

New analysis suggests ways for landowners to limit fracking and mineral extraction without regulations

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Rural Pennsylvania is one of many parts of the United States in which oil and gas mining activity occur. Credit: Rob Jackson

Private landowners concerned about the risks of fracking may be able to prevent mining for oil and natural gas on their land – in perpetuity – without government regulation, according to a new analysis by Rob Jackson, professor of Earth system science at Stanford University, and his colleagues.

Jackson and a team of legal scholars have assessed how an established legal agreement – the conservation easement – could enable individual [landowners](#) to restrict fracking on their property. They've dubbed this new approach a mineral estate conservation easement (MECE).

Fracking (as hydraulic fracturing is commonly known) has dramatically increased in the United States and now accounts for about half of all U.S. oil output. Despite this growth, many communities

remain concerned about public health and safety.

As some local governments try to ban fracking, legal battles have yielded mixed success, largely because state governments are considered the greater authority on regulating oil and gas development. In Denton, Texas, voters approved a fracking ban only to have it overturned by the state legislature months later.

"People concerned about groundwater contamination and other potential impacts of fracking may welcome a new option for permanent conservation," said Jackson. "The MECE is a conservation easement underground that provides landowners with legal flexibility to restrict hydraulic fracturing and other subsurface activities on their land in perpetuity." The analysis is published this week in *Environmental Law Reporter*.

Nonregulatory action

A conservation easement is a contract (usually between a landowner and a land trust) whereby a landowner voluntarily agrees to sell or donate the right to use a piece of property in a certain way, commonly agreeing not to develop it. The restriction on the property often diminishes its value and the law allows landowners donating a conservation easement to take a tax write-off of the difference in fair market value of the land before and after the easement. Donors with larger tax bills could see significant savings without being required to give up private ownership of their property.

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