

MUNICIPAL OFFICERS' CERTIFICATION OF OFFICIAL TEXT OF A PROPOSED ORDINANCE  
[30-A M.R.S.A. § 3002(2)]

To the Town Clerk of the Town of Newfield:

We hereby certify to you that the document to which we have affixed this certificate is a true copy of the official text of an ordinance entitled "Town of Newfield Water Ordinance," which is to be presented to the voters for their consideration voters on 3-14, 2009.

Pursuant to 30-A M.R.S.A. § 3002(2), you will retain this copy of the complete text of the ordinance as a public record and make other copies available for distribution to the voters, and you will ensure that copies are available at the town meeting/polling places on the day of the vote.

Dated: 2-10, 2009.

Thomas Bond

Luke Smith

Ben Coll

Town Selectmen

[Notes: This form should be executed, and the ordinance and the form delivered to the Clerk, not less than seven days before the day of voting. See 30-A M.R.S.A. § 3002(2). In the spaces following entitled "Town of" insert the name of the town and then the name (of the ordinance, which will ordinarily convey information about its purpose.

This seven-day minimum filing deadline is clearly applicable when the ordinance will be voted on at an open town meeting. When voting is to be by secret ballot, however, you may wish to choose a more conservative course, and certify the ordinance text not later than the 45<sup>th</sup> day before the meeting. (See 30-A M.R.S.A. § 2528(5).) This would mean that all *developmental* hearings on the ordinance will have to be held before the 45<sup>th</sup> day before election day.

By law, no ordinance of any municipality subject to this subsection may be held invalid due to the municipality's failure to comply with this subsection unless the plaintiff is harmed or prejudiced by that failure. 30-A M.R.S.A. § 3002(2)(A).]

## Newfield Water Rights & Local Self-Government WARRANT ARTICLE

• Section 1. Name. The name of this Warrant Article shall be the "Newfield Water Rights and Local Self-Government Ordinance."

• Section 2. Preamble and Purpose. We the People of the Town of Newfield declare that water is essential for life, liberty, and the pursuit of happiness – both for people and for the ecological systems, which give life to all species.

We the People of the Town of Newfield 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 community of Newfield, and the rights of the ecosystems of which Newfield is a part.

We the people of Newfield declare that all of our water is held in the public trust as a common resource to be used for the benefit of Newfield residents and of the natural ecosystems of which they are a part. We believe that the corporatization of water supplies in this community – placing the control of water in the hands of a corporate few, rather than the community – would constitute tyranny and usurpation; and that we are therefore duty bound, under the Maine Constitution, to oppose such tyranny 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.

• Section 3. Authority. This Warrant Article is adopted and enacted pursuant to the inherent, unalienable, and fundamental right of the citizens of the Town of Newfield to self-government and under the authority recognized as belonging to the people of the Town by all relevant state and federal laws including, but not limited to the following:

Article 1, §2 of the Maine Constitution, which declares that "all power is inherent in the people; all free governments are founded in their authority and instituted for their benefit, [and that] they have therefore an unalienable and inalienable right to institute government and to alter, reform, or totally

change the same, when their safety and happiness require it";

§3001 of Title 30-A of the Maine Revised Statutes, which grants municipalities all powers necessary to protect the health, safety, and welfare of the residents of the Town of Newfield;

The Declaration of Independence, which declares that governments are instituted to secure people's rights, and that government derives its just powers from the consent of the governed;

The General Comment of the United Nations Covenant on Economic, Social, and Cultural Rights, which declares that "the human right to drinking water is fundamental to life and health. Sufficient and safe drinking water is a precondition to the realization of human rights."

• Section 4. Statement of Law. No corporation shall engage in water withdrawals in the Town of Newfield. The term "corporation" means any corporation organized under the laws of any state of the United States or any country, or any limited partnership, limited liability partnership, business trust, or Limited Liability Company organized under the laws of any state of the United States or any country. The term "engage" shall include, but not be limited to, the physical extraction of water, and the buying and/or selling of water extracted within the Town of Newfield.

• Section 5. Statement of Law. No corporation doing business within the Town of Newfield shall be recognized as a "person" under the United States or Maine Constitutions, or laws of the United States or Maine, nor shall the corporation be afforded the protections of the Contracts Clause or Commerce Clause of the United States Constitution, or similar provisions found within the Maine Constitution, within the Town of Newfield.

Section 5.1. Rights. All residents of the Town of Newfield possess a fundamental and unalienable right to access, use, consume, and preserve water drawn from the sustainable natural water cycles that provide water necessary to sustain life within the Town. **Natural communities and ecosystems possess unalienable and fundamental rights to exist, flourish, and naturally evolve within the Town of Newfield. Ecosystems shall include, but not be limited to,**

**wetlands, streams, rivers, aquifers, and other water systems.**

• Section 6. Exceptions. The people of the Town of Newfield hereby allow the following exceptions to the Statement of Law contained within §4 of this Warrant Article:

(1) Municipal authorities established under the laws of the State of Maine engaged in water withdrawals providing water only to residential and commercial users within the Town of Newfield;

(2) Nonprofit educational and charitable corporations organized under state non-profit corporation law, qualified under §501(c)(3) of the federal Tax Code, which do not sell water withdrawn within the Town of Newfield outside of the Town of Newfield;

(3) Utility corporations operating under valid and express contractual provisions in agreements entered into between the Town of Newfield and those utility corporations, for the provision of service within the Town of Newfield;

(4) Corporations operating under valid and express contractual provisions in agreements entered into between persons in the Town of Newfield and those corporations, when the withdrawn water is used solely for on-site residential, household, agricultural, or commercial use within the Town of Newfield, provided that such commercial use does not involve the withdrawal of water for sale outside of the Town of Newfield, or involve the purchase of water withdrawn from the Town of Newfield for sale outside of the Town.

• Section 7. Enforcement. Any corporation planning to engage in water withdrawals within the Town of Newfield must notify the Town of such activity at least sixty (60) days prior to engaging in water withdrawals. Such notification shall contain a claim to one of the exemptions listed in Section 6 of this Warrant Article. Any violation of this Warrant Article shall be considered a criminal summary offense, and will subject the Directors of the noncompliant corporation to joint and several liability with the corporation itself. The Board of Selectmen of the Town of Newfield authorizes the maximum allowable monetary fine under the Maine Revised Statutes for the violation of this Ordinance. Each act of water withdrawal and each day that water is withdrawn shall be considered a separate violation of this Ordinance. The Board of



Selectmen of the Town of Newfield may also file an action in equity in any Court of competent jurisdiction to abate any violation defined in Section 4 of this Ordinance. If the Selectmen of the Town of Newfield fail to bring an action to enforce this Warrant Article, or fail to diligently pursue ongoing litigation aimed at the enforcement of this Warrant Article, any resident of the Town has standing in front of the Court for enforcement.

**Section 7.1. Civil Rights:** Any person acting under the authority of a permit issued by the Department of Environmental Protection, any corporation operating under a State charter or certificate of authority to do business, or any director, officer, owner, or manager of a corporation operating under a State charter or certificate of authority to do business, who deprives any Town resident, natural community, or ecosystem of any rights, privileges, or immunities secured by this Warrant Article, the Maine Constitution, the United States Constitution, or other laws, shall be liable to the party injured and shall be responsible for payment of compensatory and punitive damages and all costs of litigation to satisfy that liability, including, without limitation, expert and attorney's fees. Compensatory and punitive damages paid to remedy the violation of the rights of natural communities and ecosystems shall be paid to the Town of Newfield for restoration of those natural communities and ecosystems.

**Section 7.2. Environmental Protection:** It shall be unlawful for any corporation or its directors, officers, owners, or managers to interfere with the rights of natural communities and ecosystems to exist and flourish, or to cause damage to those natural communities and ecosystems. The Town of Newfield, along with any resident of the Town, shall have standing to seek declaratory, injunctive, compensatory, and punitive relief for damages caused to natural communities and ecosystems within the Town, regardless of the relation of those natural communities and ecosystems to Town residents or the Town itself. **Town residents, natural communities, and ecosystems shall be considered to be "persons" for purposes of the enforcement of the civil rights of those residents, natural communities, and ecosystems.**

**Section 7.3. Civil Rights Enforcement:** Any Town resident shall have standing and authority to bring an action under this Warrant Article's civil rights provisions, or under state and federal civil rights laws,

for violations of the rights of natural communities, ecosystems, and Town residents, as recognized by this Warrant Article.

**Section 7.4. Town Action Against Preemption.** The foundation for the making and adoption of this law is the people's fundamental and unalienable right to govern themselves, and thereby secure rights to life, liberty, property, and pursuit of happiness. Any attempts to use county, state, or federal levels of government – judicial, legislative, or executive - to preempt, amend, alter, or overturn this Warrant Article or parts of this Warrant Article, or to intimidate the people of the Town of Newfield or their elected officials, shall require the Board of Selectmen 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 unalienable right to self-government. Such consideration may include actions to separate the municipality from the other levels of government used to preempt, amend, alter, or overturn the provisions of this Warrant Article or other levels of government used to intimidate the people of Newfield or their elected officials.

**Section 7.5. Strict Liability.** Persons using corporations to engage in water withdrawal in a neighboring municipality shall be strictly liable for all harms caused to the health, safety, and welfare of the residents of Newfield from those activities, and for all harms caused to ecosystems and natural communities within the Town of Newfield.

**Section 7.6. Liability.** No permit, license, privilege or charter issued by any State or federal Regulatory 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 provisions of this Warrant Article or deprive any Newfield resident, natural community, or ecosystem of any rights, privileges, or immunities secured by this Warrant Article, the Maine Constitution, the United States Constitution, or other laws, shall be deemed valid within the Town of Newfield. Additionally, any employee, agent or representative of any State or federal Regulatory Agency, Commission or Board who issues a permit, license, privilege or charter 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 provisions of this Warrant Article or deprive any resident, natural community, or ecosystem of any rights, privileges, or immunities secured by this Warrant Article, the Maine Constitution, the United States Constitution, or other laws, shall be liable to the party injured and shall be responsible for payment of compensatory and punitive damages and all costs of litigation, including, without limitation, expert and attorney's fees. Compensatory and punitive damages paid to remedy the violation of the rights of natural communities and ecosystems shall be paid to the Town of Newfield for restoration of those natural communities and ecosystems.

**Section 7.7. Future Lost Profits.** Within the Town of Newfield, 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 7.8. Prohibition on Selectboard Challenge.** The Selectboard of the Town of Newfield or any other agent or agency of the Town shall be prohibited from taking any action to annul, amend, or overturn this Warrant Article, unless such action is approved by a prior Town Meeting at which two-thirds (2/3) of the residents of the Town attending the Town Meeting approve such action.

**Section 8. Severability.** The provisions of this Warrant Article are severable, and if any section, clause, sentence, part, or provision thereof shall be held illegal, invalid or unconstitutional by any court of competent jurisdiction, and if such ruling is deemed legitimate by the people of the Town of Newfield, such decision of the court shall not affect, impair, or invalidate any of the remaining sections, clauses, sentences, parts or provisions of this Warrant Article. It is hereby declared to be the intent of the people of Newfield that this Warrant Article would have been adopted if such illegal, invalid, or unconstitutional section, clause, sentence, part, or provision had not been included herein.

**Section 9. Effect.** This Warrant Article shall be effective immediately upon its enactment.

**Section 10—Repealer.** All inconsistent provisions of prior Ordinances adopted by the Town of Newfield are hereby repealed, but only to the extent necessary to remedy the inconsistency.

**Anatomy of the Proposed Ordinance:  
Newfield Water Rights and Local Self-Government Ordinance**

**Section 1 Name** – the name by which the ordinance will be referred.

**Section 2 Preamble and Purpose** – summarizes the reasons the ordinance is needed.

**Section 3 Authority** – outlines Maine and U.S. constitutional authority for the adoption of this Ordinance.

**Section 4 Statement of Law** - Prohibits corporations from using a corporation to engage in water withdrawals in the Town.

**Section 5 Statement of Law** - Strips corporations of certain legal rights and protections that are routinely used to challenge the Ordinance and override local control. This action in no way prohibits corporations from doing business in the town. It leaves intact the limited liability protections for normal lawful business operations.

**5.1 Rights** - Asserts right of residents to access, use and preserve water from sources within the Town, and asserts rights that protect the natural environment within Newfield.

**Section 6 Exceptions** – Allows certain corporations to engage in water withdrawals under community specified conditions.

**Section 7 Enforcement** – provides for monetary fines for violation of the Ordinance, and provides a mechanism for citizen enforcement of the Ordinance.

**7.1 Civil Rights** - Imposes penalties on those using or assisting corporations to deprive the rights of citizens within Newfield.

**7.2 Environmental Protection** - Imposes penalties on those using or assisting corporations to deprive the rights of natural communities within Newfield.

**7.3 Civil Rights Enforcement** - Establishes legal standing for any resident of the Town to bring suit on behalf of the recognized civil rights of residents and natural communities of the Town.

**7.4 Town Action Against Preemption** - Asserts the superior right of the People of Newfield to local self-government over attempts by corporations to use other levels of government to preempt lawmaking by the People of Newfield and requires action by the Town to secure local self-government against such usurpations.

**7.5 Strict Liability** - Establishes strict liability for persons using corporations in other jurisdictions that deprive residents and natural communities of rights recognized in this ordinance.

**7.6 Liability** - Establishes liability for persons or agencies issuing permits or licenses to persons using corporations that enable them to deprive residents and natural communities of rights recognized in this ordinance.

**7.7 Future Lost Profits** - Eliminates corporate claims to "future lost profits" as an intangible property interest.

**7.8 Prohibition on Selectboard Challenge** - Prevents overturn of ordinance by selectmen / women. Provides for 2/3 majority of residents at Town Meeting to overturn law.

**Section 8 Severability** – provides that striking of one section by a court will not invalidate other sections of the law.

**Section 9 Effect** – provides for implementation immediately after adoption of the Ordinance.

**Section 10 Repealer** – provides for the repeal of any conflicting law on the books.