

# The Longmont Frack Trials



By John Harpole

I see an uneasy, eerie similarity between what happened leading up to the November election in Longmont, Colorado, and what led up to what became known as the Salem Witch Trials. No accusation was considered false. No claim was weighed and measured. No journalistic investigation took place. There was no burden of proof. It's as if Salem's "spectral evidence"—evidence based on dreams and visions—was once again enough to condemn.

It was known as Ballot Question 300. The initiative was organized by a group known as "Our Health, Our Future, Our Longmont" (OHOFOL) in an effort to ban hydraulic fracturing in the 22-square-mile city of Longmont, which is located 30 miles north of Denver.

OHOFOL knocked on doors and incited fear in Longmont citizens. "Are you content with an operation next to your home or your children's school that is said to be safe, but hasn't been shown to be safe?" asked Michael Bellmont of OHOFOL. "Hydraulic fracking is destroying our water!" the organization claimed.

OHOFOL did not present data supporting its claim that hydraulic fracking is destroying water. And yet, voters of Longmont passed the ban by a significant 60-40 majority.

The reality of the day is that we can no longer count on an independent press to act as a first line of defense. During the pre-election campaign the lack of accurate reporting by the local media on the truth related to hydraulic fracturing was astounding. How many stories exposed the dishonesty of these claims? How many investigated the risks to the City of Longmont?

By my count: one.

A *Longmont Times-Call* editorial warned that the fracking ban won't be free: "Mineral rights are property rights, and to enforce a ban [the City of Longmont] will have to compensate the owners for their loss. The proponents failed to mention that part when they went door to door collecting signatures."

So who are the parties that are truly damaged? We will soon find out. Apparently the Longmont Frack Trials are about to begin. However, this time the accused parties have decades of significant case law and actual science on their side. Three harmed parties come to mind:

**Mineral owners:** Thanks to the U.S. Constitution, owners of mineral interests beneath Longmont have a significant claim for damages. The Constitution is quite clear, "private property cannot be taken for public use without just compensation."

Perhaps as proof of that legal remedy, plaintiff attorneys are researching mineral-interest ownership for prospective class-

action clients, and the Colorado Oil & Gas Association filed a lawsuit in late December.

**Oil and gas companies:** Companies that currently hold a lease with a mineral-interest owner inside the city's boundaries have also been harmed. An implied covenant of every oil and gas lease is a "duty to develop" that lease.

The lessee cannot abide by its implied "duty to develop" as a result of the fracking ban. The net effect? The oil and gas company's lease is rendered worthless by the ban.

What is just compensation in this case?

I asked Peterson Energy, a division of Integrated Petroleum Technologies Inc., to do a calculation of potential damages to oil and gas companies and mineral owners. Their conservative number was \$170.5 million. That includes lost lease bonus payments for mineral owners and lost production revenue for both mineral owners and producers. Another recent industry estimate of damages is more than twice that figure.

**The State of Colorado:** Imagine the historical coincidence that Colorado Gov. John Hickenlooper is the first governor/geologist in the history of the U.S., no less, a former oil and gas company geologist.

Who better to explain the industry's unblemished record as it relates to hydraulic fracturing? Who better to explain the negative effect of a de facto-drilling ban on the states' ability to collect severance taxes from producers? Who better to stand up for energy jobs?

In December at Hart Energy's Rockies Midstream Conference, the governor announced that the state won't sue Longmont over its fracking ban. The governor said he wasn't sure that the state had legal standing. Many industry experts question the legitimacy of that concern given the loss of severance tax revenue to the state. Gov. Hickenlooper's announcement marked a dramatic shift from his pre-election position wherein he stated a hydraulic fracture ban would bring a state lawsuit. He did say he will support energy companies that file lawsuits.

There is no question that several lawsuits will be filed. Those lawsuits should expose proponents of the ban for inciting mass hysteria with an astonishing lack of evidence. Here's the reality of the day: The truth is on trial. ■

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