From the Doghouse

*by Eric Thompson*

Appearing in the Rocky Mountain Oil Journal, January 29, 2016 – February 4, 2016

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Given current crude prices, it may feel instinctual for explorers, producers, and mineral owners to move into the background until prices rebound. Opponents of oil and gas production, however, are seeking sweeping changes in the deteriorating economic conditions.

On Dec. 22, 2015, Coloradans Resisting Extreme Energy Development (CREED) formally submitted 11 ballot initiatives to amend Colorado’s constitution. According to CREED’s website, the initiatives, which could appear on the ballot for Colorado’s November 2016 general election, are a “range of ballot measures aimed at protecting homes, neighborhoods, schools, and water supplies from the dangers associated with fracking operations.”

The 11 proposals, which follow with their initiative number, title, and brief description, appear on the Colorado Legislative Council’s website, all contain language aimed at frustrating or banning oil and gas exploration and development efforts in Colorado. (Note that some initiatives carry similar titles but have different numbers and slightly different wording.)

*No. 62, Ban on Hydraulic Fracturing*

Prohibits the use of hydraulic fracturing in oil and gas development in all lands within the geographic boundaries of the state of Colorado, less and except federal and Indian lands. The measure further maintains that the prohibition is not a taking of property, thereby prohibiting payment of compensation to affected property owners.

*No. 63, Right to a Healthy Environment*

Grants local governments the power to enact laws and regulations “that are protective of a healthy environment.”

*No. 64, Local Government Control of Oil and Gas Development*

Grants local governments the power and authority to create laws and regulations concerning oil and gas development within its geographic borders.

*No. 65, Mandatory Setback from Oil and Gas Development*

Requires that all new oil and gas development facilities must be located at least 2,500’ from “occupied structures and areas of special concern”. Includes re-entry for a well previously plugged or abandoned as a “new well.” Further allows local governments to enact larger setbacks.

*No. 66, Mandatory Setback from Oil and Gas Development*

Requires that all new oil and gas development facilities must be located at least 4,000’ from “occupied structures and areas of special concern.” Includes re-entry for a well previously plugged or abandoned as a “new well.” Further allows local governments to enact larger setbacks.

*No. 67, Mandatory Setback from Oil and Gas Development*

Requires that all new oil and gas development facilities must be located at least 2,500’ from “occupied structures and areas of special concern.” Includes re-entry for a well previously plugged or abandoned as a “new well.”

*No. 68, Mandatory Setback from Oil and Gas Development*

Requires that all new oil and gas development facilities must be located at least 4,000’ from “occupied structures and areas of special concern.” Includes re-entry for a well previously plugged or abandoned as a “new well.”

*No. 69, Mandatory Setback from Oil and Gas Development*

Requires that all new or “re-entered” oil and gas wells and wells used for disposal of waste products must be located at least 2,500’ from “occupied structures and areas of special concern.” Further allows local governments to set larger setbacks. Prohibits local governments to allow for the building of new occupied structures within the applicable setback.

*No. 70, Mandatory Setback from Oil and Gas Development*

Requires that all new or “re-entered” oil and gas wells and wells used for disposal of waste products must be located at least 4,000’ from “occupied structures and areas of special concern.” Further allows local governments to set larger setbacks. Prohibits local governments to allow for the building of new occupied structures within the applicable setback.

*No. 71, Mandatory Setback from Oil and Gas Development*

Requires that all new or “re-entered” oil and gas wells and wells used for disposal of waste products must be located at least 2,500’ from “occupied structures and areas of special concern.” Further allows local governments to set larger setbacks.

*No. 72, Mandatory Setback from Oil and Gas Development*

Requires that all new or “re-entered” oil and gas wells and wells used for disposal of waste products must be located at least 4,000’ from “occupied structures and areas of special concern.” Further allows local governments to set larger setbacks.

Proposed Initiatives 65 through 72 define an *occupied structure* as “any building or structure that requires a certificate of occupancy, or building or structure intended for human occupancy, including homes, schools, and hospitals.” While *areas of special concern* are defined to include “public and community drinking water sources, lakes, rivers, perennial or intermittent streams, creeks, irrigation canals, riparian areas, playgrounds, permanent sports fields, amphitheaters, public parks, and public open space.”

Given the overly broad definitions of *occupied structure* and *areas of special concern*, it would prove difficult, if not impossible, to find acceptable surface locations for future drilling operations.

It remains to be seen if CREED will obtain the 98,492 signatures for each proposed initiative required under Colorado law, being 5 percent of the total number of votes cast in the previous election. Nevertheless, such initiatives should serve as a constant reminder that the oil and gas industry must remain vigilant and steadfast, even in the current market.

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*Eric began his legal career at Akers & Thompson LLC, formerly Akers & Associates LLC, in January 2010 and was promoted to partner in July of 2015. During his time at the firm, Eric opened and maintained a branch office in Cheyenne, Wyo. He has since relocated to Denver, although most of his focus continues to surround exploration and production in the Powder River Basin of Wyoming.*

*Eric’s practice has focused entirely around oil and gas law, including mineral title examination on federal, state, and fee land, the acquisition and divestiture of leasehold and mineral properties, as well as service, joint operating, communitization, and unitization agreements.*

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