STATE OF COLORADO

Colorado General Assembly

Mike Mauer, Director
Legislative Council Staff

Colorado Legislative Council
029 State Capitol Building
Denver, Colorado 80203-1784
Telephone (303) 866-3521
Facsimile (303) 866-3855
TDD (303) 866-3472
E-Mail: lcs.ga@state.co.us

Charles W. Pike, Director
Office of Legislative Legal Services

Office Of Legislative Legal Services
091 State Capitol Building
Denver, Colorado 80203-1782
Telephone (303) 866-2045
Facsimile (303) 866-4157
E-Mail: olls.ga@state.co.us

MEMORANDUM

June 28, 2010

TO: Philip Doe and Richard Hamilton

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2011-2012 #5, concerning uranium mineral in-site extraction and exploration

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

Purposes

The major purposes of the proposed amendment appear to be:

1. To protect the water of Colorado and the health of the people of Colorado with regard to uranium mining and require that the total costs of any environmental remediation of a mishap due to the mining or exploration of uranium will be borne by the mine operator and not the state or people of Colorado;

2. To require a bond, in the amount of the estimated costs of remediation of a mine-site area,

be given by the mining operator to the state treasurer to be kept for fifty years; and

3. To require another bond in the amount of the estimated costs of remediation of the whole area of a geologic basin and formation where the mine is located.

Technical Comments:

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. Carefully check the proposed initiative to ensure that there are no spelling, grammatical, punctuation, or typographical errors. There are many of these types of changes that need to be made throughout the entire proposed initiative. Following are a few examples:

   a. Paragraph letters should be in lower case type, not small caps. For example, all the paragraph letters in section 34-32-102 (2) should be lower case, and in section 34-32-110(2) (a) (X), "34-32-112.5 (3) (D)" should be "34-32-112.5 (3) (d)."

   b. Check for spelling errors. Here are a few examples:

      i. "IN-SITU" should be "IN SITU";

      ii. In section 34-32-102 (2) (a) (II), "PUBLICALLY-FUNDED" should be "PUBLICLY FUNDED";

      iii. "Insure" means to enter into or to have a contract for insurance and the term is generally only used with regard to insurance. "Ensure" means to make sure or certain and the term is generally used without regard to insurance. Make sure the terms are used correctly within the proposed initiative.

      iv. "Affect" means to influence and is generally not used as a noun. "Effect" means a result, or to bring about or execute. Make sure the terms are used correctly within the proposed initiative.

   c. Check for general typos. Here are a few examples:

      i. In section 34-32-102 (2) (b), "AN CONVERTIBLE ALLOCATION" should be "A CONVERTIBLE ALLOCATION," and "WHOLE-AREA OF THE OF THE MINERAL-BEARING" should be "WHOLE AREA OF THE MINERAL-BEARING";

      ii. In the second sentence of section 34-32-102 (2) (c), "THE INTENT OF PUBLIC" should be "THE INTENT OF THE PUBLIC," and in the last sentence, "ACTION THE UNITED STATES" should be "ACTION OF THE UNITED STATES";

iii. In section 34-32-102 (3) (d), there is an extra space between the word "ASSEMBLY" and the semicolon.

d. Check for subject-verb agreement. For example, in section 34-32-112 (4) (b), "corresponds" should be changed to "correspond," so that the sentence would read "the area AND GROUNDWATER AQUIFERS which ~~corresponds~~ CORRESPOND with . . .".

e. Paragraphs and other subdivisions that follow an introductory portion should end in a semicolon, unless the subdivision contains more than one complete sentence or is the last item in the list following the introductory portion, in which cases it should end in a period. For example, in section 34-32-110 (2) (a) (IV), before the strike type "article." should be "article;".

2. Many other types of changes need to be made throughout the entire proposed initiative. Following are some examples:

a. It is standard drafting practice to insert a left tab at the beginning of the first line of each new section, subsection, paragraph, or subparagraph, including amending clauses and section headings.

b. With regard to section numbers and headnotes, it is standard drafting practice for a section number and headnote to be in bold-faced type and for the first subsection to immediately follow the headnote on the same line instead of the first subsection appearing on a separate line from the headnote. For example:

34-32-102. Legislative declaration. (1) It is declared to be the policy of this state . . . .

(2) The general assembly further declares that it is . . . .

c. Check that terms are used consistently.

i. For example, some similar terms used in the proposed initiative are "URANIUM IN SITU SOLUTION LEACHING OPERATION," "URANIUM IN SITU SOLUTION LEACH MINERAL EXTRACTION," "URANIUM MINERAL RESOURCE IN SITU MINING," and "URANIUM IN SITU SOLUTION MINING OPERATION." If the proponents are referring to the same thing, the terms should be the same. Similarly, if "LOCAL GOVERNMENT OF JURISDICTION," "LOCAL GOVERNMENT JURISDICTION," "LOCAL GOVERNMENT OF COMPETENT JURISDICTION," "LOCAL GOVERNMENT OF THE JURISDICTION WHERE THE MINERAL EXTRACTION OPERATION WAS LOCATED," and "LOCAL GOVERNMENT HAVING LEGAL JURISDICTION OVER LANDS" are all referring to the same thing, the terms should be the same.

With regard to these two example, the terms "in situ leach mining," "in situ mining," and "local government" are defined in section 34-32-103. It is standard drafting practice to use defined terms consistently to avoid confusion

or ambiguity. The proponents should consider whether these definitions will suffice for the purposes of the proposed initiative, or whether new definitions should be added.

ii. The proponents refer to "exploration" and "prospecting." "Prospecting" is defined for use in the article. If "exploration" is different from "prospecting," the proponents may want to define "exploration" for use in the article. If "exploration" is the same as "prospecting," the proponents should refer only to prospecting.

d. Avoid redundancy. There are many redundant phrases used throughout the proposed initiative. For example, the phrase "ANY AND ALL" is used throughout the initiative, but "AND ALL" is unnecessary. In section 34-32-102 (2) (a), the phrase "BY THE PEOPLE OR THE PUBLIC OF THE STATE OF COLORADO" is also redundant.

e. With regard to defined terms, the mined land reclamation board is defined as "board" for use in article 32 of title 34 and, therefore, any references to the "MINED LAND RECLAMATION BOARD" should be changed to "BOARD."

f. Only proper names, such as states or rivers, should be capitalized. With regard to small capital letters, although new text of the proposed initiative should be in small capital letters, a large capital letter should be used to indicate capitalization where appropriate. The following should be large capitalized:

i. The first letter of the first word of each sentence;

ii. The first letter of the first word of each entry of an enumeration paragraphed after a colon; and

iii. The first letter of proper names.

Some words that do not fall under these three categories are capitalized, but should instead be lower case. For example, "STATE OF COLORADO" should be "STATE OF COLORADO," "CONGRESS" should be "CONGRESS," and "COLORADO STATE TREASURER'S OFFICE" should be "COLORADO STATE TREASURER'S OFFICE."

g. Numbers should be spelled out. It is not necessary to put digits in parentheses following the written number.

h. With regard to commas:

i. It is standard drafting practice to use a serial comma before the conjunction in a series of three or more items and to use only one conjunction ("and" or "or") before the last item in the series ("cash, checks, or money orders," not "cash, or checks, or money orders"). For example, section 34-32-102 (2) (c) contains the phrase "OPERATOR, OR THE OPERATOR'S INVESTORS, OR THE

OPERATOR'S SUCCESSORS-IN-INTEREST," which should instead read "OPERATOR, THE OPERATOR'S INVESTORS, OR THE OPERATOR'S SUCCESSORS-IN-INTEREST." In another example, section 34-32-110 (2) (a) (IV) uses the conjunction "and" three times following commas.

ii. It is standard drafting practice to use a comma and conjunction to connect two independent clauses. If the clauses are not independent of each other, a comma should not be used. For example, in section 34-32-102 (3) (e), the comma after "BOARD" should be removed.

iii. It is standard drafting practice to set off certain phrases (i.e., introductory, parenthetical, or prepositional phrases) with commas. For example, in section 34-32-112 (8), in the new language at the end of that subsection, the phrase "IN THE CASE OF A URANIUM IN SITU SOLUTION MINE" should be set off by commas.

i. With regard to the use of strike type:

i. It is unnecessary to strike through part of a word to change the capitalization. To change the capitalization of a word, simply change the word without showing what was changed. For example, in section 34-32-102 (3) (c), change "~~T~~ The" to "the."

ii. Similarly, it is standard drafting practice to strike through an entire word, not just part of a word. For example, in section 34-32-103 (13), "employED ~~ment~~" should be "~~employment~~ EMPLOYED."

iii. It is standard drafting practice to place strike type before small capitalized type. For example, in section 34-32-103 (1.5), "IS CONTEMPLATED TO BE ~~will be~~" should be "~~will be~~ IS CONTEMPLATED TO BE."

iv. It is standard drafting practice to not strike punctuation alone. For example, in section 34-32-103 (4), the strike line should be removed from above the comma and the comma can simply be deleted, and the strike line should be removed from above the period at the end of the subsection.

j. With regard to references to other parts of the statutes:

i. Reference statutory sections by using the word "SECTION" followed by the number of the section. For example, in section 34-32-103 (1.5), "PURSUANT TO 34-32-117 (5.6)" should be "PURSUANT TO SECTION 34-32-117 (5.6)." When referring to more than one section, the word "section" should be plural. For example, in section 34-32-113 (1), "section 34-32-127 (2) AND 34-32-117 (5.6)" should be "~~section~~ SECTIONS 34-32-127 (2) AND 34-32-117 (5.6)."

ii. It is unnecessary to add "C.R.S." either before or after a section number,

unless the section you are referencing is in a different title than the title you are in. For example, in section 34-32-103 (5.5), "C.R.S." should be deleted because the reference is to another section that is also in title 34.

iii. References within a section to another subsection within that same section should be written as "subsection (1) of this section." For example, in section 34-32-102 (3) (e), "34-32-102 (2)" should be written as "SUBSECTION (2) OF THIS SECTION."

iv. When referencing different subsections within the same section, there is no need to repeat the section number. For example, in section 34-32-103 (11.5), "34-32-117 (2) AND 34-32-117 (5.6)" should be "34-32-117 (2) AND (5.6)."

v. When referencing more than one subdivision, repeat each of the subdivision numbers. For example, in section 34-32-112.5 (5) (b) (I), "34-32-110 (2) (a) (X), (XI) and 34-32-112 (4) (f) (I)" should be "34-32-110 (2) (a) (X) and (2) (a) (XI) AND 34-32-112 (4) (f) (I)."

vi. Check to ensure that all internal references are correct. For example, in section 34-32-112.5 (5) (b) (I), the reference to "34-32-110 (2) (a) (x), (xI)" should be "SECTIONS 34-32-110 (2) (a) (X) and (2) (a) (XI)."

vii. Do not use section numbers as adjectives. For example, in section 34-32-112.5 (2), "THE 34-32-117 (5.6) PERFORMANCE AND SURETY BONDS FOR REMEDIATION" should be "THE PERFORMANCE AND SURETY BONDS FOR REMEDIATION REQUIRED BY SECTION 34-32-117 (5.6)."

3. Avoid archaic or ambiguous wording. For example, in section 34-32-102 (2) (c), "HERE REQUIRED" is ambiguous and should be changed to "REQUIRED IN THIS SUBSECTION (2)," or whatever the proponents intend to mean. Also, in section 34-32-117 (5.6) (d), "STATUTE-REVISION SUBSECTION" should be changed to "SUBSECTION (5.6)."

4. Article V, section 1 (8) of the Colorado constitution requires that the following enacting clause be the style for all laws adopted by the initiative: "Be it Enacted by the People of the State of Colorado." To comply with this constitutional requirement, the proponents should not capitalize the word "It."

5. With regard to the amending clauses, such clauses are used to tell the reader exactly what is being added to or amended in the Colorado Revised Statutes. The proponents' first amending clause states that "34-32-101, et. seq." is amended, but that is misleading; several sections within article 32 of title 34, Colorado Revised Statutes, are not being amended in the proposed initiative, including sections 34-32-101, 34-32-104 to 34-32-108, 34-32-111, 34-32-114, 34-32-116.5, 34-32-119 to 34-32-123, 34-32-124.5, 34-32-125, and 34-32-126. The proponents' second amending clause is also incorrect, as it states the wrong statutory number. Also, the last three statutory sections in the proposed initiative, sections 24-4-103, 24-4-104, and 24-4-108, are missing amending clauses. Below are three suggested changes

for the proponents so that the amending clauses are accurate.

a. If the proponents intend to amend all of article 32 of title 34 of the Colorado Revised Statutes, the first amending clause should read as follows:

SECTION 1. Article 32 of title 34, Colorado Revised Statutes, is amended to read:

If the proponents choose to make this change, the proposed initiative would need to include all of the missing statutory sections within article 32, as listed above.

b. If the proponents intend to amend only those sections that are currently in the proposed initiative, each statutory section being amended needs to be preceded by a separate amending clause. For example:

SECTION 1. 34-32-102, Colorado Revised Statutes, is amended to read:

[All of 34-32-102 would go here]

SECTION 2. 34-32-103, Colorado Revised Statutes, is amended to read:

[All of 34-32-103 would go here]

SECTION 3. 34-32-109, Colorado Revised Statutes, is amended to read:

[All of 34-32-109 would go here, and so on]

If the proponents choose to make this change, there are several sections missing some language that will need to be added: Subsection (10) is missing from section 34-32-112, subsection (2) (f) is missing from section 34-32-113, subsections (1) and (4) (a) are missing from section 34-32-115, and subsection (1) (b) is missing from section 34-32-127.

c. In addition, it is standard drafting practice to include in an initiative only those provisions that are actually being amended. [An exception to this practice would be if almost an entire provision (section, subsection, paragraph, etc.) is being amended anyway, then it makes sense to include the entire provision.] Each statutory section being amended needs to be preceded by a separate amending clause that lists only those provisions within each section that are actually being amended. For example:

SECTION 2. 34-32-103 (1.5), (3.5) (a) (III), (4), (4.9), (5.5), (5.7), (6) (a) (III), (6) (b), (11.5), (12), and (13), Colorado Revised Statutes, are

amended, and the said 34-32-103 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

[The text of those provisions listed in the amending clause would go here]

SECTION 3. 34-32-110 (1) (d) (I), (2), (3), (4), (6), and (7) (c), Colorado Revised Statutes, are amended, and the said 34-32-110 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

[The text of those provisions listed in the amending clause would go here]

SECTION 4. 34-32-112 (1), (2) (e), (3), (4) (b), (4) (e), (4) (f), (6), (8), and (9), Colorado Revised Statutes, are amended to read:

[The text of those provisions listed in the amending clause would go here]

The proponents would then need to remove from the proposed initiative all of the provisions that are not being amended, with the exception of introductory portions to provisions that are being amended. For reader-friendly purposes, an introductory portion to a provision that is being amended is always included, even though the introductory portion is not being amended. For example, in section 34-32-103 (3.5) (a) (III), the introductory portion to subsection (3.5) (a) is not being amended, but subparagraph (a) (III) is being amended. This is how it would appear in the proposed initiative:

> (3.5) (a) "Designated mining operation" means a mining operation at which:
>
> (III) Uranium is developed or extracted OR AT WHICH LANDS ARE DISTURBED BY ANY MANNER OF URANIUM MINERAL IN SITU EXPLORATION, either by in situ leach mining or by conventional underground or open mining techniques. ~~A uranium mining operation may seek an exemption from designated mining operation status in accordance with section 34-32-112.5 (2).~~

6. Provisions of sections can be broken down into lesser subdivisions (that is, subsections can be divided into paragraphs, paragraphs into subparagraphs, and subparagraphs into sub-subparagraphs) in two ways. The first and more common method is to denote those lesser subdivisions by listing them according to similar subject matter following the introductory portion to that section division, which ends with a colon. For example:

(1) This subsection (1) can be broken into three lesser section divisions respectively:

(a) Paragraphs (a), (b), (c), etc.;

(I) Subparagraphs: (I), (II), (III), etc.; and

(A) Sub-subparagraphs: (A), (B), (C), etc.

The other method is to group similar thoughts under a larger section division. For example:

(1) (a) This subsection (1) is divided into paragraphs.

(b) This subsection (1) contains three paragraphs, (a), (b), and (c).

(c) This paragraph (c) and paragraphs (a) and (b) all pertain to the same subject.

It is also standard drafting practice that you cannot break down a section into only one subsection [no (1) without a (2)], you cannot break down a subsection into only one paragraph [no (a) without a (b)], you cannot break down a paragraph into only one subparagraph [no (I) without a (II)], and you cannot break down a subparagraph into only one sub-subparagraph [no (A) without a (B)].

To conform to these standard drafting practices, the proponents should renumber and reletter the following:

a. Section 34-32-102 (2). For example:

> (2) (a) The general assembly further declares that it is the intent of this article to require the development of a mined land reclamation regulatory program in which the economic costs of reclamation measures utilized bear a reasonable relationship to the environmental benefits derived from such measures. The mined land reclamation board or the office, when considering the requirements of reclamation measures, shall evaluate the benefits expected to result from the use of such measures. It is also the intent of the general assembly that consideration be given to the economic reasonableness of the action of the mined land reclamation board or the office. In considering economic reasonableness, the financial condition of an operator shall not be a factor.
>
> (b) (I) IN CONJUNCTION WITH STATE AND LOCAL GOVERNMENT LICENSING . . . .
>
> (II) TO THAT END, AND IN CONNECTION THEREWITH, AN OPERATION SURETY . . . .
>
> (c) A FURTHER, AND SEPARATE, PERFORMANCE BOND AND AN OPERATION . . . .
>
> (d) THE MAINTENANCE OF THE PRISTINE-NATURE OF THE . . . .

b. Section 34-32-112 (4) (f) (I). For example:

> (4) The accurate map of the affected lands shall:
>
> (f) (I) Show the total area to be involved in the operation, including the area to be mined and the area of affected land.
>
> (II) WITH REGARD TO URANIUM IN SITU SOLUTION MINING, THE APPLICANT . . . .

c. Section 34-32-115 (2) (a). For example:

(2) (a) Prior to the holding of any such hearing, the board or the office

. . . .

(b) NO ACTION OF THE BOARD SHALL COMPEL A LOCAL GOVERNMENT

. . . .

d. Section 34-32-117 (5.6). For example:

(5.6) (a) (I) FOR ANY URANIUM IN-SITU SOLUTION LEACH MINING . . . .
(II) THE AMOUNT INSURED AND GUARANTEED BY PERFORMANCE . . . .
(b) PERFORMANCE AND SURETY BONDS ARE REQUIRED FOR THE . . . .
(c) PERFORMANCE AND SURETY BONDS REQUIRED AS A GUARANTEE

. . . .

(d) SINCE THE WATERS OF THE PEOPLE OF THE STATE OF COLORADO

. . . .

e. Section 24-4-101.5. For example:

(1) The general assembly finds that an agency should not . . . .
(2) THE PEOPLE OF THE STATE OF COLORADO, BY THE ADOPTION . . . .

Note that if you change the lettering or numbering of any of these provisions, references elsewhere in the proposed initiatives to the old letters or numbers will also have to be changed.

7. Subdivisions that follow an introductory portion should be read in conjunction with the introductory portion and should make sense (there should be subject-verb agreement, there should not be any redundancy of language, etc.). Section 34-32-110 (2) (a) (X) and (2) (a) (XI) are not consistent with the introductory portion of subsection (2) (a) of that section. The proponents should either reword those subparagraphs so that they are consistent with the introductory portion or should move or renumber those subparagraphs elsewhere in the section.

8. All proposed new language must be written in SMALL CAPITAL LETTERS.

a. In section 34-32-112 (2) (e), the first "operator" should be "OPERATOR";

b. In section 34-32-112 (2) (e), in the ninth sentence, right before the new language, "be" should be "BE";

c. In section 34-32-112.5 (5) (b) (I), "and 34-32-112 (4) (f) (I)" should be "AND 34-32-112 (4) (f) (I)";

d. In section 34-32-115 (5) (a) and (5) (b) (I), "and 34-32-112 (4) (f) (I)" should be "AND 34-32-112 (4) (f) (I)";

e. In section 34-32-115 (5) (c), the second "uses," before the word "DOMESTIC" should

be "USES";

f. In the introductory portion to section 34-32-116 (8) and section 34-32-116 (8) (a), "and 34-32-112 (4) (f) (I)" should be "AND 34-32-112 (4) (f) (I)";

9. It is standard drafting practice that, when referring to the name of a statutory act, the official name of the act is quoted and referenced by article or part. For example:

a. In section 34-32-115 (2) (a), "LOCAL GOVERNMENT LAND USE CONTROL ENABLING ACT, C.R.S. 29-20-101 ET. SEQ." should be ""LOCAL GOVERNMENT LAND USE CONTROL ENABLING ACT OF 1974," ARTICLE 20 OF TITLE 29, C.R.S.";

b. In section 24-4-101.5 (a), "COLORADO MINED LAND RECLAMATION ACT, C.R.S. 34-32-101, ET. SEQ." should be ""COLORADO MINED LAND RECLAMATION ACT," ARTICLE 32 OF TITLE 34, C.R.S."

10. Because of ambiguity, it is standard drafting practice to avoid using "/", such as the use of "BASIN/FORMATION" in section 34-32-117 (5.6) (b), the use of "PRODUCTION/EXPLORATION" in section 34-32-117 (5.6) (c), and the use of "AND/OR" in section 34-32-117 (5.6) (c). Consider changing the examples to "BASIN OR FORMATION," just "BASIN," or just "FORMATION"; and to "PRODUCTION OR EXPLORATION," just "PRODUCTION," or just "EXPLORATION," respectively.

11. Section 34-32-102 (2) consists of several lengthy sentences with multiple concepts that may be difficult for the average reader to follow. To make it easier to understand, the proponents might consider using additional punctuation to separate some of the concepts or breaking up the paragraphs into more subdivisions. Also, the first part of subsection (2) (c) contains some archaic-sounding language, and it would be easier to read if the proponents used standard English and simple sentences.

12. In section 34-32-103 (6) (b), consider changing "THE LIFE OF THE MINE DEFINITION SHALL COINCIDE" to ""LIFE OF THE MINE" SHALL COINCIDE."

13. In section 34-32-110 (5.5), consider changing "IMMEDIATELY UPON APPROVAL OF THE MODIFICATIONS TO THE MINED LAND RECLAMATION ACT BY THE VOTERS OF PROVISIONS IN THIS SECTION," to "ON AND AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (5.5),".

14. In section 34-32-112.5 (2), since the proponents have stricken the phrase "or otherwise," they should also consider striking "whether" from that sentence.

15. In section 34-32-113 (2), the existing paragraph (f) is missing. If the proponents intend to get rid of the paragraph, they should show it in strike type. The proponents have also added a new paragraph (f), but since paragraph (f) already exists, the proponents should reletter it as paragraph (g).

16. In section 34-32-113 (3), the phrase "except that" has been deleted. It is located right before

the new language. If the proponents intend to get rid of that phrase, they should show it in strike type.

17. In section 34-32-113 (9), at the end of the subsection, the word "its" is missing. It is located right before the new language "A PUBLICALLY AVAILABLE [*sic*]." If the proponents intend to get rid of that word, they should show it in strike type.

18. In section 34-32-115 (4), the first sentence is missing from the introductory portion of subsection (4) and paragraph (a) is missing. If the proponents intend to get rid of that language, they should show it in strike type. Also, the paragraphs in subsection (4) have been mislettered: "(a)" should be "(b)," "(b)" should be "(c)," and "(e)" should be "(d)."

19. In section 34-32-115 (5) (b) (II), the "(II)" should not be stricken; only the language should be shown in strike type.

20. In section 34-32-117 (2), the phrase that begins "HOWEVER," should be preceded by a semicolon ("article; HOWEVER").

21. In section 34-32-117 (5.6) (b), the second sentence is long and convoluted and needs to be clarified.

22. The section number and headnote for section 34-32-121.5 in the proposed initiative should be changed to the section number and headnote for section 34-32-124. The statutory language under section 34-32-121.5 in the initiative is actually the language for section 34-32-124.

23. The change to section 34-32-127 (3) does not make sense; it appears that some language may be missing. Note that the authority to reduce fees is mandated by the "Taxpayer's Bill of Rights," section 20 of article XX of the Colorado constitution, because "fiscal year spending" is defined to include reserve increases.

24. In section 24-4-101.5 (a), consider changing "C.R.S. 24-65.1-101 ET.SEQ." to "ARTICLE 65.1 OF THIS TITLE."

25. Section 24-4-103 contains no changes by the proponents other than that subsections (4.5) (f), (5), (6), (7), (8), (8.1), (8.2), (9), (10), (11), (12), (12.5), (13), and (14) are missing. If the proponents intend to get rid of those subsections, they should show them in strike type and include an appropriate amending clause.

26. Section 24-4-104 contains no changes by the proponents. If the proponents do not intend to change the language of section 24-4-104, that section should be removed from the proposed initiative.

27. Section 24-4-108 contains no changes by the proponents other than that subsection (8) is missing. If the proponents intend to get rid of that subsection, they should show it in strike type and include an appropriate amending clause.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. Article V, section 1 (5.5) of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?

2. What will be the effective date of the proposed initiative?

3. As a statutory change, the proposed initiative may be amended by subsequent legislation enacted by the General Assembly. Is this your intention?

4. Standard drafting practice is to use the word "fund" to refer to an account into which "moneys" or "revenues" are placed. Therefore, the word "fund" or "funds" is not typically used to refer to the moneys or revenues themselves. Would the proponents consider changing the phrase "funds" to "revenues" throughout the initiative?

5. It appears that the proposed initiative is directed largely at in situ uranium mining. If so, what is the proponent's basis for singling out a specific extraction method and mineral? Should public health and groundwater receive heightened protection regardless of the substance being mined or the means of extraction?

6. The proposed initiative gives local governments the authority to issue permits for in situ uranium mining activities.

    a. Will local government authority be concurrent with or replace state authority? Are state and local authorities expected to coordinate their efforts? If so, how? The proposal should be amended to clarify these issues.

    b. Do local governmental entities possess the necessary technical expertise to exercise more discretion and control over mining operations?

    c. Will local governmental regulation result in inconsistent in situ uranium mining policies across the state? If methods of regulation vary widely from locality to locality, a patchwork of laws may result. Can uniformity of administration and policy be achieved?

7. With regard to section 34-32-102:

    a. The word "exploration" is added to subsection (1), but the term is not defined in the proposal. How does this term differ from the defined term "prospecting"?

    b. Section 34-32-102 is a legislative declaration, which states the intent of the legislature in enacting article 32. The language added by the proponents, particularly

in subsection (2) (a) and (2) (b), are mandates rather than declarations of intent. The proponents should consolidate the mandates with the financial warranties specified in section 34-32-117 (5.6). Doing so will (1) clarify what is a legislative declaration and what is a mandate; (2) reduce needless duplication between sections 34-32-102 and 34-32-117 (5.6); and (3) eliminate the existing conflicts between how the financial warranties are expressed in sections 34-32-102 and 34-32-117 (5.6).

c. The new paragraph (A) [which should be a lower case (a)] of subsection (2) raises the following questions:

i. What is a "comprehensive performance bond"?

ii. Does the word "mishap" imply that something must have gone amiss in order for the listed responsible parties to be liable for costs? If there is no negligence or accident, can a "mishap" still occur? That is, if everything proceeds normally and according to plan, but lands are adversely affected, has there been a "mishap"?

iii. A person wishing to conduct certain in situ uranium mining or exploration must sign a performance agreement under the new provisions added to paragraph (a). Who are the other signatories to such a performance agreement? What sort of terms should be contained in the performance agreement and who makes this decision? If the agreement is executed, and the bond posted, with the state, what about local governmental entities issuing permits? Are they expected to apply to the appropriate state agency for reimbursement?

iv. Paragraph (a) makes the requisite performance bond an "entirely binding," "comprehensive obligation upon" the operator, the operator's successors-in-interest, and any operators or successors acting as capital investors "associated in any manner with" the in situ uranium mining or exploration.

(1) What is meant by a "comprehensive obligation"? Do the proponents mean that the amount of the bond must be sufficient to remediate absolutely *any* potential environmental harm that results from the mining or exploration, regardless of the likelihood of harm? If so, who determines this amount?

(2) The new language here specifies that the bond binds certain principals. However, isn't the surety the entity answerable for the obligations incurred by the operator?

v. Paragraph (a) also states that no costs associated with remediating sites at which in situ mining operations have been conducted shall be borne "by the people or the public" of Colorado, nor may the state or "any [publicly] funded

entity" appropriate or expend funds to remediate harm caused by or during in situ uranium mining.

(1) Can federal revenues be used for remediation?

(2) What is meant by "the people or the public of the state of Colorado"? How are a state's "people" distinguishable from its "public"?

(3) Are entities that are partially financed by public entities (by grants, loans, etc.) included within the scope of "[publicly] funded entities"?

(4) If environmental damage is caused during in situ uranium mining or exploration that exceeds the amount covered by the applicable financial warranties, and no responsible and solvent party can be located, this provision would preclude the use of any state (and perhaps federal) funds for these sites. Is that the proponents' intent?

(5) Would the cost of enforcement officials pursuing responsible parties come within the purview of "costs of any remediation [or] clean-up"?

vi. Under subparagraph (I) of paragraph (a):

(1) An "operation surety and a remediation performance bond" is required for in situ uranium mining. Can the proponents clarify this term? Moreover, the previous section discusses a "performance agreement and a surety bond." Are these financial warranties related? If so, can the proponents specify how, or use consistent terms, to reduce confusion?

(2) The bond(s) required under this subparagraph (I) must be in the "total amount of the most comprehensive independent estimate" of remediation costs at an in situ uranium mining or exploration site.

(a) Who is qualified or authorized to decide this amount? Who decides what the "most comprehensive" estimate is? Can the estimate be disputed? If so, by whom and to whom?

(b) If a prospective in situ uranium mining owner or operator posts the required bond, is the government then prevented from pursuing any additional costs if the bond is insufficient?

(c) Is fifty years an excessive amount of time to retain the bond? Won't environmental impacts be apparent prior to the expiration of that period?

(d) Requiring a bond in the amount of the entire possible costs of

environmental remediation may deter some mining activity that might have otherwise occurred. Is this the proponents' intent?

(3) The "people of the state are to be held harmless in any and all manners for the costs of any consequence of any uranium in situ production or exploration activity."

(a) Under what circumstances would the people of the state be liable for in situ uranium mining? Do the proponents intend to exempt, for example, malfeasance or gross negligence by state actors that may otherwise be actionable? Does this affect the availability of remedies to private parties?

(b) "Any consequence" is very broad. Does the term include administrative consequences such as personnel and other administrative costs necessary to process and regulate uranium mining?

d. Regarding the new paragraph (b) of this section:

i. This paragraph refers to a "performance bond and an operation surety bond" and a "whole-area performance and surety bond."

(1) Do the proponents intend to require two different financial instruments under this paragraph (b), or a single instrument?

(2) Further, a performance bond is a surety bond. Would the proponents consider clarifying what is meant?

(3) What relationship, if any, does this instrument (or these instruments) have to the "operation surety and a remediation performance bond" required under subparagraph (I) of paragraph (a) or the "performance agreement and a surety bond" referred to in paragraph (a)?

ii. An "independent contractor" shall assess the "character" of the bond(s) required under this paragraph.

(1) Who selects the independent consultant? Does the consultant need to possess certain qualifications or demonstrate competence? If so, who makes those determinations or sets those standards?

(2) What is meant by the "character" of the whole-area performance and surety bond?

e. With respect to the new paragraph (c):

i. Colorado is directed to act as a "quasi-sovereign." What is meant by this?

ii. Express federal preemption is required before state or local regulation of in situ uranium mining is "impressed or constrained." However, when a conflict arises between federal and state laws, federal law prevails under the United States constitution's supremacy clause regardless of whether the preemption is express or implied.

f. With respect to the proposed changes to subsection (3) of this section:

i. Paragraph (d) strikes the words "or other activity," leaving enforcement as the only acceptable mining-related activity for which general fund revenues may be spent. Is this the proponents' intent (especially in light of the fact that this paragraph pertains to mining in general, and not just in situ uranium mining)?

ii. Also in paragraph (d), what is meant by "general appropriation"? Do the proponents mean inclusion in the annual budget bill?

iii. The amendment to paragraph (e)--that the conditions contained elsewhere in statute are "non-modifiable by any administrative action of the board" or "by any local government"--is unnecessary because administrative agencies and local governments are bound by, and are not free to contravene or modify, statutory requirements.

8. With respect to section 34-32-103:

a. The alteration of the definition of "affected land" in subsection (1.5) raises the following questions:

i. The measure includes lands on which mining operations are merely "contemplated to be" conducted. What is meant by "contemplated"? How do regulating authorities know on which lands mining is "contemplated" to be conducted?

ii. What is the rationale for adding groundwater that "may be contaminated" to the definition? Given the tendency of contamination to spread, would the entire portion of an aquifer located down-gradient from the mining operation qualify as "affected land"?

b. Subsection (3.5) repeals the ability to seek an exemption from "designated mining operation" (DMO) status. However, the proposed measure does not make a corresponding amendment to section 34-32-112.5 (2). Do the proponents intend to remove the ability for the mined land reclamation board to waive DMO status?

c. Subsection (4.9) amends the definition of "environmental protection plan" to add plans that may be required by local governments.

i. Do the proponents intend that an environmental protection plan must be issued by both state and local entities for a single mining project?

ii. Under section 34-32-116.5, environmental protection plans are governed by rules of the mined land reclamation board and such plans are enforced by the board and the office of mined land reclamation. The proposed measure does not amend this section. Do the proponents intend that locally required environmental protection plans comply with the board's rules and that the board or office enforce those plans? If not, would the proponents consider amending section 34-32-116.5 accordingly?

d. Regarding the definition of the term "life of the mine" in subsection (6):

i. Under (a) (III), the proposed measure would require a mine at which production is resumed within five years from the date on which the hiatus commenced to undergo the permitting process anew, but the new language does not limit this provision to in situ uranium mining operations. Do the proponents intend this provision to apply to all mining? If not, would the proponents consider specifying otherwise?

ii. Currently, paragraph (b) allows the board to release operators of any type of mining operation from certain reclamation mining obligations.

(1) Do the changes proposed to paragraph (b) make the release provision applicable only to in situ uranium mining activities?

(2) Who participates in the "review and comment" process being added to paragraph (b)? Local government entities only? The owners and operators of the mining operation? Any interested parties?

(3) What happens if the board disagrees with a local government's assessment of whether reclamation has been satisfactorily achieved?

e. In subsection (6.5):

i. The definition of a "local government" would allow multiple local governments to grant or deny mining permits for the same mine because the mine could be in a school district, one or more special districts that exist for different purposes, and a municipality or county. This will result in inconsistent determinations.

ii. What is meant by the "authority of convertibility"?

iii. Are financial warranties required by a permit issued by a local government limited to guarantee "its" (the local government's) property against risk, or can the warranties cover risks to the property of third parties, including the

public?

f. Regarding the definition of "reclamation" under subsection (13):

i. The proponents have stricken the modifier "reasonably," which pertained to remediation efforts. Do the proponents intend to remove reasonableness from consideration here? If so, is the result that unreasonable procedures may be undertaken?

ii. Why do the proponents propose to strike the phrase regarding processes "designed to minimize as much as practicable the disruption [from mining operations]"? This amendment could be construed to exclude methods that minimize harm in the first place.

iii. Given the amended definition of "affected land," what is the meaning of "disturbed" land? What is the difference between "affected" and "disturbed" lands?

iv. What is the proponents' intent in striking the requirement that reclamation be conducted in accordance with performance standards under the Act? Note that section 34-32-117 twice mentions "applicable performance standards," but those references are not amended by this measure.

9. With respect to section 34-32-110:

a. The proposal adds new language to subsection (1) even though subsection (1) applies only to certain mining operations for which an application was submitted prior to July 1, 1993. Do the proponents intend to affect such operations? If so, is such retroactive application constitutionally sound?

b. Uranium mining is defined as a DMO under section 34-32-103 (3.5) (a) (III), and section 34-32-110 (2) is clear that in situ leach mining applications must be filed pursuant to section 34-32-112.5 (3) (d) and that the limited impact operation provisions of section 34-32-110 do not apply to "uranium in situ solution mining." Yet the proposal adds numerous provisions to section 34-32-110 that apply to various types of uranium mining. What is the proponents' reasons for adding in situ uranium leach mining provisions here? Because all uranium mining is defined as a DMO under section 34-32-103 (3.5) (a) (III) and given that the proposal deletes the exemption provision in section 34-32-103 (3.5) (a) (III), how can any uranium mining be a limited impact operation?

c. Who is authorized to conduct the independent analyses required under subsections (2) (a) (X) and (4)? Who pays for them?

d. Regarding subsection (3) and the last sentence of subsection (5.5), how are local governments' costs determined and how are they reimbursed for the costs?

e. Regarding subsection (5.5), is the statement that all in situ uranium mining operations are "matters of state interest and activities of state concern[]" intended to affect issues addressed by article 65.1 of title 24, C.R.S.? If so, the proponents should consider amending that article; if not, the proponents should consider whether granting local governments the authority to deny uranium in situ mining permits is consistent with the state's interests.

10. Regarding section 34-32-112:

a. Under subsection (1):

i. If a local government rejects a reclamation permit application for in situ uranium mining, what recourse is available to the applicant?

ii. Can the proponents clarify what constitutes a "legal newspaper" (see also section 34-32-110 (5.5))?

b. With regard to subsection (4) (f) (I), how does the "fully-documented groundwater registry of original characteristics" differ from the "baseline site characterization" required by section 34-32-112.5 (5) (a) and the "scientifically defensible groundwater, surface water, and environmental baseline characterization and monitoring plan" required by section 34-32-112.5 (5) (b)? Would requiring a uranium mine to complete both the registry and the baseline characterization be needlessly duplicative?

c. With regard to subsection (8):

i. On what grounds may a local government deny a reclamation permit amendment application? Can the applicant appeal?

ii. What is the rationale for excluding in situ mining operations from the provision allowing a reduction in the amount of the financial warranty when the mining area is less than that originally permitted?

d. Subsection (9) makes any information that is required to be submitted to a local government in relation to in situ uranium mining "subject to constant open public document disclosure requirements."

i. Some of that information may be commercially sensitive and proprietary.

ii. The use of the word "constant" is inconsistent with the "Colorado Open Records Act," part 2 of article 72 of title 24, C.R.S., under which public records must be available for inspection at "reasonable" times. What do the proponents mean by "constant"?

iii. Do the assertions of "state interest" and "state concern" contradict the

increased involvement of local authorities under the measure? That is, does a "statewide concern" render local control inappropriate?

11. Regarding section 34-32-112.5:

    a. What expertise does a local government have regarding the certification of an environmental protection facility as required by subsection (4) (a)?

    b. What is a "premining" application as referenced in subsection (5) (c)?

12. Regarding section 34-32-113:

    a. Why does subsection (2) (f) refer to uranium in situ solution mining when the requirements of this section apply to prospecting, not mining?

    b. Is the effect of subsection (3) to make uranium in situ solution leach mining or prospecting notices of intent filed with local governments subject to "confidential anti-disclosure provisions"?

    c. Is the statewide financial warranty authorized by subsection (4) (b) available as an alternative to the performance and surety bond specified in section 34-32-117 (5.6)?

    d. What is the rationale for prohibiting temporarily abandoned drill hoes in subsection (5.5) (c)?

    e. Subsection (6) excepts uranium in situ solution leach mining and mineral exploration from the 30-day inspection period and release of financial warranties, but the proposal does not amend the requirement in subsection (7) that financial warranty shall not be held for more than 30 days after completion of the reclamation; is that what the proponents intend?

13. Regarding section 34-32-115:

    a. In subsection (2), the third sentence does not make sense unless there is a defined distinction between "uranium in situ solution leach mining" and "uranium in situ leach mining." The proponents should clarify the sentence.

    b. Paragraph (2) (a) states that local governments' permitting decisions are pursuant to the "Local Government Land Use Control Enabling Act of 1974," article 20 of title 29, C.R.S. If so, why does the proposal give local governments authority over the environmental and technical aspects of the uranium mining rather than simply land use authority as specified in section 29-20-104?

    c. Regarding paragraph (5) (a):

        i. Won't there always be scientific or technical uncertainty about a uranium

mine's "absolute" provision for public health and safety and protection of groundwater and thus won't the board and the local government be required to deny all such permit applications?

ii. The paragraph needs to be clarified, particularly with regard to the phrase "feasibility of reclamation."

d. What is the rationale for repealing the incorporation of the radioactive materials standards and groundwater criteria in subparagraph (5) (b) (II)?

14. Given the repeal in section 34-32-115 (5) (b) (II) of the incorporation of the radioactive materials standards and groundwater criteria, why are these standards and criteria still incorporated in section 34-32-116 (8)?

15. Regarding section 34-32-117:

a. Subsection (2) requires that a single operator or entity shall be "solely" responsible for the financial warranty requirements of subsection (5.6), but subsection (5.6) states that the obligation applies to "an operator, or an operator's successors-in-interest, or an operator's capital investors . . .". Who determines who is liable, and how is that determination made? Is it different for the different types of financial warranties or for permits issued by the board versus a local government?

b. Paragraph (5.6) (c) refers to "Colorado's citizens and the people of the state." What do the proponents intend by using these two phrases?

c. Paragraph (5.6) (d) uses the term "implored," which means begged or entreated. Do the proponents intend this paragraph to not have the force of law?

16. The language that the proponents wish to add to section 24-4-101.5, C.R.S., seems to be out of place. Currently, this section contains a broad statement setting forth the general assembly's intent in enacting the "State Administrative Procedures Act," article 4 of title 24, C.R.S. The provisions that the proposed measure would insert are specifically directed to the alterations that the measure is making to the "Mined Land Reclamation Act" and thus may be more appropriately included in section 34-32-102, C.R.S., the legislative declaration for the Act. Would the proponents consider relocating this language?