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Hydraulic fracking: we can decide now

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Americans are discovering fracking. More precisely, citizens are finding that while hydraulic fracturing has been around since just after World War II, its incidence and effects were unknown, until recently, to many, including regulators.

Fracking involves creating deep-reservoir fractures to

increase the productivity of a well. A cocktail mix of chemicals in water along with a "propping agent" such as sand is injected at pressures that exceed the strength of the drilled rock. Most fracking targets natural gas from shale and tight sands formations; some involves oil. Fracking happens along a chain of activities - from the decision to search for energy reserves on public or private land to delivery of an energy product to an end user.

At least 16 states in the U.S. have important reserves of natural gas (or oil) accessible through hydraulic fracking. Companies as large as ExxonMobil are in the fracking business but so too are very small local operations.

The pace of discovery and the pace of new fracking initiatives are accelerating. Fracking produces an increasingly important amount of the nation's energy and is a part of the story of the U.S. moving closer to energy independence, a prediction that would have seemed laughable five or 10 years ago.

But fracking is controversial and it should be. Its environmental effects are still being debated while its contributions to a weak economy are trumpeted. President Barack Obama recently stated that 600,000 jobs had been created from shale gas development and there are anecdotal stories of individuals and groups of neighbors reaping huge windfalls in leasing fees.

Citizens remain the best source of information about the risks and benefits, both observed and anticipated, of this process.

Fracking's effects and its relative impacts, say compared to those associated with the carbon economy, are debated but reports link living near fracking sites to disease clusters. Documentaries show tap water on fire and marred landscapes in fracking regions. Excessive noise, threats to wildlife and to water sources - their quality and quantity - as well as air pollution are real concerns.

Until very recently, regulation of the core activity of fracking at the federal level was very limited, and it is still in an early stage of evolution. However, already a dozen laws from the Clean Water Act to the National Environmental Policy Act can

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Mergers & Acquisitions

California firms get a slice of the country's M&A work

Several firms with California presences saw large jumps in the total value of M&A transactions they handled in the first half of 2012 from a year earlier, with Skadden, Arps, Slate, Meagher & Flom and Affiliates at the top of the list.

Law Practice

Sacramento firm acquires Beverly Hills entertainment boutique

The new Weintraub Tobin Chediak Coleman Grodin Law Corp. is a 72-lawyer firm with headquarters in Sacramento and offices in San Francisco and Beverly Hills.

Litigation

Direct purchasers settle with defendant in price-fixing case

A set of plaintiffs in a long-running antitrust class action on Friday filed a motion to approve a \$38 million settlement with AU Optronics Corp.

Bankruptcy

Bankruptcy fee rises to pay for judgeships

The cost of filing for Chapter 11 bankruptcy will increase by \$46 in November to pay for extending four temporary bankruptcy judges in California and 29 nationwide, the U.S. Administrative Office of the Courts announced Friday.

Alternative Dispute Resolution

How independent mediators get a piece of the pie

Although the recession affected business for independent mediators, many have come up with innovative ways to sell their work in a competitive, and shrinking, marketplace.

Intellectual Property

Apple gains momentum in smartphone patent battle

The momentum has shifted, at least for now, in the smartphone legal battle pitting Apple Inc. against Google Inc. and its allies, including South Korea-based Samsung Electronics Co. Ltd.

Law Practice

Legal, U.S. job markets show little movement

The legal jobs tally remained at 1.1 million after a slight uptick of 200 jobs in June, according to the U.S. Bureau of Labor Statistics.

be used to manage fracking in an environmentally responsible way.

States are a major source of regulation of the fracking enterprise. Targeted activities include seismic testing, construction of roads to the sites and transporting equipment to them, habitat preservation and conservation around the wells, drilling and casing, control of air emissions, water quantity and quality regulation near and at the sites, waste storage and disposal, and site restoration.

State laws on fracking vary widely. Some states, including California, do not even have records of how many sites are being fracked and where those sites are. Other states have fairly aggressive approaches to some steps in the process including New York, Louisiana and Texas.

Local law is potentially potent in fracking decisions. Local zoning can address the aesthetics of fracking facilities. Counties, cities and towns can ban the practice or impose moratoriums on it until its effects are better understood and better controlled. Furthermore, common law actions remain available to individual property owners under nuisance, trespass, negligence and liability schemes.

Formal federal and state law may begin to catch up with the practice of fracking as public interest grows. Meanwhile citizens remain the best source of information about the risks and benefits, both observed and anticipated, of this process. They can act under existing law even while new rules are being developed.

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Government

High speed rail project squeezes by in key senate vote

Unresolved, however, are lawsuits challenging the project that critics said will now proceed.

Discipline

Disciplinary Actions

Here are summaries of lawyer disciplinary actions taken recently by the state Supreme Court or the Bar Court, listing attorney by name, age, city of residence, and date of the court's action.

Firm Watch

On the Move

Carroll, Burdick & McDonough LLP added Richard J. Zuromski Jr. as partner in San Francisco.

U.S. Supreme Court

Eminent domain and the Obamacare decision

What Congress determines to be a "public use" is "well-nigh conclusive" to the same court that ignored repeated legislative declarations that the individual mandate is a penalty, not a tax. By **Gideon Kanner** of Loyola Law School

Intellectual Property

The (un)safe harbor of willful blindness

Courts sometimes cross-apply legal doctrines from other areas of jurisprudence; such is the case with willful blindness in copyright law. By **Lorelei D. Ritchie** of the U.S. Trademark Trial and Appeal Board

Law Practice

Andy Griffith, William Rehnquist, and the 'Man in a Hurry'

Andy Griffith's death spurs memories of a time before lawyers' lives were held hostage by technology. By **Dan Lawton** of Lawton Law Firm

Administrative/Regulatory

National data breach notification: federal preeminence or Texan governance?

The FTC has been flexing its muscles recently to ensure the public that it's working to protect private consumer information. By **Raymond O. Aghaian** of McKenna Long & Aldridge LLP

Environmental

Hydraulic fracking: we can decide now

While hydraulic fracturing has been around for decades, its incidence and effects were unknown, until recently, to many, including regulators. By **Joseph F. C. DiMento** of UC Irvine School of Law

Judicial Profile