

## Lawsuits follow fracking outcome - Denton Record-Chronicle (TX) - November 6, 2014 - page NEWS\_A01

November 6, 2014 | Denton Record-Chronicle (TX) | PEGGY HEINKEL-WOLFE PHEINKEL-WOLFE@DENTONRC.COM STAFF WRITER | Page NEWS\_A01

Both the Texas General Land Office and the Texas Oil and Gas Association sued the city of **Denton** on Wednesday in two separate actions that challenge the city's new ordinance banning hydraulic fracturing.

Land Commissioner Jerry Patterson, head of the state agency that oversees state-owned lands, filed suit in Travis County. The association filed in **Denton** district court.

Both lawsuits seek to keep the city from enforcing its new ban on fracking, the first of its kind in Texas. In a landslide vote Tuesday, **Denton** residents passed the ordinance as an initiative under the city charter.

City leaders continued their pledge Wednesday to defend the new ordinance vigorously.

"We haven't been served yet, but we're aware of it," said Mayor Chris Watts. "It's an ordinance that's on the books, and we're going to defend it to the best of our ability. Come Dec. 2, it will go active."

Tom Phillips, former chief justice of the Texas Supreme Court and attorney with Houston-based Baker Botts, said the Texas Oil and Gas Association seeks to block the ordinance.

The association is not seeking a temporary restraining order against the city, since the ordinance was not scheduled to take effect right away. However, the association did ask for an expedited schedule in **Denton** district court to keep the ordinance from ever taking effect.

The association is acting on behalf of its members, but should it prevail in court, the ruling would benefit all operators, Phillips said.

Currently, Colorado-based Vantage Energy is drilling and fracking gas wells on land owned by former Dallas Cowboy and current NFL Network host and analyst Brian Baldinger. Vantage sought and received a waiver from the city's moratorium earlier this year.

Phillips and the association claim in its lawsuit that the ordinance is unconstitutional, since a city cannot write ordinances that go against the Texas Constitution.

"State law trumps over local law just as federal law trumps over state law," Phillips said. "I'm perfectly comfortable with, and confident in, our position that the state has sufficiently regulated this area, that no one municipality has the legal authority to rise up and say 'not in my backyard.'"

The land office had sued in part because the ordinance does not differentiate between privately owned and state-owned minerals, according to Jim Suydam, spokesman for the state agency.

Typically, Texas cities don't claim that their ordinances affect state agencies. The state fire marshal, for example, not the city's, oversee the fire codes at the University of North Texas, Texas Woman's University and the **Denton** State Supported Living Center.

Patterson, too, claimed in his lawsuit that the ban was unconstitutional because it prohibited him from performing his duties, calling the ban "arbitrary, capricious and unreasonable."

In a press release, Patterson said the state's land commissioner has a fiduciary obligation to state-owned lands, which benefit public schools. This year, the land office deposited \$1.2 billion into the state's Permanent School Fund, largely from oil and gas revenues. It was unclear, as of press time, how much of that revenue was from state-owned lands in the city of **Denton**.

Whether the pair of lawsuits filed Wednesday reflect all the challenges the city may face remains to be seen. Phillips said the association's challenge is limited to the ordinance and does not represent any individual claim of damages that could be made by a mineral owner or company that is unable to operate because of the ban.

Another industry group, the Texas Independent Producers and Royalty Owners Association, is weighing its options, according to Kelli Way, communications director.

"For the time being, our association has not made any definitive decisions as to whether to file suit against the ordinance," Way wrote in an email.

And whether the Texas Legislature responds to the local initiative with a new law limiting local authority related to fracking remains to be seen.

State Rep. Phil King, R-Weatherford, has said previously that he would file such legislation. State Rep. Myra Crownover, R-**Denton**, did not return a call for comment Wednesday.

**Frack Free Denton** issued a statement on its website, [frackfreedenton.com](http://frackfreedenton.com), saying that the lawsuits were expected.

"Unfortunately, industry has met our expectations," the statement read. "They have taken no time to reflect on their own irresponsible actions that brought the people of **Denton** to this point."

More than 25,000 **Denton** voters cast a ballot on the fracking proposition, with an overwhelming 59 percent approving the ban. Nearly 2,000 registered voters signed the petition that forced the matter to an election. Proponents of the ban were outspent nearly 10-1, with political contributions from the oil and gas industry making it the most expensive political campaign in the city's history.

Voters in two California counties and the city of Athens, Ohio, also approved fracking bans on Election Day, joining dozens of cities in New York, Colorado and elsewhere that have moved to ban fracking. But the current boom in shale oil and gas production began in **Denton** and Wise counties, so the local proposition pushed **Denton's** battle over a city's rights to police what happens within

its boundaries into the national spotlight.

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