

SUPREME COURT, STATE OF COLORADO
2 EAST 14TH. AVENUE
DENVER, COLORADO 80203

ORIGINAL PROCEEDING PURSUANT TO §1-40-107(2),
1 C.R.S. (2001)
Appeal from the Ballot Title Board

FILED IN THE
SUPREME COURT

JUL 09 2007

OF THE STATE OF COLORADO
SUSAN J. FESTAG, CLERK

IN THE MATTER OF THE TITLE, BALLOT TITLE AND
SUBMISSION CLAUSE, AND SUMMARY FOR THE
PROPOSED INITIATIVE 2007 -2008 #17 (NEW STATE
DEPARTMENT AND ELECTED BOARD FOR
ENVIRONMENTAL CONSERVATION).

Petitioners: DOUGLAS KEMPER AND STUART A.
ANDERSON, REGISTERED ELECTORS OF THE STATE OF COLORADO

and

Title Board: WILLIAM A. HOBBS, DANIEL CARTIN, AND
DANIEL DOMENICO

and

Respondents: RICHARD G. HAMILTON AND PHIL DOE,
PROponents

PHIL DOE, PRO SE
7140 S. DEPEW STREET
LITTLETON, COLORADO 80128

RICHARD G. HAMILTON, PRO SE
531 FRONT STREET
POST OFFICE BOX 156
FAIRPLAY, COLORADO 80440

Phone Number: 719.836.4619
F.A.X. Number: 719.836.1799
E-mail: rghami70705@peoplepc.com

Case Number: 07SA201

OPENING BRIEF OF RESPONDENTS

Phil Doe and Richard G. Hamilton ("Respondents") are sponsors of the proposed Initiative # 17, "New State Department and Elected Board for Environmental Conservation", filed in compliance with provisions of, and with regard to, Section 1 of Article V of the Colorado Constitution. (Initiative 2007-2008 #17, "New State Department and Elected Board for Environmental Conservation", with a cover declaration by the initiative sponsors, is attached hereto as APPENDIX A.).

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. The "review and comment" MEMORANDUM, detailing the queries from the directors of the Colorado Legislative Council and the Office of Legislative Legal Services, dated March 22, 2007, and specifically incorporating the RESPONSE BY THE INITIATIVE SPONSORS, Phil Doe and Richard G. Hamilton, has been stipulated by the sponsors to be the statement of sponsor's "constitutional intent" for the proposed 2007-2008 # 17 Initiative. (The Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" March 22, 2007 MEMORANDUM, incorporating the RESPONSE BY THE INITIATIVE SPONSORS, Phil Doe and Richard G. Hamilton, is attached hereto as APPENDIX B)

I. ACTION OF THE BALLOT TITLE BOARD

The Initiative Title Setting Review Board (the "Board") conducted a public meeting pursuant to C.R.S. § 1-40-106 (1) on June 6, 2007, at which time the Board designated and fixed a title, ballot title and submission clause for Initiative 2007-2008 # 17.

Petitioners, Douglas Kemper and Stuart Sanderson, filed a MOTION FOR REHEARING IN RE: TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE SET FOR INITIATIVE 2007-08 # 17 before the Initiative Title Setting Review Board (Petitioner's MOTION FOR REHEARING

IN RE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE SET FOR INITIATIVE 2007-08 # 17 is attached hereto as Appendix C.).

"Respondents" prepared, and submitted, RESPONSE TO MOTION TO REHEAR THE TITLE SET BY THE TITLE SETTING BOARD FOR THE INITIATIVE TO ADD ARTICLE XXX - ESTABLISHMENT OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION. (Respondent's RESPONSE TO MOTION TO REHEAR THE TITLE SET BY THE TITLE SETTING BOARD FOR THE INITIATIVE TO ADD ARTICLE XXX - ESTABLISHMENT OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION is attached hereto as Appendix D).

The MOTION FOR REHEARING before the initiative Title Setting Review Board (pursuant to C.R.S. § 1-40-107(1) was heard by the Board on June 20, 2007. At the rehearing, the Board denied the Petitioner's MOTION FOR REHEARING objections, and sustained the fixed title, ballot title and submission clause for Initiative 2007-2008 # 17 set June 6, 2007 (SUMMARY OF BOARD ACTION - Initiative Title Setting Review Board, Wednesday, June 20,2007 is attached hereto as Appendix E.).

The title set by the Initiative Title Setting Review Board is as follows:

Ballot Title Setting Board
Proposed Initiative 2007-2008 #17

The title as designated and fixed by the Board is as follows:

"An amendment to the Colorado constitution concerning the creation of a new department of environmental conservation, and, in connection therewith, establishing an elected board of commissioners to supervise the department; specifying the department's duties and powers and declaring that conflict between economic interest and conservation stewardship responsibilities shall be resolved in favor of public ownerships and public values; transferring certain existing governmental programs and entities to the department, including the great outdoors Colorado program; transferring to the board of commissioners the authority to appoint

members of certain boards and commissions relating to those programs and entities; vesting procedural management responsibility for the department in an executive director, subject to supervision by the board of commissioners; identifying revenue sources for the department; and exempting the department from the fiscal limits contained in section 20 of article X of the Colorado constitution. "

II. CONCERNS WITHIN ISSUES PRESENTED - PROPOSED INITIATIVE SINGLE SUBJECT REQUIREMENT

The Colorado Constitution, at Article V, Section 1 (5.5), and the Colorado Revised Statutes § 1-40-106.5 require that an initiated measure, submitted by initiative sponsors to the citizens of the State of Colorado for the voters consideration as legislators, be presented to the Colorado electorate by a measure with a title to the initiative and a ballot title and submission clause: "that expresses the subject of the bill in the title to make ... the public aware of the contents of the proposed legislation" - see Legislative Research Memorandum No. 2, December 1971 - Bills to Contain Single Subject. Also, within *Catron v. Co. Commissioners*, 18 Colo. 553, at 558, 33 P. 513, at 514 (1893) this Court stated, with regard to the concept of clarity and the responsibility of single-subject captioning of legislated measures for consideration, "... the generality of a title is oftener to be commended than criticized, the constitution being sufficiently complied with so long as the matters contained within a bill are directly germane to the subject expressed in the title."

The Colorado Constitution, at Article V, Section 1 (5.5), and the Colorado Revised Statutes § 1-40-106.5 (2005), require that an initiated measure, submitted by initiative sponsors to the citizens of the State of Colorado for the voter's consideration, be presented to the Colorado electorate by a question presenting the proposed initiative that sets forth the measure as a "single subject." In *No. 06SA20, June 12, 2006, In the Matter of the Title and Ballot Title and Submission Clause for 2005-2006*

#55: *Gonzales-Estay v. Lamm*, the Court reviewed the "Single Subject Case Law" as follows:

"An extension of the single subject/clear title limitation applicable to bills, *In re Proposed Initiative for "Public Rights in Waters II"*, 898 P.2d 1076, 1078 (Colo. 1995), Colorado's Constitution prohibits voter initiatives from containing multiple subjects.¹ Colo. Const. art. V, § 1(5.5); see also § 1-40-106.5, C.R.S. (2005) . This single subject requirement:

"prohibits a single legislative act from addressing "disconnected and incongruous measures" that have no "necessary or proper connection." This limitation serves to ensure that each legislative proposal depends upon its own merits for passage and protects against fraud and surprise occasioned by the inadvertent passage of a surreptitious provision "coiled up in the folds" of a complex bill."

§ 1-40-107(2), C.R.S. (2005).

"An initiative violates the single subject requirement when it (1) relates to more than one subject and (2) has at least two distinct and separate purposes that are not dependent upon or connected with each other. See *In re "Public Rights in Waters II"*, 898 P.2d at 1078-79; see also *In re Proposed Initiative on Petition Procedures*, 900 P.2d 104, 109 (Colo. 1995)."

**III. THE SINGLE SUBJECT OF PROPOSED INITIATIVE # 17
2007-2008 - ESTABLISHMENT OF THE COLORADO
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

(1.) Within The MEMORANDUM (dated March 22, 2007), required by Section 1-40-105 (1), Colorado Revised Statutes, that the directors of the Colorado Legislative Council and the Office of Legislative Legal Services

"review and comment" on initiative petitions, the MEMORANDUM from the directors of the Colorado Legislative Council and the Office of Legislative Legal Services was modified by the addition to, and the incorporation into, the March 22, 2007 MEMORANDUM the RESPONSE (to the queries by the directors of the Colorado Legislative Council and the Office of Legislative Legal Services) BY THE INITIATIVE SPONSORS, Phil Doe and Richard G. Hamilton.

The combined MEMORANDUM and RESPONSE BY THE INITIATIVE SPONSORS, reviewed and commented upon by representatives of the directors of the Colorado Legislative Council and the Office of Legislative Legal Services, has been designated and stipulated by the initiative sponsors to be the statement of sponsor's "constitutional intent" for the proposed 2007-2008 # 17 Initiative. (The Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" MEMORANDUM, incorporating the RESPONSE BY THE INITIATIVE SPONSORS, Phil Doe and Richard G. Hamilton is attached hereto as APPENDIX B).

Portions of the RESPONSE BY THE INITIATIVE SPONSORS (note that UPPER CASE LETTERING HAS BEEN ADDED BY THE SPONSORS, and lower case lettering is from the original legislative staff Section 1-40-105 (1) "review and comment" memorandum) are restated here to reproduce the record of proceedings at the "review and comment" March 22, 2007 public hearing:

"N. B. RESPONSES FROM THE INITIATIVE SPONSORS TO THE REVIEW AND COMMENTS AND QUESTIONS OFFERED BY LEGISLATIVE COUNCIL AND BY LEGISLATIVE LEGAL SERVICES SHALL BE PRESENTED DIRECTLY FOLLOWING, OR AS SUBSTITUTE LANGUAGE, TO THE LEGISLATIVE COUNCIL STAFF AND THE OFFICE OF LEGISLATIVE LEGAL SERVICES MEMORANDUM OF MARCH 22, 2007.

"THE RESPONSE OF THE SPONSORS PROVIDED HERE TO THE TO LEGISLATIVE COUNCIL STAFF AND THE OFFICE OF LEGISLATIVE LEGAL SERVICES MEMORANDUM QUESTIONS OF MARCH 22, 2007 SHALL BE CONSIDERED AS THE CONSTITUTIONAL INTENT OF THE SPONSORS.

"Purpose s

"THE PURPOSE of the proposed amendment appearS to be to amend the state constitution by the addition of a new article to create a STATE CONSERVATION department CHARGED WITH DESIGNATED TRUST RESPONSIBILITIES, ADMINISTERED BY AN elected board of commissioners, WHOSE SPECIFIED PRIORITIES INCLUDE STATE GOVERNMENTAL PROGRAMS FOCUSED ON environmental PROTECTION AND conservation, WHOSE RESPONSIBILITIES INCLUDE THE RECOGNITION OF THE STEWARDSHIP OF PUBLIC RESOURCES BY SPECIFYING the powers and duties of the board AND, IN CONNECTION THEREWITH;

"BY SPECIFYING transferS OF particularly identified agencies, divisions, offices, programs, boards, commissions, and authorities to the new department;

"BY PROVIDING FOR the election and vacancy procedures, term limits, and compensation for the ELECTED board;

"BY DESIGNATING THE ELECTED BOARD OF THE DEPARTMENT AS the appointing authority for, and the supervisory authority OVER the executive director of the department;

"BY SPECIFYING a commencement date for OPERATIONS OF the department;

"BY SPECIFYING THE department's TRUST AND STEWARDSHIP responsibilities regarding a variety of public conservation resources INITIATIVES

regarding wildlife, WATER, PERMITTING OF NATURAL RESOURCE DEVELOPMENT ACTIONS ON FEDERALLY AND STATE MANAGED LANDS, parks, and outdoor recreation;

"BY DESIGNATING THE ELECTED BOARD OF COMMISSIONERS OF THE DEPARTMENT AS BEING RESPONSIBLE FOR THE APPOINTMENT OF members, officers, and program staff of a variety of boards, commissions, and programs THAT HAVE PUBLIC STEWARDSHIP RESPONSIBILITIES;

"BY RECOGNIZING THAT matters of state interest and activities of state concern AS INCORPORATED IN COLORADO STATUTE ARE AMONG THE STEWARDSHIP AND PROGRAM RESPONSIBILITIES OF THE DEPARTMENT;

"BY AUTHORIZING the department to generate revenues to pay for its expenses;

"BY STIPULATING THAT THE DEPARTMENT MAY utilize the COLORADO general fund TO FUND OPERATIONS, and to exempt the department from the fiscal limits contained in Article X, section 20 of the state constitution;

"BY STIPULATING THAT OPERATIONS OF THE Great Outdoors Colorado Program BE INTEGRATED into the NEWLY CREATED department;

"and

"BY SPECIFYING THAT PROVISIONS OF THE amendment ARE self-enacting and self-executing."

The "statement of constitutional intent" by the sponsors that the proposed initiated measure has, for its single purpose, the establishment of a state department environmental conservation with delineated operational and policy guidelines and determinations, is evident from the record of

proceedings at the March 22, 2007 Section 1-40-105 (1), Colorado Revised Statutes, public hearing at which the directors of the Colorado Legislative Council and the Office of Legislative Legal Services chaired the "review and comment" on the proposed initiative for the establishment of the Colorado Department of Environmental Conservation.

(2.) The Initiative Title Setting Review Board (the "Board") conducted a public meeting pursuant to C.R.S. § 1-40-106 (1) on June 6, 2007, at which time the Board designated and fixed a title, ballot title and submission clause for Initiative 2007-2008 # 17.

Petitioners, Douglas Kemper and Stuart Sanderson, filed a MOTION FOR REHEARING IN RE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE SET FOR INITIATIVE 2007-08 # 17 before the Board.

Respondents prepared, and submitted, a RESPONSE TO MOTION TO REHEAR THE TITLE SET BY THE TITLE SETTING BOARD FOR THE INITIATIVE TO ADD ARTICLE XXX - ESTABLISHMENT OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION. (The respondents a RESPONSE TO MOTION TO REHEAR THE TITLE SET BY THE TITLE SETTING BOARD FOR THE INITIATIVE TO ADD ARTICLE XXX - ESTABLISHMENT OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION was "hand delivered" at the Board re-hearing June 20, 2007 to the attorneys for the petitioners, to members of the Initiative Title Setting Review Board, and to the public (a statement of "Certification of Delivery" is included within APPENDIX D - RESPONSE TO MOTION TO REHEAR THE TITLE SET BY THE TITLE SETTING BOARD FOR THE INITIATIVE TO ADD ARTICLE XXX - ESTABLISHMENT OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION.).

The petitioner's MOTION TO REHEAR to rehear the title set June 6, 2007 by the Board with regard to initiative # 17 2007 - 2008 cited three (3) issues of error by the Initiative Title Setting Review Board in setting the

title for the initiative that included the contentions that the title contains more than a single subject:

- "1.) TABOR - Article X, Section 20 of the Colorado Constitution.
- "2.) Section 7 of the measure doesn't protect "private property rights".
- "3.) Measure makes substantive changes in law."

The respondent's RESPONSE to the issues presented within the MOTION TO REHEAR are presented here as prepared for the record of the June 20, 2006 "rehearing" proceedings:

"TABOR: The initiated measure does not change TABOR - Article X, section 20 - of the Colorado Constitution. The measure does propose that no manner of fiscal management contained within TABOR is to constrain the new Department of Environmental Conservation (D.E.C.) in funding or operation. The reason for the TABOR section in the initiative - as was stated at the Title Board June 6th. - is that the proposed D.E.C. is to be an agency where departmental funding is largely dependent upon revenues from "discretionary", non-steady, sole sources. Departmental funding will not be derived, in whole, from the Colorado General Fund, or from "secure" finance program areas, or directly from ad valorem taxing authorities. The funding of the department is more "ad hoc" than say the Department of Revenue where economic conditions and "steady-stream" revenues can be predicted. The measure also states that the Legislature may fund activities of the Department of Environmental Conservation. The petitioners for the MOTION TO REHEAR assert that TABOR is being modified. TABOR is not being modified. The inclusion of the TABOR section in the initiative has to do with departmental funding, the potentials of wide cash-funded vacillations in revenues disrupting stability in the proposed department's funding, and does not effect substantive changes in TABOR.

"The initiated measure's Section 7 "stewardship" provisions, and the initiative's Section 2 provisions, those constitutional provisions relating to "prior constitutional provisions - if conflict shall arise", are included in the measure to detail, and define, the stewardship responsibilities of the Department (not now in statute), as well as to attempt to protect the new ARTICLE XXX by stating that, if adopted, ARTICLE XXX shall have been adopted by the public in a public vote to be an new constitutional article ratifying the public's intent - see Colorado Constitution Article 5, Section 1 - the people's right to legislate.

"The contention by the petitioners to Rehear that suggests that the measure is an attempt, in a surreptitious manner, to install a public trust doctrine into the Colorado Constitution, is in direct conflict with testimony provided at the Title Hearing, June 6th., where testimony specifically stated that there was, in no manner, any attempt to promote a public trust doctrine. The badinage and persiflage espoused by the petitioners of the MOTION TO REHEAR that the sponsors have an public trust "agenda" is a specious contention meant to smear and mischaracterize the motivations of the sponsors. The petitioner's for the MOTION TO REHEAR contention is without merit. The sponsors of the initiative definitely and succinctly stated that there has been no attempt in the ARTICLE XXX proposal to install a public trust doctrine.

"The reason that Section 7 (*ed. note: Section within Initiative # 17*) was proposed in its present form is demonstrated by the following: The recent Colorado Court of Appeals case - (see *Board of County Commissioners of Gunnison County v. BDS and the Colorado Oil and Gas Conservation Commission (COGCC) - Court of Appeals No.: 04CA1679, Gunnison County District Court No. 03CV76*)

December 16, 2006, wherein the Court of Appeals decided (and, thereafter, the Colorado Supreme Court Petition for Writ of Certiorari was DENIED. EN BANC - June 10, 2007) that counties can review and permit "matters of state interest" and "activities of state concerns" on environmental grounds on federally-managed lands (thereby upholding Gunnison County's "1041" regulations as being exigent - see state authority acknowledged in the U. S. Supreme Court decision, *CALIFORNIA COASTAL COMM'N v. GRANITE ROCK CO.*, 480 U.S. 572 (1987), March 24, 1987, 107 S. Ct. 1419 (1987), Steve Aquafresca, a former Colorado legislator and now Mesa County commissioner - upon being informed that counties have authority to promulgate hearings and issue environmental compliance permits on resource developments on federally-managed lands, stated: "Now we are going to have to go through numerous court decisions to see what those county powers and environmental authorities are" (see "Locals get a say in drilling issues" - Grand Junction Sentinel, June 12, 2007). That contention - that court cases are to determine environmental compliance areas of authority that counties retain - is precisely the reason that Section 7 was included, in detail, in the ARTICLE XXX initiative. The sponsor's of the initiative propose the public to legislate authorities to protect and steward their natural resources, and are loath to permit courts to determine, piecemeal, public resource conservation policy generated as judicial dicta. "The ARTICLE XXX initiative is an effort to stipulate, via publicly approved and enacted language, what protections are to be included within state and local environmental stewardship regulations as those stewardship stipulations direct a new state department to ensure and enable conservation protection guarantees. The initiative proposal for the establishment of ARTICLE XXX is an effort to present to the public

a well-enunciated series of environmental protection proposals so that the public might be able to see a clear and extensive "check-list" of stewardship protections proposals presented for their consideration and for their vote. Section 7 forwards to the public, in a forthright manner, proposed authorities that stipulate comprehensive responsibilities for a new state department to protect the public's interests in public resources as those responsibilities would be constitutionally mandated in Colorado law.

"In the section of the MOTION FOR REHEARING, captioned "The Initiative Modifies the Method of Appointing Certain Governmental Officers", the response is "obviously". If an initiative for constitutional modification did not modify certain governmental authorities - then why present it? The rehearing proponents are not supposing the measure was introduced in order to establish a new department - they are intent upon presupposing that the measure seeks to reform current governance. The sponsor's intent - (see the CRS 1-40 "Advise and Comment Hearing") - is that the mandates and the enabling language of the proposed new ARTICLE XXX department should specify the department's duties and powers insofar as stewardship of the public's natural resource are concerned. The measure has not been introduced to destroy or impede the authority of the governor, nor to constrain the legislature from an ability to act in any specific manner. These questions are rightly within the province of the public's right to legislate, and to vote to confirm, via an initiated measure.

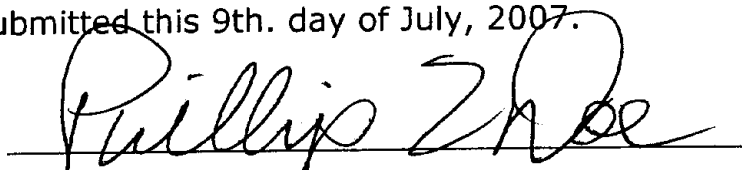
"The title set and the summary clause designated for the Proposed Initiative 2007 - 2008 # 17 by the Title Setting Board fairly and clearly sets forth a ballot initiative title and summary clause: "that expresses the subject of the bill in the title to make ... the public

aware of the contents of the proposed legislation" - see Legislative Research Memorandum No. 2, December 1971 - Bills to Contain Single Subject. And, "... the generality of a title is oftener to be commended than criticized, the constitution being sufficiently complied with so long as the matters contained within a bill are directly germane to the subject expressed in the title." (see *Catron v. Co. Commissioners*, 18 Colo. 553, at 558, 33 P. 513, at 514 (1893)).

IV. REQUEST THE DETERMINATIONS OF THE INITIATIVE TITLE SETTING REVIEW BOARD IN SETTING THE TITLE, BALLOT TITLE AND SUBMISSION CLAUSE OF PROPOSED INITIATIVE 2007-2008 - # 17 BE AFFIRMED

Respondents respectfully request that this Court find that the Title Review Board did correctly assessed the Proposed Initiative 2007-2008 # 17 with respect to the measure's single subject, and that the Board did have the jurisdiction to set the title, ballot tile and submission clause, and that title set does reflect the true meaning and intent of the Proposed Initiative 2007-2008 # 17.

Respectfully submitted this 9th. day of July, 2007.



Phil Doe, Pro Se, concurring

BY: 

Richard G. Hamilton, Pro Se
531 Front Street
P. O. Box 156
Fairplay, Colorado 80440-0156

CERTIFICATE OF MAILING

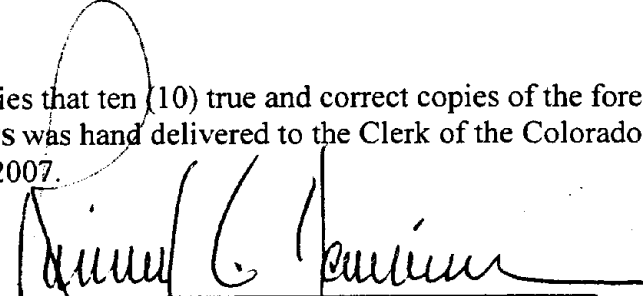
The undersigned hereby certifies that a true and correct copy of the foregoing **OPENING BRIEF OF THE RESPONDENTS** was served via U. S. mail on this 9th. day of July, 2007, as follows:

BURNS, FIGA, & WILL, P. C.
Stephen H. Leonhardt
Alix L. Joseph
Peter F. Waltz
6400 South Fiddlers Green Circle, Suite 1000
Greenwood Village, CO 80111

Maurice G. Knaiser, Esq.
First Assistant Attorney General
State Services Section
1525 Sherman Street, 6th. Floor
Denver, Colorado 80203

and

The undersigned hereby certifies that ten (10) true and correct copies of the foregoing **OPENING BRIEF OF THE RESPONDENTS** was hand delivered to the Clerk of the Colorado Supreme Court this 9th. day of July, 2007.


Richard G. Hamilton

APPENDIX A

PROPOSAL FOR FORMATION OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION

NEED:

- Colorado utilizes various state departments, and their associated divisions, for the analysis of activities that cause impacts to the public's resources.
- No single state department or agency has legislated authority to comprehensively investigate the potentials of development impacts to the public's resources or manage the public's resources for stewardship values.
- Hearings and permits regarding matters of state interest and activities of state concern are discretionary in Colorado in that counties may, or may not, require local resource development impact permits - impact reviews by Colorado counties are not required / are optional to each county.
- No state department or agency has a mandated statutory requirement to assist any Colorado county in the development of local impact analysis guidelines or permitting procedures.
- Resource development activities, of potential consequence to the public's waters, to public lands and to the public's wildlife resources, on federally managed lands in Colorado, are not included in resource development permitting processes.

BACKGROUND:

- The Colorado constitution recognizes that the waters within the state are the property of the public, subject to use.
- Federal judicial decisions have ratified that state sovereignty can require resource development activities on federally managed lands within Colorado to be subject to state environmental permitting procedures.

SOLUTION:

- Establish a single, comprehensive, state government department to protect the public's interests and values in public resources, and to protect public resource conservation values associated with resource development activities on state and federally managed lands as those matters and activities might impact public resource stewardship.

Ballot Title Setting Board
Proposed Initiative 2007-2008 #17

The title as designated and fixed by the Board is as follows:

An amendment to the Colorado constitution concerning the creation of a new department of environmental conservation, and, in connection therewith, establishing an elected board of commissioners to supervise the department; specifying the department's duties and powers and declaring that conflict between economic interest and conservation stewardship responsibilities shall be resolved in favor of public ownerships and public values; transferring certain existing governmental programs and entities to the department, including the great outdoors Colorado program; transferring to the board of commissioners the authority to appoint members of certain boards and commissions relating to those programs and entities; vesting procedural management responsibility for the department in an executive director, subject to supervision by the board of commissioners; identifying revenue sources for the department; and exempting the department from the fiscal limits contained in section 20 of article X of the Colorado constitution.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be an amendment to the Colorado constitution concerning the creation of a new department of environmental conservation, and, in connection therewith, establishing an elected board of commissioners to supervise the department; specifying the department's duties and powers and declaring that conflict between economic interest and conservation stewardship responsibilities shall be resolved in favor of public ownerships and public values; transferring certain existing governmental programs and entities to the department, including the great outdoors Colorado program; transferring to the board of commissioners the authority to appoint members of certain boards and commissions relating to those programs and entities; vesting procedural management responsibility for the department in an executive director, subject to supervision by the board of commissioners; identifying revenue sources for the department; and exempting the department from the fiscal limits contained in section 20 of article X of the Colorado constitution?

Hearing June 6, 2007:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 10:32 a.m.

Re-Hearing June 20, 2007:

Motion for Rehearing denied.

Hearing adjourned 2:59 p.m.

¹ Unofficially captioned "New State Department and Elected Board for Public Resource Conservation" by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.

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 XXX
Environmental Conservation**

Section 1. Colorado department of environmental conservation created. THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION IS CREATED BY THE PEOPLE OF THE STATE OF COLORADO TO ENSURE PUBLIC RESOURCE CONSERVATION STEWARDSHIP, AND IN CONNECTION THEREWITH, THE OPERATION AND MANAGEMENT OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL BE COMPLIANT WITH PROVISIONS CONTAINED WITHIN THIS ARTICLE XXX AND WITH STATUTORY PROVISIONS FOR LEGISLATIVE DIRECTION FOR A DEPARTMENT CONTAINED WITHIN ARTICLE 7 OF TITLE 2, COLORADO REVISED STATUTES, OR ANY ANALOGOUS SUCCESSOR STATUTE.

Section 2. Supervision and management of public lands, resources, waters, and wildlife by elected commissioners - responsibilities, conflicts with other provisions. THE SUPERVISION, MANAGEMENT, AND POLICY DETERMINATIONS REGARDING THE PUBLIC'S RESOURCES AND PUBLIC RESOURCE CONSERVATION STEWARDSHIP PROGRAMS WITHIN THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL BE THE RESPONSIBILITY OF THE ELECTED BOARD OF COMMISSIONERS OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION. SECTION 1 OF ARTICLE V OF THE COLORADO CONSTITUTION SHALL BE THE AUTHORITY USED BY THE PUBLIC IN THE FORMATION OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION. SHOULD CONFLICT WITH OTHER COLORADO CONSTITUTIONAL PROVISIONS ARISE HEREAFTER, PROVISIONS WITHIN ARTICLE XXX SHALL BE HELD DOMINANT OVER OTHER, PREVIOUS CONSTITUTIONAL PROVISIONS.

Section 3. Colorado department of environmental conservation is created. Boards, divisions, programs and commissions transferred. (1) THE FOLLOWING DEPARTMENTAL DIVISIONS, AND STATE OF COLORADO BOARDS, COMMISSIONS AND PROGRAMS, AND THE ADMINISTRATION THERETO, ARE TRANSFERRED FROM VARIOUS COLORADO GOVERNMENTAL ENTITIES TO THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION, AND TO THE MANAGEMENT AND PROGRAM SUPERVISION OF THE ELECTED COMMISSIONERS FOR THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION;

- (a) COLORADO NATURAL AREAS PROGRAM;
- (b) COLORADO WATER CONSERVATION BOARD;
- (c) COLORADO DIVISION OF FORESTRY;
- (d) COLORADO DIVISION OF STATE PARKS;
- (e) COLORADO WATER QUALITY CONTROL DIVISION;
- (f) COLORADO DIVISION OF WILDLIFE;
- (g) COLORADO LAND USE COMMISSION;
- (h) COLORADO CAPTIVE WILDLIFE AND ALTERNATIVE LIVESTOCK BOARD;
- (i) STATE BOARD OF LAND COMMISSIONERS;
- (j) GREAT OUTDOORS COLORADO PROGRAM;
- (k) AND, AS MAY BE DETERMINED BY THE EXECUTIVE COMMITTEE OF THE LEGISLATIVE COUNCIL, ANY OTHER COLORADO STATE AGENCY, DIVISION, PROGRAM, OFFICE OR BOARD OF COLORADO STATE GOVERNMENT, THAT EITHER

NOW EXISTS, OR SHALL BE CREATED, AS A MANDATED PROGRAM OR AS A STATE-RECOGNIZED, NEWLY-CREATED GOVERNMENTAL ACTIVITY, AUTHORITY, OR PROGRAM THAT HAS BEEN EMPOWERED BY THE COLORADO CONSTITUTION, OR BY COLORADO STATE STATUTE, OR WILL BE EMPOWERED IN THE FUTURE, TO ACT IN, OR HAVE, STEWARDSHIP AND TRUST CAPACITIES FOR THE PUBLIC'S INTERESTS IN STATE OR IN OTHERWISE STATE OR FEDERALLY MANAGED PUBLIC LANDS, PUBLIC RESOURCES, WATERS AND WILDLIFE, SHALL BE TRANSFERRED TO THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

(2) THE FOLLOWING COLORADO BOARDS, COMMISSIONS AND COUNCILS, PROVIDING GUIDANCE, POLICY GUIDELINE TO PROGRAM ADMINISTRATION, AND POLICY DIRECTION, INCLUDING OPERATIONS, TO VARIOUS STATE OF COLORADO GOVERNMENT DEPARTMENTS, DIVISIONS, AND PROGRAMS ARE TRANSFERRED FROM THE OFFICE OF THE GOVERNOR OF COLORADO TO THE MANAGEMENT AND SUPERVISION OF THE ELECTED COMMISSIONERS FOR THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION;

- (a) STATE BOARD OF THE GREAT OUTDOORS COLORADO TRUST FUND;
- (b) HAZARDOUS WASTE COMMISSION;
- (c) STATE BOARD OF LAND COMMISSIONERS;
- (d) COLORADO LAND USE COMMISSION;
- (e) COLORADO NATURAL AREAS COUNCIL;
- (f) COLORADO BOARD OF PARKS AND OUTDOOR RECREATION;
- (g) POLLUTION PREVENTION ADVISORY BOARD;
- (h) COLORADO WATER CONSERVATION BOARD;
- (i) COLORADO WATER QUALITY CONTROL COMMISSION;
- (j) WILDLANDS AND URBAN INTERFACE WILDLIFE WORKING GROUP;
- (k) COLORADO WILDLIFE COMMISSION;
- (l) COLORADO JOINT REVIEW PROCESS;
- (m) AND, AS MAY BE DETERMINED BY THE EXECUTIVE COMMITTEE OF THE LEGISLATIVE COUNCIL, ANY OTHER COLORADO STATE AGENCY, DIVISION, PROGRAM, OFFICE OR BOARD OF COLORADO STATE GOVERNMENT, THAT EITHER NOW EXISTS, OR SHALL BE CREATED, AS A MANDATED PROGRAM OR AS A STATE-RECOGNIZED, NEWLY-CREATED GOVERNMENTAL ACTIVITY, AUTHORITY, OR PROGRAM THAT HAS BEEN EMPOWERED BY THE COLORADO CONSTITUTION, OR BY COLORADO STATE STATUTE, OR WILL BE EMPOWERED IN THE FUTURE, TO ACT IN, OR HAVE, STEWARDSHIP AND TRUST CAPACITIES FOR THE PUBLIC'S INTERESTS IN STATE OR IN OTHERWISE STATE OR FEDERALLY MANAGED PUBLIC LANDS, PUBLIC RESOURCES, WATERS AND WILDLIFE, SHALL BE TRANSFERRED TO THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

Section 4. Election of the board of commissioners of the Colorado department of environmental conservation - members from congressional districts. Compensation. (1) THE INDIVIDUAL MEMBERS OF THE BOARD OF COMMISSIONERS OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL BE ELECTED AT REGULAR STATEWIDE BIENNIAL GENERAL ELECTIONS, WITH COMMISSION MEMBERS ELECTED FROM ELIGIBLE CANDIDATES WHO RESIDE WITHIN ONE OF THE SEVERAL COLORADO CONGRESSIONAL DISTRICTS. THE BOARD OF COMMISSIONER MEMBER SHALL BE ELECTED BY A MAJORITY VOTE OF THOSE VOTING FOR THAT OFFICE IN A STATEWIDE GENERAL ELECTION. BOARD OF COMMISSION MEMBERS ELECTED FROM ODD-NUMBERED COLORADO CONGRESSIONAL

DISTRICTS SHALL SERVE UNTIL THE LAST DAY OF DECEMBER, 2012 ON THE COMMISSION FOR THE INITIAL TERM OF OFFICE. BOARD OF COMMISSION MEMBERS FROM EVEN-NUMBERED COLORADO CONGRESSIONAL DISTRICTS SHALL SERVE UNTIL LAST DAY OF DECEMBER, 2014 ON THE COMMISSION FOR THEIR INITIAL TERM OF OFFICE. NEWLY ELECTED COMMISSIONERS SHALL BE SWORN TO OFFICE ON JANUARY 1 FOLLOWING MEMBER OFFICE ELECTIONS. ALL MEMBER TERMS OF OFFICE SHALL BE FOUR-YEAR TERMS OF OFFICE FOR ALL SUBSEQUENT COMMISSION TERMS.

(a) A REGISTERED VOTER, RESIDING WITHIN ONE OF THE CONGRESSIONAL DISTRICTS WITHIN COLORADO, SHALL BECOME ELIGIBLE TO BECOME A CANDIDATE FOR ELECTION TO THE BOARD OF COMMISSIONERS OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION BY SUBMITTING TO THE COLORADO SECRETARY OF STATE ONE HUNDRED FIFTY (150) DAYS PRIOR TO AN ELECTION PETITIONS WITH THE NAMES AND ADDRESSES AFFIXED OF TWO HUNDRED (200) REGISTERED VOTERS FROM THE CONGRESSIONAL DISTRICT TO BE REPRESENTED. AFTER CERTIFICATION BY THE COLORADO SECRETARY OF STATE OF THE NAMES AND ADDRESSES PRESENTED ON THE NOMINATING PETITION TO BE ACCOMPLISHED WITHIN THIRTY (30) DAY AFTER SUBMISSION OF PETITIONS, THE SECRETARY OF STATE SHALL CERTIFY THE NAME OF THE CANDIDATE TO THE BALLOT FOR ELECTION TO THE COMMISSION BOARD.

(b) COMMISSIONERS SERVING ON THE BOARD OF COMMISSIONERS OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL RESIDE WITHIN THE CONGRESSIONAL DISTRICT THEY ARE TO REPRESENT.

(2) A STATEWIDE SPECIAL ELECTION, TO BE HELD IN NOVEMBER 2009 AT THE DATE RESERVED FOR STATEWIDE ELECTIONS CONCERNING FISCAL MATTERS , SHALL BE CONDUCTED FOR THE ELECTION OF INITIAL MEMBERS TO THE BOARD OF COMMISSIONERS TO THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

(3) VACANCY ELECTIONS, AS REQUIRED, SHALL BE HELD AT THE NEXT BIENNIAL GENERAL ELECTION AND SHALL BE FOR THE REMAINING PERIOD OF THAT OFFICE TERM. VACANCY ON THE COMMISSION BOARD, UNTIL THAT POSITION CAN BE FILLED AT A REGULAR ELECTION, SHALL BE APPOINTED BY A MAJORITY VOTE OF THE EXECUTIVE COMMITTEE OF THE LEGISLATIVE COUNCIL.

(4) MEMBERS OF THE BOARD OF COMMISSIONERS FOR THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL BE ELECTED TO NO MORE THAN TWO TERMS OF OFFICE, TERMS OF OFFICE BEING COMPLIANT WITH SECTION 11 OF ARTICLE XVIII OF THE CONSTITUTION.

(5) COMPENSATION FOR ELECTED MEMBERS OF THE GOVERNING BOARD OF COMMISSIONERS OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL BE COMMENSURATE WITH COMPENSATION PAID TO EXECUTIVE DIRECTORS OF STATE OF COLORADO GOVERNMENTAL DEPARTMENTS.

Section 5. Appointment of the executive director of the Colorado department of environmental conservation. PROCEDURAL MANAGEMENT RESPONSIBILITIES FOR THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL RESIDE WITHIN THE OFFICE OF THE EXECUTIVE DIRECTOR OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

(a) THE EXECUTIVE DIRECTOR OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL SERVE AT THE PLEASURE OF THE ELECTED BOARD OF COMMISSIONERS OF THE DEPARTMENT.

- (b) MATTERS OF ORGANIZATION, OPERATION, AND MANAGEMENT OF THE DEPARTMENT OF DEPARTMENTAL PROGRAMS AND THEIR OPERATIONS, SHALL BE UNDER THE SUPERVISION OF THE EXECUTIVE DIRECTOR OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION. POLICY DETERMINATIONS REGARDING MATTERS OF ORGANIZATION AND OPERATION OF DEPARTMENTAL PROGRAMS SHALL BE EFFECTIVE UPON AN AFFIRMATIVE AFFIRMATION OF A MAJORITY OF THE COMMISSION MEMBERS.

Section 6. Colorado governmental departmental reorganization in effect. THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL COMMENCE DEPARTMENTAL OPERATIONS JANUARY 1, 2010.

Section 7. Trust responsibilities of the Colorado department of environmental conservation. (1) THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION IS CREATED BY THE PEOPLE OF THE STATE OF COLORADO TO ENSURE PUBLIC RESOURCE CONSERVATION STEWARDSHIP, AND IN CONNECTION THEREWITH, THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION, AND THE ELECTED MEMBERS OF THE BOARD OF COMMISSIONERS OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION, SHALL HAVE, AS PRIORITY, THE RESPONSIBILITIES TO STEWARD AND PROTECT THE PUBLIC OWNERSHIP AND PUBLIC CONSERVATION VALUES IN LANDS, WATERS, PUBLIC RESOURCES, AND WILDLIFE. CONFLICT BETWEEN ECONOMIC INTEREST AND CONSERVATION STEWARDSHIP RESPONSIBILITIES TO, AND FOR, THE PUBLIC'S RESOURCES AND RESOURCE CONSERVATION VALUES SHALL BE RESOLVED IN FAVOR OF PUBLIC OWNERSHIPS AND PUBLIC VALUES.

- (a) RESPONSIBILITIES OF THE BOARD OF COMMISSIONERS OF COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION, AND OF THE DEPARTMENT, SHALL INCLUDE: POLICY DETERMINATIONS, SUPERVISION, OPERATIONS OF PROGRAMS AND ACTIVITIES, MANAGEMENT, AND STEWARDSHIP OF PUBLIC RESOURCES INCLUDING MANAGEMENT AND POLICY DETERMINATIONS REGARDING PARKS, MONUMENTS, GOVERNMENT MANAGED LANDS, NATURAL HERITAGE AREAS, POLICY REVIEW AND EVALUATION AND OVERSIGHT OF PERMITTING REGARDING MATTERS OF STATE INTEREST AND ACTIVITIES OF STATE CONCERN INCLUDING THOSE MATTERS AND CONCERNS THAT PERTAIN TO RESOURCE DEVELOPMENT AND ENVIRONMENTAL PERMITTING OF DEVELOPMENT ACTIVITIES ON FEDERALLY MANAGED PUBLIC LANDS, AND OF SHORE LANDS; PROTECTION OF ARCHEOLOGICAL RESOURCES; MANAGEMENT AND RESTORATION OF FOREST HEALTH OF STATE FORESTS; WATER CONSERVATION AND THE PROTECTION AND PRESERVATION OF PUBLIC VALUES IN WATER; MANAGEMENT OF CORRECTION EFFORTS TO REDRESS UNRESOLVED HARMFUL IMPACTS TO THE PUBLIC'S RESOURCES; PROTECTION, CONSERVATION, AND RESTORATION OF WILDLIFE RESOURCES, WILDLIFE HABITAT, AND RESPONSIBILITY FOR PREDATOR MANAGEMENT; MANAGEMENT OF WILDLIFE RESOURCES WITHIN ANY WILDLAND AND URBAN LANDS INTERFACE; PROTECTION STRATEGIES FOR MIGRATORY BIRDS; PROTECTION OF STATE AND FEDERALLY DESIGNATED THREATENED AND ENDANGERED SPECIES OF PLANTS AND ANIMALS; PRESERVATION AND PROTECTION OF FISHERIES HABITAT RESOURCES; FISH RESTORATION PROGRAMS, FISH HEALTH, AND AQUATIC RESOURCE STEWARDSHIP PROGRAMS; REGULATION OF AND

LICENSING OF TRANSPORTATION OF FISH, GAME, AND EXOTIC ANIMALS INTO AND WITHIN COLORADO; WATERSHED REVIEW, EVALUATION AND DESIGNATION; FLOODPLAIN REVIEW, EVALUATION, AND DESIGNATION; IMPLEMENTATION AND COORDINATION OF STATE TRAILS SYSTEMS, TRAILS DEVELOPMENT, AND MANAGEMENT OF PUBLIC FUNDS ESTABLISHED FOR THOSE PURPOSES; RURAL ENVIRONMENTAL CONSERVATION PROGRAMS; FOSTERING OF PARTNERSHIPS FOR WILDLIFE ENHANCEMENT; PRESERVATION OF FENS AND WETLANDS INCLUDING THOSE THAT FUNCTION AS POLLUTANT TRAPS, ASSIST IN FLOOD CONTROL, AND HELP CONTROL RUNOFF; PROMOTION OF WETLAND CONSERVATION AND RESERVE PROGRAMS; AND REGULATION OF HUNTING, OFF-ROAD VEHICLES, AND BOATING.

(i) PERMITTING PROGRAM ELEMENTS FOR MATTERS OF STATE INTEREST AND ACTIVITIES OF STATE CONCERN REGARDING RESOURCE DEVELOPMENT ON FEDERALLY MANAGED PUBLIC LANDS WITHIN COLORADO SHALL BE RETAINED, AS AUTHORIZED, BY COLORADO STATE AND ELIGIBLE LOCAL GOVERNMENT ENVIRONMENTAL PERMITTING AUTHORITIES.

(ii) CRITERIA FOR THE ADMINISTRATION OF MATTERS OF STATE INTEREST AND ACTIVITIES OF STATE CONCERN SHALL BE COMPLIANT WITH ARTICLE 65 AND ARTICLE 65.1 OF TITLE 24 OF THE COLORADO REVISED STATUTES, OR ANY ANALOGOUS SUCCESSOR STATUTES.

(b) ANY CITIZEN OF THE STATE OF COLORADO SHALL HAVE STANDING TO PETITION THE BOARD OF COMMISSIONERS OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION TO REQUEST THE DEPARTMENT, OR THE COMMISSION, EVALUATE, ANALYZE, AND DESIGNATED ADDITIONAL CONSERVATION STEWARDSHIP MATTERS, WITH ANY ADDITIONAL STEWARDSHIP MATTER BEING ADDED TO DEPARTMENTAL PRIORITY UPON APPROVAL OF THE COMMISSION BOARD.

(2) THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION IS CREATED BY THE PEOPLE OF THE STATE OF COLORADO TO ENSURE PUBLIC RESOURCE CONSERVATION STEWARDSHIP, AND IN CONNECTION THEREWITH, THE BOARD OF COMMISSIONERS OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL:

- (a) SHALL SIT, AND ACT, AS THE COLORADO STATE BOARD OF PARKS AND OUTDOOR RECREATION.
- (b) SHALL SIT, AND ACT, AS THE COLORADO LAND USE COMMISSION.
- (c) SHALL SIT, AND ACT, AS THE COLORADO WILDLIFE COMMISSION.
- (d) SHALL BE RESPONSIBLE FOR THE APPOINTMENT OF MEMBERS OR OFFICERS OR PROGRAM STAFF TO THE FOLLOWING BOARDS, COMMISSIONS, COUNCILS, GROUPS AND PROGRAMS, OR TO SUCCESSOR BOARDS, COMMISSIONS, COUNCILS, GROUPS OR PROGRAMS;
 - (i) STATE BOARD OF THE GREAT OUTDOORS COLORADO TRUST FUND;
 - (ii) HAZARDOUS WASTE COMMISSION;
 - (iii) STATE OF COLORADO BOARD OF LAND COMMISSIONERS;
 - (iv) COLORADO LAND USE COMMISSION;
 - (v) COLORADO NATURAL AREAS COUNCIL;
 - (vi) POLLUTION PREVENTION ADVISORY BOARD;
 - (vii) STATE OF COLORADO EMERGENCY PLANNING AND COMMUNITY RIGHT-TO KNOW COUNCIL;

- (VIII) COLORADO WATER CONSERVATION BOARD;
- (IX) COLORADO WATER QUALITY CONTROL COMMISSION;
- (X) WILDLANDS AND URBAN INTERFACE WILDLIFE WORKING GROUP;
- (XI) AND, AS MAY BE DETERMINED BY THE EXECUTIVE COMMITTEE OF THE LEGISLATIVE COUNCIL, ANY OTHER COLORADO STATE AGENCY, DIVISION, PROGRAM, OFFICE OR BOARD OF COLORADO STATE GOVERNMENT, THAT EITHER NOW EXISTS, OR SHALL BE CREATED, AS A MANDATED PROGRAM OR AS A STATE-RECOGNIZED, NEWLY-CREATED GOVERNMENTAL ACTIVITY, AUTHORITY, OR PROGRAM THAT HAS BEEN EMPOWERED BY THE COLORADO CONSTITUTION, OR BY COLORADO STATE STATUTE, OR WILL BE EMPOWERED IN THE FUTURE, TO ACT IN, OR HAVE, STEWARDSHIP AND TRUST CAPACITIES FOR THE PUBLIC'S INTERESTS IN STATE OR IN OTHERWISE STATE OR FEDERALLY MANAGED PUBLIC LANDS, PUBLIC RESOURCES, WATERS AND WILDLIFE, SHALL BE TRANSFERRED TO THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION.
- (XII) APPOINTMENT TO ANY BOARD, COMMISSION, COUNCIL OR ADVISORY GROUP OF A MEMBER OR OFFICER BY THE BOARD OF COMMISSIONERS OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL NOT BE SUBJECT TO ANY MANNER OF LEGISLATIVE CONFIRMATION.

(3) THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION IS CREATED BY THE PEOPLE OF THE STATE OF COLORADO TO ENSURE PUBLIC RESOURCE CONSERVATION STEWARDSHIP, AND IN CONNECTION THEREWITH;

- (a) THE BOARD OF COMMISSIONERS OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION MAY CONVENE, EITHER UPON THE INITIATIVE OF ANY DEPARTMENTAL DIVISION THEREOF, OR BY THE BOARD SITTING AS THE COLORADO LAND USE COMMISSION, AS AUTHORIZED IN ARTICLE 65 OF TITLE 24 OF THE COLORADO REVISED STATUTES, OR ANY ANALOGOUS SUCCESSOR STATUTE, EITHER INDEPENDENTLY OR UPON PETITION FROM A MEMBER OF THE PUBLIC, TO REVIEW, CONSIDER, AND HAVE THE AUTHORITY TO ISSUE COMPLIANCE PERMIT DIRECTIVES, AS AUTHORIZED WITHIN THE COLORADO LAND USE ACT, ARTICLE 65 AND ARTICLE 65.1 OF TITLE 24 OF THE COLORADO REVISED STATUTES, OR ANY ANALOGOUS SUCCESSOR STATUTE, THAT HAS AS PURPOSE THE DESIGNATING OF MATTERS OF STATE INTEREST AND ACTIVITIES OF STATE CONCERN THAT COULD INITIATE STATE GOVERNMENTAL, MULTI-AGENCY REVIEW AND PERMITTING UNDER AUTHORITY OF THE COLORADO JOINT REVIEW PROCESS OF ANY ACTIVITY THAT COULD IMPACT PUBLIC RESOURCE CONSERVATION STEWARDSHIP, OR THE PUBLIC'S OWNERSHIP OR PUBLIC VALUES IN PUBLIC NATURAL RESOURCES.
- (b) THE BOARD OF COMMISSIONERS OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION MAY INITIATE IDENTIFICATION, REQUIRE DESIGNATION, AND MAY REQUIRE PROMULGATION AND ADOPTION OF GUIDELINES FOR PERMITTING OF ACTIVITIES REGARDING MATTERS OF STATE INTEREST AND ACTIVITIES OF STATE CONCERN WITHIN COLORADO. THE BOARD OF COMMISSIONERS OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL AUTHORIZE THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION TO REVIEW AND COMMENT ON LOCAL GOVERNMENT ARTICLE 65.1

OF TITLE 24 COLORADO REVISED STATUTES, OR ANY ANALOGOUS SUCCESSOR STATUTE, AUTHORITIES, AND MAY AUTHORIZE THE DEPARTMENT TO REQUIRE AN ELIGIBLE LOCAL GOVERNMENT, AS IDENTIFIED WITHIN ARTICLE 65.1 OF TITLE 24 COLORADO REVISED STATUTES, OR ANY ANALOGOUS SUCCESSOR STATUTE, TO ADOPT STATE-APPROVED DEPARTMENT OF ENVIRONMENTAL CONSERVATION GUIDELINES FOR REGULATION OF MATTERS OF STATE INTEREST AND ACTIVITIES OF STATE CONCERN.

Section 8. Licenses, fees, and revenues necessary for the operation and management of the Colorado department of environmental conservation.

(1) FEES, REVENUES, PAYMENTS, AND ALL MONIES GENERATED WITHIN AND UNDER THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION AS LICENSES, OR AS PENALTIES, OR AS ASSESSMENTS, OR AS INTERGOVERNMENTAL TRANSFERS FROM ANY SOURCES, OR FROM GRANTS OR FROM REVENUES OF ANY MANNER, SHALL BE USED BY THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION FOR DEPARTMENT PROGRAMS AND OPERATIONS OF THE DEPARTMENT.

(2) FUNDS FOR THE OPERATION OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION MAY BE DERIVED FROM THE COLORADO GENERAL FUND.

(a) DEVELOPMENT OF AN ANNUAL OPERATING BUDGET FOR THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL BE GENERATED WITHIN THE DEPARTMENTAL BUDGET SETTING PROCESS ESTABLISHED TO GENERATE THE ANNUAL OPERATING BUDGETS FOR STATE OF COLORADO DEPARTMENTS.

(b) THE ANNUAL BUDGET FOR THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL BE ADOPTED BY THE COLORADO GENERAL ASSEMBLY AS PART OF THE BUDGET ENACTING PROCESS ESTABLISHED FOR THE ENACTING OF BUDGETS FOR COLORADO STATE GOVERNMENT DEPARTMENTS.

(3) NO MANNER OF FISCAL REGULATION CONTAINED WITHIN SECTION 20 OF ARTICLE X OF THE COLORADO CONSTITUTION, EXCEPT THAT OF THE ABILITY OF THE PUBLIC TO INITIATE FUNDING FOR DEPARTMENTAL PROGRAMS AND FOR PROJECTS USING GUIDELINES AND PROCEDURES ENABLED WITHIN SECTION 1 OF ARTICLE V OF THE COLORADO CONSTITUTION, SHALL APPLY TO THE OPERATION, FUNDING, RESERVES OR EXPENDITURES OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

Section 9. Debt for public purpose. DEBT PROVISIONS FOR PUBLIC RESOURCES CONSERVATION PURPOSES AND EFFORTS REGARDING THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL BE GOVERNED BY ARTICLE XI AND ARTICLE XXVII OF THE COLORADO CONSTITUTION.

Section 10. State board of the great outdoors Colorado trust fund. ARTICLE XXVII OF THE COLORADO CONSTITUTION – GREAT OUTDOORS COLORADO PROGRAM – IS INTEGRATED INTO THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION FOR PURPOSES OF PROGRAM MANAGEMENT, PROGRAM OPERATION AND PROGRAM ADMINISTRATION. PROVISIONS OF SECTION 2, 3, 4, AND 5 OF ARTICLE XXVII RELATING TO THE ESTABLISHMENT AND OPERATION OF THE GREAT OUTDOORS COLORADO TRUST FUND SHALL NOT BE OTHERWISE IMPRESSED BY PROVISIONS OF ARTICLE XXX.

Section 11. Provisions within article XXX are self-enacting and self-executing. PROVISIONS OF THIS ARTICLE ARE SELF-ENACTING AND SELF-EXECUTING.

APPENDIX B

STATE OF COLORADO

Colorado General Assembly

Kirk Mlinek, 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



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: oills.ga@state.co.us

E-Mail: lcs.ga@state.co.us

MEMORANDUM

AND RESPONSE BY THE INITIATIVE SPONSORS

March 22, 2007

TO: Richard G. Hamilton and Phil Doe

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2007-2008 #8, concerning new state department and elected board for environmental conservation

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.

N. B. RESPONSES FROM THE INITIATIVE SPONSORS TO THE REVIEW AND COMMENTS AND QUESTIONS OFFERED BY LEGISLATIVE COUNCIL AND BY LEGISLATIVE LEGAL SERVICES SHALL BE PRESENTED DIRECTLY FOLLOWING, OR AS SUBSTITUTE LANGUAGE, TO THE LEGISLATIVE COUNCIL STAFF AND THE OFFICE

**OF LEGISLATIVE LEGAL SERVICES MEMORANDUM OF MARCH 22,
2007.**

**THE RESPONSE OF THE SPONSORS PROVIDED HERE TO THE TO
LEGISLATIVE COUNCIL STAFF AND THE OFFICE OF LEGISLATIVE
LEGAL SERVICES MEMORANDUM QUESTIONS OF MARCH 22, 2007
SHALL BE CONSIDERED AS THE CONSTITUTIONAL INTENT OF THE
SPONSORS.**

Purpose s

THE PURPOSE of the proposed amendment appearS to be to amend the state constitution by the addition of a new article to create a STATE CONSERVATION department CHARGED WITH DESIGNATED TRUST RESPONSIBILITIES, ADMINISTERED BY AN elected board of commissioners, WHOSE SPECIFIED PRIORITIES INCLUDE STATE GOVERNMENTAL PROGRAMS FOCUSED ON environmental PROTECTION AND conservation, WHOSE RESPONSIBILITIES INCLUDE THE RECOGNITION OF THE STEWARDSHIP OF PUBLIC RESOURCES BY SPECIFYING the powers and duties of the board AND, IN CONNECTION THEREWITH;

BY SPECIFYING transferS OF particularly identified agencies, divisions, offices, programs, boards, commissions, and authorities to the new department;

BY PROVIDING FOR the election and vacancy procedures, term limits, and compensation for the ELECTED board;

BY DESIGNATING THE ELECTED BOARD OF THE DEPARTMENT AS the appointing authority for, and the supervisory authority OVER the executive director of the department;

BY SPECIFYING a commencement date for OPERATIONS OF the department;

BY SPECIFYING THE department's TRUST AND STEWARDSHIP responsibilities regarding a variety of public conservation resources INITIATIVES regarding wildlife, WATER, PERMITTING OF NATURAL RESOURCE DEVELOPMENT ACTIONS ON FEDERALLY AND STATE MANAGED LANDS, parks, and outdoor recreation;

BY DESIGNATING THE ELECTED BOARD OF COMMISSIONERS OF THE DEPARTMENT AS BEING RESPONSIBLE FOR THE APPOINTMENT OF members, officers, and program staff of a variety of boards, commissions, and programs THAT HAVE PUBLIC STEWARDSHIP RESPONSIBILITIES;

BY RECOGNIZING THAT matters of state interest and activities of state concern AS INCORPORATED IN COLORADO STATUTE ARE AMONG THE STEWARDSHIP AND PROGRAM RESPONSIBILITIES OF THE DEPARTMENT;

BY AUTHORIZING the department to generate revenues to pay for its expenses;

BY STIPULATING THAT THE DEPARTMENT MAY utilize the COLORADO general fund TO FUND OPERATIONS, and to exempt the department from the fiscal limits contained in Article X, section 20 of the state constitution;

BY STIPULATING THAT OPERATIONS OF THE Great Outdoors Colorado Program BE INTEGRATED into the NEWLY CREATED department;

and

BY SPECIFYING THAT PROVISIONS OF THE amendment ARE self-enacting and self-executing.

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 consider:

a. Using the enacting clause specified in section 1 (8) of article V of the state constitution: "Be it Enacted by the People of the State of Colorado:"?

INCORPORATED BY SPONSORS.

b. Using an amending clause as follows: "The constitution of the state of Colorado is amended BY THE ADDITION OF A NEW ARTICLE to read:"?

INCORPORATED BY SPONSORS.

c. Changing the heading of the new article so that it is centered, in bold-faced type, and is broken up into two lines, with the first line in ALL CAPS and the second line initial cased, as follows:

ARTICLE XXVIII

Environmental Conservation

INCORPORATED BY SPONSORS.

d. Putting the new constitutional language in SMALL CAPS?

INCORPORATED BY SPONSORS.

e. Changing the headnotes to delete "ARTICLE XXVIII" in front of each section, indent the first line of the headnote, put the headnotes in lower case letters (but initial cap the first word), put a period after the section number, and have the constitutional language go directly after the headnote instead of being on a separate line? For example:

Section 1. Colorado department of environmental conservation created. THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION IS CREATED BY THE PEOPLE OF THE STATE . . .

INCORPORATED BY SPONSORS.

f. Capitalizing only the initial letter of words that are proper nouns or the first word of a sentence, i.e., "Colorado Department of Environmental Conservation" should be "Colorado department of environmental conservation"?

INCORPORATED BY SPONSORS.

g. Not using:

i. A subsection "(1)" in sections that have no further subdivisions in them (as in sections 1, 2, 6, 9, 10, and 11);

INCORPORATED BY SPONSORS.

ii. A paragraph "(a)" in subsections that have no further subdivisions in them (as in section 4 (1), 5 (1), and 8 (2)); or

INCORPORATED BY SPONSORS.

iii. A subparagraph "(I)" in paragraphs that have no further subdivisions in them (as in section 7 (1) (a))?

INCORPORATED BY SPONSORS.

h. For references to statutes or the constitution, using the following format:

i. "article 7 of title 2, Colorado Revised Statutes," (instead of "Article 7, Title 2"), or "section 1 of article V" (instead of "Article V, section 1")

INCORPORATED BY SPONSORS.

ii. Including a reference to "Colorado Revised Statutes, or any analogous successor statute" when referring to a statute, i.e., "article 7 of title 2, Colorado Revised Statutes, or any analogous successor statutes,"?

INCORPORATED BY SPONSORS.

iii. Placing a comma before the last item in a series of three or more items? For example, from section 2, "The supervision, management, and policy determinations . . ."; from section 8, "Fees, revenues, payments, and all monies generated within and under the Colorado department of environmental conservation as licenses, penalties, assessments, intergovernmental transfers from any sources, grants, or from revenues of any manner, shall be used . . .".

INCORPORATED BY SPONSORS.

iv. Not include the parenthetic "(s)" at the end of nouns, as the commonly accepted meaning of singular nouns includes the plural. (See section 2-4-102, C.R.S.)

INCORPORATED BY SPONSORS.

2. Do the proponents intend the table of contents contained on the first page of the proposed amendment to be part of the constitution? If not, would the proponents consider deleting the table of contents?

TABLE OF CONTENTS DELETED BY SPONSORS.

3. The proposed amendment codifies the new article as Article XXVIII, but the constitution already has an Article XXVIII regarding campaign and political finance as well as an Article XXIX regarding ethics in government. Would the proponents consider codifying the new article with the next available number, i.e., XXX?

AMENDMENT RE-CODIFIED AS ARTICLE XXX BY SPONSORS.

4. In section 3 (1) and (2) and section 7 (4), the proposed amendment lists a number of agencies, divisions, boards, etc., in the paragraphs that follow subsections (1), (2), and (4).

a. Would the proponents end each paragraph with a semicolon instead of a period, since these are not complete sentences?

INCORPORATED BY SPONSORS.

b. Would the proponents end the second to the last paragraphs in each of those subsections with a "; and" and delete "AND," from the beginning of the last paragraphs?

NOT SO MODIFIED

c. Would the proponents list the correct names of each of the agencies, divisions, boards, etc., as they are created in statute or the constitution? For example, in paragraph (c) of subsection (1), "Colorado State Division of Forestry" should actually be "division of forestry", as it was created in section 24-33-201, C.R.S. In paragraph (f) of subsection (1), "Colorado Wildlife Division" should be "division of wildlife", as it was created in section 24-1-124, C.R.S. In paragraph (a) of subsection (2), "Great Outdoors Colorado Trust Fund Board" should be "State Board of the Great Outdoors Colorado Trust Fund", as it was created in section 6 of article

XXVII of the constitution.

INCORPORATED BY SPONSORS

d. In section 7 (4) of the proposed amendment, there is a missing paragraph "(j)". Would the proponents reletter the paragraphs?

INCORPORATED BY SPONSORS.

5. "Colorado" is misspelled in the table of contents for section 10; "Counsel." should be "Council." at the end of section 4 (3); "RESPONSIBILITIES" is misspelled in the headnote in section 7 and the headnote contains the incorrect name of the new department; and "specie" should be "species" in section 7 (1) (a) (approximately line 22).

CORRECTED BY SPONSORS.

Substantive questions:

1. Section 1 (5.5) of article V of the state constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed amendment?

THE SINGLE SUBJECT OF THE INITIATIVE IS THE FORMATION OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION CHARGED WITH STEWARDSHIP RESPONSIBILITIES FOR THE PROTECTION AND PRESERVATION OF THE PUBLIC'S RESOURCES AND OF PUBLIC RESOURCE CONSERVATION VALUES.

2. What do the proponents intend by the language in section 1 of the proposed amendment that specifies that the operation and management of the department shall be compliant with legislative oversight of principal departments "insofar as legislative oversight and review is needed"? What aspects of the department's operation and management would not need legislative oversight and review?

MODIFIED BY THE SPONSORS.

3. Given that the proposed amendment would, if approved, create the new department, what do the proponents intend by the following language in section 2: "Article V, section 1 Colorado constitutional authorities shall be the authorities used by the public in the formation of the Colorado Department of Environmental Conservation."? Does the proposed amendment need to refer to the means by which the department is created? YES. If not, would the proponents consider deleting the reference?

NO.

4. What do the proponents intend by the following language in section 2: "Should conflict with other Colorado constitutional provisions arise, provisions within Article XXVIII shall supercede other, previous provisions."?

MODIFIED BY THE SPONSORS.

a. For example, could any of the rights specified in Article II of the constitution, the bill of rights, be superceded?

PROVISIONS WITHIN THE NEWLY CREATED CONSTITUTIONAL SYSTEM
RELATE ONLY TO STEWARDSHIP PROVISIONS FOR PUBLIC RESOURCES.

Could the powers of home rule local governments be superceded?

YES.

b. Is the term "conflict" in the quoted passage intended to include both explicit and implicit conflicts?

EXPLICIT.

Who should decide whether a conflict exists?

JUDICIAL DETERMINATION.

5. Given that section 1 of the proposed amendment creates the department and section 3 does not relate to the creation of the department IT DOES, what do the proponents intend by the following language in the heading of section 3: "**COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION IS CREATED;**"?

SPONSORS RETAIN THE LANGUAGE.

6. Regarding the transfers specified in proposed section 3:

a. Section 3 (1) and (2) of the proposed amendment grant the executive committee of the legislative council the authority to transfer state agencies, divisions, etc., to the new department, essentially granting a single legislative committee the authority to reorganize state government. Have the proponents considered whether it is appropriate to grant this level of authority to the six individual state legislators of the executive committee?

YES.

b. How do section 3 (1) (i) of the proposed amendment, which allows the executive committee of the legislative council to transfer additional agencies, divisions, etc., to the new department, and proposed section 3 (2) (o), which allows the executive committee to transfer additional boards, etc., to the new department, interact with section 17 of article V of the constitution, which specifies that no law shall be passed "except by bill", and section 39 of article V of the constitution, which specifies that bills that create law must be presented to the governor for signature? (Is this a "conflict" as discussed in question 4. above?)

NO.

SECTION 1 (1) OF ARTICLE V OF THE CONSTITUTION STIPULATES, IN BLACK LETTER LAW, "THE PEOPLE RESERVE TO THEMSELVES THE POWER TO PROPOSE LAWS AND AMENDMENTS TO THE CONSTITUTION AND TO ENACT OR REJECT THE SAME AT THE POLLS INDEPENDENT OF THE GENERAL ASSEMBLY

c. Note that, because existing agencies, divisions, etc., are created in statute, transferring them to the new department would typically require legislation.

SEE SECTION 1 OF ARTICLE V OF THE STATE CONSTITUTION.

What action by the executive committee suffices for such a transfer?

A MAJORITY VOTE OF THE EXECUTIVE COMMITTEE.

What procedural requirements, if any, would apply to the executive committee's action?

TO BE DETERMINED BY THE EXECUTIVE COMMITTEE.

d. What do the proponents intend by the reference in proposed section 3 (2) to the transfers being from the "discretion of the Office of the Governor of Colorado and from the Colorado General Assembly" to the "management and supervision of the elected Commissioners . . ." ? Would the governor and the general assembly no longer have any management or supervision over the transferred entities? Would the general assembly not be able to establish the transferred entities' appropriations? Would the governor not be able to prioritize the department's expenditures of appropriated moneys?

MODIFIED BY THE SPONSORS.

e. How does proposed section 3 (2) (a), which transfers the "Great Outdoors Colorado Trust Fund Board" to the new department, interact with section 6 (3) of article XXVII of the constitution, which specifies that the "State Board of the Great Outdoors Colorado Trust Fund" is a political subdivision of the state that is not subject to direction by either the general assembly or any department?

SEE PROVISIONS OF SECTION 1 OF ARTICLE V OF THE STATE CONSTITUTION.

f. How does proposed section 3 (2) (c), which transfers the state board of land commissioners to the management and supervision of the new department, interact with section 9 of article IX of the constitution, which case law has construed to authorize the general assembly to regulate the state board of land commissioners' management of state lands as may be prescribed by law?

THE INTENT OF THE SPONSORS IS THAT, SHOULD THE INITIATIVE BE APPROVED BY THE PEOPLE OF THE STATE OF COLORADO, THE MANAGEMENT AND OPERATIONS OF THE STATE BOARD OF LAND COMMISSIONERS, BEING A

NECESSARY COMPLIMENT IN THE STEWARDSHIP OF PUBLIC'S LANDS AND RESOURCES, BE TRANSFERRED TO THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

g. What do the proponents intend by the reference in proposed section 3 (2) (i) to the "Colorado Environmental Control Commission"? Section 24-62-101, C.R.S., creates a "Southern Ute Indian Tribe/State of Colorado Environmental Control Commission", but that entity has been created by an intergovernmental agreement with the tribe in addition to statute and cannot be altered without impairing that contract.

MODIFIED BY THE SPONSORS.

h. How does the transfer in proposed section 3 (2) (l) of the Colorado water resources and power development authority to the new department affect the fact that, by virtue of section 37-95-104, the authority is not "an agency of state government, nor shall it be subject to administrative direction by any department . . ." ? In particular, how would the authority's bonding authority be affected by the transfer, given the constitutional debt limits referenced in section 9 of the proposed amendment? What would be the effect on the authority's existing bonds?

MODIFIED BY THE SPONSORS.

i. What do the proponents intend by the reference in proposed section 3 (2) (m) to the "Wildlife and Urban Interface Working Group"?

LANGUAGE RETAINED BY THE SPONSORS.

j. What do the proponents intend by the following language in section 3 (1) (i) and 3 (2) (o) regarding which types of agencies, divisions, etc., may be transferred: Those that act in a "stewardship and trust capacity" for the public's interests in state or in "otherwise" state or federally-managed public lands, public resources, waters and wildlife?

PROPERTIES MANAGED BY THE STATE THAT ARE PUBLIC BY VIRTUE OF PROPERTY LEASES ARE TO BE INCLUDED WITHIN THE SCOPE OF THE MEASURE.

i. What is a "stewardship and trust capacity"? Must the capacity include both stewardship and trust?

YES. STEWARDSHIP AND TRUST EFFORTS ARE DIFFERING LEGAL AND PHYSICAL CONCEPTS.

ii. What is an "otherwise" state or federally-managed interest?

SEE LEASES ABOVE.

iii. How would this provision affect the management of federal lands?

IN THE U.S. SUPREME COURT DECISION IN CALIFORNIA COASTAL COMM'N V. GRANITE ROCK CO., 480 U.S. 572 (1987), CALIFORNIA COASTAL COMMISSION ET AL. V. GRANITE ROCK CO., AN APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT NO. 85-1200. ARGUED DECEMBER 2, 1986 DECIDED MARCH 24, 1987, THE COURT OPINED THAT:

"2. (A) THE PROPERTY CLAUSE OF THE CONSTITUTION - WHICH GIVES CONGRESS PLENARY POWER TO LEGISLATE THE USE OF FEDERAL LANDS - DOES NOT ITSELF AUTOMATICALLY CONFLICT WITH ALL STATE REGULATION OF FEDERAL LANDS. THE QUESTION IN THIS CASE IS GOVERNED BY THE USUAL PRE-EMPTION ANALYSIS WHEREBY STATE LAW IS PRE-EMPTED IF CONGRESS HAS EVIDENCED AN INTENT TO OCCUPY ENTIRELY A GIVEN FIELD OR, WHERE CONGRESS HAS NOT ENTIRELY DISPLACED STATE REGULATION, IF STATE LAW ACTUALLY CONFLICTS WITH FEDERAL LAW. PP. 579-581"

iv. Proposed section 3 (2) (o) does not mention commissions or authorities. Can the executive committee transfer additional commissions or authorities pursuant to section 3 (2) (o)?

MODIFIED BY SPONSORS.

k. Does the proposed amendment specify what happens to the statutory authority, powers, duties, functions, records, personnel, property, contractual obligations, and unexpended balances of appropriations, allocations, or other funds, of the governmental entities transferred pursuant to proposed section 3?

MODIFIED BY SPONSORS.

7. Regarding the election of commissioners pursuant to proposed section 4:

a. How many commissioners would there be on the board?

AS MANY AS THERE ARE COLORADO CONGRESSIONAL DISTRICTS.

As many as there are congressional districts? If so, would the proponents consider adding an explicit statement to that effect?

NO.

b. Would the commissioner positions be statewide offices, or would commissioners represent the congressional district from which they were elected?

SEE LANGUAGE WITHIN THE PROPOSED MEASURE.

c. What happens if multiple candidates file sufficient petitions to be on the ballot and no candidate for a position receives a "a majority of all Colorado electors voting in a

statewide election" as required by proposed section 4 (1)?

MODIFIED BY SPONSORS.

d. Proposed section 4 (1) states that commissioners are elected to the board at "regular statewide biennial general elections" and proposed section 4 (2) states that a statewide election "in November 2009" shall be held to elect the commissioners.

MODIFIED BY SPONSOR.

However, section 1-1-104 (17), C.R.S., defines a "general election" as occurring in even-numbered years. Do the proponents intend to alter the statutory definition of a general election as occurring in even-numbered years?

NO.

e. Proposed section 4 (1) states that commissioners elected from odd-numbered congressional districts shall serve "until January, 2013" for the initial term of office and commissioners from even-numbered congressional districts shall serve "until December, 2015". Do the proponents intend that commissioners serve until the first day of the months specified? The last day of the months specified? The last day of the preceding months?

MODIFIED BY SPONSORS.

f. A literal interpretation of proposed section 4 (1) (a) could be that eligible candidates for election to the board are limited to a registered voter who is "from one of the Congressional districts within Colorado". Do the proponents intend that candidates must reside within the various congressional districts from which they are elected?

YES.

g. If so, would the proponents consider clarifying the proposal to reflect that intent?

MODIFIED BY SPONSORS.

h. An implication derived from a literal interpretation of proposed section 4 (4) could be that commissioners can be "elected for . . . two terms of office" at a single election. Do the proponents intend that commissioners are subject to term limits as specified in section 11 of article XVIII of the constitution and, if so, would the proponents consider clarifying the proposal to reflect that intent by including a reference to section 11 of article XVIII of the constitution?

MODIFIED BY SPONSORS.

i. Proposed section 4 (5) states that compensation for the commissioners is "commensurate with compensation paid to other executive directors" of other state departments.

i. The commissioners are not themselves executive directors, as is made

clear by proposed section 5 (1), pursuant to which the commissioners appoint an executive director for the new department.

CORRECT.

ii. Do the proponents intend that the commissioners earn the same compensation as the executive director?

TO BE DETERMINED BY THE ELECTED COMMISSIONERS.

iii. What do the proponents intend by "commensurate" compensation? Equal to a particular salary? An average of the salaries of executive directors of other state departments?

TO BE DETERMINED BY THE ELECTED COMMISSIONERS.

8. Proposed section 5 (1) (a) specifies that the executive director supervises the organization, operations, and management of the department, "with affirmative consultation" of a majority of the commissioners.

MODIFIED BY THE SPONSORS.

a. What does "affirmative consultation" mean? Is it the same as an affirmative vote of a majority of the commission?

MODIFIED BY THE SPONSORS.

b. Do the proponents intend that the executive director cannot supervise the department independently of control by the commission?

YES.

If not, what actions would the executive director be able to take in organizing and operating the department without the affirmative vote of the majority of the commissioners?

TO BE DETERMINED BY THE ELECTED COMMISSIONERS.

9. If the commissioners are elected in an election occurring in an even-numbered year,

NO

would the department still commence operations on January 1, 2010, pursuant to proposed section 6?

YES

If the commissioners are elected in an election occurring in November 2009, does commencing operations on January 1, 2010, provide sufficient time to make all the changes necessitated by

the proposed amendment?

YES. FORMATION ELECTION FOR THE DEPARTMENT IS TO TAKE PLACE AT THE 2008 GENERAL ELECTION. ELECTION OF COMMISSIONERS IS TO TAKE PLACE AT THE ELECTION USUALLY RESERVED FOR FISCAL MATTER IN 2009. THE MANNER OF DEPARTMENT ORGANIZATION WILL BE UNDER THE SUPERVISION AND CONTROL OF THE ELECTED BOARD OF COMMISSIONERS FOR DEPARTMENTAL INITIATION IN JANUARY 2010. PROVISIONS OF THE MEASURE ARE SELF-ENACTING AND SELF-EXECUTING.

10. The heading of proposed section 7 (1) refers to "trust responsibilities" of the department. Except as specified in section 7 (4) (o), the operative text of section 7 does not refer to "trust responsibilities", but rather to the department's responsibility to "steward and protect the public ownership and the public's conservation values in the lands, waters, public resources, and wildlife of the people of Colorado" and "public ownerships and public values". Does the proposed amendment create a public trust in these public resources?

NO.

THE TRUST RESPONSIBILITIES ARE STEWARDSHIP MEASURES TO PRESERVE AND PROTECT THE PUBLIC'S RESOURCES AND PUBLIC RESOURCE VALUES.

11. If so, what consequences would result, for instance, from a public trust in water resources?

NOT CONTAINED WITHIN THE PROPOSAL.

12. Proposed section 7 (1) (a) specifies that the department's stewardship responsibilities are not limited to the various listed resources. Does the proposed amendment limit the department's stewardship responsibilities, and if so, how?

MODIFIED BY SPONSORS.

13. Proposed section 7 (1) (a) (I) specifies that permitting requirements for resource development activities on federally managed public lands within Colorado are "retained by Colorado state . . . environmental permitting authorities". How does this affect the transfers effected by proposed section 3?

NOT AT ALL.

14. Proposed section 7 (4) specifies that the commissioners appoint a variety of boards and commissions, including the "Great Outdoors Colorado Trust Fund Board" and the "State of Colorado Board of Land Commissioners".

a. How does this interact with:

i. Section 6 (1) of article XXVII of the constitution, which specifies the appointing authority of the members of the "State Board of the Great Outdoors Colorado Trust Fund"?

SECTION 6 (1) IS MODIFIED BY THE MEASURE.

ii. Section 9 of article IX of the constitution, which specifies that the governor appoints the state board of land commissioners?

SECTION 9 OF ARTICLE IX IS MODIFIED BY THE MEASURE.

iii. The intergovernmental agreement with the Southern Ute Indian Tribe, which specifies that the tribe appoints three members and the governor appoints three members to the Southern Ute Indian Tribe/State of Colorado Environmental Control Commission?

MODIFIED BY SPONSORS.

b. With regard to proposed section 7 (4) (o), which allows the executive committee of the legislative council to determine additional governmental entities that are subject to the commission's appointing authority:

How does this designation interact with section 17 of article V of the constitution, which specifies that no law shall be passed "except by bill", and section 39 of article V of the constitution, which specifies that bills that create law must be presented to the governor for signature?

SEE SECTION 1 OF ARTICLE V OF THE COLORADO CONSTITUTION.

Note that, because existing agencies, divisions, etc., are created in statute, transferring them to the new department would typically require legislation. What action by the executive committee suffices for such a transfer?

A VOTE BY A MAJORITY OF THE EXECUTIVE COMMITTEE VOTING ON THE TRANSFER.

What procedural requirements, if any, would apply to the executive committee's action?

PROCEDURAL STANDARDS ESTABLISHED BY THE EXECUTIVE COMMITTEE.

15. With regard to proposed section 7 (6) and 7 (7) concerning matters of state interest:

What do the proponents intend by the phrase "compliance permit directives contained within the Colorado Land Use Act . . . "?

SEE IN PARTICULAR PART 5 OF ARTICLE 65.1 OF TITLE 24, AND FOR A COMPREHENSIVE PRESENTATION THE WHOLE OF ARTICLE 65.1 OF TITLE 24 FOR INSTRUCTIONS REGARDING GOVERNMENTAL DIRECTIONS FOR POTENTIAL ACTIONS TO BE UNDERTAKEN TO STEWARD THE PUBLIC'S LANDS AND PUBLIC RESOURCE

CONSERVATION VALUES.

Do the proponents intend to prevent local governments from determining matters of state interest as specified in that act if the board of commissioners acts pursuant to proposed section 7 (6) or 7 (7)?

NO. SEE ARTICLE 65.1 OF TITLE 24.

What is an "eligible local government"?

SEE ARTICLE 65.1 OF TITLE 24 - ACTIONS DESIGNATING MATTERS OF STATE INTEREST AND ACTIVITIES OF STATE CONCERN ARE STIPULATED TO BE RESPONSIBILITIES OF A MUNICIPALITY OR A COUNTY (24-65.1-102 GENERAL DEFINITIONS).

What do the proponents intend by section 8 (3) regarding the interaction of section 20 of article X and section 1 of article V of the constitution?

LANGUAGE RETAINED BY SPONSORS.

What do the proponents intend by section 11 regarding the proposed amendment being "self-enacting and self-executing"? Is effectiveness of the proposed amendment subject to proclamation of the governor pursuant to section 1 (4) of article V of the constitution?

NO.

May the general assembly enact implementing legislation?

NO ENACTING LEGISLATION IS NECESSARY.

APPENDIX C



STATE OF COLORADO

DEPARTMENT OF
STATE

CERTIFICATE

I, **MIKE COFFMAN**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the text, motion for rehearing, titles, and the rulings thereon of the Title Board on Proposed Initiative "2007-2008 #17".....

..... **IN TESTIMONY WHEREOF** I have unto set my hand
and affixed the Great Seal of the State of Colorado, at the
City of Denver this 22nd day of June, 2007.

A handwritten signature in black ink that reads "Mike Coffman".

SECRETARY OF STATE

RECEIVED

JUN 13 2007

ELECTIONS / LICENSING
SECRETARY OF STATE

17:54 P.M.
via e-mail

BEFORE THE TITLE BOARD, STATE OF COLORADO

MOTION FOR REHEARING

IN RE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE SET FOR INITIATIVE
2007-08 #17

Petitioners, Douglas Kemper and Stuart A. Sanderson, both registered electors of the State of Colorado, by and through their counsel, Burns, Figa & Will, P.C., hereby request a rehearing and reconsideration of the title and ballot title and submission clause (collectively the "Titles") set by the Title Board on June 6, 2007 for Initiative 2007-08 #17 (the "Initiative"), which would add a new Article XXX to the Colorado Constitution. Reconsideration is requested for the following reasons:

1. The Initiative and Titles do not conform to the single-subject requirements of Article V, Section 1(5.5) of the Colorado Constitution, and C.R.S. § 1-40-106.5.
2. The Titles do not adequately and fairly express the true intent and meaning of the Initiative.

Specifically, the Initiative and Titles are defective in at least the following respects:

I. The Initiative and Titles Violate the Single Subject Requirement.

The Initiative violates the single subject requirements of Article V, Section 1(5.5) of the Colorado Constitution, and C.R.S. § 1-40-106.5. In addition to consolidating certain state departmental divisions, boards and agencies into a newly created Colorado Department of Environmental Conservation (the "Department"), and establishing the Department's governance, powers and duties, the Initiative contains at least the following separate, distinct and unrelated subjects and purposes, which would create substantive changes to several aspects of Colorado law:

1. The plain language of Initiative Section 8(3) would not only exempt revenues generated by the Department from TABOR (as Article X, Section 20 of the Colorado Constitution is more commonly known), but also would exempt monies provided to the Department from the state general fund from all of the restrictions of TABOR.
2. Section 7 of the Initiative would alter substantive Colorado law by imposing trust responsibilities while preempting all other state Constitutional provisions found to

conflict, including those Constitutional provisions that protect private property rights in water and land.

3. The Initiative would substantially alter the manner and procedure in which officials are appointed to serve on certain state boards, councils and departments, removing the General Assembly's confirmation power over those appointments.

A. The Initiative Exempts all Funds Allocated to or Generated By the Department from TABOR Requirements.

In addition to specifying the duties and powers of the Department, the Initiative would exempt all funds allocated to or generated by the Department from the requirements of TABOR. Section 8(3) of the Initiative provides that, "No manner of fiscal regulation contained within Section 20 of Article X of the Colorado Constitution... shall apply to the *operation, funding, reserves or expenditures* of the Colorado Department of Environmental Conservation." (emphasis added). Furthermore, Section 8(2) of the Initiative expressly allows for an allocation of operating funds from the General Assembly. Thus, the Initiative's plain language not only would allow funds generated by and through the Department to be exempt from TABOR, but also would make any funds that may be provided to the Department from the state's general fund exempt from all TABOR restrictions.

TABOR imposes restrictions aimed to limit governmental growth including restrictions on governmental revenue collection, governmental spending and requiring voter approval for the imposition of several forms of new or increased taxes or the creation of any multiple-fiscal year direct or indirect debt or financial obligation. Colo. Const. Art. X, §§ 20(4), (7), and (8). The Colorado Supreme Court has held that TABOR itself contains multiple subjects. *See, e.g. In re Proposed Initiative 2001-02 #43*, 46 P.3d 438, 447 (Colo. 2002) (holding that because TABOR contains multiple subjects, an initiative seeking to prevent the repeal of TABOR contains multiple subjects). Accordingly, the broad exemption from TABOR contained in the Initiative would substantially alter the TABOR treatment of the Department and the state budget, and encompass separate and distinct subjects from the creation and administration of the Department. *See, In re Amend TABOR 25*, 900 P.2d 121 (Colo. 1995) (holding initiative that proposed to make both procedural and substantive changes to TABOR violates the single subject rule).

B. The Trust Responsibilities Given to the Department Combined with the Explicit Preemption of all Other Constitutional Provisions Make Substantive Changes to the Law.

Section 7 of the Initiative charges the new Department with several "trust" or "stewardship" responsibilities, providing that any conflict of such responsibilities with economic interest "shall be resolved in favor of public ownerships and public values." The Initiative further provides in Section 2 that Article XXX "shall be held dominant over other, previous constitutional provisions" if found to conflict. These related features of the Initiative would greatly alter substantive Colorado law under existing constitutional provisions, such as those

provisions protecting private property rights in water and land, by establishing public trust requirements not currently recognized in Colorado.

A public trust doctrine declares that the state holds its navigable waters and lands underneath them in trust for the people. See *Ill. Cent. RR. Co. v. Illinois*, 146 U.S. 387, 452 (1892). Colorado has never applied the public trust doctrine to water rights within the state due to the express protection of private property rights contained in Article XVI of the Colorado Constitution. *People v. Emmert*, 597 P.2d 1025, 1029-1030 (Colo. 1979) (holding Colo. Const. Art. XVI, Section 5 does not impose a public trust but protects private property rights in appropriation of Colorado waters and ownership of adjoining lands). This is likely because of the adverse impacts that doctrine would have on existing water rights under the prior appropriation doctrine. See Gregory J. Hobbs, Jr. and Bennett W. Raley, *Water Rights Protection in Water Quality Law*, 60 U. Colo. L. Rev. 841, 855-56 (1989). By creating trust responsibilities, dictating how conflicts are resolved, and preempting any contrary provisions in Article XVI of the Constitution, the plain language of the Initiative would establish a public trust doctrine contrary to current Colorado law.¹

Similarly, applying the substantive policy directive in Section 7 will require the Department (and any entity or court that may later review Departmental actions) to "have, as priority, the responsibilities to steward and protect the public ownership and public conservation values in lands, waters, public resources, and wildlife. Conflict between economic interest and conservation stewardship responsibilities to, and for, the public's resources and resource conservation values shall be resolved in favor of public ownerships and public values." Given the broad range of state divisions and boards being consolidated into the Department, and the range of duties and responsibilities the Department is charged with, this substantive policy directive will affect separate and distinct governmental activities and issues, including issues pertaining to hazardous waste, pollution prevention, water conservation, wildlife issues and oversight of the local government permitting process regarding matters of statewide concern. Because this policy directive applies to separate and distinct aspects of state government, it necessarily encompasses multiple subjects.

C. The Initiative Modifies the Method of Appointing Certain Governmental Officers.

Several of the boards, commissions, and councils that would be transferred to the Department currently consist of members or officers that are appointed to those positions by the Governor and then legislatively confirmed. For example, Article IX, § 9 of the Colorado Constitution provides that the members of the state board of land commissioners are appointed by the Governor and confirmed by the Senate. This appointment and confirmation process

¹ Proponent Richard Hamilton has previously proposed a series of initiatives that would expressly adopt a "public trust doctrine" in the Colorado Constitution provisions governing water, Art. XVI, Section 5. See *MacRavey v. Hufford*, 917 P.2d 1277 (Colo. 1996); *MacRavey v. Hamilton (Public Rights in Water II)*, 898 P.2d 1076 (Colo. 1995); *In re Proposed Initiative on Water Rights*, 877 P.2d 321 (Colo. 1994); see also 2001-2002 Proposed Initiative #135.

would be changed as Section 7(2) of the Initiative provides that the Board of Commissioners within the Department would unilaterally appoint such officers and members, with no legislative confirmation. Thus, the Initiative not only would reorganize the executive branch of state government and create new powers and duties in the Department, but also would remove powers currently vested in the General Assembly for confirmation of certain appointed state officers.

II. The Titles do not Fully Express the Initiative's True Intent and Meaning.

In addition to the separate, distinct and unrelated subjects and purposes contained within the Initiative, the Initiative's ballot title also does not fully express the initiative's true intent and meaning. The title should be "a brief statement that fairly and accurately represents the true intent and meaning of the proposed text of the initiative." C.R.S. § 1-40-102(10). In setting a title, the Board "shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general understanding of the effect of a 'yes' or 'no' vote will be unclear." C.R.S. § 1-40-106(3)(b). The Board's title for the Initiative fails to meet these standards, in that (1) it does not fully express the Initiative's intent and meaning regarding appointment of certain officers, and (2) it contains a catch-phrase.

The title set by the Board states that in connection with the creation of the Department, the Initiative transfers "to the board of commissioners the authority to appoint members of certain boards and commissions relating to those programs and entities." This implies that the power is transferred from some similar body, and does not clearly state that the Initiative removes the power to appoint such officers from the Governor, or that the Initiative specifically precludes "any manner of legislative confirmation" for such appointments. Without such clarification, it is likely that voters would be surprised by the fact that the Governor is no longer entitled to appoint, nor the Senate to confirm, certain executive officers. This is the type of confusion that the title should avoid.

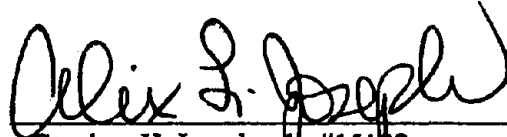
Moreover, the title set by the Board contains an impermissible catch phrase. The ballot title for the Initiative contains the phrase "conflicts between economic interests and conservation stewardship will be resolved in the favor of public ownership and public values." This phrase may prejudice electors to vote for or against the Initiative by virtue of the fact that the phrase is likely to appeal to a voter's emotions and could be used to form the basis for a slogan for or against the Initiative. Therefore, the title contains an impermissible "catch phrase." *See In re Ballot Title 1999-2000 # 258(A)*, 4 P.3d 1094, 1110 (Colo. 2000) (holding that a ballot title impermissibly contained a catch phrase even though the language at issue appeared in the initiative).

WHEREFORE, Petitioners, Douglas Kemper and Stuart A. Sanderson, respectfully request a rehearing and reconsideration of the title and ballot title and submission clause set by the Title Board on June 6, 2007 for Initiative 2007-08 #17.

Respectfully submitted this 13th day of June, 2007.

BURNS, FIGA & WILL, P.C.

By:

A handwritten signature in cursive script, appearing to read "Stephen H. Leonhardt", written over a horizontal line.

Stephen H. Leonhardt, #15122

Alix L. Joseph, #33345

Peter F. Waltz, #35828

6400 S. Fiddlers Green Circle, Suite 1000
Greenwood Village, CO 80111

Attorneys for Petitioners
Douglas Kemper and Stuart A. Sanderson

CERTIFICATE OF MAILING

The undersigned hereby certifies that a true and correct copy of the foregoing **MOTION FOR REHEARING** was served via U.S. mail on this 13th day of June, 2007, as follows:

Mr. Richard Hamilton
P.O. Box 156
Fairplay, CO 80440

Mr. Phil Doe
7140 S. Depew Street
Littleton, CO 80128

Adrienne Abate

one copy
from original text
Proposed Initiative #17

RECEIVED
APR 23 2007 11:30 AM
11030
ck.

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:

ELECTIONS/LICENSING
SECRETARY OF STATE

**ARTICLE XXX
Environmental Conservation**

Section 1. Colorado department of environmental conservation created. THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION IS CREATED BY THE PEOPLE OF THE STATE OF COLORADO TO ENSURE PUBLIC RESOURCE CONSERVATION STEWARDSHIP, AND IN CONNECTION THEREWITH, THE OPERATION AND MANAGEMENT OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL BE COMPLIANT WITH PROVISIONS CONTAINED WITHIN THIS ARTICLE XXX AND WITH STATUTORY PROVISIONS FOR LEGISLATIVE DIRECTION FOR A DEPARTMENT CONTAINED WITHIN ARTICLE 7 OF TITLE 2, COLORADO REVISED STATUTES, OR ANY ANALOGOUS SUCCESSOR STATUTE.

Section 2. Supervision and management of public lands, resources, waters, and wildlife by elected commissioners - responsibilities, conflicts with other provisions. THE SUPERVISION, MANAGEMENT, AND POLICY DETERMINATIONS REGARDING THE PUBLIC'S RESOURCES AND PUBLIC RESOURCE CONSERVATION STEWARDSHIP PROGRAMS WITHIN THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL BE THE RESPONSIBILITY OF THE ELECTED BOARD OF COMMISSIONERS OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION. SECTION 1 OF ARTICLE V OF THE COLORADO CONSTITUTION SHALL BE THE AUTHORITY USED BY THE PUBLIC IN THE FORMATION OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION. SHOULD CONFLICT WITH OTHER COLORADO CONSTITUTIONAL PROVISIONS ARISE HEREAFTER, PROVISIONS WITHIN ARTICLE XXX SHALL BE HELD DOMINANT OVER OTHER, PREVIOUS CONSTITUTIONAL PROVISIONS.

Section 3. Colorado department of environmental conservation is created. Boards, divisions, programs and commissions transferred. (1) THE FOLLOWING DEPARTMENTAL DIVISIONS, AND STATE OF COLORADO BOARDS, COMMISSIONS AND PROGRAMS, AND THE ADMINISTRATION THERETO, ARE TRANSFERRED FROM VARIOUS COLORADO GOVERNMENTAL ENTITIES TO THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION, AND TO THE MANAGEMENT AND PROGRAM SUPERVISION OF THE ELECTED COMMISSIONERS FOR THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION;

- (a) COLORADO NATURAL AREAS PROGRAM;
- (b) COLORADO WATER CONSERVATION BOARD;
- (c) COLORADO DIVISION OF FORESTRY;
- (d) COLORADO DIVISION OF STATE PARKS;
- (e) COLORADO WATER QUALITY CONTROL DIVISION;
- (f) COLORADO DIVISION OF WILDLIFE;
- (g) COLORADO LAND USE COMMISSION;
- (h) COLORADO CAPTIVE WILDLIFE AND ALTERNATIVE LIVESTOCK BOARD;
- (i) STATE BOARD OF LAND COMMISSIONERS;
- (j) GREAT OUTDOORS COLORADO PROGRAM;
- (k) AND, AS MAY BE DETERMINED BY THE EXECUTIVE COMMITTEE OF THE LEGISLATIVE COUNCIL, ANY OTHER COLORADO STATE AGENCY, DIVISION, PROGRAM, OFFICE OR BOARD OF COLORADO STATE GOVERNMENT, THAT EITHER

11030

NOW EXISTS, OR SHALL BE CREATED, AS A MANDATED PROGRAM OR AS A STATE-RECOGNIZED, NEWLY-CREATED GOVERNMENTAL ACTIVITY, AUTHORITY, OR PROGRAM THAT HAS BEEN EMPOWERED BY THE COLORADO CONSTITUTION, OR BY COLORADO STATE STATUTE, OR WILL BE EMPOWERED IN THE FUTURE, TO ACT IN, OR HAVE, STEWARDSHIP AND TRUST CAPACITIES FOR THE PUBLIC'S INTERESTS IN STATE OR IN OTHERWISE STATE OR FEDERALLY MANAGED PUBLIC LANDS, PUBLIC RESOURCES, WATERS AND WILDLIFE, SHALL BE TRANSFERRED TO THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

(2) THE FOLLOWING COLORADO BOARDS, COMMISSIONS AND COUNCILS, PROVIDING GUIDANCE, POLICY GUIDELINE TO PROGRAM ADMINISTRATION, AND POLICY DIRECTION, INCLUDING OPERATIONS, TO VARIOUS STATE OF COLORADO GOVERNMENT DEPARTMENTS, DIVISIONS, AND PROGRAMS ARE TRANSFERRED FROM THE OFFICE OF THE GOVERNOR OF COLORADO TO THE MANAGEMENT AND SUPERVISION OF THE ELECTED COMMISSIONERS FOR THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION;

- (a) STATE BOARD OF THE GREAT OUTDOORS COLORADO TRUST FUND;
- (b) HAZARDOUS WASTE COMMISSION;
- (c) STATE BOARD OF LAND COMMISSIONERS;
- (d) COLORADO LAND USE COMMISSION;
- (e) COLORADO NATURAL AREAS COUNCIL;
- (f) COLORADO BOARD OF PARKS AND OUTDOOR RECREATION;
- (g) POLLUTION PREVENTION ADVISORY BOARD;
- (h) COLORADO WATER CONSERVATION BOARD;
- (i) COLORADO WATER QUALITY CONTROL COMMISSION;
- (j) WILDLANDS AND URBAN INTERFACE WILDLIFE WORKING GROUP;
- (k) COLORADO WILDLIFE COMMISSION;
- (l) COLORADO JOINT REVIEW PROCESS;
- (m) AND, AS MAY BE DETERMINED BY THE EXECUTIVE COMMITTEE OF THE

LEGISLATIVE COUNCIL, ANY OTHER COLORADO STATE AGENCY, DIVISION, PROGRAM, OFFICE OR BOARD OF COLORADO STATE GOVERNMENT, THAT EITHER NOW EXISTS, OR SHALL BE CREATED, AS A MANDATED PROGRAM OR AS A STATE-RECOGNIZED, NEWLY-CREATED GOVERNMENTAL ACTIVITY, AUTHORITY, OR PROGRAM THAT HAS BEEN EMPOWERED BY THE COLORADO CONSTITUTION, OR BY COLORADO STATE STATUTE, OR WILL BE EMPOWERED IN THE FUTURE, TO ACT IN, OR HAVE, STEWARDSHIP AND TRUST CAPACITIES FOR THE PUBLIC'S INTERESTS IN STATE OR IN OTHERWISE STATE OR FEDERALLY MANAGED PUBLIC LANDS, PUBLIC RESOURCES, WATERS AND WILDLIFE, SHALL BE TRANSFERRED TO THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

Section 4. Election of the board of commissioners of the Colorado department of environmental conservation - members from congressional districts. Compensation. (1) THE INDIVIDUAL MEMBERS OF THE BOARD OF COMMISSIONERS OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL BE ELECTED AT REGULAR STATEWIDE BIENNIAL GENERAL ELECTIONS, WITH COMMISSION MEMBERS ELECTED FROM ELIGIBLE CANDIDATES WHO RESIDE WITHIN ONE OF THE SEVERAL COLORADO CONGRESSIONAL DISTRICTS. THE BOARD OF COMMISSIONER MEMBER SHALL BE ELECTED BY A MAJORITY VOTE OF THOSE VOTING FOR THAT OFFICE IN A STATEWIDE GENERAL ELECTION. BOARD OF COMMISSION MEMBERS ELECTED FROM ODD-NUMBERED COLORADO CONGRESSIONAL

DISTRICTS SHALL SERVE UNTIL THE LAST DAY OF DECEMBER, 2012 ON THE COMMISSION FOR THE INITIAL TERM OF OFFICE. BOARD OF COMMISSION MEMBERS FROM EVEN-NUMBERED COLORADO CONGRESSIONAL DISTRICTS SHALL SERVE UNTIL LAST DAY OF DECEMBER, 2014 ON THE COMMISSION FOR THEIR INITIAL TERM OF OFFICE. NEWLY ELECTED COMMISSIONERS SHALL BE SWORN TO OFFICE ON JANUARY 1 FOLLOWING MEMBER OFFICE ELECTIONS. ALL MEMBER TERMS OF OFFICE SHALL BE FOUR-YEAR TERMS OF OFFICE FOR ALL SUBSEQUENT COMMISSION TERMS.

(a) A REGISTERED VOTER, RESIDING WITHIN ONE OF THE CONGRESSIONAL DISTRICTS WITHIN COLORADO, SHALL BECOME ELIGIBLE TO BECOME A CANDIDATE FOR ELECTION TO THE BOARD OF COMMISSIONERS OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION BY SUBMITTING TO THE COLORADO SECRETARY OF STATE ONE HUNDRED FIFTY (150) DAYS PRIOR TO AN ELECTION PETITIONS WITH THE NAMES AND ADDRESSES AFFIXED OF TWO HUNDRED (200) REGISTERED VOTERS FROM THE CONGRESSIONAL DISTRICT TO BE REPRESENTED. AFTER CERTIFICATION BY THE COLORADO SECRETARY OF STATE OF THE NAMES AND ADDRESSES PRESENTED ON THE NOMINATING PETITION TO BE ACCOMPLISHED WITHIN THIRTY (30) DAY AFTER SUBMISSION OF PETITIONS, THE SECRETARY OF STATE SHALL CERTIFY THE NAME OF THE CANDIDATE TO THE BALLOT FOR ELECTION TO THE COMMISSION BOARD.

(b) COMMISSIONERS SERVING ON THE BOARD OF COMMISSIONERS OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL RESIDE WITHIN THE CONGRESSIONAL DISTRICT THEY ARE TO REPRESENT.

(2) A STATEWIDE SPECIAL ELECTION, TO BE HELD IN NOVEMBER 2009 AT THE DATE RESERVED FOR STATEWIDE ELECTIONS CONCERNING FISCAL MATTERS, SHALL BE CONDUCTED FOR THE ELECTION OF INITIAL MEMBERS TO THE BOARD OF COMMISSIONERS TO THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

(3) VACANCY ELECTIONS, AS REQUIRED, SHALL BE HELD AT THE NEXT BIENNIAL GENERAL ELECTION AND SHALL BE FOR THE REMAINING PERIOD OF THAT OFFICE TERM. VACANCY ON THE COMMISSION BOARD, UNTIL THAT POSITION CAN BE FILLED AT A REGULAR ELECTION, SHALL BE APPOINTED BY A MAJORITY VOTE OF THE EXECUTIVE COMMITTEE OF THE LEGISLATIVE COUNCIL.

(4) MEMBERS OF THE BOARD OF COMMISSIONERS FOR THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL BE ELECTED TO NO MORE THAN TWO TERMS OF OFFICE, TERMS OF OFFICE BEING COMPLIANT WITH SECTION 11 OF ARTICLE XVIII OF THE CONSTITUTION.

(5) COMPENSATION FOR ELECTED MEMBERS OF THE GOVERNING BOARD OF COMMISSIONERS OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL BE COMMENSURATE WITH COMPENSATION PAID TO EXECUTIVE DIRECTORS OF STATE OF COLORADO GOVERNMENTAL DEPARTMENTS.

Section 5. Appointment of the executive director of the Colorado department of environmental conservation. PROCEDURAL MANAGEMENT RESPONSIBILITIES FOR THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL RESIDE WITHIN THE OFFICE OF THE EXECUTIVE DIRECTOR OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

(a) THE EXECUTIVE DIRECTOR OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL SERVE AT THE PLEASURE OF THE ELECTED BOARD OF COMMISSIONERS OF THE DEPARTMENT.

- (b) MATTERS OF ORGANIZATION, OPERATION, AND MANAGEMENT OF THE DEPARTMENT OF DEPARTMENTAL PROGRAMS AND THEIR OPERATIONS, SHALL BE UNDER THE SUPERVISION OF THE EXECUTIVE DIRECTOR OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION. POLICY DETERMINATIONS REGARDING MATTERS OF ORGANIZATION AND OPERATION OF DEPARTMENTAL PROGRAMS SHALL BE EFFECTIVE UPON AN AFFIRMATIVE AFFIRMATION OF A MAJORITY OF THE COMMISSION MEMBERS.

Section 6. Colorado governmental departmental reorganization in effect. THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL COMMENCE DEPARTMENTAL OPERATIONS JANUARY 1, 2010.

Section 7. Trust responsibilities of the Colorado department of environmental conservation. (1) THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION IS CREATED BY THE PEOPLE OF THE STATE OF COLORADO TO ENSURE PUBLIC RESOURCE CONSERVATION STEWARDSHIP, AND IN CONNECTION THEREWITH, THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION, AND THE ELECTED MEMBERS OF THE BOARD OF COMMISSIONERS OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION, SHALL HAVE, AS PRIORITY, THE RESPONSIBILITIES TO STEWARD AND PROTECT THE PUBLIC OWNERSHIP AND PUBLIC CONSERVATION VALUES IN LANDS, WATERS, PUBLIC RESOURCES, AND WILDLIFE. CONFLICT BETWEEN ECONOMIC INTEREST AND CONSERVATION STEWARDSHIP RESPONSIBILITIES TO, AND FOR, THE PUBLIC'S RESOURCES AND RESOURCE CONSERVATION VALUES SHALL BE RESOLVED IN FAVOR OF PUBLIC OWNERSHIPS AND PUBLIC VALUES.

- (a) RESPONSIBILITIES OF THE BOARD OF COMMISSIONERS OF COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION, AND OF THE DEPARTMENT, SHALL INCLUDE: POLICY DETERMINATIONS, SUPERVISION, OPERATIONS OF PROGRAMS AND ACTIVITIES, MANAGEMENT, AND STEWARDSHIP OF PUBLIC RESOURCES INCLUDING MANAGEMENT AND POLICY DETERMINATIONS REGARDING PARKS, MONUMENTS, GOVERNMENT MANAGED LANDS, NATURAL HERITAGE AREAS, POLICY REVIEW AND EVALUATION AND OVERSIGHT OF PERMITTING REGARDING MATTERS OF STATE INTEREST AND ACTIVITIES OF STATE CONCERN INCLUDING THOSE MATTERS AND CONCERNS THAT PERTAIN TO RESOURCE DEVELOPMENT AND ENVIRONMENTAL PERMITTING OF DEVELOPMENT ACTIVITIES ON FEDERALLY MANAGED PUBLIC LANDS, AND OF SHORE LANDS; PROTECTION OF ARCHEOLOGICAL RESOURCES; MANAGEMENT AND RESTORATION OF FOREST HEALTH OF STATE FORESTS; WATER CONSERVATION AND THE PROTECTION AND PRESERVATION OF PUBLIC VALUES IN WATER; MANAGEMENT OF CORRECTION EFFORTS TO REDRESS UNRESOLVED HARMFUL IMPACTS TO THE PUBLIC'S RESOURCES; PROTECTION, CONSERVATION, AND RESTORATION OF WILDLIFE RESOURCES, WILDLIFE HABITAT, AND RESPONSIBILITY FOR PREDATOR MANAGEMENT; MANAGEMENT OF WILDLIFE RESOURCES WITHIN ANY WILDLAND AND URBAN LANDS INTERFACE; PROTECTION STRATEGIES FOR MIGRATORY BIRDS; PROTECTION OF STATE AND FEDERALLY DESIGNATED THREATENED AND ENDANGERED SPECIES OF PLANTS AND ANIMALS; PRESERVATION AND PROTECTION OF FISHERIES HABITAT RESOURCES; FISH RESTORATION PROGRAMS, FISH HEALTH, AND AQUATIC RESOURCE STEWARDSHIP PROGRAMS; REGULATION OF AND

LICENSING OF TRANSPORTATION OF FISH, GAME, AND EXOTIC ANIMALS INTO AND WITHIN COLORADO; WATERSHED REVIEW, EVALUATION AND DESIGNATION; FLOODPLAIN REVIEW, EVALUATION, AND DESIGNATION; IMPLEMENTATION AND COORDINATION OF STATE TRAILS SYSTEMS, TRAILS DEVELOPMENT, AND MANAGEMENT OF PUBLIC FUNDS ESTABLISHED FOR THOSE PURPOSES; RURAL ENVIRONMENTAL CONSERVATION PROGRAMS; FOSTERING OF PARTNERSHIPS FOR WILDLIFE ENHANCEMENT; PRESERVATION OF FENS AND WETLANDS INCLUDING THOSE THAT FUNCTION AS POLLUTANT TRAPS, ASSIST IN FLOOD CONTROL, AND HELP CONTROL RUNOFF; PROMOTION OF WETLAND CONSERVATION AND RESERVE PROGRAMS; AND REGULATION OF HUNTING, OFF-ROAD VEHICLES, AND BOATING.

(I) PERMITTING PROGRAM ELEMENTS FOR MATTERS OF STATE INTEREST AND ACTIVITIES OF STATE CONCERN REGARDING RESOURCE DEVELOPMENT ON FEDERALLY MANAGED PUBLIC LANDS WITHIN COLORADO SHALL BE RETAINED, AS AUTHORIZED, BY COLORADO STATE AND ELIGIBLE LOCAL GOVERNMENT ENVIRONMENTAL PERMITTING AUTHORITIES.

(II) CRITERIA FOR THE ADMINISTRATION OF MATTERS OF STATE INTEREST AND ACTIVITIES OF STATE CONCERN SHALL BE COMPLIANT WITH ARTICLE 65 AND ARTICLE 65.1 OF TITLE 24 OF THE COLORADO REVISED STATUTES, OR ANY ANALOGOUS SUCCESSOR STATUTES.

(b) ANY CITIZEN OF THE STATE OF COLORADO SHALL HAVE STANDING TO PETITION THE BOARD OF COMMISSIONERS OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION TO REQUEST THE DEPARTMENT, OR THE COMMISSION, EVALUATE, ANALYZE, AND DESIGNATED ADDITIONAL CONSERVATION STEWARDSHIP MATTERS, WITH ANY ADDITIONAL STEWARDSHIP MATTER BEING ADDED TO DEPARTMENTAL PRIORITY UPON APPROVAL OF THE COMMISSION BOARD.

(2) THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION IS CREATED BY THE PEOPLE OF THE STATE OF COLORADO TO ENSURE PUBLIC RESOURCE CONSERVATION STEWARDSHIP, AND IN CONNECTION THEREWITH, THE BOARD OF COMMISSIONERS OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL:

- (a) SHALL SIT, AND ACT, AS THE COLORADO STATE BOARD OF PARKS AND OUTDOOR RECREATION.
- (b) SHALL SIT, AND ACT, AS THE COLORADO LAND USE COMMISSION.
- (c) SHALL SIT, AND ACT, AS THE COLORADO WILDLIFE COMMISSION.
- (d) SHALL BE RESPONSIBLE FOR THE APPOINTMENT OF MEMBERS OR OFFICERS OR PROGRAM STAFF TO THE FOLLOWING BOARDS, COMMISSIONS, COUNCILS, GROUPS AND PROGRAMS, OR TO SUCCESSOR BOARDS, COMMISSIONS, COUNCILS, GROUPS OR PROGRAMS;
 - (i) STATE BOARD OF THE GREAT OUTDOORS COLORADO TRUST FUND;
 - (ii) HAZARDOUS WASTE COMMISSION;
 - (iii) STATE OF COLORADO BOARD OF LAND COMMISSIONERS;
 - (iv) COLORADO LAND USE COMMISSION;
 - (v) COLORADO NATURAL AREAS COUNCIL;
 - (vi) POLLUTION PREVENTION ADVISORY BOARD;
 - (vii) STATE OF COLORADO EMERGENCY PLANNING AND COMMUNITY RIGHT-TO KNOW COUNCIL;

- (viii) COLORADO WATER CONSERVATION BOARD;
- (ix) COLORADO WATER QUALITY CONTROL COMMISSION;
- (x) WILDLANDS AND URBAN INTERFACE WILDLIFE WORKING GROUP;
- (xi) AND, AS MAY BE DETERMINED BY THE EXECUTIVE COMMITTEE OF THE LEGISLATIVE COUNCIL, ANY OTHER COLORADO STATE AGENCY, DIVISION, PROGRAM, OFFICE OR BOARD OF COLORADO STATE GOVERNMENT, THAT EITHER NOW EXISTS, OR SHALL BE CREATED, AS A MANDATED PROGRAM OR AS A STATE-RECOGNIZED, NEWLY-CREATED GOVERNMENTAL ACTIVITY, AUTHORITY, OR PROGRAM THAT HAS BEEN EMPOWERED BY THE COLORADO CONSTITUTION, OR BY COLORADO STATE STATUTE, OR WILL BE EMPOWERED IN THE FUTURE, TO ACT IN, OR HAVE, STEWARDSHIP AND TRUST CAPACITIES FOR THE PUBLIC'S INTERESTS IN STATE OR IN OTHERWISE STATE OR FEDERALLY MANAGED PUBLIC LANDS, PUBLIC RESOURCES, WATERS AND WILDLIFE, SHALL BE TRANSFERRED TO THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION.
- (xii) APPOINTMENT TO ANY BOARD, COMMISSION, COUNCIL OR ADVISORY GROUP OF A MEMBER OR OFFICER BY THE BOARD OF COMMISSIONERS OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL NOT BE SUBJECT TO ANY MANNER OF LEGISLATIVE CONFIRMATION.

(3) THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION IS CREATED BY THE PEOPLE OF THE STATE OF COLORADO TO ENSURE PUBLIC RESOURCE CONSERVATION STEWARDSHIP, AND IN CONNECTION THEREWITH;

- (a) THE BOARD OF COMMISSIONERS OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION MAY CONVENE, EITHER UPON THE INITIATIVE OF ANY DEPARTMENTAL DIVISION THEREOF, OR BY THE BOARD SITTING AS THE COLORADO LAND USE COMMISSION, AS AUTHORIZED IN ARTICLE 65 OF TITLE 24 OF THE COLORADO REVISED STATUTES, OR ANY ANALOGOUS SUCCESSOR STATUTE, EITHER INDEPENDENTLY OR UPON PETITION FROM A MEMBER OF THE PUBLIC, TO REVIEW, CONSIDER, AND HAVE THE AUTHORITY TO ISSUE COMPLIANCE PERMIT DIRECTIVES, AS AUTHORIZED WITHIN THE COLORADO LAND USE ACT, ARTICLE 65 AND ARTICLE 65.1 OF TITLE 24 OF THE COLORADO REVISED STATUTES, OR ANY ANALOGOUS SUCCESSOR STATUTE, THAT HAS AS PURPOSE THE DESIGNATING OF MATTERS OF STATE INTEREST AND ACTIVITIES OF STATE CONCERN THAT COULD INITIATE STATE GOVERNMENTAL, MULTI-AGENCY REVIEW AND PERMITTING UNDER AUTHORITY OF THE COLORADO JOINT REVIEW PROCESS OF ANY ACTIVITY THAT COULD IMPACT PUBLIC RESOURCE CONSERVATION STEWARDSHIP, OR THE PUBLIC'S OWNERSHIP OR PUBLIC VALUES IN PUBLIC NATURAL RESOURCES.
- (b) THE BOARD OF COMMISSIONERS OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION MAY INITIATE IDENTIFICATION, REQUIRE DESIGNATION, AND MAY REQUIRE PROMULGATION AND ADOPTION OF GUIDELINES FOR PERMITTING OF ACTIVITIES REGARDING MATTERS OF STATE INTEREST AND ACTIVITIES OF STATE CONCERN WITHIN COLORADO. THE BOARD OF COMMISSIONERS OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL AUTHORIZE THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION TO REVIEW AND COMMENT ON LOCAL GOVERNMENT ARTICLE 65.1

OF TITLE 24 COLORADO REVISED STATUTES, OR ANY ANALOGOUS SUCCESSOR STATUTE, AUTHORITIES, AND MAY AUTHORIZE THE DEPARTMENT TO REQUIRE AN ELIGIBLE LOCAL GOVERNMENT, AS IDENTIFIED WITHIN ARTICLE 65.1 OF TITLE 24 COLORADO REVISED STATUTES, OR ANY ANALOGOUS SUCCESSOR STATUTE, TO ADOPT STATE-APPROVED DEPARTMENT OF ENVIRONMENTAL CONSERVATION GUIDELINES FOR REGULATION OF MATTERS OF STATE INTEREST AND ACTIVITIES OF STATE CONCERN.

Section 8. Licenses, fees, and revenues necessary for the operation and management of the Colorado department of environmental conservation.

(1) FEES, REVENUES, PAYMENTS, AND ALL MONIES GENERATED WITHIN AND UNDER THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION AS LICENSES, OR AS PENALTIES, OR AS ASSESSMENTS, OR AS INTERGOVERNMENTAL TRANSFERS FROM ANY SOURCES, OR FROM GRANTS OR FROM REVENUES OF ANY MANNER, SHALL BE USED BY THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION FOR DEPARTMENT PROGRAMS AND OPERATIONS OF THE DEPARTMENT.

(2) FUNDS FOR THE OPERATION OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION MAY BE DERIVED FROM THE COLORADO GENERAL FUND.

(a) DEVELOPMENT OF AN ANNUAL OPERATING BUDGET FOR THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL BE GENERATED WITHIN THE DEPARTMENTAL BUDGET SETTING PROCESS ESTABLISHED TO GENERATE THE ANNUAL OPERATING BUDGETS FOR STATE OF COLORADO DEPARTMENTS.

(b) THE ANNUAL BUDGET FOR THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL BE ADOPTED BY THE COLORADO GENERAL ASSEMBLY AS PART OF THE BUDGET ENACTING PROCESS ESTABLISHED FOR THE ENACTING OF BUDGETS FOR COLORADO STATE GOVERNMENT DEPARTMENTS.

(3) NO MANNER OF FISCAL REGULATION CONTAINED WITHIN SECTION 20 OF ARTICLE X OF THE COLORADO CONSTITUTION, EXCEPT THAT OF THE ABILITY OF THE PUBLIC TO INITIATE FUNDING FOR DEPARTMENTAL PROGRAMS AND FOR PROJECTS USING GUIDELINES AND PROCEDURES ENABLED WITHIN SECTION 1 OF ARTICLE V OF THE COLORADO CONSTITUTION, SHALL APPLY TO THE OPERATION, FUNDING, RESERVES OR EXPENDITURES OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

Section 9. Debt for public purpose. DEBT PROVISIONS FOR PUBLIC RESOURCES CONSERVATION PURPOSES AND EFFORTS REGARDING THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL BE GOVERNED BY ARTICLE XI AND ARTICLE XXVII OF THE COLORADO CONSTITUTION.

Section 10. State board of the great outdoors Colorado trust fund. ARTICLE XXVII OF THE COLORADO CONSTITUTION – GREAT OUTDOORS COLORADO PROGRAM – IS INTEGRATED INTO THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION FOR PURPOSES OF PROGRAM MANAGEMENT, PROGRAM OPERATION AND PROGRAM ADMINISTRATION. PROVISIONS OF SECTION 2, 3, 4, AND 5 OF ARTICLE XXVII RELATING TO THE ESTABLISHMENT AND OPERATION OF THE GREAT OUTDOORS COLORADO TRUST FUND SHALL NOT BE OTHERWISE IMPRESSED BY PROVISIONS OF ARTICLE XXX.

Section 11. Provisions within article XXX are self-enacting and self-executing. PROVISIONS OF THIS ARTICLE ARE SELF-ENACTING AND SELF-EXECUTING.

Proposed Initiative 2007-2008 #17

Richard Hamilton
P.O. Box 156
Fairplay, CO 80440
719-836-4619
rghamilton@cointernet.net

Phil Doe
7140 S. Depew Street
Littleton, CO 80128
303-973-7774
ptdoe@comcast.net

Ballot Title Setting Board

Proposed Initiative 2007-2008 #17¹

The title as designated and fixed by the Board is as follows:

An amendment to the Colorado constitution concerning the creation of a new department of environmental conservation, and, in connection therewith, establishing an elected board of commissioners to supervise the department; specifying the department's duties and powers and declaring that conflict between economic interest and conservation stewardship responsibilities shall be resolved in favor of public ownerships and public values; transferring certain existing governmental programs and entities to the department, including the great outdoors Colorado program; transferring to the board of commissioners the authority to appoint members of certain boards and commissions relating to those programs and entities; vesting procedural management responsibility for the department in an executive director, subject to supervision by the board of commissioners; identifying revenue sources for the department; and exempting the department from the fiscal limits contained in section 20 of article X of the Colorado constitution.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be an amendment to the Colorado constitution concerning the creation of a new department of environmental conservation, and, in connection therewith, establishing an elected board of commissioners to supervise the department; specifying the department's duties and powers and declaring that conflict between economic interest and conservation stewardship responsibilities shall be resolved in favor of public ownerships and public values; transferring certain existing governmental programs and entities to the department, including the great outdoors Colorado program; transferring to the board of commissioners the authority to appoint members of certain boards and commissions relating to those programs and entities; vesting procedural management responsibility for the department in an executive director, subject to supervision by the board of commissioners; identifying revenue sources for the department; and exempting the department from the fiscal limits contained in section 20 of article X of the Colorado constitution?

Hearing June 6, 2007:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 10:32 a.m.

Hearing June 20, 2007:

Motion for Rehearing denied.

Hearing adjourned 2:59 p.m.

¹ Unofficially captioned "New State Department and Elected Board for Public Resource Conservation" by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.

APPENDIX D

(REFORMATTED)

**RESPONSE TO MOTION TO REHEAR THE TITLE SET BY THE TITLE
SETTING BOARD FOR THE INITIATIVE TO ADD ARTICLE XXX -
ESTABLISHMENT OF COLORADO DEPARTMENT OF
ENVIRONMENTAL CONSERVATION**

Wednesday, June 20, 2007

Richard G. Hamilton
Fairplay, Colorado 80440-0156

One sponsor of the Initiative responds to the contentions of the petitioner's Motion for Rehearing on the Article XXX initiated proposal.

The petitioners to rehear the title set June 6, 2007 by the Title Setting Board for the Initiative 2007 - 2008 # 17 cited three (3) issues of error by the Title Setting Board in setting the title for the initiative that include the contention that the title contains more than a single subject:

- 1.) TABOR - Article X, Section 20 of the Colorado Constitution.
- 2.) Section 7 of the measure doesn't protect "private property rights".
- 3.) Measure makes substantive changes in law.

TABOR: The initiated measure does not change TABOR - Article X, section 20 - of the Colorado Constitution. The measure does propose that no manner of fiscal management contained within TABOR is to constrain the new Department of Environmental Conservation (D.E.C.) in funding or operation. The reason for the TABOR section in the initiative - as was

stated at the Title Board June 6th. - is that the proposed D.E.C. is to be an agency where departmental funding is largely dependent upon revenues from "discretionary", non-steady, sole sources. Departmental funding will not be derived, in whole, from the Colorado General Fund, or from "secure" finance program areas, or directly from ad valorem taxing authorities. The funding of the department is more "ad hoc" than say the Department of Revenue where economic conditions and "steady-stream" revenues can be predicted. The measure also states that the Legislature may fund activities of the Department of Environmental Conservation. The petitioners for a Motion to Rehear assert that TABOR is being modified. TABOR is not being modified. The inclusion of the TABOR section in the initiative has to do with departmental funding, the potentials of wide cash-funded vacillations in revenues disrupting stability in the proposed department's funding, and does not effect substantive changes in TABOR.

The initiated measure's Section 7 "stewardship" provisions, and the initiative's Section 2 provisions, those constitutional provisions relating to "prior constitutional provisions - if conflict shall arise", are included in the measure to detail, and define, the stewardship responsibilities of the Department (not now in statute), as well as to attempt to protect the new ARTICLE XXX by stating that, if adopted, ARTICLE XXX shall have been adopted by the public in a public vote to be an new constitutional article ratifying the public's intent - see Colorado Constitution Article 5, Section 1 - the people's right to legislate.

The contention by the petitioners to Rehear that suggests that the measure is an attempt, in a surreptitious manner, to install a public trust doctrine into the Colorado Constitution, is in direct conflict with testimony provided at the Title Hearing, June 6th., where testimony specifically stated that there was, in no manner, any attempt to promote a public trust doctrine. The badinage and persiflage espoused by the petitioners of the Motion to Rehear that the sponsors have an public trust "agenda" is a specious contention meant to smear and mischaracterize the motivations of the sponsors. The petitioners for the Motion to Rehear contention is without merit. The sponsors of the initiative definitely and succinctly stated that there has been no attempt in the ARTICLE XXX proposal to install a public trust doctrine.

The reason that Section 7 was proposed in its present form is demonstrated by the following: The recent Colorado Court of Appeals case - (see *Board of County Commissioners of Gunnison County v. BDS and the Colorado Oil and Gas Conservation Commission*

(COGCC) - Court of Appeals No.: 04CA1679, Gunnison County District Court No. 03CV76) December 16, 2006, wherein the Court of Appeals decided (and thereafter the Colorado Supreme Court Petition for Writ of Certiorari was DENIED. EN BANC - June 10, 2007) that counties can review and permit "matters of state interest" and "activities of state concerns" on environmental grounds on federally-managed lands (thereby upholding Gunnison County's "1041" regulations as being exigent - see state authority acknowledged in the U. S. Supreme Court decision, *see CALIFORNIA COASTAL COMM'N v. GRANITE ROCK CO.*, 480 U.S. 572 (1987), March 24, 1987, 107 S. Ct. 1419 (1987), Steve Aquafresca, a former Colorado legislator and now Mesa County commissioner - upon being informed that counties have authority to promulgate hearings and issue environmental compliance permits on resource developments on federally-managed lands, stated: "Now we are going to have to go through numerous court decisions to see what those county powers and environmental authorities are." That contention - that court cases are to determine environmental compliance areas of authority that counties retain - is precisely the reason that Section 7 was included, in detail, in the ARTICLE XXX initiative. The sponsor's of the initiative propose the public to legislate authorities to protect and steward their natural resources, and are loath to permit courts to determine, piecemeal, public resource conservation policy generated as judicial dicta.

The ARTICLE XXX initiative is an effort to stipulate, via publicly approved and enacted language, what protections are to be included within state and local environmental stewardship regulations as those stewardship stipulations direct a new state department to ensure and enable conservation protection guarantees. The initiative proposal for the establishment of ARTICLE XXX is an effort to present to the public a well-enunciated series of environmental protection proposals so that the public might be able to see a clear and extensive "check-list" of stewardship protections proposals presented for their consideration and for their vote. Section 7 forwards to the public, in a forthright manner, proposed authorities that stipulate comprehensive responsibilities for a new state department to protect the public's interests in public resources as those responsibilities would be constitutionally mandated in Colorado law.

In the section of the Motion for Rehearing captioned "The Initiative Modifies the Method of Appointing Certain Governmental Officers", the response is "obviously". If the initiative for

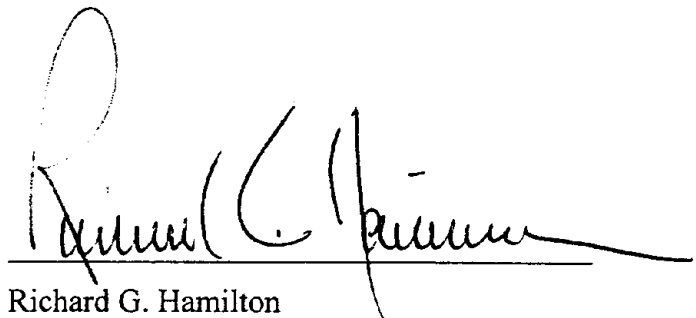
constitutional modification did not modify certain governmental authorities - then why present it? The rehearing proponents are not supposing the measure was introduced in order to establish a new department - they are intent upon presupposing that the measure seeks to reform current governance. The sponsor's intent - (see the CRS 1-40 "Advise and Comment Hearing") - is that the mandates and the enabling language of the proposed new ARTICLE XXX department should specify the department's duties and powers insofar as stewardship of the public's natural resource are concerned. The measure has not been introduced to destroy or impede the authority of the governor, nor to constrain the legislature from an ability to act in any specific manner. These questions are rightly within the province of the public's right to legislate, and to vote to confirm, via an initiated measure.

The title set and the summary clause designated for the Proposed Initiative 2007 - 2008 # 17 by the Title Setting Board fairly and clearly sets a ballot initiative title and summary clause: "that expresses the subject of the bill in the title to make ... the public aware of the contents of the proposed legislation" - see Legislative Research Memorandum No. 2, December 1971 - Bills to Contain Single Subject And "... the generality of a title is oftener to be commended than criticized, the constitution being sufficiently complied with so long as the matters contained within a bill are directly germane to the subject expressed in the title." (see *Catron v. Co. Commissioners*, 18 Colo. 553, at 558, 33 P. 513, at 514 (1893)).

THE "RESPONSE TO MOTION TO REHEAR THE TITLE SET BY THE TITLE SETTING BOARD FOR THE INITIATIVE TO ADD ARTICLE XXX - ESTABLISHMENT OF COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION", was presented at the Title Setting Board, June 20, 2007, for Initiative # 17 2007-2008 - New State Department and Elected Board for Environmental Conservation - as a response to the MOTION FOR REHEARING by petitioners Douglas Kemper and Stuart A. Sanderson, registered electors (in) the State of Colorado.

THE "RESPONSE TO MOTION TO REHEAR THE TITLE SET BY THE TITLE SETTING BOARD FOR THE INITIATIVE TO ADD ARTICLE XXX - ESTABLISHMENT OF COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION", by Richard G. Hamilton, initiative sponsor, resident of Fairplay, Colorado, was HAND DELIVERED TO THE COUNSEL FOR THE PETITIONERS AT THE TITLE BOARD HEARING, JUNE 20, 2007, was MADE PART OF THE RECORD AT THE TITLE SETTING HEARING, and was made (hand delivered) a part of the RECORD OF HEARING PACKET OF THE TITLE BOARD, WILLIAM A. HOBBS, DANIEL CARTIN, AND DANIEL DOMENICO (ABSENT) as well as being placed in the RECORD OF HEARING PACKET OF THE TITLE BOARD for Maurice G. Knaiser, Esq., First Assistant Attorney General of the State of Colorado and attorney for the Title Setting Board.

The undersigned hereby certifies that the above statement of HAND DELIVERY OF THE "RESPONSE TO THE MOTION TO REHEAR THE TITLE SET BY THE TITLE SETTING BOARD FOR THE INITIATIVE TO ADD ARTICLE XXX - ESTABLISHMENT OF THE COLORADO DEPARTMENT OF ENVIRONMENTAL CONSERVATION" is a true representation.

A handwritten signature in black ink, appearing to read "Richard G. Hamilton", is written over a horizontal line. The signature is cursive and somewhat stylized.

Richard G. Hamilton

Fairplay, Colorado

APPENDIX E



SUMMARY OF BOARD ACTION

Initiative Title Setting Review Board

Wednesday, June 20, 2007, 2:00 p.m.

Secretary of State's Blue Spruce Conference Room

1700 Broadway, Suite 270

Denver, Colorado

The order for the day was:

- 1. 2007 –2008 #17 – “New State Department and Elected Board for Public Resource Conservation”* - Rehearing**
Commenced 2:02 p.m.; Motion for Rehearing denied; adjourned 2:59 p.m.
- 2. 2007 –2008 #31 – “Prohibition on Discrimination and Preferential Treatment by Colorado Governments”* - Rehearing**
Commenced 2:59 p.m.; Motion for Rehearing denied; adjourned 4:09 p.m.

ALL AGENDA ITEMS WERE COMPLETED.

* Unofficial caption assigned by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.

Ballot Title Setting Board

Proposed Initiative 2007-2008 #17¹

The title as designated and fixed by the Board is as follows:

An amendment to the Colorado constitution concerning the creation of a new department of environmental conservation, and, in connection therewith, establishing an elected board of commissioners to supervise the department; specifying the department's duties and powers and declaring that conflict between economic interest and conservation stewardship responsibilities shall be resolved in favor of public ownerships and public values; transferring certain existing governmental programs and entities to the department, including the great outdoors Colorado program; transferring to the board of commissioners the authority to appoint members of certain boards and commissions relating to those programs and entities; vesting procedural management responsibility for the department in an executive director, subject to supervision by the board of commissioners; identifying revenue sources for the department; and exempting the department from the fiscal limits contained in section 20 of article X of the Colorado constitution.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be an amendment to the Colorado constitution concerning the creation of a new department of environmental conservation, and, in connection therewith, establishing an elected board of commissioners to supervise the department; specifying the department's duties and powers and declaring that conflict between economic interest and conservation stewardship responsibilities shall be resolved in favor of public ownerships and public values; transferring certain existing governmental programs and entities to the department, including the great outdoors Colorado program; transferring to the board of commissioners the authority to appoint members of certain boards and commissions relating to those programs and entities; vesting procedural management responsibility for the department in an executive director, subject to supervision by the board of commissioners; identifying revenue sources for the department; and exempting the department from the fiscal limits contained in section 20 of article X of the Colorado constitution?

Hearing June 6, 2007:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 10:32 a.m.

Hearing June 20, 2007:

Motion for Rehearing denied.

Hearing adjourned 2:59 p.m.

¹ Unofficially captioned "New State Department and Elected Board for Public Resource Conservation" by legislative staff for tracking purposes. Such caption is not part of the titles set by the Board.