

MN LEGAL AUTHORITY HAS FOUND THAT A LEGAL BAN CAN BE USED IN WINONA COUNTY, MN.....SEE THE REPORT BELOW!



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**A REPORT FROM JOANNA RUPPRECHT:
Would you like to share this with your network?
LSP just released a new legal report documenting**

why a frac sand ban is not only fully legal but the most practical approach for Winona County to take. The legal analysis is specific to Minnesota, but a lot of the other contents would also be relevant to people in other states. The press release is below, it's also at this link: <http://landstewardshipproject.org/posts/825>. And the report is at this direct link: http://landstewardshipproject.org/repository/1/1730/winona_county_frac_legal_review.pdf. Thanks,
Johanna

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**RELEASE: Report Finds a Winona County Frac
Sand Ban has Strong Legal Justification**

*Regulating Through Permits Fails to Protect
County & Poses Bigger Legal Risks, Analysis
Finds*

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LEWISTON, Minn. -- Minnesota law does not prevent imposing a total ban on frac sand mining, processing and transportation operations in Winona County, according to a new legal analysis released today by the Land Stewardship Project (LSP). The analysis, "Legal and Practical Considerations in Support of a Zoning Ban on Frac Sand Operations in Winona County: A Review of Minnesota Statutes, Case Law, and County Policy," was written by attorney Leili Fatehi and documents why a ban on any new frac sand mining, processing and transportation operations is by far the most appropriate policy for Winona County to adopt.

"No Minnesota statutory or case law supports a conclusion that counties can't entirely ban frac sand operations by zoning ordinance, nor, for that matter, that a ban is legal only when the county can prove regulations would be insufficient," said Fatehi, who is an expert on legal and policy issues related to the environment, health, science and technology, and who teaches at the University of Minnesota Law School. "The reality is that, not

only will courts presume such a ban by zoning ordinance is legal, but it's also easier for a county to defend than a denial of a permit through regulatory measures."

Since June 2015, LSP has led a grassroots campaign calling for a frac sand ban in Winona County. This southeastern Minnesota county has been heavily targeted in recent years with proposals to mine and process vast quantities of sand for the use of the oil and gas industry in hydraulic fracturing in other states.

"Hundreds of people have already taken action in this campaign because they want our County Commissioners to act for the common good," said LSP organizer Johanna Rupprecht.

"Residents are asking the County Board to pass a total ban because the frac sand industry is inherently destructive and is an excessive use of resources. The harms it poses to the land, the water and people's health, safety and welfare are too great to be prevented by less-restrictive regulations."

Fatehi's analysis demonstrates that an idea often advanced by frac sand industry proponents -- that

a total ban would be outside a county's legal authority to enact or defend -- is unfounded in Minnesota law. The 50-page report describes the serious water quality, ecological, transportation, economic, agricultural and air quality impacts of frac sand operations. These negative impacts all provide ample justification for prohibiting the industry, according to the report.

Detailed analysis by Fatehi demonstrates why a ban is fully within the authority of a Minnesota county. She also found that regulating through such means as conditional use permits not only fails to prevent the industry's negative impacts, but also carries much more significant legal risks. The report includes model language by which a ban could be enacted through an amendment to Winona County's zoning ordinance.

"The in-depth legal analysis presented in this report is impressive and authoritative," said Ed Walsh, a New Hartford Township resident and LSP member who is an attorney with more than 38 years of experience in zoning law and litigation. "I believe this work clearly legally and practically confirms that a ban on frac sand operations is the wisest course to follow."

The report has been shared with Winona County Commissioners and other county officials so that the analysis and information gathered in it can be made use of as Winona County moves forward with consideration of the frac sand ban.

“Now that it’s clear a frac sand ban is legal and would be upheld, it’s time for Winona County Commissioners to do what the people want, formally introduce and ultimately enact the ban,” said Wilson Township resident Joe Morse, a member of LSP’s Winona County Organizing Committee. “This is necessary to fulfill the goals of the county’s Comprehensive Plan and protect the health, safety and general welfare of Winona County and its residents.”

The report, “Legal and Practical Considerations in Support of a Zoning Ban on Frac Sand Operations in Winona County: A Review of Minnesota Statutes, Case Law, and County Policy,” is available at http://landstewardshipproject.org/repository/1/1730/winona_county_frac_legal_review.pdf.

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Welcome to the Frac Sand Sentinel, a newsletter highlighting resource links, news media accounts, blog posts, correspondence, observations and opinions gathered regarding local actions on, and impacts of, the developing frac sand mining and processing industries.

The content of this newsletter is for informational purposes only. The editor of the Frac Sand Sentinel does not accept any responsibility or liability for the use or misuse of the content of this newsletter or reliance by any persons on the newsletters contents.

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