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MEMORANDUM

July 23, 2010

TO: Philip Doe and Richard Hamilton

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure #9, 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.

This initiative was submitted with a series of initiatives including proposed initiative 2011-2012 #5. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memoranda for proposed initiative 2011-2012 #5, except as necessary to fully understand the issues raised by the revised proposed initiative. Comments and questions addressed in those other memoranda may also be relevant, and those questions and comments are hereby incorporated by reference in this memorandum.

Purposes

The major purposes of the proposed amendment are as stated in the memoranda for proposed initiative 2011-2012 #5 with the addition of the major purpose of requiring in situ uranium mining and exploration to be permitted by the local government of jurisdiction.

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. The headnotes of each section are missing throughout the entire initiative. Each section should include the current headnote in bold-faced type at the beginning of the section. The first subsection of each section should appear on the line below the amending clause. For example:

   a. **SECTION 1.** 34-32-102, Colorado Revised Statutes, is amended to read:
   34-32-102. Legislative declaration. (1) It is declared to be . . .

   SECTION 2. 34-32-103, Colorado Revised Statutes, is amended to read:
   34-32-103. Definitions. As used in this article . . .

   SECTION 3. 34-32-109, Colorado Revised Statutes, is amended to read:
   34-32-109. Necessity of reclamation permit - application to existing permits. (1) Reclamation permits for mining. . .

   The proponents should add the existing headnote to each section. Please consult article 32 of title 34 and article 4 of title 24, Colorado Revised Statutes, to find the current existing headnote that should be added to each section.

2. There are several provisions in the initiative in which language that is currently in the statute was dropped. If the proponents intend to remove any existing language, it must be shown in ~~strike type~~. Following is a list of provisions from which current language is missing and needs to be either added back in or shown in ~~strike type~~:

   a. Section 34-32-103 (3.5) (a) (III) and (5.7) are both missing the word "leach," subsection (8) is missing the word "leach" two times, and subsection (13) is missing the word "minimize";
   b. Section 34-32-110 (2) (a) is missing the word "leach";
   c. Section 34-32-112 (2) (i) is missing the word "leach," subsection (2) (j) is missing the word "leach" four times, and subsection (4) (b) is missing the word "corresponds" (it should read "~~corresponds~~ CORRESPOND");
   d. Section 34-32-112.5 (3) (c) is missing the word "than," (5) (a), (5) (b), (5) (c), (5) (d)

(I), and (5) (d) (I) (A), respectively, are missing the word "leach."

e. In section 34-32-113 (8), the word "warranties" has been replaced with the word "warrantees." If the proponents intend to change an existing word, it should be shown in ~~strike type~~, with the new spelling or word following it in SMALL CAPS. (Note: the plural spelling "warranties" is correct, and "warrantees" is incorrect).

f. Section 34-32-115 (2), (5) (a), (5) (b), and the introductory portion to (5) (d), respectively, are all missing the word "leach," and subsection (5) (c) is missing the word "leach" two times.

g. Section 34-32-116 (7) (q) (III) (B), (8), and (9) are all missing the word "leach."

The proponents should carefully compare the current existing statutory language with the new proposed language and make sure that no current words have been dropped. If it is the intent of the proponents to eliminate the definition of "in situ leach mining" (as currently defined in subsection (5.7) of section 34-32-103) and replace it with "in situ mining," then the proponents should strike the old definition and references to it throughout with ~~strike type~~ and add a new definition for "in situ mining" in SMALL CAPS, instead of simply dropping the word "leach" throughout the initiative.

3. The terms "rules," "regulations," and "rules and regulations" are used in the initiative. It is standard drafting practice to refer only to "rules" when referencing state agency rules (the phrase "rules and regulations" is redundant). The term "regulation" should be used when referencing federal regulations. Local laws are typically called "ordinances," but may also be part of a "code" or a "resolution."

4. It is standard drafting practice to use the word "after" instead of "from" when referring to a period of time after a date. For example, in section 34-32-110 (4), the phrase "NOT LESS THAN FIFTY (50) YEARS FROM THE DATE" should read "NOT LESS THAN FIFTY YEARS AFTER THE DATE."

5. The term "must," where it is used as a command, should be replaced with "shall" to conform to standard drafting practice.

6. In section 34-32-110 (8), the period after "(8)" should be removed.

7. The language in section 34-32-102 (2) (a) contains grammatical errors, run-on sentences, and is redundant and difficult to read. The proponents should clarify subsection (2) (a) to make it more reader-friendly.

8. Section 34-32-103 (13) has several grammatical and technical errors. Instead of the current format, it should read as follows:

(13) "Reclamation" means ~~the employment~~ ACTIONS EMPLOYED during and after a mining operation of procedures ~~reasonably~~ designed to ~~minimize as much as practicable~~ RESTORE DISTURBED LANDS FROM the disruption from the mining operation and to provide for the establishment of plant cover, stabilization of soil, the protection ~~of~~ AND RESTORATION OF ALL water resources, or other measures appropriate to the subsequent beneficial use of

such affected AND DISTURBED lands. Reclamation shall be conducted in accordance with the performance standards of this article.

9. The last sentence of section 34-32-112.5 (5) (d) (II) does not make sense; the proponents should clarify the language of that section.

10. 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, no redundant 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.

11. In section 34-32-110 (2) (a) (XI), the terms "(CPT)" and "(GPR)" should be removed. Because those shortened terms are not used at any other point in the initiative, it is unnecessary to include them in the language.

12. Avoid the use of archaic or over-complicated language. For example, in section 34-32-103 (6.5), instead of "UNIT OF LOCAL GOVERNMENT, WHICH FOR PURPOSES OF THIS ARTICLE INCLUDES COUNTIES . . . ," you could write "UNIT OF LOCAL GOVERNMENT, INCLUDING COUNTIES . . ." and, instead of "INSURANCE OR BONDING MAY HAVE BEEN REQUIRED," you could write "INSURANCE OR BONDING IS REQUIRED." In section 34-32-102 (2) (a) (I), instead of "TO THAT END, AND IN CONNECTION THEREWITH, AN OPERATION . . ." the sentence can simply begin "AN OPERATION SURETY AND . . .". In section 34-32-117 (5.6) (d), instead of "PROTECTION OF WATER, AND ARE THEREFORE AND HEREBY NOT TO BE IMPRESSED . . . ," you could write "PROTECTION OF WATER, AND ARE NOT IMPRESSED . . .".

13. The phrase "except that" is used to express an idea related to the phrase that preceded it, and is generally preceded by a semicolon. For example:

    a. In section 34-32-113 (3), instead of reading "title 24, C.R.S., WITH, HOWEVER, ALL URANIUM . . ." it should read "title 24, C.R.S.; EXCEPT THAT, ALL URANIUM . . .";

    b. In section 34-32-117 (3) (a), instead of reading "board may prescribe, WITH HOWEVER, ANY URANIUM . . ." it should read "board may prescribe; EXCEPT THAT, ANY URANIUM . . .".

14. With regard to section 34-32-109 (6) (a), the citation "24-65.101" does not exist. If the proponents intend to reference article 65.1 of title 24 and article 20 of title 29, Colorado Revised Statutes, instead of saying "C.R.S. 24-65.1-101 ET SEQ. AND C.R.S. 29-20-101 ET SEQ.," the proponents should replace that with "ARTICLE 65.1 OF TITLE 24 AND ARTICLE 20 OF TITLE 29, C.R.S." There are similar references in sections 34-32-110 (5.5) and 34-32-113 (5.5) (a) (I) to those articles and titles that should also be corrected to conform to standard drafting practices. Using the phrase "et seq." to refer to a Colorado state statute is incorrect, as that phrase is used only to refer to federal law.

15. With regard to section 34-32-113 (5.5) (a) (I):

a. The "Colorado Land Act" does not exist, therefore that reference should be removed or changed;

b. To make the last sentence of subsection (5.5) (a) (I) more reader-friendly and to conform to standard drafting practices, it should instead read as follows:

"ABANDONMENT OR PLUGGING OF URANIUM IN SITU SOLUTION MINERAL PROSPECTING DRILL HOLES SHALL BE A MATTER OF STATE INTEREST AND AN ACTIVITY OF STATE CONCERN UNDER ARTICLE 65.1 OF TITLE 24, C.R.S., AND SHALL BE UNDER THE PURVIEW OF THE LOCAL GOVERNMENT OF JURISDICTION PURSUANT TO POWERS AND AUTHORITIES SPECIFIED WITHIN THE POWERS OF LOCAL GOVERNMENTS IN SECTION 29-20-104 (1), C.R.S., AND UNDER THE "LOCAL GOVERNMENT LAND USE CONTROL ENABLING ACT OF 1974," ARTICLE 20 OF TITLE 29, C.R.S."

16. In section 14 of the initiative:

a. The reference in the amending clause is to section 24-32-101.5, which section does not exist. The language being amended is from section 24-4-101.5; therefore the citation in the amending clause needs to be corrected accordingly.

b. In subsection (2), the reference to the "MINE LAND RECLAMATION BOARD AND OFFICE" is incorrect; the proper name of the board is the "MINED LAND RECLAMATION BOARD AND OFFICE."

Substantive Comments and Questions

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

1. Section 34-32-109 (6) (b) states in part: "nor shall any adopted local government of jurisdiction's regulations pertaining to uranium in situ solution mining or uranium in situ solution mineral exploration be deemed invalid on the ground that any portion of the local government of jurisdiction rule may be found to be unconstitutional." Presuming that a local regulation has been found to be unconstitutional, how can a statute prevent the regulation from being deemed invalid?

2. Section 34-32-112.5 (3) states that "no local government rule or regulation shall be constrained in any manner by a rule that requires a consideration of economic reasonableness in the denial or issuance of any permit relating to any uranium in situ solution mineral resource activity. With regard to uranium mineral in situ solution mining proposals for mine operations or mineral exploration activities, no local government rule or regulation shall be encumbered by any designation as a designated mining operations under this section."

a. What is the intended effect of the first sentence of subsection (3)? Do the proponents

intend that it prohibit, or otherwise limit, local governments from considering economic reasonableness in the denial or issuance of any permit? If so, there are many instances in article 32 where reasonableness is established as a legal standard, but the proposed initiative does not amend those provisions.

b. What do the proponents mean by the statement that local rules are not "encumbered by any designation as a designated mining operations [*sic*]"?

3. Section 34-32-112.5 (4) (a) establishes a $10,000 per day penalty for operating or exploring after revocation of a local government permit. Section 34-32-115 (5) (d) specifies that the "board or the office may deny or revoke a permit for in situ mining if: . . .," and section 34-32-124 (6) (a) states that "Upon a determination, after hearing, that a violation of a permit provision has occurred, the board may suspend, modify, or revoke the pertinent permit," but the proposed initiative does not specify the grounds upon which or the procedure pursuant to which a local government may revoke a permit.

4. Section 34-32-112.5 (5.5) (a) (I) specifies that certain uranium mining activities are a matter of state interest and an activity of state concern and are "under the purview" of the local government of jurisdiction pursuant to the "Local Government Land Use Control Enabling Act of 1974," article 20 of title 29, Colorado Revised Statutes, specifically section 29-20-104. However, existing section 29-20-104 does not mention any authority over uranium mining or exploration, and the proposed initiative does not amend section 29-20-104. Consequently, it is unclear what local government authority over uranium mining or exploration is created by this section of the proposed initiative.

5. Section 34-32-115 (2) (a) prohibits local governments from engaging in private communication, with or without public notice, with "any other local entity, or any state or federal entity, regarding any uranium in situ solution mineral resources development proposal."

a. How is a communication that is subject to public notice "private"?

b. What is the policy rationale for prohibiting local governments from publicly communicating with third parties regarding a uranium development proposal?

6. Section 34-32-115 (4) states that notwithstanding a local government's authority to deny a permit, the board or office shall grant a permit if the application complies with the applicable requirements. What is the policy rationale for requiring the board or office to grant a permit if the local government of jurisdiction has denied the permit?