| | |
|---|---|
| To: | City Council |
| From: | William D. Cahill, City Manager |
| | Judy Schmidt, Acting City Attorney |
| Date: | May 5, 2014 |
| RE: | Fracking Moratorium Ballot Measure: Questions and Answers Sheet Addendum |

This is an addendum to the question-and-answer sheet of April 30, 2014, to deal with two additional questions that have also been asked at some point during the process, but which were not included in the original question-and-answer sheet.

**Does a 2-year moratorium result in a regulatory taking of private property?**

The Colorado Supreme Court has upheld the authority of local government to impose temporary moratoria on land use applications as an exercise of police power (protecting the public health, safety and welfare). The US Supreme Court has held that a moratorium is not a "per se" taking, but must be judged by balancing a "complex of factors", primarily the economic effect on a landowner, the extent of interference with reasonable investment-backed expectations, and the importance of the public interest being protected by the governmental action. So there is no bright line test.

**What is the effect of a moratorium on severance tax and mineral lease revenues?**

There may be some minor effect upon the amount of severance tax revenue and mineral lease revenue from the City receives from the state. But the amount is not likely to be very large in the context of the City budget because the distributions of tax revenues are based on several factors, most of which are not affected by a moratorium. The distributions are not based on oil and gas extraction within a community, but they do involve the number of industry employees who reside in a community.

Mineral lease revenue is based primarily on the number of employees involved in the mineral extraction industry that live within the City limits; secondarily on the community's road miles compared to the State total; and third on the City's population.

Severance tax distribution is based on the number of employees in the coal mining industry that live within the City limits; the number of employees in the metals mining industry that live within the City limits; the number of employees in the oil and gas industry that live within the City limits; the road index; and the City's population.

For many years these were minor revenue sources for the City, with the annual distributions totaling $50,000 or less. Since 2008 this source has increased to between $150,000 to $200,000 per year. In 2013 the City received $118,546.91 from the Severance Tax Distribution and $89,018.93 from the Mineral Lease Distribution for total revenue of $207,565.84. For comparison, revenue received in 2012 from both sources was $201,323 and in 2011 was $168,147.

There are also grant programs that are funded through Severance Tax and Mineral lease revenue collected by the State. In 2011 the City was awarded $400,000 through the Energy and Mineral Impact Assistance Program as partial funding for the expansion of the Loveland Public Library.