to them through the state regulatory processes, but ultimately, RBOs allowed them to circumvent state regulatory approaches by crafting alternative legal structures at the local level. In so doing, activists learned to creatively, and authoritatively, bypass bureaucratic regulatory channels. Strategically emphasizing "local control," RBOs resonated with residents in a way that transcended political divisions. Although local RBOs are fairly circumscribed in scope, they tilt the balance of power in the favor of communities by taking a stance against certain types of corporate activities and claims to personhood

rights. The legality of the Barnstead, Nottingham, and Barrington RBOs has yet to be tested, but as one activist pointed out, they serve to "put private companies on notice" that residents are ready and willing to fight against threats to the rights of nature and residents' shared vision of sustainability.

Research suggests that to mobilize support, social movements must frame their approaches in ways that are plausible and that resonate culturally with potential recruits.⁴⁴ Rather than making claims about new rights, RBOs reassert what voters perceive to be their existing rights, and they do so in a way that is congruent with processes of local decision making that are deeply woven into New England's tradition of town meetings. Residents who have successfully gone through the education and mobilizing process necessary to craft and then pass an RBO learn to think about themselves differently. Activism spills over into civic engagement, and one-third of those interviewed have assumed roles on local planning, zoning, select, or education boards. As one Nottingham resident explained, "We need to get those involved in the fight to serve on critical boards." Such involvement facilitates continued monitoring by embedding concerned citizens in local civic structures. As one Maine activist said of her community's successful effort against Nestlé Waters, "Do I think they'll be back? Sure, they'll be back. They have a diamond in the rough." Reluctant to find too much comfort in the expiration of the USA Springs permit, one Nottingham activist conceded, "There is no win yet."

Once mobilized, individuals also forge networks that persist across time and place. The linkages that grew out of the Nottingham, Barrington, and Barnstead water fight have provided fertile ground for the broader community rights movement. Another third of my interviewees continued their work as community activists with the Barrington Waterways Protection Committee, the New Hampshire Community Rights Network, CELDF, the American Friends Service Committee, and other groups. Participants have learned to think about their engagement as bigger than themselves and their respective towns, and, importantly, that sense of common purpose may provide a potent basis for future mobilization should the need arise. The community rights networks in New Hampshire and other states have evolved quickly and in response to a shared perception that established political processes need to be realigned with local priorities. How and when that will occur remains to be seen, but the emerging activist infrastructure associated with CELDF's RBO movement is remarkable for fostering a grassroots-level activism that has engaged citizens from across the political spectrum.

Endnotes

1. David A. Snow, Sarah A. Soule, and Hanspeter Kriesi, "Mapping the Terrain," in David A. Snow et al., eds., *The Blackwell Companion to Social Movements* (Malden, MA: Blackwell Publishing, 2004), 3–16; Verta Taylor and Nella Van Dyke, "Get Up, Stand Up": Tactical Repertoires of Social Movements," in David A. Snow et al., *The Blackwell Companion*, 262–93.
2. Community Environmental Legal Defense Fund, *On Community Civil Disobedience in the Name of Sustainability* (Oakland, CA: PM Press, 2015).
3. Using snowball sampling, I conducted interviews with twelve activists during the summer and fall of 2014. I attended the Nottingham Water Alliance "Burn the Permit" celebration on August 23, 2014 and various New Hampshire Community Rights Network meetings in the summer and fall of 2014 and in the spring of 2015. I was also able to attend a two-day CELDF "Democracy School" in the fall of 2014.
4. United Nations, "General Assembly Declares Access to Clean Water and Sanitation Is a Human Right," United Nations News Centre, <http://www.un.org/apps/news/story.asp?NewsID=35456&Cr=SANITATION#.UIrYM4U5hJM>; Jennifer Cooley et al., "Global Water Governance in the Twenty-First Century," in Peter Gleick, ed., *The World's Water*, vol. 8 (Washington, DC: Island Press, 2014), 1–18.
5. Natural Resources Defense Council, "Climate Change, Water, and Risk: Current Water Demands Are Not Sustainable," <http://www.nrdc.org/globalWarming/watersustainability/>; David S. Beckman, "Threats to Our Drinking Water," *New York Times*, August 6, 2014, <http://nyti.ms/1syANP>; Maude Barlow and Tony Clarke, *Blue Gold: The Fight to Stop the Corporate Theft of the World's Water* (New York: New Press, 2002); Maude Barlow and Tony Clarke, "Who Owns Water?" *The Nation*, August 15, 2002, <http://www.thenation.com/print/article/who-owns-water>; Maude Barlow, *Blue Covenant: The Global Water Crisis and the Coming Battle for the Right to Water* (New York: New Press, 2007); David L. Feldman, *Water* (Malden, MA: Polity Press, 2012), 10–15, 42–43.
6. Emma G. Fitzsimmons, "Tap Water Ban for Toledo Residents," *New York Times*, August 3, 2014, <http://nyti.ms/1oko9cX>; Thomas Frohlich, "Cities Running Out of Water," *USA Today*, August 2, 2014, <http://usat.ly/1ndTNJ5>; Evan Osnos, "Chemical Valley: The Coal Industry, the Politicians, and the Big Spill," *The New Yorker*, April 7, 2014, 38–49; Mitch Smith, "Flint Wants Safe Water, and Someone to Answer for Its Crisis," *New York Times*, January 9, 2016, <http://nyti.ms/1mNAaPl>; Nathaniel Rich, "The Lawyer Who Became DuPont's Worst Nightmare," *New York Times Magazine*, January 6, 2016, <http://nyti.ms/1V1ITgg>.
7. Michelle Goracke Haley, *Water Commodification: A Study of the Bottled Water Industry*, M.A. Thesis, California State University (Fullerton), 2011; Rhodante Ahlers, "Fixing and Nixing: The Politics of Water Privatization," *Review of Radical Political Economics* 42 (2010): 213–30; Karen Bakker, "Neoliberalizing Nature? Market Environmentalism in Water Supply in England and Wales," *Annals of the Association of American Geographers* 95, no. 3 (2005): 542–65; Noel Castree, "Commodifying What Nature?" *Progress in Human Geography* 27, no. 3 (2003): 273–97; Amanda Ciafone, "If 'Thanda Matlab Coca-Cola' Then 'Cold Drink Means Toilet Cleaner': Environmentalism of the Dispossessed in Liberalizing India," *International Labor and Working-Class History* 81 (2012): 114–35; Maude Barlow, *Blue Covenant*, 5, 34–35; Maude Barlow and Tony Clarke, "Who Owns Water?"; Robert J. Glennon, *Unquenchable: America's Water Crisis and What to Do About It* (Washington, DC: Island Press, 2009), 246; David L. Feldman, *Water*, 99–101; Alan Snitow, Deborah Kaufman, and Michael Fox, *Thirst:*

Fighting the Corporate Theft of Our Water (San Francisco: John Wiley and Sons, 2007), 11.

8. National Conference of State Legislatures, “State Water Withdrawal Regulations,” <http://www.ncsl.org/research/environment-and-natural-resources/state-water-withdrawal-regulations.aspx>. In New Hampshire, a “withdrawal from groundwater of 57,600 gallons or more of water in any 24-hour period from a well or wells installed after July 1998 at a single property or place of business is considered to be a large groundwater withdrawal” and is thus subject to the DES permitting process. New Hampshire Department of Environmental Services, “Large Groundwater Withdrawal Permitting Program,” http://des.nh.gov/organization/divisions/water/dwgb/dwssp/lg_withdrawals/.

9. Deborah Ball, “Bottled Water Pits Nestlé vs. Greens,” *Wall Street Journal*, May 25, 2010, <http://on.wsj.com/1X3p4SD>; Peter H. Gleick, *Bottled and Sold: The Story Behind Our Obsession With Bottled Water* (Washington, DC: Island Press, 2010), 156–57; Elizabeth Royte, *Bottlemania: Big Business, Local Springs, and the Battle Over America’s Drinking Water* (New York: Bloomsbury, 2009), 6–7; Food and Water Watch, “The Unbottled Truth About Bottled Water Jobs,” June 25, 2008, <http://www.foodandwaterwatch.org/factsheet/bottled-water-jobs/>; Robert J. Glennon, *Unquenchable*, 45; Atlas Films, “Tapped: Mapping the Water Industry,” <http://www.tappedthemovie.com/>.

10. Janet Blanck and Michael Blanck, “Hidden Cost of Poland Spring’s Bottling Operation,” *Defending Water for Life in Maine*, February 13, 2009, <http://defendingwater.net/maine/2009/02/hidden-cost-of-nestlepoland-spring-bottling-operation-letter/>; Food and Water Watch, “The Unbottled Truth About Bottled Water Jobs.”

11. Peter H. Gleick, *Bottled and Sold*, 72–73; Michelle Goracke Haley, *Water Commodification*, 102; Elizabeth Royte, *Bottlemania*, 59–60, 87; Steve Bodnar, “Poland Spring PR ‘Helping’ Public Officials in Wells,” *Defending Water for Life in Maine*, November 20, 2009, <http://defendingwater.net/maine/2009/11/poland-spring-pr-helping-public-officials-in-wells/>; Terry Date, “Wetland Impacts of USA Springs Plans Draws Nottingham Discussion,” *Fosters Daily Democrat*, March 3, 2005; Norah Shipman, “Nestlé: Draining America Bottle by Bottle: Nestlé Builds an Empire at the Expense of Rural Communities” (Washington, DC: Public Education Center), July 13, 2009, <http://www.dcbureau.org/20090713724/natural-resources-news-service/nestle-draining-america-bottle-by-bottle-nestle-builds-an-empire-at-the-expense-of-rural-communities-2.html>.

12. Matt Kanner, “The War Over Water,” *The Wire*, July 10, 2008, <http://defendingwater.net/maine/2008/07/the-war-over-water/>; Barry Yeoman, “Rebel Towns,” *The Nation*, January 16, 2013, <http://www.thenation.com/article/172266/rebel-towns>; Daniel Limmer, “Local, State Activists Take Issue With Water Sale to Nestlé,” *Seacoast Online*, June 19, 2008, <http://www.seacoastonline.com/apps/pbcs.dll/article?AID=/20080619/NEWS/806190380>.

13. Dan Gorenstein, “Water Bottling Company Wants to Pump Nottingham,” *New Hampshire Public Radio*, June 18, 2001, <http://info.nhpr.org/node/861>; Dan Gorenstein “Conflict Bubbles Up With Possible Bottling Plant,” *New Hampshire Public Radio*, July 2, 2001, <http://info.nhpr.org/node/969>; Thomas Linzey and Anneke Campbell, *Be the Change: How to Get What You Want in Your Community* (Salt Lake City: Gibbs Smith, 2009), 46–47; Department of Environmental Services, “Administrative Order No. WD 02-31,” September 30, 2002, http://www.saveourgroundwater.org/wp-content/uploads/2013/12/2002_0930_WD-02-31NHDES_wetlandsAO.pdf.

14. Save Our Groundwater, “SOG Update: 8/10 Nottingham ZBA to Review Variance,” SOG Listserve, August 7, 2004, <http://lists.topica.com/lists/saveourgroundwater/read/>.

15. Dan Gorenstein, “Water Bottling Company Wants to Pump Nottingham”; Dan Gorenstein “Conflict Bubbles Up With Possible Bottling Plant.”

16. Chris Mills and Gail Mills, “Nottingham Water Alliance,” *The Forum*, March 15, 2014, <http://forumhome.org/nottingham-water-alliance-p21018-78.htm>; Save Our Groundwater, “Our Story,” <http://www.saveourgroundwater.org/about/our-story>.

17. The GSS is a national survey of American adults that has been administered since 1972 by the National Opinion Research Center at the University of Chicago.

18. General Social Survey Data Explorer, *General Social Surveys, 1972–2014* (Chicago: National Opinion Research Center, 2014), <https://gssdataexplorer.norc.org/variables/4802/vshow>; <https://gssdataexplorer.norc.org/variables/3460/vshow>; <https://gssdataexplorer.norc.org/variables/4762/vshow>; <https://gssdataexplorer.norc.org/variables/4773/vshow>.

19. Quotations from community members throughout the report are from interviews conducted by the author with twelve activists in 2014 (see note 3).

20. Thomas Linzey and Anneke Campbell, *Be the Change*, 18.

21. The figure does not include some sixteen Maine towns that have passed “food sovereignty” ordinances, which endeavor to protect the interests of small farmers and local communities concerning state and federal regulations that affect small-scale poultry and meat processing, food labeling, milk pasteurization, and direct sales of farm products to consumers. The food sovereignty movement focuses largely on the existing regulatory framework rather than on corporate activities, and is only tangentially linked to CELDF. Hilda

- E. Kurtz, "Scaling Food Sovereignty: Biopolitics and the Struggle for Local Control of Farm Food in Rural Maine," *Annals of the Association of American Geographers* 105, no. 4 (2015): 859–73; Farm-to-Consumer Legal Defense Fund, "Sixteenth Town Passes Food Sovereignty Ordinance," July 10, 2015, <http://www.farmtoconsumer.org/blog/2015/07/10/sixteenth-maine-town-passes-food-sovereignty-ordinance/>.
22. *New Hampshire Gazette*, November 2, 2001; Save Our Groundwater, SOG Listserve, <http://lists.topica.com/lists/saveourgroundwater/read>.
23. *Annual Report of the Town of Nottingham 2002*, p. 20, http://www.library.unh.edu/digital/islandora/solr/search/%2520/1/category%3ANH%5C%20Cities%5C%20%2526%5C%20Towns~slsh~Nottingham*~/dismax.
24. Save Our Groundwater, SOG Listserve; Thomas P. Ballestero, "Comments and Recommendations on the Water Resources Issues Involved With the Application by USA Springs, Inc. for a Large Ground Water Withdrawal," May 23, 2004, http://www.nottingham-nh.gov/pages/NottinghamNH_Planning/bellestereport.pdf; New Hampshire Business Review, "Meet the Man Behind the USA Springs Project," December 18, 2003, <http://www.nhbr.com/>.
25. *Ibid.*; Save Our Groundwater, "Our Story."
26. DES, "Large Groundwater Withdrawal Permit No. LGWP-2004-0003," <http://www.saveourgroundwater.org/getinfo/usa-springs>; Terry Date, "State Says Nottingham's Water Supply Is Protected," *Foster's Daily Democrat*, July 3, 2004; Clare Kittredge, "Wide Effects Seen in Water Rights Case," *Boston Globe*, December 12, 2004.
27. Francisco Rotundo, founder of USA Springs, contributed to Craig Benson's campaign for governor in 2002, and after assuming office in 2003 Benson appointed Michael P. Nolin, who developed a reputation for favoring business interests over environmental protection, as new DES commissioner. Several activists with whom I spoke attributed the permit reversal to political cronyism, the political shift in the governor's office, and Nolin's appointment at DES. Rick Russman and Jim O'Brien, "Next DES Leader Must Put Environment First," *Concord Monitor*, May 25, 2006, <http://www.concordmonitor.com>; Rick Russman and Jim O'Brien, "Let's Ditch Benson's Environmental Policy," *SentinelSource.com*, May 26, 2006, <http://www.sentinelsource.com/>.
28. Terry Date, "Nottingham Residents Claim the Fix Is in Over USA Springs Permit," *Foster's Daily Democrat*, April 8, 2004; Terry Date, "Lawyer Says USA Springs Misstated Production of Half-Liter Bottles," *Foster's Daily Democrat*, September 29, 2004.
29. Save Our Groundwater, SOG Listserve; Clare Kittredge, "Wide Effects Seen in Water Rights Case"; Terry Date, "USA Springs Case in Court Sept. 15," *Foster's Daily Democrat*, August 10, 2005.
30. CELDF, "Barnstead & Nottingham, NH, Live Up to Their State Constitution," <http://celdf.org/2006/04/barnstead-nh-lives-up-to-its-state-constitution/>.
31. Denise Carpenter, WERU RadioActive interview, February 26, 2009, <http://archives.weru.org/2009/02/>.
32. Gail Darrell, "Barnstead, NH: Establishing the Community Right to Water and Self-Governance," *Read the Dirt*, December 24, 2012, <http://readthedirt.org/barnstead-nh-establishing-the-community-right-to-water-and-self-governance>.
33. CELDF, "Rights of Nature: Background," <http://celdf.org/rights-of-nature-background>; Doug Pibel, "Communities Take Power: The Citizens of Barnstead, New Hampshire, Used Local Law to Keep Corporate Giants Out of Their Water," *Yes! Magazine*, July 29, 2007, <http://www.yesmagazine.org/issues/stand-up-to-corporate-power/communities-take> power; Kat Bundy, "New Hampshire Town Bans Corporate Water Withdrawals," *Corp Watch*, June 1, 2006, <http://www.corpwatch.org/article.php?id=13891>; Thomas Linzey and Anneke Campbell, *Be the Change*, p. 57.
34. Gail Darrell, "Barnstead, NH: Establishing the Community Right to Water and Self-Governance."
35. Margit Christenson, "Towns Rein in Corporate Power," *Yes! Magazine*, May 22, 2008.
36. Sources frequently cited a \$400,000 figure for Nottingham's legal fees associated with the USA Springs case. CELDF, "Barnstead, NH Lives Up to Its State Constitution," <http://www.celdf.org/article.php?id=613>.
37. CELDF, "Barnstead & Nottingham, NH, Live Up to Their State Constitution."
38. New Hampshire Supreme Court: 2006 Opinions, <http://www.courts.state.nh.us/supreme/opinions/2006/index.htm>. A subsequent appeal to the New Hampshire Supreme Court in 2008 was also denied. See Save Our Groundwater, "New Hampshire Supreme Court Denies Save Our Groundwater Appeal," June 24, 2008, <http://www.saveourgroundwater.org/category/media/press>.
39. Terry Date, "Hearing on Water Bottling Plant Turns Ugly," *Foster's Daily Democrat*, July 14, 2005; Maureen Mann, "Nottingham Board Votes to OK USA Springs," *The Forum*, November 26, 2005, <http://forumhome.org/nottingham-board-votes-to-ok-usa-springs-p589-129.htm>.
40. John Quinn, "Work Begins at Nottingham Bottling Plant," *Foster's Daily Democrat*, December 2, 2006.
41. Located about twenty miles south of Nottingham, Atkinson passed an ordinance based on Barnstead's at a special town meeting held on September 7, 2007. Residents from Atkinson attended one of the CELDF "Democracy Schools" with one of the Nottingham residents I interviewed. Town of Atkinson,

2007 *Annual Report*, 11, 58, http://www.town-atkinsonnh.com/town_reports/2007%20Annual%20Report.pdf; Town of Atkinson, *Ordinances*, 2012, 58, http://www.town-atkinsonnh.com/documents_and_forms/2012%20Town%20Ordinances.pdf; Gail Darrell, “Barnstead, NH: Establishing the Community Right to Water and Self-Governance.”

42. John Quinn, “USA Springs Files for Chapter 11 Bankruptcy,” *Foster’s Daily Democrat*, July 2, 2008; Save Our Groundwater, “Save Our Groundwater Remarks on the July 1st Expiration of USA Springs, Inc.’s Large Groundwater Withdrawal Permit,” <http://www.saveourgroundwater.org/category/media/press>.

43. Nora Fenton, “Barrington Narrowly Approves Ordinance to Protect Waterways,” *Foster’s Daily Democrat*, March 8, 2016, <http://nhcommunityrights.org/fosters-com-barrington-narrowly-approves-ordinance-to-protect-waterways/>; Michelle Sanborn, “Press Release: The People of Barrington, NH, Vote in Community Rights at Town Meeting,” March 8, 2016, <http://celdf.org/2016/03/press-release-the-people-of-barrington-nh-vote-in-community-rights-at-town-meeting/>.

44. Verta Taylor and Nella Van Dyke, “Get Up, Stand Up.”

About the Author

Cliff Brown is an associate professor of sociology at the University of New Hampshire (cliff.brown@unh.edu).

Acknowledgements

I thank the Carsey School of Public Policy for supporting this work. Michele Dillon, Ken Johnson, and Catherine Moran were particularly encouraging and offered valuable guidance. I am especially grateful to the individuals who agreed to be interviewed for this project, and I thank Cilia Bannenberg and James Conley for facilitating my participation in a CELDF Democracy School in October 2014. My gratitude to Michael Ettlinger, Curt Grimm, and Amy Sterndale at the Carsey School, as well as Laurel Lloyd for her help in drafting this brief and to Bianca Nicolosi for preparing the work for online publication. Many thanks to Patrick Watson for his editorial assistance. I dedicate this brief to the memory of Gail Darrell, a leader in the community rights movement who generously shared her time and insights with me.



University of New Hampshire
Carsey School of Public Policy

The Carsey School of Public Policy at the University of New Hampshire is nationally recognized for its research, policy education, and engagement. The school takes on the pressing issues of the twenty-first century, striving for innovative, responsive, and equitable solutions.

Huddleston Hall • 73 Main Street • Durham, NH 03824
(603) 862-2821
TTY USERS: DIAL 7-1-1 OR 1-800-735-2964 (RELAY N.H.)

carsey.unh.edu
