



Denton and Other Texas Cities Shouldn't Ban Fracking

by Josiah Neeley
& Jess Fields

Key Points

- On November 4, 2014, residents of the city of Denton will decide whether to ban all hydraulic fracturing within the city limits, though not conventional oil and gas production.
- Hydraulic fracturing is safe. The fracking process has been used over a million times since the 1940s and has never been found to contaminate groundwater.
- Denton has already been sued for denying mineral owners access to oil and gas via fracking. If the ban passed, such suits will proliferate.

On November 4, 2014, residents of the city of Denton will decide whether to ban all hydraulic fracturing within the city limits. The ballot measure was proposed by anti-fracking activists via initiative petition, and approved for the ballot by the Denton City Council. The ban would not apply to conventional oil and gas production. The Denton city council has imposed a moratorium on fracking until the ballot measure is decided.

The idea of banning fracking is a gross overreaction to the concerns of some Denton residents that could leave the taxpayers of Denton on the hook to pay for potential lawsuits from producers. Such an extreme measure is unnecessary, as any nuisances caused by hydraulic fracturing can be addressed in other ways.

Thanks to innovative energy entrepreneurs, fracking is a safe, proven job creating tool that has been a boon for the Texas economy and many communities. Where it has been used, local tax bases have expanded to the benefit of resident taxpayers. To ban it is to ignore the clear evidence in its favor and the negative consequences that would result from its absence.

Fracking Is Safe

Hydraulic fracturing is not new. Use of liquids to recover shale oil and gas has been in use since the late 1940s, and the fracking process has been used over a million times in the United States alone. Today, an estimated 90 percent of all oil and gas wells in North America are fracked.¹

Despite being so ubiquitous, there is not a single proven instance of fracking contaminating groundwater. This has been repeatedly

confirmed by the U.S. Department of Energy, the University of Texas at Arlington, Duke University, and many others.²

Fracking is Good for the Economy

The economic benefits of fracking are undeniable. The average unemployment rates in counties where fracking occurs is 2.4 percentage points lower than in non-fracking counties in the United States, while Personal incomes are raised 8 percent in counties with at least one unconventional oil or gas well.³ A ban on fracking, by contrast, would be damaging for Denton. According to a recent study by the Perryman Group, banning fracking in Denton could cost 2,000 jobs and \$251.4 million in forgone economic activity over 10 years. The City would also lose \$5.1 million in lost tax revenue, while Denton schools would lose an additional \$4.6 million.

Fracking Is Good for Taxpayers

One of the overlooked benefits of fracking is its ability to expand the local tax base. The high property value of fracking operations relieves local taxpayers of paying higher tax rates, and results in much higher revenue to local governments.

As a case study, consider three counties in the heart of the Eagle Ford Shale, one of Texas' most active fracking regions for both oil and natural gas. Dimmit, Karnes, and La Salle counties are rural South Texas counties who have seen tremendous economic growth thanks to fracking. These counties once relied on agriculture for much of their tax revenue, often an unreliable revenue source because of the myriad exemptions available to agricultural uses.

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Since fracking in the Eagle Ford has exploded, however, the economies—and the tax bases—have likewise boomed in these small Texas counties. Even as tax revenue has increased, property tax rates have dramatically declined. See Tables 1-3.

During the period between 2009 and 2013, as fracking activity boomed in South Texas, these three counties saw assessed market value of all properties at least triple. The benefit was passed on to the taxpayers, because even as tax revenues increased exponentially, the three counties were able to reduce tax rates by nearly 70 percent. To say that fracking helps to relieve the burden of local taxpayers is putting it mildly. As

energy production has boomed, local taxpayers have been clear beneficiaries.

Banning Fracking May Be Illegal

Numerous legal and political figures have questioned the legality of a total ban on fracking by Denton. As former Texas Supreme Court Justice Tom Phillips noted during public hearings on the issue, if the ban were to go into effect, some of the affected parties would “undoubtedly sue.”⁵

A Denton fracking ban could be potentially vulnerable on several grounds. Oil and gas wells are permitted by the Texas Railroad Commission, and some commentators have sug-

Table 1: Dimmit County, Texas Tax and Revenue 2009-2013

	Market Value	Tax Rate	Tax Revenue
2009	1,598,505,852	0.6922	3,063,896
2010	1,646,701,482	0.69	3,357,199
2011	2,119,612,178	0.46	4,793,702
2012	3,662,621,125	0.28	7,281,390
2013	6,217,834,435	0.23	11,828,730
Change 09-13	288.98%	66.77%	286.07%

Table 2: Karnes County, Texas Tax and Revenue 2009-2013

	Market Value	Tax Rate	Tax Revenue
2009	1,341,784,871	0.6193	3,190,633
2010	1,274,218,609	0.5	2,813,442
2011	1,771,648,523	0.4269	4,509,005
2012	3,967,846,218	0.2943	9,234,398
2013	7,539,850,530	0.187	12,425,277
Change 09-13	461.93%	69.80%	289.43%

Table 3: La Salle County, Texas Tax and Revenue 2009-2013

	Market Value	Tax Rate	Tax Revenue
2009	1,441,072,853	0.7435	3,187,012
2010	1,578,506,843	0.75	4,168,997
2011	1,937,170,149	0.75	6,903,594
2012	3,450,216,393	0.52	12,607,598
2013	5,802,029,567	0.25001	11,936,826
Change 09-13	302.62%	66.37%	274.55%

gested that a city-wide ban would therefore be superseded by state law. Home rule cities such as Denton have great latitude in their ability to regulate economic activity, and a number of lower court rulings have held that a home rule city is not preempted from independently regulating or permitting oil and gas drilling within its city limits.⁶ Whether Denton could enact a total ban on all fracking, however, has never been definitively settled by the Texas courts.

In July, Land Commissioner Jerry Patterson sent a letter to the city stating that a city-imposed fracking ban “may be viewed as either an unlawful use of zoning, or... [as a] claimed use of ‘police powers’ to enter into an arena reserved for the legislature.”⁷ Patterson also stated that “should the ordinance be implemented either by ballot measure or council action, it will be necessary to pursue any available remedy to ensure the right to develop State owned minerals.” George P. Bush, who is currently running to replace Patterson, has stated that he supports his position on the issue.⁸

Even if the city has the legal authority to pass a ban, it could still be subject to suits claiming that the ban constituted a regulatory taking. The Texas Constitution provides that government entities may not take private property unless they pay just compensation. Lawsuits have already been brought claiming millions in compensation based on the city’s temporary moratorium, and such suits would only proliferate if a full ban went into effect.⁹

This could put the city into a difficult position. As Denton Mayor Mark Burroughs has noted, should the ban pass Denton “could be bound to enforce an illegal act, which throws into a whole panoply of open issues... We as a city would be bound to defend it, whether we believed it was illegal or not.”¹⁰

Endnotes

¹ Ezra Levant, *Groundswell: The Case for Fracking* (Random House 2014).

² “Studies: Fracking Doesn’t Contaminate Water Wells,” *Wichita Falls Times Record News* (27 Sept. 2014).

³ Thiemo Fetzer, “Fracking Growth,” CEP Working Paper 1278 (2014).

⁴ “The Adverse Impact of Banning Hydraulic Fracturing in the City of Denton on Business Activity and Tax Receipts in the City and State,” The Perryman Group (June 2014).

⁵ “North Texas City Council Rejects Proposed Fracking Ban, Sends Issue to Voters,” Fox News (16 July 2014).

⁶ See, e.g., *Unger v. State*, 629 S.W.2d 811 (2nd Tex. App. 1982); see also *Tysco v. Railroad Commission*, 12 F. Supp. 195 (S.D. Tex. 1935).

⁷ Letter of Jerry Patterson, Commissioner Texas General Land Office to City of Denton (15 July 2014).

⁸ Jim Malewitz, “Denton Fracking Ban Could Spur Wider Legal Clash,” *Texas Tribune* (25 July 2014).

⁹ Peggy Heinkel-Wolfe, “Mineral Royalty Owner Sues Denton,” *Denton Record Chronicle* (29 Sept. 2014).

¹⁰ Alex Dropkin, “What a Ban on Fracking in Denton Could Mean for the Rest of Texas,” State Impact NPR (8 Apr. 2014).

¹¹ Jason Morris, “Texas Family Plagued by Ailments Gets \$3M in 1st-of-its-kind Fracking Judgment,” CNN (25 Apr. 2014).

There Are Alternative Methods to Safeguard the Public

A total ban on fracking is unnecessary to deal with any legitimate concerns that might arise from increased oil and gas production. Fracking is already subject to regulation both by the state agencies and by the city itself. In addition, residents of Denton have the ability to bring nuisance lawsuits based on noise or other negative effects that may result from the energy production process. For example, as recently as April of 2014, North Texas resident Lisa Parr received a judgment of \$3 million based on claims that drilling activities near her property (such as trucking and traffic construction) created a private nuisance. Similarly, in *Crowder et al. v. Chesapeake Operating Inc.*, a jury found drilling operations near Sam and Jane Crowder’s home to be a temporary nuisance.¹¹

Instead of seeking to ban an economic activity that creates jobs and economic opportunity for countless Texans, residents who have legitimate concerns about nuisance can and should seek relief in the courts, and within Texas’ existing regulatory framework.

Conclusion

Fracking has been an economic boon to Texas, creating jobs, relieving taxpayers, and ushering in a new era of economic prosperity. To the extent fracking has raised environmental concerns, they are no different from those poses by conventional oil and gas development. Individual property owners who are negatively affected by fracking, or any other energy-related economic activity, have numerous existing avenues by which to seek redress. An outright ban would likely tie the city up in litigation for years, to the benefit of no one.

Denton should not enact a fracking ban. If they do, it will hurt their economy, decrease their tax base, and highlight Denton as an example of how to overreact via local regulation. ★

About the Authors



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