

## Would a Ban on Fracking Constitute a Takings?

Fracking is all the rage these days, a means of increasing domestic energy production by injecting fluid into cracks that exists in rock formations to open them up and allow oil and gas to flow out and be collected. There is a great national debate taking place over fracking, which to date remains largely unregulated. Many argue that fracking should be limited or banned due to environmental concerns about polluting the water basin and creation of toxic waste based on chemicals in the liquid being injected, as well as other concerns.

A recent [article](#) by an a senior policy analyst for the National Resources Defense Council reports that the Governor of Colorado has stated that a ban on fracking would be equivalent to a taking, and that mineral owners would have to be compensated. But the author notes that “the question of whether a municipal ban will or will not effect a taking is far from clear cut” and cautions that the governor “should not jump to any conclusions that every local fracking regulation would constitute a taking and require some sort of financial compensation.”

In a related development, a group of landowners in New York interested in commencing fracking operations [announced](#) in February that they were considering filing a takings lawsuit if the state failed to issue hydraulic fracturing regulations by February 27, 2013, the deadline set for such regulations. The state missed the deadline and the frustrated landowners [plan to file a lawsuit](#) against the Cuomo administration once the funds are available.

The intensity of the debate over fracking continues to grow nationwide and seems destined to result in fracking lawsuits based on a federal takings theory in the months and years ahead.

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