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Dissecting Denton: How This North Texas City Banned Fracking

By JIM MALEWITZ TEXAS TRIBUNE • DEC 16, 2014

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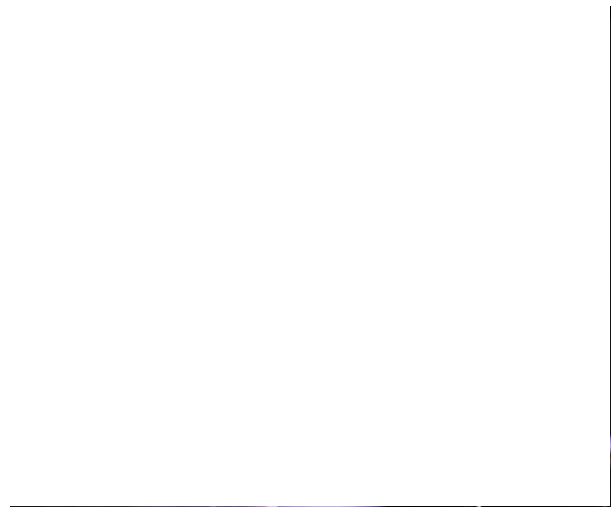
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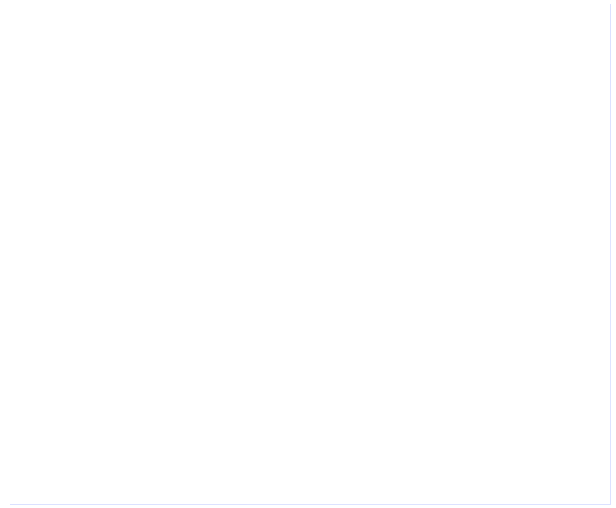
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State lawmakers, the oil and gas industry and national environmental groups are asking deep questions about Denton, home to two universities, 277 gas wells and now, thanks to a rag-tag group of local activists, Texas' first ban on hydraulic fracturing.

BRANDI KORTE / FRACK FREE DENTON / TEXAS TRIBUNE



Cathy McMullen taps the brakes of her Toyota Prius after driving through a neighborhood of mostly one-story homes in Denton. “There,” she says, nodding toward a limestone wall shielding from view a pad of gas wells.



McMullen, a 56-year-old home health nurse, cruised past a stretch of yellowed grass and weeds. “They could have put that pad site on that far corner right there,” she says, pointing ahead. “The land’s all vacant.”

Instead, the wells sit on the corner of Bonnie Brae and Scripture Street. Across the way: Texas Health Presbyterian Hospital. Across another street: the basketball court, picnic tables and purple playground of McKenna Park. That was where Range Resources, a company based in Fort Worth, wanted to start drilling and fracking in 2009.

McMullen, who at that time had just moved into a house about 1,500 feet away from the proposed site, joined others in raising concerns about bringing the gas industry and hydraulic fracturing — widely known as fracking — so close to where kids play.

Fracking, which involves blasting apart underground rock with millions of gallons of chemical-laced water to free up oil and gas, “is a brutal, brutal process for people living around it,” McMullen says.

Their efforts in city hall failed.

If McMullen felt invisible five years ago, she doesn’t anymore. Today, state lawmakers, the oil and gas industry and national environmental groups have become acutely aware of Denton, home to two universities, 277 gas wells (<http://www.cityofdenton.com/departments-services/departments-g-p/gas-well-inspections/gas-well-sites>) and now, thanks to a rag-tag group of local activists, Texas’ first ban on fracking.

Petroleum vs. local control

Thrust into the saga is George P. Bush (<http://www.texastribune.org/directory/george-p-bush/>), who in January will take the helm of the Texas General Land Office, an otherwise obscure office (<http://www.texastribune.org/2014/10/28/once-obscure-agency-rises-prominence/>) that manages mineral rights on millions of acres of state-owned property. In his first political office, Jeb’s eldest son and George W.’s nephew will inherit one of two major lawsuits filed against Denton, home to a sliver of that mineral portfolio.

“We don’t need a patchwork (<http://www.texastribune.org/2014/07/25/denton-fracking-ban-could-spur-wider-legal-clash/>) approach to drilling regulations across the state,” Bush, a former energy investment consultant, told The Texas Tribune in July as the anti-fracking campaign gained steam. It appears to be his only public statement on the issue.

Bush’s role in the dispute — however peripheral — only brightens the spotlight on Denton, and it forces him and others to choose between two interests Texans hold dear: petroleum and local control.

McMullen’s group — Frack Free Denton — persuaded nearly 59 percent of Denton voters to approve a fracking ban on Nov. 4, after knocking on doors, staging puppet shows and performing song-and-dance numbers. The movement had help from Earthworks, a national environmental group, but its opponents — backed by the oil and gas lobby — raised more than \$700,000 to spend on mailers and television ads and a high-profile public relations and polling firm. That was more than 10 times what Frack Free Denton collected.

The town had company on Election Day. Voters in Athens, Ohio, and two California counties – three of the seven other communities that weighed in nationally – rejected the practice. To supporters, the North Texas city has taken a stand for clean air, clean water, public safety and quality of life. To opponents, the ban is the result of activists sowing fear and misinformation, threatening the economy and confiscating property – mineral rights – thousands of feet below ground.

If the ban in Denton (population: 123,000) isn't the biggest play in the national debate, it's certainly the most interesting.

This is Texas, after all. The state was built on oil and gas and is at the forefront of the most recent fossil fuels bonanza. Though threatened by plummeting oil prices in recent months, Texas is pumping more than twice the oil it did three years ago – more than 700 million barrels of crude in 2013 – accounting for more than a third of all U.S. production. It also produces about a quarter of the nation's natural gas, more than 7 trillion cubic feet last year.

“If Denton wasn't followed by two little letters – TX – no one would give a hill of beans about it,” says Chris Faulkner, chief executive of Breitling Energy in Dallas. Breitling has no direct financial interests in Denton, but Faulkner is among those in the industry who fears Texas could see more urban drilling communities “run amok.”

“You can already hear the environmentalists saying, ‘If we can win in Denton, we can win anywhere,’” he says.



(https://mediad.publicbroadcasting.net/p/keratv/files/styles/x_large/public/201412/fracking_denton_2_Fracking_Denton.jpg)

A gas well last fracked in March sits less than 400 feet from a home in Denton, which just became Texas' first city to ban fracking.

CREDIT COOPER NEILL / THE TEXAS TRIBUNE

A “tsunami of exclusion?”

Denton sits on the northern edge of the Barnett Shale (<http://www.texastribune.org/tribpedia/barnett-shale/about/>), which stretches some 5,000 square miles beneath 25 Texas counties and pumps millions of dollars into state and local economies. That includes Wise County, which shares Denton County’s western border. It’s where George P. Mitchell pioneered the combination of horizontal drilling and fracking in use today.

Unlike other cities that rejected fracking, Denton residents have spent years alongside gas wells, rather than simply reading about them. Well pads sit near homes, schools and even across the street from Apogee Stadium, where the University of North Texas’ Mean Green plays football. (Three hulking wind turbines also loom over the stadium.)

The ban hasn’t completely turned off the spigot on Denton’s natural gas, but production will dwindle as long as it’s in place. Without fracking, companies cannot stimulate gas locked in the Barnett Shale. Operators can keep pumping from wells they had already drilled and fracked, but they can’t frack them again. Without that option, the flow weakens over time. Meanwhile, companies are unlikely to drill new wells that can’t be fracked.

Not every oilman fears Denton's vote could, in Faulkner's words, unleash a "tsunami of exclusion" elsewhere. A few days before the vote, T. Boone Pickens told the Tribune that closing off Denton to fracking "would mean a lot to those landowners there, but not to anybody else."

Still, representatives of major oil and gas companies joined Texas lawmakers to try to ward off the ban at a marathon city council meeting (<http://www.texastribune.org/2014/07/16/denton-council-punts-fracking-ban-proposal-voters/>) last July. Industry representatives told voters that a ban would ruin Denton's economy and expose the city to millions in legal claims. Two state oil and gas regulators (<http://www.texastribune.org/2014/09/08/railroad-commissioner-fears-russian-threat/>) and the industry-funded group (http://www.dentontaxpayers.com/denton_drilling_ban_effort_tied_to_russia) that opposed the ban insinuated (without evidence) that grassroots activists were in cahoots with the Kremlin — looking to protect Russia's share of the global natural gas market.

It didn't work, and the claim about Russia became the butt of jokes, even earning a mention in a song parody performed by the local anti-fracking trio. Sung to the tune of "Diamonds Are a Girl's Best Friend," The Frackette's (<https://www.youtube.com/watch?v=MD5r8WGYAug>) "Fracking Is a Town's Best Friend" advises, "When hippies try to crush ya, just say they're funded by Russia."

So, how did a North Texas town come to reject a tool that has been instrumental in the state's economic well-being? It seems it was equal parts concerns about health and the environment and a good dose of NIMBY.

Complicated history

Trying to make sense of the Nov. 4 landslide vote, some industry officials suggest that the voting power of Denton's roughly 51,000 university students effectively drowned out the town's permanent residents. The gowns, the argument goes, drove the town. "If we're looking at Denton and trying to glean some sort of national significance out of this," says Steve Everley, the national spokesman for Energy In-Depth, which promotes the petroleum industry, "then the significance is that activists are having success in college towns and in populations with few if any wells."

But Denton's voting records cast doubt on that argument. It's not clear that college students turned out in high enough numbers to single-handedly tilt the vote. Voters closer to campuses overwhelmingly supported the ban, as well as Democrat Wendy Davis (<http://www.texastribune.org/directory/wendy-davis/>) in the race for governor. But plenty of conservatives also rejected fracking. Both Republican Greg Abbott (<http://www.texastribune.org/directory/greg-abbott/>), who ultimately defeated Davis, and the ban prevailed in 11 of Denton's biggest 33 precincts. Roughly 25,000 votes were cast in the fracking question and those opposed to fracking outpaced supporters by some 4,400 votes. Denton would have still passed the measure by 412 votes even if voters younger than 30 were disregarded. Voting data also shows that the average age of a voter was 52.

McMullen is a prime example of such a voter. When McMullen and her husband arrived in Denton in 2009, they were trying to escape heavy drilling and fracking that spilled onto their 11 acres of ranch land in Wise County. The noise, lights, fumes and traffic were horrible, McMullen said — different from anything she

experienced growing up near conventionally drilled wells in East Texas, where bobbing pump jacks dotted the landscape.

McMullen says she suffered constant headaches and suspects that benzene – whether wafting from a compressor station, tank battery or fracking itself– was the cause. (When a jury later awarded (<http://www.texastribune.org/2014/04/30/family-near-drilling-activity-awarded-3-million-su/>) her Wise County neighbors, Bob and Lisa Parr, nearly \$3 million in damages from the company that fracked those wells, McMullen felt her worries were validated. The verdict is under appeal (<http://insideclimatenews.org/news/20140916/29-million-fracking-verdict-against-texas-oil-company-survives-another-challenge>.) McMullen and her husband sold their ranch home in Wise County shortly after an industry tanker fatally struck one of their friends, she said.

“We naively felt if we lived in a town where there are city limits, it’s going to be regulated,” McMullen says. “There are going to be rules [operators] have to follow.”

Just two weeks after the couple moved to Denton, McMullen said she noticed Range Resources pounding in stakes across the street from the park, sizing up the corner as a gas site. She and some of her new neighbors called for the development to be moved elsewhere on the large lot, but the council, fearing litigation, ultimately permitted the development.

Everley insists Range was not trying to bully Denton. Geology made only two spots viable for drilling, he says, and a park-adjacent site would yield higher returns for the family that owns the minerals. “If a company can develop their property efficiently and effectively, then do they not have a right to move forward with that?” he says. “Or do their rights not matter at all?”

From that point on, McMullen, who rarely voted until she reached her 40s, became an activist, organizing a group to push for tighter drilling rules as the industry expanded its footprint in Denton.

Over time, they succeeded – at least on paper. The city updated its drilling ordinance in 2013, for instance, adding 200 feet to its previous 1,000-foot buffer between drilling sites and homes, schools, parks and hospitals. But that changed little on the ground. The rules didn’t prevent developers from building houses near existing wells, and people kept buying them. In fact, homes are still cropping up in those neighborhoods. What’s more, Denton’s fire department in the city’s early drilling days issued permits for some well pads in perpetuity, meaning operators could drill as many wells as they wanted without further approval from the city.

Depending on how one sees it, Dallas-based EagleRidge Energy either exploited a loophole or strictly adhered to the law by drilling wells as close as 200 feet from homes. In October of 2013, the city sued the company for drilling too close, but it quickly withdrew the lawsuit after a judge denied its request for a temporary injunction. An EagleRidge well blowout (<http://www.dentonrc.com/local-news/local-news-headlines/20130727-few-answers-in-april-gas-well-blowout.ece>) that year worsened the tension, spewing benzene and other chemicals into a neighborhood and prompting evacuations and flight diversions at the city’s airport. EagleRidge declined interview requests.

So with input from a lawyer who has remained anonymous, McMullen and the other activists decided on a last-ditch remedy: Use the ballot box to try to ban fracking. By the spring of 2014, they had gathered close to 2,000 signatures — enough to put it to a vote.

But would any of this have happened — would McMullen have even become involved — if that well pad had been installed down the road, farther away from her home?

“Probably not,” she says.



(https://mediad.publicbroadcasting.net/p/kera/files/styles/x_large/public/201412/adam_briggle_frack_denton

Adam Briggles, vice president of Frack Free Denton, throws up his arms after giving a victory speech to a watch party in Denton in November.

CREDIT CHRISTINA ULSH / KERA

Few mineral owners

A real David and Goliath story? Sure, says Bobby Jones, sipping a Diet Coke at a Cracker Barrel off U.S. Highway 380.

If the pro-fracking side were David.

Jones, a round-faced, round-bellied general contractor and rancher, is a local face of Denton Taxpayers for a Strong Economy. The group — funded almost entirely by energy companies — was formed to oppose the ban. For seven generations, his family has owned 82 acres on the west side of town. They own the minerals, too.

Drilling on his land means hefty royalty checks that pay for his mother's retirement. As the 57-year-old sees it, Denton's anti-fracking activists are tampering with his property for no good reason. "They were taking a small problem — you can call it a problem, if you want to — and multiplying it out," he says. "What they did was scare the hell out of a bunch of people."

Jones says the development on his land hasn't caused any problems for him, his two kids, five grandchildren — or even his cattle, which sometimes graze near wellheads. "In my age and older, you were brought up to know and respect the minerals," he says.

But the election's outcome didn't surprise him one bit. The industry was slow to react to fracking opponents' three and a half years of organizing, he says. The local newspaper's scrutiny of the industry didn't help. And another thing, he adds: "They don't have their minerals. So there's the problem."

It's true. Few Denton residents own the mineral wealth beneath their property. That happens frequently in Texas, where mineral interests are "severed" from surface property.

Energy companies and large corporations own around 80 percent of the roughly \$88 million below Denton, according to 2013 city appraisal data. (<https://www.dentoncad.com/>) That leaves some minerals for the city, local schools and other public entities, and even less for everyday residents, giving voters less motivation to support fracking.

The ban shouldn't immediately impact Jones because his wells won't be ready to be fracked again for several years. But Randy Sorrells, his buddy and fellow mineral owner, had expected new frack jobs for his five wells early next year. If the ban survives, Sorrells won't be able to go forward with his plans.

"It's just a propaganda fear-factor thing," he says of the ban. "It's just rampant."

Legal battles

But Denton's undoubtedly the underdog now. With the votes tallied, Texas and the energy lobby shifted to offense, racing each other to sue first.

At 10:20 a.m. the morning after the election, the Texas Oil and Gas Association — the state's biggest petroleum group — announced its lawsuit. Just four hours later, the Texas General Land Office, which manages millions of acres of state-owned property, blasted a release about its challenge, noting the filing time: 7:51 a.m.

“This ban on hydraulic fracturing is not constitutional and it won’t stand,” said Land Commissioner Jerry Patterson (<http://www.texastribune.org/directory/jerry-patterson/>), calling it “arbitrary, capricious and unreasonable” and a threat to the state’s royalty interests under Denton, which flow into a \$37.7 billion fund that benefits public schools. “If it were allowed to be enforced it would hurt the school children of Texas,” he said.

The minerals Texas owns in Denton were worth just \$45,000 in 2013, according to city tax data. George P. Bush, who is set to succeed Patterson in January, will continue the litigation, says Trey Newton, his chief of staff. “However, we can’t comment on pending litigation,” he added.

Because of current shale economics, both the state and petroleum group argue, the measure amounts to a ban on all drilling, essentially confiscating mineral rights. They also say state law trumps Denton’s.



(<https://mediad.publicbroadcasting.net/p/kera/files/story/healthandpublic/2014/11/dentonlitigs>)

In early November, Denton voters saw side-by-side signs featuring opponents and supporters of the fracking ban.

CREDIT DOUALY XAYKAOTHAO / KERA NEWS

But the case is more complicated. Texas law says the state intends its mineral resources to be “fully and effectively exploited,” but courts have said the power isn’t absolute. The Railroad Commission oversees the state’s oil and gas industry, with authority to adopt “all necessary rules for governing and regulating persons and their operations.” Local governments have the right to impose reasonable health and safety regulations, and the Legislature has granted most Texas cities, including Denton, the power to “regulate exploration and development of mineral interests.”

Where fracking falls on that spectrum is unclear. Texas courts have occasionally considered cities’ drilling regulations, but they have yet to see a case of such size and scope. The case will almost certainly reach the Texas Supreme Court.

Some legal experts say Denton could make a compelling argument that a fracking ban would not wipe out all options to drill. After all, drilling technology lets operators tap resources thousands of feet away at various angles. Some companies might reach Denton’s gas from outside city limits.

But the lawsuits cite Texas Supreme Court cases calling production in the Barnett Shale “entirely dependent on hydraulic fracturing.” Texas courts have traditionally given great deference to the property rights of oil and gas interests, and the Texas Oil and Gas Association in 2014 contributed \$25,000 each to three Texas Supreme Court justices who won races. The industry’s lead attorney in the Denton suit is Tom Phillips, the chief justice of the Texas high court from 1988 to 2004, now with the law firm Baker Botts.

The lawsuits are asking for an injunction and for Denton to pay the industry’s legal fees. Even if Denton prevails, it could still be on the hook: Mineral owners will likely sue, asking the city to pay tens of millions of dollars — if not more — for the gas they can’t extract without fracking.

Some state lawmakers have also promised to fight the ban in the statehouse, though Denton-area Republicans say they will leave the decision to the judges. The Texas Railroad Commission has also dug in, saying it will continue to issue drilling permits. Texas Republicans often blast federal efforts to regulate the oil and gas industry, but many call Denton's effort to assert home rule different. "Local control's great in a lot of respects. But I'm the expert on oil and gas," Christi Craddick, the Railroad Commission's chairwoman, said at a Texas Tribune event. "The city of Denton is not."

That rankles Denton Mayor Chris Watts, who never shared his position on the ban but promises to vigorously defend the vote in court (<http://www.texastribune.org/2014/12/01/defending-ban-denton-calls-fracking-nuisance/>). "The Railroad Commission is not an expert about the city of Denton," he says, adding that his city "wasn't trying to pick a fight."

But it's not shying away from one now (<https://www.texastribune.org/2014/12/01/defending-ban-denton-calls-fracking-nuisance/>).

"I expect to be able to protect my community, take care of it and do what we need," says McMullen, gliding past the well pads near her home. "And I expect the state of Texas to do that."

The well pads near McMullen's home and others throughout Denton were silent on a chilly Tuesday in December, the day fracking became a misdemeanor inside the city's limits. There were no trucks rumbling down Denton's roads, hauling sand, chemicals or millions of gallons of water. No haze from the drill sites wafting into the Texas sky.

What's unclear is whether the stillness will last.

Disclosure: T. Boone Pickens has been a major donor to The Texas Tribune. The University of North Texas is a corporate sponsor of the Tribune. A complete list of Tribune donors and sponsors can be viewed here (<http://www.texastribune.org/support-us/donors-and-members/>).

--by Jim Malewitz with The Texas Tribune

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