

ENERGY LAW

Professor, Students Enter Fracking Fray

By Law Week Colorado Staff
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IF YOU'RE Mike Harris, it's hard to hand over a case on one of the biggest environmental issues facing Colorado.

The director of the University of Denver Sturm College of Law's Environmental Law Clinic spent 17 years in nonprofits, agencies and big law firms fighting on behalf of environmental groups. But as the clinic stepped into the fight over Longmont's ban on fracking, he had to step back.

"I want to take on these cases because I believe in the client's case, and I want to be successful at it," he said. "But to back away and realize teaching is the biggest priority of my job, it's tough."

Luckily, he says the clinic's track record proves the students can handle the challenge. Their latest fight is with a lawsuit filed last year by the Colorado Oil & Gas Association against the city of Longmont, whose voters in November passed a ban on the gas-extraction technique hydraulic fracturing, or fracking.

In March, the clinic's student attorneys filed a motion to join Longmont in the suit on behalf of environmental and citizen groups. The oil and gas association has replied, arguing that the clinic's clients don't have an interest in the suit unique from the city and that they will raise collateral issues.

Harris said the city's main interest is in protecting its jurisdiction, and that's where the oil and gas association wants to keep the fight. But, he said, "it's impossible to talk about the voter approved charter amendment without talking a little bit about why they approved it, which is the effects of fracking on their health."

The judge in the case has yet to rule whether the clinic can intervene.

Telling experience

If it's tough for Harris to let go, he has no one to blame but himself.

For the first 17 or so years of DU Law's environmental clinic, it ran like many law school clinics. The students largely honed



MIKE HARRIS

research and writing skills but weren't the lead in cases. Then in 2008, the Carnegie Foundation released a critical report on the legal education system that called for, among other things, an increase in hands-on training.

It's that new approach that Harris brought to the clinic when he took over a few years ago. The students began handling the cases, including arguments before the court. It's a lot of work for Harris to prepare a student to go to court. "A lot of folks I used to work with think I'm insane letting students have this much control."

But, he adds, "now that I've done it for a while, it's rewarding."

His students have won some big cases. In February 2012, a judge agreed with them and blocked a logging permit in southwest Colorado. This past October, a federal court sided with them ruling that a coal-fired power plant on the eastern plains violated the Clean Air Act.

"It might take more time (to prepare students) than to do it myself, but it's no less effective," he said. "These folks are going out and being excellent lawyers."

Into the fray

Harris selects cases more for the teaching opportunities. In attempting to join the Longmont lawsuit, the students will take on one of the most controversial issues facing the state.

Numerous municipalities have attempted to regulate fracking, where a chemical-slurry mixture is injected deep into the ground to release trapped natural gas. Most have faced pushback through lawsuits brought by the oil industry or the state itself, which says it has the sole right to regulate oil and gas extraction.

Harris said the case allows the students to consider their role as advocates and to practice on an issue with no academic guide. "We're trying to write the casebook on it," he said.

Jenni Barnes, a third-year law student, said the citizens groups that the clinic represents have a unique interest in the Longmont fight and should be allowed to intervene. "They're the ones breathing the air and drinking the water. The city, as an entity, isn't the one living near the proposed drilling sites and dealing with the potential impact."

They face a tough battle. In 1992, the Colorado Supreme Court ruled that local governments cannot ban oil and gas drilling. Municipalities that have passed fracking bans could argue that they haven't banned drilling, just one method of it. But fracking is seen as the only economically feasible way to extract

some natural gas deposits, so opponents of the bans argue that a fracking ban is a de facto ban on all drilling.

Harris said the courts may have said there needs to be a balance between local and state interests, but those are in the context of traditional oil and gas drilling. Citizen groups don't see traditional methods and fracking as remotely the same.

"Until the court says it's the same, we intend to argue it's not," he said.

Continually meaningful work

Barnes and the other students estimate they put in 30 hours each week on the case.

Second-year law student Jonathan Goldstein said hitting the send button on a real-life motion isn't like a graded paper. "It's real and it's nerve-wracking but also very exciting."

Stephanie Arndt, a second-year student who actually drafted the motion to intervene, said she enjoys getting the client contact provided by the Longmont case.

Harris said he hasn't seen a movement like the opposition to fracking in his 17 years practicing in the area. He's parlayed the clinic's work in Longmont into representation with other cities. Come this summer, the clinic's students won't be around, but the case will continue.

"So I'll be taking a break," he said. "By break, I mean I'll be doing it myself."

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