

# STATE OF COLORADO

## Colorado General Assembly

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### MEMORANDUM

October 17, 2007

**TO:** Page Penk and Chester Penk

**FROM:** Legislative Council Staff and Office of Legislative Legal Services

**SUBJECT:** Proposed initiative measure 2007-2008 #44, concerning the reservation of Pinon Canyon for non-lethal weapons training

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 amend the Colorado constitution to declare that Pinon Canyon shall be reserved for non-lethal weapons training only.

## Comments and Questions

The form and substance of the proposed initiative raise the following comments and questions:

### Technical questions:

1. To conform to standard drafting practices, would the proponents specify by what means they intend to amend the Colorado constitution (i.e. by adding a new article, part, or section); specify the language they intend to add to the constitution; and state the text of the proposed amendment in "ALL-CAPS" text? For example:

"Be it Enacted by the People of the State of Colorado:

The constitution of the state of Colorado is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE \_\_\_\_

**Section 1.** PINON CANYON SHALL BE RESERVED FOR NON-LETHAL WEAPONS TRAINING ONLY."

2. Do the proponents intend the proposed initiative to apply to the entire Pinon Canyon geographical area in southeastern Colorado or only the area that has been designated to date as the "Pinon Canyon Maneuver Site"? If the latter, would the proponents consider modifying the language of the proposed initiative so that it refers only to the "Pinon Canyon Maneuver Site"? If some other meaning is intended, would the proponents modify the language accordingly?

### Substantive questions:

1. Article V, section 1 (5.5) of the Colorado constitution requires each initiative to have a single subject. What is the single subject of the proposed initiative?
2. The phrasing of the proposed initiative is ambiguous. Do the proponents mean to say that only non-lethal weapons shall be used during training in Pinon Canyon, or that Pinon Canyon shall be used only for non-lethal weapons training (that is to say, that the land area may not be used for any other types of training)? Would the proponents modify the text of the proposed initiative to remove this ambiguity?
3. Typical dictionary definitions of the verb "to reserve" include: (1) To keep back or save for future use, disposal, treatment, etc.; (2) To retain or secure by express stipulation; (3) To set apart for a particular use, purpose, service, etc.; and (4) To keep for oneself. What legal effect do the proponents intend by "reserving" Pinon Canyon for non-lethal weapons training?
4. What do the proponents mean by the phrase "non-lethal weapons"? What are examples of

"non-lethal weapons" for which training would be permitted in Pinon Canyon under the proposed initiative?

5. What do the proponents mean by the phrase "non-lethal weapons training"? What type or kind of non-lethal weapons training would be permitted in Pinon Canyon under the proposed initiative? What kind of training would be prohibited?
6. Rather than specify that Pinon Canyon can be used for non-lethal weapons training only, have the proponents considered the alternative of simply prohibiting lethal weapons training at the site? By reserving Pinon Canyon for non-lethal weapons training "only", does this limit the use of the site for other activities that are not related to such weapons? For example, could the site be used for medical training, survival training, or training on the use of equipment other than weapons, or must all training at the site relate to the use of non-lethal weapons?
7. What legal force and effect do the proponents believe a provision in the Colorado constitution will have upon any plans of the federal government with respect to Pinon Canyon? Assuming such a provision will be without legal force and effect, what is the proponents' intent in adding this provision to the Colorado constitution?
8. Are the proponents aware of any legal authority supporting the proposition that the people of the state of Colorado, by amendment to their state constitution, have the legal power and authority to restrict the uses of Pinon Canyon in accordance with the proposed initiative? If "yes," please describe such authority.
9. In submitting the proposed initiative, are the proponents relying for legal authority upon either the so-called "Consent Clause" of the federal constitution or section 8 (17) of article I of said constitution? If so, are the proponents aware that the provision at issue grants any powers to state legislatures, not to the people of the states themselves, and that cases construing this provision have concluded that the consent given is not the consent for the acquisition of land by the federal government but rather consent by the state to the federal government for the exercise of exclusive jurisdiction over the land acquired?
10. Do the proponents intend the proposed initiative to apply only to land presently contained within the Pinon Canyon Maneuver Site, to any land that is now or that may become part of such site in the future, or only to land that may be added to the site in the future? Would the proponents clarify their intent with respect to this issue?
11. What is the effective date of the proposed initiative? Unless otherwise specified, under section 1 (4) of article V of the state constitution, an initiative takes effect on the date of the governor's proclamation. Would the proponents specify an internal effective date for the proposed initiative?