ENERGY LAND USE FOR HYDRAULIC FRACTURING

Legal Aspects of Hydraulic Fracturing Symposium

University of Idaho College of Law March 29, 2013

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Presentation Outline

- Local government powers and community-scale concerns
- 2. Forms of official local resistance to fracking
- 3. State and industry responses litigation and legislation



[Source: Nat'l Science Fndtn./Chuck Anderson]

Community-Scale Fracking Concerns

"Mapping the Movement"

http://www.foodandwaterwatch.org/water/fracking/fracking-action-center/map/

Local Governments Respond to Fracking

Bans

Moratoria

Restrictions/Requirements

Resolutions Supporting State/Federal Regulation

Litigation

San Joaquin

NEW YORK:

Anschutz Exploration Corp.

v. Town of Dryden

isc. 3d 450) (2012)

On appeal

COLORADO:

Colorado Oil & Gas Ass'n v. City of Longmont (Colo. Dist. Crt. Weld Cty) (filed Dec. 2012)

pending

Paradox Basin

WEST VIRGINIA:

Northeast Natural Energy v. City of Morgantown No. 11-c-411 (Aug. 2011)

Basin

PENNSYLVANIA:

Huntley & Huntley v. orough Council of the Borough of Oakmont 4 A2d 855 (Pa. 2009)

COLORADO:

Fayetteville

Mulky Cherokee Platform

dford

Colorado Oil & Gas Conserv.
Comm'n v. City of Longmont
(No. 2012-0730, Colo. Dist Crt.
Boulder Cty) (filed July 2012)

pending

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Source: Energy Information Administration based on data from various published studies Updated: May 9, 2011

State Legislative Responses

Pennsylvania – Act 13

- Sweeping preemption of local governments
- Eminent domain for natural gas corporations

Overturned, in part:

Robinson Township v. Commonwealth 52 A.3d 463 (Pa. Cmwlth. 2012)

- HELD: Act 13 requirement that localities amend municipal zoning ordinances to include oil and gas operations in all districts → unconstitutional
- Appeal pending

State Legislative Responses

Other States in 2012

Enacted:

• <u>Idaho:</u> HB 464

• Kansas: HB 2526

North Carolina: SB 820

Failed bills to reinforce local authority:

New York, Ohio, West Virginia

And more

Observations / Conclusions

- Contours of local authority
- 2. Risk of oversimplification

3. Community voices in national energy policy

- Pressure on higher levels of government
- Energy/environment divide

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